PHILIPPINE CONSTITUTION

A. THE CONSTITUTION

Constitution – a written instrument enacted by direct action of the people by which the fundamental powers of the government are established, limited and defined, and by which those powers are distributed among the several departments for their safe and useful exercise for the benefit of the body politic. *(Justice Malcolm)*

- It is the study of the maintenance of the proper balance between authority as represented by the three inherent powers of the State and liberty as guaranteed by the Bill of Rights. *(Cruz, Constitutional Law 1)*

- It is a body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised. *(Cooley)*

Purposes:

1. to prescribe the permanent framework of a system of government;

2. to assign to the several departments powers and duties;

3. to establish certain first fixed principles on which government if founded.

Nature:

1. Supremacy of the Constitution

It is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer.

2. The symbol of monument of the people's will. It may be submitted for ratification of the people.

3. It outlines the infrastructure of the government.

4. It must be obeyed by all.

5. The courts are the ultimate guardian of the Constitution.

Concept:

Our Constitution is written, conventional and rigid. Its precepts are embodied in one document. It was formally 'struck off' at a definite time and place following a conscious or deliberate effort taken by a constituent body. And it is one that can be amended only by a formal and usually difficult process. *(Cruz, Constitutional Law 1)*

The real and main function of 1987 Constitution is to replace the Freedom Constitution, which was revolutionary constitution and to pave the way for stability and normality under regular Constitution approved by people.

Effectivity of the 1987 Constitution- February 2, 1987, the date of the plebiscite when the people ratified the Constitution *(De Leon vs. Esguera, 153 SCRA 602).*

Amendments and Revisions

Amendment – means isolated or piecemeal change only.

Purposes:

1. to improve specific parts

2. to add new provisions deemed necessary to meet new conditions

3. to suppress specific portions that may have become obsolete or that are judged to be dangerous.

Revision- is a revamp or rewriting of the whole instrument.

Purposes:

1. re-examination of the entire document

2. re-examination of provisions of document which have over-all implications for the entire document, to determine how and to what extent they should be altered. *(Bernas, Political Law I)*

Revolution- if the change made *dehors* the constitution is made by the sovereign people, the resultant alteration is not unconstitutional but extra-constitutional. This is important because of the manner in which the 1973 Constitution and the Freedom Constitution of 1986 came into being. *(Justice Antonio in Ratification cases)*

The amendatory and revision provisions are called "*constitution of sovereignty*" because it is through these provisions that the sovereign people have allowed the expression of their sovereign will through this constitution to be canalized. It defines the constitutional meaning of sovereignty of the people.

Two-Part Test

1. **Quantitative test-** whether the proposed change is so extensive in its provision as to change directly the "substance entirety" of the Constitution by the deletion or alteration of numerous provisions.

2. **Qualitative test**- inquires into the qualitative effects of the proposed change in the Constitution. The main inquiry is whether the change will "accomplish such far –reaching changes in the nature of our basic governmental plan as to amount to a revision."*(Lambinovs. Comelec, Oct. 25, 2006)*

Stages/ Steps in the Amendatory and Revision process:

Proposal Stage and Ratification Stage

I. Proposal Stage

* Proposal for Amendments

3 methods:

a. by Congress upon a vote of ¾ of all its members. *(Congress here acts as a constituent assembly)*

b. by constitutional convention

c. by the people through initiative upon a petition of at least 12% of the total number of registered voters, of which every legislative district must be represented by at least 3% of registered voters therein.

Limitations:

1. Amendment through people's initiative shall not be authorized within 5 years following the ratification of 1987 Constitution.

2. Amendment through people's initiative shall not be oftener than once every 5 years. *(Sec. 2, Art. XVII)*

Requirements:

1. there must be written petition

2. the petitioners must be at least 12% of the total number of registered voters

3 of the 12% total number of registered voters, every legislative district must be represented by at least 3% of registered voters therein.

Procedure:

1. The people must author and sign the entire proposal; no agent or representative can sign in their behalf;

2. As an initiative upon a petition, the proposal must be embodied in the petition.

*Failure to comply with these requirements was fatal to the validity of the initiative petition. *(Lambino vs, Comelec, Oct. 25, 2006)*

Proposal through people's initiative applies only to amendments, not to revision.

Sec. 2, Art. XVII is not a self-executing provision; the Congress shall enact an implementing law. And so R.A. 6735 was enacted as the implementing law of *Sec. 2, Art XVII.* Under R.A. 6735, there are three initiatives:

1. initiative on the Constitution- refers to a petition proposing amendments to the Constitution

2. initiative on statutes- refers to a petition to enact a national legislation

3. initiative on local legislation- refers to a petition proposing to enact a regional, provincial, city or municipal or barangay law, resolution or ordinance.

***Proposal for Revision**

2 methods:

a. by Congress upon a vote of ¾ of all its members. *(Congress here acts as a constituent assembly)*

b. by Constitutional Convention

If the Congress chooses to call a constitutional convention to revise the Constitution, it may either:

a. call a constitutional convention by a vote of 2/3 of all its Members; or

b. submit to the electorate the question of calling such a convention by a majority vote of all its members. *(Sec. 3, Art XVII)*

The choice of the method of proposal is discretionary upon the legislature *(Occeña vs.COMELEC)*

Since the Constitution is silent about the method and since the amendatory process has been committed to Congress, under the *"political questions doctrine"* Congress should be free to choose whichever method it prefers:

1. Each House may separately formulate amendments by a vote of ¾ of all its members, and then pass it on to the other house for similar process. Disagreements can be settled through a conference committee.

2. Congress may also decide to come together in joint session and vote separately on proposed amendments and revisions.

What is essential is that both Houses vote separately, because the power to propose amendments is given to a bicameral body. *(Bernas, Political Law I)*

When the Congress directly proposed the amendment or revesion, it is acting in its *constituent assembly* and not as legislative body.

The Constitutional Commission is a separate and distinct body from Congress. *(Prof. Sandoval, UP BRI)*

The case of *Frantz vs. Autry* declares that as long as the Constitutional Commission exists and confines itself within the sphere of its jurisdiction, it must be considered independent of and co-equal with other department of the government.

II. Ratification

It involves the people themselves in their sovereign act of drafting or altering the fundamental law. It is imperative and proper that approval came directly from the people. *(Cruz, Constitutional Law1)*

Amendment or revision shall be valid when ratified by majority of vote cast in a plebiscite held not earlier than 60 days nor later than 90 days *after approval by Congress or constitutional convention*. *(par. 1, Sec. 4, Art. XVII)*

If the amendment is through people's initiative, it shall be valid if ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than sixty days nor later than ninety days *after the certification by the COMELEC of the sufficiency of the petition*. *(par. 2, Sec. 4, Art. XVII)*

In *Gonzales vs. COMELEC*, SC sustained the simultaneous holding of regular election and the plebiscite.

Judicial review of Amendments

The question of the validity of the adoption of amendments to the Constitution is now subject to judicial review. It allows the courts to inquire into whether or not the prescribe procedure for amendment has been observed.

In *Sanidad v. COMELEC (73 SCRA 333),* SC ruled that the amending process both as to proposal and ratification raises a judicial question. The SC has the last word in the construction not only of treaties and statutes, but also of the constitution itself.

The amending power, like all other powers organized in the Constitution is in form a delegated and hence a limited power, so that the SC is vested with that authority to determine whether the power has been discharged within its limits.

Thus, the judiciary may declare invalid a proposal adopted by less than ¾ of members of Congress, o a call for constitutional convention by less than 2/3 of legislature, or a ratification made by less than majority votes cast, or a plebiscite irregularly held.

4. Self-Executing and Non-Self-Executing Provisions

Self-executing provision- is a rule that by itself is directly or indirectly applicable without need of statutory implementation.

Example: provisions found in the Bill of Rights which may be invoked by proper parties independently of or even against legislative enactment.

Non-self-executing provision- is one that remains dormant unless it is activated by legislative implementation.

Example: Art. II, Sec. 4 states that 'all citizens may be required under conditions provided by law to render personal military or civil service'. Such requirement cannot be imposed until and unless the legislature so wills, through the passage of law specifying the conditions.

Another example of non-self-executing provision is par.2, Section 2, Art XVII, which states that "The Congress shall provide for the implementation of the exercise of this right."

In the case of *Santiago vs. Commision*, an attempt to use 'people's initiative as method of proposal was stuck down by SC for lack of necessary implementing law. The provision was not self-executing and RA 6735 provides for *local initiative* only not the national.

5. General Provisions

ARTICLE XVI

Section 1. The flag of the Philippines shall be red, white, and blue, with a sun and three stars, as consecrated and honored by the people and recognized by law.

Section 2. The Congress may, by law, adopt a new name for the country, a national anthem, or a national seal, which shall all be truly reflective and symbolic of the ideals, history, and traditions of the people. Such law shall take effect only upon its ratification by the people in a national referendum.

The following may be changed by law, provided it is ratified by the people:

1. name of the country

2. national anthem

3. national seal

Thus, the law making "Bayan Ko" as the national anthem of the Philippines, in lieu of "Lupang Hinirang" is constitutional. The Congress may by law adopt a new national anthem, but it shall take effect only upon ratification by the people in a national referendum. *(Handout #4, 2010 UP Law Center)*

ARTICLE I

1. National Territory

"The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial and aerial domains, including its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines."

a. Archipelagic Doctrine

Under this doctrine, the Philippine archipelago is considered as one integral unit instead of being fragmented into more than 7,000 islands. This assertion, together with the application of the "straight baseline method," is what is referred to as the *Archipelagic Doctrine.* By using this method, the outermost points of our archipelago are connected with straight baselines and all waters inside the baselines are considered as internal waters.

Under *Art. 49(1) of the UN Convention on the Law of the Sea,* these waters do not form part of the territorial sea but are described as archipelagic waters.

Question and Answer *(2006; Bernas,4-6)*

Q: What is the scope of national Territory?

A: It includes:

1. the Philippine archipelago;

2. all other territories over which the Philippines has sovereignty or jurisdiction;

3. the territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas corresponding to (1) and (2).

Moreover, (1) and (2) consists of: terrestrial, fluvial, and aerial domains.

Q: What is an archipelago?

A: An archipelago is a body of water studded with islands.

Q: What exactly is the Philippine archipelago situated?

A: The Philippine archipelago is that body of water studded with islands which is delineated in the Treaty of Paris, as modified by the Treaty of Washington and the Treaty of Great Britain. These are the same treaties which delineated Philippine territory in Article I of the 1935 Constitution.

Q: What is included by the clause "all other territories over which the Philippines has sovereignty or jurisdiction?

A: This includes any territory which presently belongs or might in the future belong to the Philippines through any of the internationally accepted modes of acquiring territory. Among these territories are what are referred to by the 1935 Constitution as "all territory over which the present (1935) Government of the Philippine Islands exercises jurisdiction"

It also includes what was referred to under the 1973 Constitution as territories "belonging to the Philippines by historic right or legal title", that is, other territories which, depending on available evidence, might belong to the Philippines (e.g., Sabah, the Marianas, Freedomland)

Q: By dropping the phrase "belonging to the Philippines by historic right or legal title" has not the Constitution in effect dropped the Philippine claim to Sabah?

A: No, it has not. It has, however, avoided the use of language historically offensive to Malaysia and ha used instead the clause "over which the Philippines has sovereignty or jurisdiction". The clause neither claims nor disclaims Sabah.

Q: What is the special claim made by the Philippines with respect to the "waters around, between and connecting the islands of the archipelago?

A: The Philippines claims them as part of its "internal waters" irrespective of their breath and dimension. This is one of the elements of the archipelagic principles which is now recognized by the 1982 Convention on the Law of the Sea.

Q: What is the other element of the archipelagic principles?

A: The other element if the straight baseline method of delineating the territorial sea. This consists of drawing straight lines connecting appropriate points on the coast without departing to any appreciable extent from the general direction of the coast. These baselines divide the internal waters from the territorial waters of an archipelago.

2. State Immunity

ARTICLE XVI

Section 3. "The State may not be sued without its consent."

This provision is recognition of the sovereign character of the State.

Basis: ***Doctrine of State Immunity or Doctrine of Non- Suability*** is based on the logical and practical ground that there can be no legal right against the authority which makes the law on which the right depends. Another justification is the practical consideration that the demands and inconveniences of

litigation will divert the time and resources of the State from the more pressing matters demanding its attention, to the prejudice of the public welfare. *(Justice Isagani Cruz)*

The Doctrine is also applicable to the following:

1. This doctrine is also available to foreign states insofar as they are sought to be sued in the courts of the local state. Following the *"Principle of the Sovereign Equality of States",* one State cannot assert jurisdiction over another in violation of maxim *"par in parem nan habet imperium"*. To do so would "unduly vex the peace of nations". The Head of State, who is deemed the personification of the State, is inviolable, and thus enjoys immunity from suit.

2. The State's diplomatic agents, including consuls to a certain extent, are also exempt from the jurisdiction of local courts and administrative tribunals.

A foreign agent, operating within a territory, can be cloaked with immunity from suit but only as long as it can be established that he is acting within the directives of the sending State. The cloak of protection is removed the moment the foreign agent is sued in his individual capacity, as when he is sought to be made liable for whatever damage he may have caused by hi act done with malice or in bad faith or beyond the cope of his authority or jurisdiction.

3. The UN, as well as its organs and specialized agencies, are likewise beyond the jurisdiction of local courts.

4. It also applies to complaints filed against officials of the State for acts performed by them in the discharge of their duties within the scope of their authority.

However, where a public officer has committed an *ultra vires* act, or where there is a showing of bad faith, malice or gross negligence, the officer can be held personally accountable even if such acts are claimed to have been performed in connection with official duties. *(Nachura, Outline Reviewer in Political Law)*

Test to determine if suit is against the State: On the assumption that decision is rendered against the public officer or agency impleaded, will the enforcement thereof require an affirmative act from the State, such as the appropriation of the needed amount to satisfy the judgment? If so, then it is a suit against the State.

There are many instances when a public officer may be sued in his official capacity without the necessity of first obtaining the consent of the State to be sued:

1. to refrain him form doing an act alleged to be unconstitutional or illegal

2. to recover from him taxes unlawfully assessed or collected

Where an action is filed against a public officer for recovery only of title or possession of property claimed to be held by him in his official capacity, the said action is not a suit against the State for which prior waiver of immunity is required.

In the case of *Festejo vs. Fernando*, the action for recovery of the land or its value was properly filed against the defendant in his personal capacity and was therefore not covered by the doctrine of State Immunity.

In *Holy See vs. Rosario*, where the plea of immunity is recognized and affirmed by the executive branch, it is the duty of the courts to accept this claim so as not to embarrass the executive arm of the government in conducting the country's foreign relations.

Waiver of Immunity from Suit

This waiver is also known as the *Built-in qualification of principle.* Under this principle, the State may, if it so desires, divest itself of its sovereign immunity and thereby voluntarily open itself to suit. In fine, the State may be sued if it gives its consent.

Where no consent is shown, state immunity from suit may be invoked as a defense by the courts *sua sponte* at any stage of the proceedings, because waiver of immunity, being in derogation of sovereignty, will not be inferred lightly and must be construed in *strictissimi juris.* Accordingly, the complaint against the State must allege the existence of such consent, otherwise, the complaint may be dismissed. *(Republic vs. Filiciano, 148 SCRA 424)*

Forms of Consent:

1. Express Consent- it may be manifested either through:

a. General Law, or

b. Special Law

2. Implied Consent- is given when:

a. State itself commences litigation, or

b. when the State enters into a contract with private person.(only if the contract is entered into by the gov't in its proprietary capacity, and not gov'tal contracts)

Examples of express consent through general or special laws:

Act 3083 – is a general law whereby the Government of the Philippine Island consents and submits to be sued upon any moneyed claim involving liability arising from contract, express or implied, which could serve as a basis of civil action between private parties.

C.A. 327 as amended by P.D. 1445, provides that a claim against the government must first be filed with the Commission on Audit, which must act upon it within 60 days. Rejection of the claim will authorize tha claimant to elevate the matter to the SC on certiorari and in effect sue the State with its consent.

Act 2457 – is a special law enacted by Congress authorizing an individual to sue the Phil. Government for injuries he had sustained when his motorcycle collided with a government ambulance.

A waiver of State's Immunity from suit cannot be given by a mere lawyer. In the case of *Republic vs. Purisima (78 SCRA 470),* the waiver made by the lawyer for the Rice and Corn Administration, an agency of the government, was held by the SC as not binding upon the State.

Examples of implied consent when the State commences the litigation or enters into a contract:

Based on equitable grounds is the rule that when the State itself files a complaint, the defendant is entitled to file a counterclaim against it. In the case of *Froilan vs. Pan Oriental Shipping Co.,* the SC

held that the government impliedly allowed itself to be sued when it filed a complaint in intervention for the purpose of asserting a claim for affirmative relief against the plaintiff to wit, recovery of a vessel.

But in the case of *Lim vs. Brownell*, the SC held that the government was not asking for any affirmative relief from the plaintiff but had intervened only for the purpose of resisting his claim, the SC held that no implied waiver of immunity could be assumed.

In *Republic vs. Sandiganbayan*, when the government enters into a contract, the State is then deemed to have divested itself of the mantle of sovereign immunity and descended to the level of the ordinary individual. Having done so, it becomes subject to judicial action and process.

According to *Prof. Edwin Sandoval*, the above ruling is called the 'old rule'. There is a 'new rule' now applying the *Restrictive Doctrine of Immunity* which provides that not every contract operates as a waiver of immunity from suit.

In the case of *USA vs. Ruiz*, suability would follow only if the contract is entered into by the government in its commercial or proprietary capacity *(jure gestionis)*. Governmental contracts or those entered in sovereign capacity *(jus imperii)* do not result in implied waiver of the immunity of the State from suit.

When the State gives its consent to be sued, it does not thereby also consent to the execution of the judgment against it. In the case of *R.P. vs. Villasor*, execution will require another waiver, lacking which the decision cannot be enforced against the State.

Assuming the decision is rendered against the State of public officer, the enforcement thereof will require an affirmative act from the State such as appropriation of the needed amount to satisfy the judgment.

Public funds cannot be garnished. It is against public policy. There must be a corresponding appropriation before a fund can be taken out from the national treasury. The remedy is to go to Congress. The Congress may enact a law appropriating public funds.

What if the Congress failed to enact an appropriation to satisfy the judgment, what will be your remedy then? The remedy is *Mandamus*, but we must remember that mandamus lies only when the act directed by mandamus is ministerial in character, and to enact an appropriation is discretionary on the part of the Congress. However, in the case of *Mun. of Makati vs. CA*, the SC sustained that mandamus was the proper remedy and held that the government should be the first one to follow the judgment of the Court. You have to know the rationale in said case. *(Prof. Sandoval, UP BRI)*

Acru Jure Imperii- the sovereign acts or acts in governmental capacity, like when the government entered into a contract in pursue of a sovereign capacity, there is no waiver of immunity and no implied consent may be derived therefrom.

Actu Jure Gestionis- it also means commercial or proprietary acts, like when the government entered into a contract in its proprietary capacity, there is waiver of immunity, it is suable.

Test of suability of Government Agency

Kinds of Government Agency:

1. Incorporated agency- has a charter of its own that invests it with a separate juridical personality, like SSS, UP, and City of Manila.

The test of its suability is found in its charter.

Rule: It is suable if its charter says so, and this is true regardless of the functions it is performing. They are subject to suit even in the performance of such functions (governmental or proprietary) because their charter provides that they can sue and be sued. *(Cruz, Constitutional Law 1)*

2. Unincorporated agency- it has no separate juridical personality but is merged in the general machinery of the government, like DOJ, Bureau of Mines and Gov't Printing Office.

Since it has no charter to be consulted to, it has no separate juridical personality. It is necessary to determine the nature of the functions in which the agency is engaged, so as to hold it suable if they are proprietary and not suable if they are governmental. The test in every case is the nature of the primary functions being discharged.

In the case of *Bureau of Printing vs. Bureau of Printing Employees Association*, the SC held that the non-suability of the State is available to the agency even if it is shown that it is engaged not only in governmental functions but also, as a sideline, or incidentally, in proprietary enterprises.

When the State litigates, it is exempt from some legal requirements:

1. Bond for damages or appeal bond. It is not required to put up a bond for damages or an appeal bond, since it can be assumed that it is always solvent.

2. Legal fees. It cannot be asked to pay the legal fees prescribed in the Rules of Court or the costs of the suit.

3. Interest. It is also not chargeable against the State. Exception: when it has expressly stipulated to pay it or when interest is allowed by an act of the legislature or in eminent domain cases where damages sustained by the owner take the form of interest at the legal rate. *(Cruz, Constitutional Law1)*

Municipal corporations are suable because their charters grant them the competence to sue and be sued.

Exception: They are not liable for torts committed by them in the discharge of governmental function.

Exception to the exception: They can be held answerable for torts if it can be shown that they were acting in a proprietary capacity.

In the case of *COA vs. Link Worth International, Inc., (March 13, 2009)*, the court held that COA is an unincorporated government agency which does not enjoy a separate juridical personality of its own. Hence, even in the exercise of proprietary functions incidental to its primarily governmental functions, COA cannot be sued without its consent. Assuming that the contract it entered into with Audio Visual can be taken as an implied consent to sued, and further that incidental relief such as damages may be awarded in certiorari proceedings, Link Worth did not appeal the CA's decision deleting the award of damages against COA. Consequently, Link Worth is bound by the findings of fact and conclusions of law of the CA.

3. Principles and Policies

Purposes:

1. to lay down the rules underlying our system of gov't and must therefore be adhered to in the conduct of public affairs and the resolution of the public issues.

2. to emphasize and articulate more unequivocally the objectives and limitations of the governmental action in pursuit of the general goals announced in the Preamble.

Article II (Declaration of Principles and State Policies) is a statement of general principles and policies. It is not a source of enforceable rights. *(Bases Conversion and Development Authority vs. COA, 580 SCRA 295)*

It is a statement of the basic ideological principles and policies that underlie the Constitution. As such, the provisions shed light on the meaning of the other provisions of the Constitution and they are a guide for all departments of the Government in the implementation of the Constitution.*(2006Bernas,7)*

ARTICLE II

DECLARATION OF PRINCIPLES AND STATE POLICIES

PRINCIPLES

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

Republic- is a representative government, a government run by and for the people.

Essence of Republicanism- is *representation* and *renovation*, the selection by the citizenry of a corps of public functionaries who derive their mandate from the people and act on their behalf, serving for a limited period only, after which they are replace or retained at the option of their principal.

The purpose of republican government is the promotion of the common welfare according to the will of the people themselves. The will is usually determined by the rule of the majority, that is, the greater number of the people. Every citizen is an individual repository of sovereignty.*(Cruz, Consti. 1)*

Manifestations:

a. Our is a government of laws and not of men *(Villavicencio vs. Lukban, 39 Phil. 778)*

b. Rule of Majority. (Plurality in election)

c. Accountability of public officials.

d. Bill of Rights.

e. Legislature cannot pass irrepealable laws.

f. Separation of Powers.

Purposes:

1. to secure action

2. to forestall overaction

3. to prevent despotism

4. to obtain efficiency

State- is a community of person more or less numerous, permanently occupying a definite portion of territory, independent of external control, and possessing an organized government to which the great body of inhabitants render habitual obedience. The four elements of the state are:

a. people- a community of persons sufficient in number and capable of maintaining the continued existence of the community and held together by a common bond of law.

b. territory

c. sovereignty

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

Political sovereignty- the sum total of all the influences in a state, legal and non-legal, which determine the course of law.

d. government- institution or aggregate of institutions by which an independent society makes and carries out those rules of action which are necessary to enable men to live in a social state, or which are imposed upon the people forming that society by those who possess the power or authority of prescribing them.*(2006Bernas,9)*

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

This provision is also knows as the *Doctrine of Incorporation.* Every State is, by reason of its membership in the family of nation, bound by the generally accepted principles of international law, which are considered to be automatically part of its own laws.

Where there appears to be a conflict between international law and municipal law, efforts should first be exerted to harmonize them, so as to give effect to both. However, where the conflict is irreconcilable and a choice has to be made between a rule of international law and municipal law, jurisprudence dictates that municipal law should be upheld by the municipal courts. Whenever a law was passed in the exercise of police power, it cannot be bargained away through the medium of a treaty or a contract. *(Bernas, Political Law 1)*

In states where the constitution is the highest law of the land, such as RP, both statutes and treaties may be invalidated if they are in conflict with the constitution. But in most countries, the principle of *lex posterior derogate priori* applies. Under that principle, the rules of international law are given equal standing with, and are not superior to, national legislative enactments. *(Secretary of Justice vs. Lantion, G.R. 139465)*

It should be presumed that municipal law was enacted with proper regard for the generally accepted rules of international law.

The renunciation of war as an instrument of national policy is itself a generally accepted principle now categorically expressed in the UN Charter. The kind of war that is *renounced* by the Philippines is an *aggressive war*, not defensive war.

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

Defense of the State is based upon the inherent right of every State to existence and self-preservation. By virtue of this right, a State may take up all necessary action, including the use of armed force, to repel any threat to its security.

Read also Art. XVI, Sec. 4 "the AFP shall be composed of a citizen armed force which shall undergo military training and serve, as may be provided by law"

In *People vs. Lagman* and *People vs. Zosa*, the accused were charged with and convicted of refusal to register for military training as required by the statute enacted by Congress. Both claimed that said statute was unconstitutional. The SC affirmed their conviction and uphold the constitutionality of the statute, holding that the law in question was based on the constitutional principle particularly Art. II, Sec. 4.

The duty is imposed on all citizens without distinction as to gender.

In the case of *Chavez vs. Romulo*, The right to bear arms (P.D. 1856 as amended by R.A. 8294) is a statutory right, not a constitutional right. Neither does it create a vested right.

The policy includes the prohibition not only of the possession, control, and manufacture of nuclear weapons but also nuclear arms tests. Exception to this policy may be made by the political departments; but it must be justified by the demands of the national interest. (consistent with the national interest) But the policy does not prohibit the peaceful uses of nuclear energy.

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

Separation of church and State was expressed in the Bill of Rights *Sec. 5, Art III* providing that "no law shall be made respecting the establishment of religion of prohibiting the free exercise thereof."

The idea is to delineate the boundaries between the 2 institutions and thus avoid encroachments by one against the other because of a misunderstanding of the limits of their respective exclusive jurisdiction. *(Cruz, Constitutional Law1)*

According to Justice Laurel, the influence of religion is deeply felt and highly appreciated by the State

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

Three responsibilities of the State embodied in this section are:

1. it shall protect and strengthen the family as a basic autonomous social institution.

2. it shall equally protect the life of the mother and the life of the unborn from conception.

3. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

The phrase *"shall equally protect the life of the mother and the life of the unborn from conception"*—this will mean to suggest a policy against abortion; unborn child must be equated with the equal protection due the mother. The provision is not closing the door on divorce, which is left for the legislature to allow in its discretion.*(Cruz, Consti.1)*

Q: What is the legal meaning and purpose of the protection that is guaranteed for the unborn?

A: First, it is not an assertion that the unborm is a legal person. Second, this is not an assertion that the life of the unborn is placed exactly on the level of the life of the mother. When necessary to save the life of the mother, the life of the unborn may be sacrificed; but not when the purpose is merely to save the mother from emotional suffering, for which other remedies must be sought, or to spare the child from a life of poverty, which can be attended to by welfare institutions.*(2006Bernas,16*

Note: The State cannot unreasonably interfere with the exercise by parents of their natural right and duty to rear their children, but it may regulate the same under the police power.

ARTICLE X. LOCAL GOVERNMENT

The vitalization of LGU will:

1. enable its inhabitants to develop their resources and thereby contribute to the progress of whole nation.

2. they will acquire a depend sense of involvement that will encourage them to participate more actively in direction of public affairs as members of the body politic.

In the case of *Basco vs. PAGCOR, 197 SCRA 52,* the SC said that local autonomy under the 1987 Constitution simply means "decentralization", and does not make the local governments sovereign within the State or an *imperium in imperio.*

Decentralization of administration- delegation of administrative powers to the LGU in order to broaden the base of governmental powers.

Decentralization of power- abdication by the national government of governmental powers.

Art. X, Sec. 5 directly conferred to the LGU the power to tax which cannot now be withdrawn by mere statute. However, the national legislature is still the principal of LGUs, which cannot defy its will or modify or violate it. Ours is still a unitary form of government, not a federal state. Being so, any form of autonomy granted to local governments will necessarily be limited and confined within the extent allowed by the central authority. *(Lina vs. Puno, Aug. 30, 2001)*

The exercise of local autonomy remains subject to the power of control by Congress and the power of general supervision by the President.

On the President's power of general supervision, the President can only interfere in the affairs and activities of the LGU if he finds that the latter acted contrary to law. He cannot interfere in local affairs as long as the concerned LGU acts within the parameters of the law and the Constitution. Any directive by the President or his alter egos seeking to alter the wisdom of a law-conforming judgment on local affairs of the LGU is a patent nullity, because it violates the principle of local autonomy, as well as the doctrine of separation of powers of the executive and legislative departments in governing municipal corporations. *(Judge Dadole vs. COA, Dec. 3, 2002)*

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

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

Three basic principles:

1. Public Office is a public trust.

2. Our government is a government of laws and

   not of men.

3. Transparency in public service.

4. Separation of Powers

Under the *Doctrine of Separation of Powers,* the *executive power* shall be vested to the President of the Republic of the Philippines; the *legislative power* shall be vested: *1.)*to the Congress composed of Senate and the House of Representative and *2.)*to the people by initiative or referendum; and the *judicial power* is vested to one Supreme Court and to such lower courts as may be prescribed by law.

In other words, separation of powers means that legislation belongs to Congress, execution to the executive, settlement of legal controversies to the judiciary. Each is preventing from invading the domain of the others. But the separation is not total. The system allows for "checks and balances" the net effect of which being that, in general, no one department is able to act without the cooperation of at least one of the other departments. *(Bernas, political Law 1)*

The purpose of the doctrine is intended to prevent a concentration of authority in one person or groups of persons that might lead to an irreversible error or abuse in its exercise to the detriment of our republican institutions. It is also intended to secure action, to forestall over-action, to prevent despotism and obtain efficiency. *(Cruz, Constitutional Law1)*

3 Major Departments of the Gov't:

1. Legislative- is generally limited to the enactments of laws and may not enforce or apply them.

2. Executive- is limited to the enforcement of the laws and may not enact or apply them.

3. Judiciary- is limited to the application of the laws and may not enact or enforce them.

Blending of Powers or Coordination of Powers- when powers are not confined exclusively within one department but are in fact assigned to and shared by several departments.

Examples:

1. Enactment of the General Appropriations Law.

It begins with the preparation by President of the budget, which becomes the basis of the bill adopted by the Congress and subsequently submitted by it to the President, who may then approve it.

2. The Grant of Amnesty by the President requires the concurrence of the majority of all the members of the Congress.

3. The COMELEC does not alone deputize law-enforcement agencies and instrumentalities of the government for the purpose of insuring free, orderly, honest, peaceful and credible elections but does so with the consent of the President.

Conferment of Power:

1. *Expressly.* The vesture of the legislative power in the Congress, the executive power in the President and the judicial power in the Supreme Court.

Examples:

a. The power to impeach which is essentially executive and the power to try and decide impeachment cases which is essentially judicial, are expressly lodged in the Congress, and the power of investigation.

b. SC can exercise the executive power of removal over judges of inferior courts, although they have been appointed by President.

c. The President may be authorized by Congress to exercise tariff powers and emergency powers, both legislative in nature.

2. *Doctrine of Implication*. It is based on the theory that the grant of express power carries with it all other powers that may be reasonably inferred from it. *(Angara vs. Electoral Commissin)*

3. *Inherent or Incidental.* It refers to powers which are not specifically granted by the Constitution either expressly or by implication.

Examples:

a. The President, as head of the government may, independent of Constitution or statutory authority, deport undesirable aliens as an “act of State”.

b. The Congress can punish person who impugns its integrity without proof.

c. the courts may claim that the contempt power is inherent in the judiciary.

5. Checks and Balances

By means of *Checks and Balances*, one department is allowed to resist encroachments upon its prerogatives or to rectify mistakes or excesses committed by the other departments. The theory is

that the ends of the government are better achieved through the exercise by its agencies of only the powers assigned to them, subject to reversal in proper case by those constitutionally authorized. *(Cruz, Constitutional Law 1)*

Examples:

1. Law making power of Congress is checked by the President through his veto power, which in turn may be overridden by the legislature.

2. The Congress may refuse to give its concurrence to an amnesty proclaimed by the President and the Senate may also refuse concurrence to a treaty which the President has concluded.

3. The President may nullify a conviction by the court in criminal case by pardoning the offender.

4. The Congress may limit the jurisdiction of the Supreme Court and that of inferior courts and even abolished the latter tribunals.

5. The Judiciary has the power to declare invalid an act done by the Congress, the President and his subordinates, or the Constitutional Commission.

It is the role of the Judiciary to see to it that the constitutional distribution of powers among the several department of the government is respected and observed.

6. Delegation of Powers

Principle of Non- delegation of Powers "potestas delegate non delegari potest" what has been delegated cannot be delegated.

It is based upon the ethical principle that such delegated power constitute not only a right but a duty to be performed by the delegate through the instrumentality of his own judgment and not through the intervening mind of another. *(Cruz, Constitutional Law 1)*

The Principle of non- delegation of powers is applicable to all the 3 major powers of the government but is especially important in the case of legislative power because of the many instances when its delegation is permitted.

Delegation of legislative power has become the rule and its non-delegation the exception.

Permissible Delegation

Delegation of legislative power is permitted in the following cases:

1. Delegation of tariff powers to the President.

Art. VI, Sec. 28 (2). "The Congress may, by law, authorize the President to fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts within the framework of the national development program of the Government."

The President is also granted stand-by or flexible tariff powers in Tariff and Customs Code.

The necessity of giving the chief executive the authority to act immediately on certain matters affecting the national economy lest delay result in hardship of the people.

2. Delegation of emergency powers to the President.

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

When the emergency powers are delegated to the President, he becomes in effect a constitutional dictator. But in strict legal theory, there is no total abdication of legislative authority in his favor.

3. Delegation to the people at large.

Except in those cases where, by the constitution, the people have expressly reserved to themselves a power of decision, the function of legislation cannot be exercised by them, even to the extent of accepting or rejecting a law which has been framed for their consideration. The people have voluntarily surrendered that power when they adopted the Constitution. *(People vs. Vera)*

4. Delegation to local government.

This traditional exception is based on the recognition that local legislatures are more knowledgeable than the national law-making body on *matters of purely local concern* and are therefore in a better position to enact the necessary and appropriate legislation thereon.

The power of taxation by the LGU is derived directly form the Constitution, subject only to limitations that may be imposed by the Congress. ***(Art. X, Sec. 5)***

5. Delegation to administrative bodies.

Equivalent terms are:

Quasi- legislative power

Rule- making power

Power of subordinate legislation

What is delegated is merely the power to make and issue rules, not the power to make or pass laws.

The power of *subordinate legislation* is entrusted to administrative agencies by the legislature to:

a. implement the broad policies laid down in a statute by "filling in" the details which the Congress may not have the opportunity or competence to provide.

b. issue contingent regulations pursuant to a delegation of authority to determine some fact or state of things upon which the enforcement of law depends. *(Cruz vs. Youngberg)*

The function performed by the administrative agency is not law-making but law-execution**. In order to ensure that the power delegated by the legislature is not law-making power, the statute making the delegation must comply with the following tests of delegation:**

1**. Completeness Test.**

The law must be complete in all its essential terms and conditions when it leaves the legislature so that there will be nothing left for the delegate to do when it reaches him except to enforce it. *(U.S. vs. Ang Tang Ho)*

2. Sufficient Standard Test.

It is intended to map out the boundaries of the delegate's authority by defining the legislative policy and indicating the circumstances under which it is to be pursued and effected.

A sufficient standard not only defines the policy fixed by the legislature but also marks its limits by specifying the extent of the authority of the delegate as well as the conditions under which the said policy should be implemented. *(Suarez, 6th mos. before the bar)*

The purpose is to prevent a total transference of legislative power from the law making body to the delegate. *(Ynot vs. IAC and Pelaez vs. Auditor Genera, 15 SCRA 569l)*

Since rules and regulations promulgated by administrative agencies pursuant to a valid delegating statute have the force of law, may their violation be punished as a penal statute? They may. For an administrative regulation to have the force of penal law it is necessary:

1. that such violation be made a crime by the delegating statute itself,

2. that the penalty be provided by the statute itself, and

3. that the regulation be published. *(Bernas, Political Law 1)*

On this principle and on due process grounds, a law which prescribed a penalty "in the discretion of the court" was declared invalid. It is not for the courts to fix the term of imprisonment where no points of references have been provided by the legislature. *(People vs. Dacuycuy, 173 SCRA 90)*

7. Forms of Government

The Philippines is a presidential form of government.

***Presidential form* of government.**

Its principal identifying feature is what is called the "separation of powers." Legislative power is given to the Legislature whose members hold office for a fixed term; executive power is given to a separate Executive who also holds office for a fixed term; and judicial power is held by an independent Judiciary. The system is founded on the belief that, by establishing equilibrium among the three power holders, harmony will result, power will not be concentrated, and thus tyranny will be avoided.

Essential characteristics of a *parliamentary form* of government

1. the members of the government or cabinet or the executive arm are, as a rule, simultaneously members of the legislature;

2. the government or cabinet, consisting of the political leaders of the majority party or of a coalition who are also a members of the legislature, is in effect a committee of the legislature;

3. the government or cabinet has a pyramidal structure at the apex of which is the Prime minister or his equivalent;

4. the government or cabinet remains in power only for as long as it enjoys the support of the majority of the legislature;

5. both government and legislature are possessed of control devices with which each can demand of the other immediate political responsibility.

What constitutional forms of government have been experienced by the Philippines since 1935?

A: Presidential only. The distinguishing marks of a presidential form of government:

1) separation of powers, and

2) the pre-eminence of the President. The president was "head of state and chief executive"

Q: What is a *republican state*?

A: It is a state wherein all government authority emanates from the people and is exercised by representatives chosen by the people.

Q: Why is the Philippine also called a "democratic state" by the new constitution?

A: In the view of the new Constitution, the Philippines is not only a representative or republican state but also shares some aspects of direct democracy such as "initiative and referendum"

Government- is an agency or instrumentally through which the will of the State is formulated, expressed and realized. The constitution requires our government to be democratic and republican.

"Doctrine of Parens Patriae" – the important task of the government is to act for the State as parens patriae (guardian of the rights of people). Under this doctrine, the State has the sovereign power of guardianship over persons under disability.

Classification:

1. ***de jure gov't.-*** has rightful title but no power or control, either because this has been withdrawn from it or because it has not yet actually into the exercise thereof.

2. ***de facto gov't***.- gov't of fact, that is, actually exercises power or control but without legal title.

3 kinds of *de facto gov't:*

a. the gov't that gets possession or control or, or usurps by force or by the voice of majority, the rightful legal gov't and maintains itself against the will of the latter.

b. the gov't that established as an independent gov't by inhabitants of country who rise in insurrection against the parent state.

c. the gov't that established and maintained by military forces who invade and occupy a territory of enemy in the course of war (gov't of paramount force)

3. ***Presidential gov't.*** –there is a separation of executive and legislative powers.

4. ***Parliamentary gov't.-*** there is a fusion of both executive and legislative powers in Parliament, although the actual exercise of executive power is vested in a Prime Minister who is chosen by, and accountable to, Parliament.

5. ***Unitary***- a single, centralized government, exercising powers over both the internal and external affairs of the State.

6. ***Federal***- consists of autonomous state (local) government units merged into a single State, with the national government exercising a limited degree of power over the domestic affairs but generally full direction of the external affairs of the State.

LEGISLATIVE DEPARTMENT

Legislative power is not exclusively vested in Congress, the people have expressly made a reservation to directly enact or propose laws by the provision on initiative and referendum. In other words, legislative power is exercised by:

1. Congress which shall consist of a Senate and a House of Representative; and

2. People by the provision on initiative and referendum.

a. Initiative and Referendum

Local Initiative. — (a) Not less than two thousand (2,000) registered voters in case of autonomous regions, one thousand (1,000) in case of provinces and cities, one hundred (100) in case of municipalities, and fifty (50) in case of barangays, may file a petition with the Regional Assembly or local legislative body, respectively, proposing the adoption, enactment, repeal, or amendment, of any law, ordinance or resolution. *(Sec. 13, R.A. 6735)*

Limitations on Local Initiatives. —

(a) The power of local initiative shall not be exercised more than once a year.

(b) Initiative shall extend only to subjects or matters which are within the legal powers of the local legislative bodies to enact.

(c) If at any time before the initiative is held, the local legislative body shall adopt in toto the proposition presented, the initiative shall be cancelled. However, those against such action may, if they so desire, apply for initiative in the manner herein provided. *(Sec.15, R.A. 6735)*

2. Houses of Congress

We have a bicameral congress consisting of a Senate and House of Representatives.

a. Senate

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

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

Sec. 3 enumerates the qualifications of senator:

1. natural-born citizen of the Philippines.

Natural born citizen means-

Art. IV, Section 2. Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens.

2. at least 35 years of age on the day of the election. The age qualification must be possessed on the day the votes are cast as fixed by law and not on the day of proclamation. *(Espinosa vs. Aquino)*

3. able to read and write.

4. a registered voter.

5. a resident of the Philippines for not less than two years immediately preceding the day of the election. The residence requirement is satisfied if one is domiciled in the Philippines even if not physically present in the Philippines during the two-year period.

Residence is defined as the place where one habitually resides and to which, when he is absent, he has the intention of returning. In the case of senators, residence must be in any part of the Philippines, unlike in the case of the member of HR, who must reside in the district where he is running.

The qualifications of senator under Sec. 3 are exclusive under the principle of *"expressio unius est exclusio alterius".* It is not competent for the Congress to provide by mere legislation for additional qualifications of senator no matter how relevant they may be. *(Cruz, Constitutional Law 1)*

☞*Case: Social Justice Society vs. Dangerous Drug Board, et al. (Nov. 3, 2008)*

Facts: Pimentel filed a Petition for Certiorari and Prohibition under Rule 65 seeking to nullify Sec. 36 (g) of R.A. 9165 insofar as it requires mandatory drug testing of candidates for public office, xxx, etc.. He contended that said provision is unconstitutional as it imposes a qualification for candidates for senators in addition to those already provided for in 1987 Constitution.

Issue: Can Congress enact a law prescribing qualifications for candidates for senator in addition to those laid down by the Constitution?

Held: No. Congress cannot enact a law prescribing qualifications for candidates in addition to those laid down by the Constitution. It is basic that if the law or administrative rule violates any norm of the Constitution, that issuance is null and void and has no effect. The Constitution is the basic law to which all laws must conform; no act must be valid if it conflicts with the Constitution. Pimentel's contention is well-taken. Sec. 36 (g) of RA 9165 was declared unconstitutional.

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

Q: Does the limitation on number of elections mean that the Senator who has served two consecutive terms must wait for 6 years before he can run again for the Senate?

A: No. A Senator could run again three (3) years after the expiration of his second term. *Par. 2, Sec. 2 of Transitory Provisions* provides that: "*Of the Senators elected in the elections in 1992, the first twelve obtaining the highest number of votes shall serve for six years and the remaining twelve for three years".* Thereafter, senatorial elections take place every three years and all are elected for a six-year term. *(Bernas, political Law 1)*

b. House of Representatives

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

The phrase "legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio" in Section 5(1) of Article VI requires that legislative districts shall be apportioned according to proportional representation. However, this principle of proportional representation applies only to legislative districts, not to the party-list system. The allocation of seats under the party-list system is governed by the last phrase of Section 5(1), which states that the party-list representatives shall be "those who, as provided by law, shall be elected through a party-list system," giving the Legislature wide discretion in formulating the allocation of party-list seats. Clearly, there is no constitutional requirement for absolute proportional representation in the allocation of party-list seats in the House of Representatives.

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

The party-list representatives shall constitute twenty *per centum* of the total number of representatives including those under the party-list. x x x

The 1987 Constitution fixes the ratio of party-list representatives to district representatives. This ratio automatically applies whenever the number of district representatives is increased by law. The mathematical formula for determining the number of seats available to party-list representatives is:

$$\frac{\text{Number of seats available to legislative districts}}{.80} \times .20 = \text{Number of seats available to party-list representatives}$$

"This formula allows for the corresponding increase in the number of seats available for party-list representatives whenever a legislative district is created by law." Thus, for every four district representatives, the 1987 Constitution mandates that there shall be one party-list representative. There is no need for legislation to create an additional party-list seat whenever four additional legislative districts are created by law. Section 5(2), Article VI of the 1987 Constitution automatically creates such additional party-list seat. *(Banat vs. Comelec, July 8, 2009).*

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

Sec. 6 enumerates the qualifications of the member of HR:

1. natural-born citizen of the Philippines.

A natural-born citizen who loses his citizenship by naturalization in another country but later is repatriated recovers his status of being a natural-born citizen and therefore is qualified to be a member of Congress. *(Bengzon vs. Cruz)*

2. at least 25 years of age on the day of the election. The age qualification must be possessed on the day the votes are cast as fixed by law and not on the day of proclamation. *(Espinosa vs. Aquino)*

3. able to read and write.

4. a registered voter in the district in which he shall be elected.

5. a resident of that district for not less than one year immediately preceding the day of the election.

In *Imelda Romualdez-Marcos vs. Comelec, 248 SCRA 300,* the SC upheld the qualification of Mrs. Marcos, despite her own declaration in her COC that she had resided in the district for only 7 months, because of the following:

1. A minor follows the domicile of his parents; Tacloban became Mrs. Marcos' domicile of origin by operation of law when her father brought the family to Leyte;

2. Domicile of origin is lost only when there is actual removal or change of domicile, a bonafide intention of abandoning the former residence and establishing a new one, and acts which correspond with the purpose; in the absence of clear and proof of the concurrence of all these, the domicile of origin should be deemed to continue;

3. The wife does not automatically gain the husband's domicile because the term "residence" in Civil law does not mean the same thing in Political Law; when Imelda married Marcos in 1954, she kept her domicile of origin and merely gained a new home, not a *domicilium necessarium*;

4. Even assuming that she gained a new domicile after her marriage and acquired the right to choose a new one only after her husband died, her acts following her return to the country clearly indicate that she chose Tacloban, her domicile of origin, as her domicile of choice.

From the foregoing reasons, two conclusions may be drawn:

1) if a person retains his domicile of origin, for purposes of the residence requirement for representatives, the one year period is irrelevant because, by legal fiction, wherever he may be, he is a resident of his domicile of origin.

2) if a person re-establishes a previously abandoned domicile or acquire a new one, the one year requirement must be satisfied.

The residence requirement was further clarified in *Domino vs. Comelec*. To establish a new domicile of choice, personal presence in the place must be couple with conduct indicative of that intention. It requires a declared and probable intent to make it one's fixed and permanent place of abode, one's home. To successfully effect a change of domicile one must demonstrate an actual removal or an actual change of domicile; a bonafide intention of abandoning the former place of residence and establishing a new one and definite acts which correspond with the purpose. In other words, there must basically be *animus manendi* coupled with *animus non revertendi.* The purpose to remain in or at the domicile of choice must be for an indefinite period of time; the change of residence must be *voluntary*; and the residence at the place chosen for the new domicile must be *actual.*

(2) Party-List System

(R.A. 7941. The Party-List System Act)

The party-list system is a mechanism of proportional representation in the election of representatives to the House of Representatives from national, regional and sectoral parties or organizations or coalitions thereof registered with the Comelec.

Nature:

The party-list system is a social justice tool designed not only to give more law to the great masses of our people who have less in life, but also to enable them to become veritable lawmakers themselves, empowered to participate directly in the enactment of laws designed to benefit them.

The party-list system is not a proportional system of representation designed to strengthen democracy but as 'sectoral representation" meant to promote social justice.*(Ang Bagong Bayani, et. al vs. Comelec, June 26, 2001)*

Those qualified to participate in the party-list system are "registered national, regional, and sectoral parties or organizations" in the manner explained by Commissioner Monsod. The party-list representative will constitute "twenty per centum of the total number of representatives including those under the party list." Thus for instance, under a total membership of 250, a fully operative party-list system would mean 200 district representatives and 50 party-list representatives. *(Bernas, Political Law 1)*

Qualifications of Party-list nominees:

1. natural-born citizen of the Philippines.

2. at least 25 years of age on the day of the election. For youth sector, he must be 25 years of age but not more than 30 years of age on th day of election. Any youth representative who attains the age of 30 during his term shall be allowed to continue in office until the expiration of his term.

3. able to read and write.

4. a registered voter.

5. a resident of the Philippines for at least one year immediately preceding the day of the election.

6. a bonafide member of the party or organization which he seeks to represent for at least 90 days preceding the day of the election, and is at least 25 years of age on the day of the election.

> **R.A. 7941, Section 10. Manner of Voting. Every voter shall be entitled to two (2) votes: the first is a vote for candidate for member of the House of Representatives in his legislative district, and the second, a vote for the party, organizations, or coalition he wants represented in the house of Representatives: Provided, That a vote cast for a party, sectoral organization, or coalition not entitled to be voted for shall not be counted: Provided, finally, That the first election under the party-list system shall be held in May 1998.**

Q: How many votes must an organization receive in order to qualify for a seat in the House?

A: At least 2% of the total votes cast for the party-list system in order to be entitled to a party-list seat. Those garnering more than this percentage may have "additional seats in proportion to their total number of votes." Furthermore, no winning party, organization or coalition may have more than three seats in the HR. *(Bernas, Political Law 1)*

In *Veterans Federation Party vs. Comelec*, the SC said that the Constitution and R.A. 7941 mandate at least four (4) inviolable parameters:

1.) *the 20% allocation*: the combined number of all party-list congressmen shall not exceed 20% of the total membership of the HR;

2.) *the 2% threshold*: only those parties garnering a minimum of 2% of the total valid votes cast for the party-list system are qualified to have a seat in the House;

3.) *the three-seat limit*: each qualified party, regardless of the number of votes it actually obtained, is entitled to a maximum of three seats, i.e., one qualifying and two additional.

4.) *proportional representation*: the additional seats which a qualified party is entitled to shall be computed “in proportion to their total number of votes”.

The 20% allocation of the total House membership is merely a ceiling. It was merely a maximum limit to the number of party-list representatives but the maximum need not be filled, or it is not mandatory to fill it out all the time.

The filling-up of all available party-list seats is not mandatory. Actual occupancy of the party-list seats depends on the number of participants in the party-list election. If only ten parties participated in the 2007 party-list election, then, despite the availability of 54 seats, the maximum possible number of occupied party-list seats would only be 30 because of the three-seat cap. In such a case, the three-seat cap prevents the mandatory allocation of all the 54 available seats. *(Banat vs. Comelec)*

In the case of *Banat vs. Comelec, July 8, 2009*, the SC established the four parameters in a Philippine-style party-list election system:

1. Twenty percent of the total number of the membership of the House of Representatives is the maximum number of seats available to party-list organizations, such that there is automatically one party-list seat for every four existing legislative districts.

2. Garnering two percent of the total votes cast in the party-list elections guarantees a party-list organization one seat. The guaranteed seats shall be distributed in a first round of seat allocation to parties receiving at least two percent of the total party-list votes.

3. The additional seats, that is, the remaining seats after allocation of the guaranteed seats, shall be distributed to the party-list organizations including those that received less than two percent of the total votes. The continued operation of the two percent threshold as it applies to the allocation of the additional seats is now unconstitutional because this threshold mathematically and physically prevents the filling up of the available party-list seats. The additional seats shall be distributed to the parties in a second round of seat allocation according to the two-step procedure laid down in the Decision of 21 April 2009 as clarified in this Resolution.

4. The three-seat cap is constitutional. The three-seat cap is intended by the Legislature to prevent any party from dominating the party-list system. There is no violation of the Constitution because the 1987 Constitution does not require absolute proportionality for the party-list system. The well-settled rule is that courts will not question the wisdom of the Legislature as long as it is not violative of the Constitution.

These four parameters allow the mathematical and practical fulfillment of the Constitutional provision that party-list representatives shall comprise twenty percent of the members of the House of Representatives. At the same time, these four parameters uphold as much as possible the Party-List Act, striking down only that provision of the Party-List Act that could not be reconciled anymore with the 1987 Constitution.

Note: In the previous case of *Labo v. COMELEC*, this Court ruled that the votes cast for an ineligible or disqualified candidate cannot be considered "stray" except when the electorate is fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety but nonetheless cast their votes in favor of the ineligible candidate. In its Resolution dated June 25, 2003,

the Court held that the Labo doctrine cannot be applied to the party-list system in view of Sec. 10 of R.A. No. 7941 which expressly provides that the votes cast for a party, a sectoral organization or a coalition "not entitled to be voted for shall not be counted." (Prof. Sandoval, UP Law Center)

3. Legislative Privileges, Inhibitions and Disqualifications

Privileges:

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

The phrase "while the Congress is in session" does not refer to the day-to-day meetings of the legislature but to the entire period from its initial convening until its final adjournment. *(Cruz, Constitutional Law 1)*

The provision speaks of two parliamentary immunities:

1. Immunity/Privilege from Arrest.

This is intended to ensure representation of the constituents of the member of the Congress by preventing attempts to keep him from attending its sessions. *(Justice Isagani Cruz).*

Two (2) requirements:

a.) the offense is punishable by less than six years;

b.) while the Congress is in session.

This is reinforced by Art. 145 of RPC: *Article 145. Violation of parliamentary immunity. - The penalty of prision mayor shall be imposed upon any person who shall use force, intimidation, threats, or fraud to prevent any member of the National Assembly (Congress of the Philippines) from attending the meetings of the Assembly (Congress) or of any of its committees or subcommittees, constitutional commissions or committees or divisions thereof, from expressing his opinions or casting his vote; and the penalty of prision correccional shall be imposed upon any public officer or employee who shall, while the Assembly (Congress) is in regular or special session, arrest or search any member thereof, except in case such member has committed a crime punishable under this Code by a penalty higher than prision mayor. (As amended by Com. Act No. 264.)*

Immunity from arrest is not enjoyed by one who has been convicted. Thus a Congressman who has been convicted of rape and is in detention cannot claim that he should be freed because of popular sovereignty and the need of his constituents to be represented.

In the case of **Trillanes vs. Judge Pimentel, June 27, 2008,** in denying the petitioner's Motion for Leave to attend Senate sessions and to attend to his official function as Senator, the SC ruled that Sec. 13, Art. III of the Constitution explicitly provides that crimes punishable by reclusion perpetua are non-bailable. The SC further said that the presumption of innocence does not necessarily carry with it the full enjoyment of civil and political rights.

2. Privilege of Speech and Debate

Its purpose is to enable and encourage a representative of the public to discharge his public trust with firmness and success for it is indispensably necessary that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of every one, however powerful, to whom the exercise of that liberty may occasion offense. *(Osmeña, Jr. vs Penadatun, 109Phil863)*

It enables the legislature to express views bearing upon the public interest without fear of accountability outside the halls of the legislature for his inability to support his statements with the usual evidence required in the court of justice.

Two (2) requirements:

a.) the remark must be made while the legislature or the legislative committee is functioning, that is in session;

b.) they must be made in connection with the discharge of official duties. *(Justice Isagani Cruz)*

Note however that the member of Congress may be called to account for his remarks or for such speech or debate by his own colleagues in the Congress itself and, when warranted, punished for disorderly behavior. *(par. 3, Sec.16, Art. VI)*

In the case of *Jimenez vs. Cabangbang, 17 SCRA 876,* the expression refers to utterances made by Congressman in the performance of their official functions, such as speeches delivered, statements made, or votes cast in the halls of Congress, while the same is in session, as well as bills introduced in Congress, whether the same is in session or not, and other acts performed by Congressman, either in Congress or outside the premises housing its offices, in the official discharge of their duties as members of Congress and of Congressional Committees duly authorized to perform its functions as such, at the time of the performance of the acts in question.

☞*Case: (Osamena, Jr. vs Penadatun, 109Phil863)*

Facts: Congressman Osmeña, in a privilege speech delivered before the House, made the serious imputations of bribery against the President and that he refused to produce before the House Committee created for the purpose. He was, by resolution of the House, suspended from office for a period of 15 months for serious disorderly behaviour. He filed a verified petition and asked for annulment of such Resolution on the ground of infringement of his parliamentary immunity.

Issue: Whether said Resolution violated his constitutional absolute parliamentary immunity for speeches delivered in the House?

Held: No. Sec. 11, Art. VI, guarantees the legislator complete freedom of expression without fear of being made responsible in criminal or civil actions before the courts or any other forum outside of the Congressional Hall. *But it does not protect him from responsibility before the legislative body itself whenever his words and conduct are considered by the latter disorderly or unbecoming a member thereof*. It has always been understood to mean that although exempt from prosecution or civil actions for their words uttered in Congress, the members of Congress may, nevertheless, be questioned in Congress itself.

☞*Case: Pobre vs. Santiago, Aug. 25, 2009*

Facts: Santiago was quoted as stating that she wanted "to spit on the face of Chief Justice Artemio Panganiban and his cohorts in the Supreme Court," and calling the Court a "Supreme Court of idiots." Pobre filed a complaint asking that disbarment proceedings or other disciplinary actions be taken against the lady senator.

Issue: Whether the statements were covered by the constitutional provision on parliamentary immunity?

Held: Conformably to Art. VI, Sec. 11 of the Constitution, the complaint is DISMISSED. This Court is aware of the need and has in fact been in the forefront in upholding the institution of parliamentary immunity and promotion of free speech.

Courts do not interfere with the legislature or its members in the manner they perform their functions in the legislative floor or in committee rooms. Any claim of an unworthy purpose or of the falsity and mala fides of the statement uttered by the member of the Congress does not destroy the privilege. The disciplinary authority of the assembly and the voters, not the courts, can properly discourage or correct such abuses committed in the name of parliamentary immunity.

For the above reasons, the plea of Senator Santiago for the dismissal of the complaint for disbarment or disciplinary action is well taken. Indeed, her privilege speech is not actionable criminally or in a disciplinary proceeding under the Rules of Court.

Disqualifications:

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

The prohibited offices are:

1. Incompatible office*- (1st sentence of Se. 13).*

Since the prohibition is only during his tenure, a legislator is not prevented from accepting a appointment. However, if he chooses to accept another office, he automatically forfeits his seat in Congress. *(Prof. Sandoval, UP BRI)*

Forfeiture of the seat in Congress shall be automatic upon the member's assumption of such other office deemed incompatible with his seat in Congress. However, no forfeiture shall take place if the member of Congress holds the other government office in an ex officio capacity, e.g., membership in the Board of Regents of UP, Chairman, Committee on education, in the Senate. *(Nachura, Outline Reviewer in Political Law, pg. 262)*

The purpose is to prevent a member from owing loyalty to another branch of the government, to the detriment of the independence of the legislature and the doctrine of separation of powers. *(Justice Isagani Cruz)*

*2**. Forbidden office-** (2nd sentence of Sec. 13).*

The ban applies only for the duration of the term for which the member of Congress was elected when such office was created or its emolument increased. The purpose is to prevent trafficking in public office. *(Cruz, Consti. Law1)*

Inhibitions:

Section 14. "No Senator or Member of the House of Representatives may personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary, during his term of office. He shall not intervene in any matter before any office of the Government for his pecuniary benefit or where he may be called upon to act on account of his office."

The prohibitions are intended to prevent members of Congress from taking advantage, pecuniary or otherwise, of their position in their dealings with the courts, or in their business operations, or in their dealings with any government agency or corporation.

In the 1st sentence of the provision, a lawyer legislature may not "personally appear as counsel before any court of justice…" Appearance of legislator is barred before all courts of justice, regardless of rank, composition or jurisdiction. It also applies to the Electoral Tribunals and to all administrative bodies like SEC and NLRC, also to court martial and military tribunals.

The purpose is to prevent the legislator from exercising undue influence, deliberately or not, upon the body where he is appearing. *(Cruz, Consti. Law1)*

This prohibition cannot be circumvented under the guise of appearing "in intervention" in one's behalf.

☞*Case: Puyat vs. de Guzman, 113 SCRA 31, 37*

Facts: A suit for certiorari and Prohibition with Preliminary Injunction is poised against the Order of respondent SEC granting Assemblyman Estanislao A. Fernandez leave to intervene in SEC Case No. 1747.

Issue: Whether or not Assemblyman Fernandez, as a then stockholder of IPI may intervene in the SEC Case without violating Constitution*?*

Held: SC constrained to find that there has been an indirect "appearance as counsel before an administrative body" and that is a circumvention of the Constitutional prohibition. The "intervention" was an afterthought to enable him to appear actively in the proceedings in some other capacity. To believe the avowed purpose, that is, to enable him eventually to vote and to be elected as Director in the event of an unfavorable outcome of the SEC Case would be pure naivete. He would still appear as counsel indirectly.

A ruling upholding the "intervention" would make the constitutional provision ineffective. All an Assemblyman need do, if he wants to influence an administrative body is to acquire a minimal participation in the "interest" of the client and then "intervene" in the proceedings. That which the

Constitution directly prohibits may not be done by indirection or by a general legislative act which is intended to accomplish the objects specifically or impliedly prohibited.

In the 2nd sentence, a legislator is prohibited from being financially interested in any contract with the government. The purpose is to prevent abuses form being committed by the members of Congress to the prejudice of the public welfare and particularly of legitimate contractors with the government who might be placed at disadvantageous position vis-à-vis the legislator. *(Cruz, Consti. Law1)*

What is prohibited is "personally" appearing as counsel. (*Nachura, Outline Reviewer in Political Law)*

Electoral Tribunals and the Commission on Appointments

Composition:

Senate Electoral tribunal is composed of:

*Three(3) SC justices- designated by the Chief Justice; and

*Six (6) members of the Senate- chosen on the basis of proportional representation from the political parties registered under the party-list system represented therein.

The Senior Justice shall be its Chairman.

HR Electoral tribunal is composed of:

*Three(3) SC justices- designated by the Chief Justice; and

*Six (6) members of the HR- chosen on the basis of proportional representation from the political parties registered under the party-list system represented therein.

The Senior Justice shall be its Chairman.

***Commission on Appointments* is composed of:**

*President of the Senate- as ex officio chairman;

*Twelve (12) Senators- elected on the basis of proportional representation from the political parties and parties or organizations registered under the party-list system represented therein;

*Twelve (12) Members of HR- elected on the basis of proportional representation from the political parties and parties or organizations registered under the party-list system represented therein.

a. Nature

- Electoral Tribunal

The Electoral Tribunal is an independent, impartial and non-partisan tribunal.

Although six members of the Electoral Tribunals are members of Congress, the Tribunals themselves are not part of either House of Congress. They are independent constitutional creations

which have power to create their own rules and are not under the supervision or control of Congress. *(Bernas, Political Law1)*

In the case of *Bondoc vs. Pineda*, the SC said that HRET was created as non-partisan court. It must independent of Congress and devoid of partisan influence and consideration. "Disloyalty to the party" and breach of party discipline" are not valid grounds for the expulsion of a member. HRET members enjoy a security of tenure; their membership may not be terminated except for just cause such as the expiration of congressional term, death, resignation from the political party, formal affiliation with another political party, or removal for other valid causes.

The decisions of Electoral Tribunal may be reviewed by the SC only upon showing of grave abuse of discretion in a petition for certiorari filed under Rule 65 of the Rules of Court. *Pena vs. HRET, March 21, 1997)*

Since the Constitution has constituted the Tribunals a "sole judge" of the legislative election contests, their decisions on such controversies are not subject to appeal to the SC. However, the SC is not totally excluded. Under Art. VIII, Sec. 1, judicial power includes the authority "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"

- Commission on Appointments

The Commission on Appointment is independent of the two Houses of Congress; its employees are not, technically, employees of Congress. It has the power to promulgate its own rules of proceedings. It I a creature of the Constitution, its powers do not come from Congress but emanate directly from the Constitution.

b. Powers

- Electoral Tribunal

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

The Electoral Tribunal may assume jurisdiction only after the winning candidate (who is a party to the election controversy) shall have been duly proclaimed, has taken his oath of office and has assumed the functions of the office, because it is only then that he is said to be a member of the Senate or HR as the case may be. And thus, Comelec's jurisdiction over the election contest relating to his election, returns and qualifications ends. *(Nachura, Outline Reviewer in Political Law)*

Q: Since the Comelec administers all election laws, when does a controversy leave the Comelec's control?

A: When there has been a proclamation and a defeated candidate claims to be the winner, clearly the Electoral Tribunal has jurisdiction to the exclusion of the Comelec.

Q: Up to what point may the Comelec entertain protests before proclamation?

A: The scope of pre-proclamation controversy was limited to incomplete returns, or returns with material defects, or returns which appeared to be tampered with, falsified or prepared under duress, or containing discrepancies in the votes credited to any candidate the difference of which would affect the

results. Anything else outside these should be brought before the Electoral Tribunal. *(Bernas, Political Law1)*

-Commission on Appointments

The Commission shall have the power to consent to or confirm nominations or appointments submitted to it by the President pursuant to Article VII, Sec. 16 which enumerates the appointments which needs action by the Commission. It serves as an administrative check on the appointing authority of the president.

The Commission shall act on all appointments submitted to it within 30 session days of Congress from their submission. The Commission shall rule by a majority vote of its members. The Commission shall meet only while the Congress is in session, at the call of its Chairman or a majority of all its members.

An ad interim appointments not acted upon at the time of the adjournment of the Congress, even if the 30-day period has not yet expired, are deemed by-passed.

Powers of Congress

The Powers of Congress are classified into:

1. Legislative Power in General – refers to power to enact laws which includes the power to alter or repeal them.

2. Specific Legislative Powers- refers to powers expressly conferred by the Constitution.

Example: Power of Appropriation, Power of Taxation and Power of Expropriation.

3. Non-legislative Powers- refers to powers which are not basically legislative in nature but which are performed by Congress.

4. Implied Powers- refers to powers which are not expressly conferred by the Constitution but which are implied from those expressly granted.

5. Inherent Powers- refers to powers which are inherent to the exercise of its legislative powers.

Oversight Functions

Section 22. "The heads of departments may, upon their own initiative, with the consent of the President, or upon the request of either House, as the rules of each House shall provide, appear before and be heard by such House on any matter pertaining to their departments. Written questions shall be submitted to the President of the Senate or the Speaker of the House of Representatives at least three days before their scheduled appearance. Interpellations shall not be limited to written questions, but may cover matters related thereto. When the security of the State or the public interest so requires and the President so states in writing, the appearance shall be conducted in executive session."

Sec. 22 refers to the power to conduct **Question Hour.** The objective of which is to obtain information ***in pursuit of Congress' oversight function***. And in keeping with the doctrine of separation

of powers, the Congress may only request the appearance of department heads, who may appear with the consent of the President.

The power of oversight embraces all activities undertaken by Congress to enhance its understanding of and influence over the implementation of legislation it has enacted. Clearly, oversight concerns post enactment measures undertaken by Congress:

a. to monitor bureaucratic compliance with program objectives,

b. to determine whether agencies are properly administered,

c. to eliminate executive waste and dishonesty,

d. to prevent executive usurpation of legislative authority, and

e. to assess executive conformity with the congressional perception of public interest.

Congress uses its oversight power to make sure that the administrative agencies perform their functions within the authority delegated to them.

Categories of Congressional Oversight functions:

1. Congressional Scrutiny

It implies a lesser intensity and continuity of attention to administrative operations. Its primary purpose is to determine economy and efficiency of the operation of government activities. In the exercise of legislative scrutiny, Congress may request information and report from the other branches of government. It can give recommendations or pass resolution of the agency involved.

Legislative scrutiny is based primarily on the power of appropriation of Congress.

The power of appropriation carries with it the power to specify the project or activity to be funded. Hence, the holding of **budget hearing** has been the usual means of reviewing the policy and auditing the use of previous appropriation to ascertain whether they have been disbursed for purposes authorized in an appropriation act.

But legislative scrutiny does not end in budget hearings. Congress can ask the heads of department to appear before and be heard by either House of Congress on any matter pertaining to their departments.

Likewise, Congress exercises legislative scrutiny thru its power of confirmation. Through the power of confirmation, Congress shares in the appointing power of the executive. Theoretically, it is intended to lessen political consideration in the appointment of officials in sensitive positions in the government. It also provides Congress an opportunity to find out whether the nominee possesses the necessary qualifications, integrity and probity required of all public servants.

2. Congressional Investigation

It involves more intense digging of facts. (See: Legislative Inquiries)

3. Legislative Supervision

It allows the Congress to scrutinize the exercise of delegated law-making authority, and permits Congress to retain part of that delegated authority.

Congress exercises supervision over the executive agencies through its veto power. It typically utilizes veto provisions when granting the President or an executive agency the power to promulgate regulations with the force of law. These provisions require the President or an agency to present the proposed regulations to Congress, which retains a right to approve or disapprove any regulation before it takes effect. Such *legislative veto* provision usually provides that a proposed regulation will become a law after the expiration of a certain period of time, only if Congress does not affirmatively disapprove of the regulation in the meantime. Less frequently, the statute provides that a proposed regulation will become law if Congress affirmatively approves it. *(2010 Bar Review Vitamins by Prof. Sandoval)*

Limitations on Legislative Power

The Revenue Power or the power to tax has the following limitations:

1. It shall be uniform and equitable

Uniformity in taxation means that persons or things belonging to the same class shall be taxed at the same rate.

Equality in taxation requires the tax imposed to be determined on the basis of the value of the property.

Equitable taxation means that the tax burden must be imposed according to the taxpayer's capacity to pay.

2. Congress shall evolve a progressive system of taxation

A tax is progressive when the rate increases as the tax base increases.

3. Charitable institutions, churches and personages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation.

4. Law granting any tax exemption shall be passed only with the concurrence of a majority of all the Members of the Congress.

5. Art. XIV, Sec 4(3) All revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties.

Limitations on Appropriation (Fiscal Power)

Implied or Extra-constitutional Limitations on appropriation measures:

1. It is essential that it be devoted to a public purpose.

2. The sum authorized to be released must be determinate, or at least determinable.

a. General Appropriation law.

Constitutional Limitations:

1. All appropriation bills should originate in the House of Representative.

2. Sec. 25(6) Discretionary funds appropriated for particular officials shall be disbursed only for public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law.

3. Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget.

4. The form, content, and manner of preparation of the budget shall be prescribed by law.

5. No provision or enactment shall be embraced unless it relates specifically to some particular appropriation therein. Any such provision or enactment shall be limited in its operation to the appropriation to which it relates. This is intended to prevent riders, or irrelevant provisions included in the bill to ensure its approval.

b. Special appropriation law.

Constitutional Limitations:

1. Must specify the public purpose for which the sum is intended.

2. Must be supported by funds actually available as certified to by the National Treasurer, or to be raised by a corresponding revenue proposal included therein.

Impoundement- The refusal of the President for whatever reason to spend funds made available by Congress. It is failure to spend or obligate budget authority of any type. This power of the President is derived from Sec. 38 of the Administrative Code of 1987. *(Nachura, Outline Reviewer in Political Law)*

Presidential Veto and Congressional Override

The veto power of the President is an instrument of control over legislation completed by the Congress. But Congress may override a presidential veto by a vote of two-thirds (2/3) of all its members.

As a general rule, if the President disapproves of a provision in a bill approve by Congress, he should veto the entire bill. He is not allowed to veto separate parts of a bill while retaining others. It is only in the case of appropriation, revenue, and tariff bills that he is authorized to exercise item-veto.

b. Non-Legislative

These are the powers which are not basically legislative in nature but which are performed by Congress.

Example:

1. power to propose amendments to the Constitution.

2. Power to Impeach

3. Power to canvass presidential elections.

4. Power to declare the existence of a state of war.

(1) Informing Function

"ARTICLE VII, Section 23. The President shall address the Congress at the opening of its regular session. He may also appear before it at any other time."

EXECUTIVE DEPARTMENT

1. Privileges, Inhibitions and Disqualifications

Section 13. "The President, Vice-President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during said tenure, directly or indirectly, practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.

The spouse and relatives by consanguinity or affinity within the fourth civil degree of the President shall not, during his tenure, be appointed as Members of the Constitutional Commissions, or the Office of the Ombudsman, or as Secretaries, Undersecretaries, chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries."

The intent of the framers was to impose stricter prohibition of the President and the official family in so far as holding other offices or employment in the government or elsewhere is concerned.

The prohibition pertains to an office or employment in the government and government-owned or controlled corporations or their subsidiaries.

In the latter provision, the disqualification is absolute, not being qualified by the phrase "in the Government." The prohibition imposed on the President and his official family is therefore all-embracing and covers both public and private office or employment.

Except for the Vice-President who may be appointed to the Cabinet, the secretary of justice who is made ex-officio member of the Judicial and Bar Council, the officials enumerated in section 13 may not hold another office. But they may be given additional functions which are intimately related to their primary office. Such conferment of additional functions does not constitute a new appointment.

It should also be noted that the stricter prohibition is imposed on "members of the Cabinet". It therefore applies not just to department secretaries, but to any one who is a member of the Cabinet even if he or she is not a head of a department.

The 2nd par of Sec. 13 is essentially an ***anti-nepotism*** provision which even in statutes normally goes up to the fourth degree of consanguinity or affinity. If the 4th degree relatives, however, are already

in office when a President assumes office, the relatives are not thereby ousted from their positions. What is prohibited is appointment or reappointment and not uninterrupted continuance in office.

a. Presidential Immunity

There is no provision in the Constitution clothing the President with immunity from suit during his tenure.

In the case of *Soliven vs. Judge Makasiar, 167 SCRA 393,* the SC confirmed the doctrime of presidential Immunity, to wit:

The rationale for the grant to the President of the privilege of immunity from suit is to assure the exercise of Presidential duties and functions free from any hindrance or distraction, considering that being the Chief Executive of the Government is a job that, aside from requiring all of the office holder's time, also demands undivided attention.

But this privilege of immunity from suit, pertains to the President by virtue of the office and may be invoked only by the holder of the office; not by any other person in the President's behalf. Thus, an accused in a criminal case in which the President is complainant cannot raise the presidential privilege as a defense to prevent the case from proceeding against such accused.

Moreover, there is nothing in our laws that would prevent the President from waiving the privilege. Thus, if so minded the President may shed the protection afforded by the privilege and submit to the court's jurisdiction. The choice of whether to exercise the privilege or to waive it is solely the President's prerogative. It is a decision that cannot be assumed and imposed by any other person.

After the tenure of office of the President, he cannot invoke immunity from suit for civil damages arising out of acts done by him while he was a President which were not performed in the exercise of official duties. *(Estrada vs. Desierto, March 2, 2001)*

b. Presidential Privilege

Executive Privilege is the right of the President and high-level executive branch officers to withhold information from Congress, the courts, and ultimately the public. *(Rozell)*

Varieties of Executive Privileges:

1. State Secrets Privilege- the information being withheld is of such a nature that its disclosure would subvert *crucial military or diplomatic objective.*

2. Informer’s Privilege- the privilege of the Government not to disclose the identity of persons who furnish information of violations of law to officers charged with the enforcement of that law.

3. Generic Privilege- for internal deliberations has been said to attach to intragovernmental documents reflecting advisory opinions, deliberations and recommendations comprising part of a process by which governmental decisions and policies are formulated. *(Senate vs. Ermita, April 20, 2006)*

In this jurisdiction, the doctrine of executive privilege was recognized by this Court in *Almonte v. Vasquez*. Almonte used the term in reference to the same privilege subject of Nixon. It quoted the following portion of the Nixon decision which explains the basis for the privilege:

"The expectation of a President to the confidentiality of his conversations and correspondences, like the claim of confidentiality of judicial deliberations, for example, has all the values to which we accord deference for the privacy of all citizens and, added to those values, is the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decision-making. A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. These are the considerations justifying a presumptive privilege for Presidential communications. The privilege is fundamental to the operation of government and inextricably rooted in the separation of powers under the Constitution x x x "

Similarly, in *Chavez v. Public Estates Authority,* the Court ruled that the right to information does not extend to matters recognized as "privileged information under the separation of powers,"82 by which the Court meant Presidential conversations, correspondences, and discussions in closed-door Cabinet meetings. It also held that information on military and diplomatic secrets and those affecting national security, and information on investigations of crimes by law enforcement agencies before the prosecution of the accused were exempted from the right to information.

2. Power

Executive Power is the power to enforce and administer the laws. As the administrative head of the government, the President is vested with the power to execute, administer and carry out laws into practical operation. *(National Electrification Administration vs. CA, Feb. 15, 2002)*

Although the Constitution imposes limitations on the exercise of specific powers of the President, it maintains intact what is traditionally considered as within the scope of “executive power”. The powers of the president are not limited to what are expressly enumerated in the article on the Executive Department and in scattered provisions of the Constitution. In other words, executive power is more than the um of specific powers so enumerated. It has been advanced that whatever power inherent in the government that is neither legislative nor judicial has to be executive.

The Administrative Code of 1987 (E.O. 292) expressly grants the President continuing authority to organize the Office of the President. The law grants the President this power in recognition of the recurring need of every President to reorganize his office “to achieve simplicity, economy and efficiency”. After all, the Office of the President is the command post of the President. This is the rationale behind the President’s continuing authority to reorganize the administrative structure of the Office of the President.

However, the President’s power to reorganize the Office of the President under Section 31 (2) and (3) of EO 292 should be distinguished from his power to reorganize the Office of the President Proper. Under Section 31 (1) of EO 292, the President can reorganize the Office of the President Proper by abolishing, consolidating or merging units, or by transferring functions from one unit to another. In contrast, under Section 31 (2) and (3) of EO 292, the President’s power to reorganize offices outside the Office of the President Proper but still within the Office of the President is limited to merely transferring functions or agencies from the Office of the President to Departments or Agencies, and vice versa.

This distinction is crucial as it affects the security of tenure of employees. The abolition of an office in good faith necessarily results in the employee’s cessation in office, but in such event there is

no dismissal or separation because the office itself ceases to exist. *(Domingo vs. Zamora, Feb. 06, 2003)*

b. Power of Appointment

(1) In General

Section 14. "Appointments extended by an Acting President shall remain effective, unless revoked by the elected President, within ninety days from his assumption or reassumption of office."

Appointment is the selection, by authority vested with the power, of an individual who is to exercise the functions of a given office. It is distinguished from *designation* in that the latter simply means the imposition of additional duties, usually by law, on a person already in the public service. It is also different from the *commission* in that the latter is the written evidence of the appointment. *(Nachura, Outline Reviewer in Political Law)*

Appointing power is the exclusive prerogative of the President, upon which no limitations may be imposed by Congress except those resulting from the need of securing the concurrence of the Commission on Appointments and from the exercise of the limited legislative power to prescribe the qualifications to a given appointive office. (*Manalang vs. Quitoriano, 94 Phil. 903)*

Kinds of Appointments:

1. *Permanent appointments*- are those extended to persons possessing the qualifications and the requisite eligibility and are thus protected by the constitutional guarantee of security of tenure.

2. *Temporary appointments*- are given to persons without such eligibility, revocable at will and without the necessity of just cause or a valid investigation; made on the understanding that the appointing power has not yet decided on a permanent appointee and that the temporary appointee may be replaced at any time a permanent choice is made.

Where a person is merely designated and not appointed, the implication is that he shall hold the office only in a temporary capacity and may be replaces at will by the appointing authority. In this sense, a designation is considered only an acting or temporary appointment which does not confer security of tenure on the person named. (*Binamira vs. Garrucho, 188 SCRA 154)*

3. *Regular appointment*- is one made by the President while Congress is in session, takes effect only after confirmation by the Commission on Appointments, and once approved, continues until the end of the term of the appointee.

In regular appointment, the President does not really appoint, he merely nominates, it is the Commission on Appointments who has the power to approve or confirm the appointment. *(Prof. Sandoval, UP BRI)*

4. *Ad interim appointment*- is one made by the President while Congress is not in session, takes effect immediately, but ceases to be valid if disapproved by the Commission on Appointments or upon the next adjournment of Congress. It is deemed "by-passed" through inaction.

Section 14 speaks of the power of the succeeding President to revoke appointments made by an Acting President, and evidently refers only to appointments in the Executive Department. It has no

application to appointments in the Judiciary, because temporary or acting appointments can only undermine the independence of the Judiciary due to their being revocable at will. The letter and spirit of the Constitution safeguard that independence. Also, there is no law in the books that authorizes the revocation of appointments in the Judiciary. Prior to their mandatory retirement or resignation, judges of the first and second level courts and the Justices of the third level courts may only be removed for cause, but the Members of the Supreme Court may be removed only by impeachment.

(2) Commission on Appointments Confirmation

Section 16. "The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards.

The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproved by the Commission on Appointments or until the next adjournment of the Congress."

There is limited number of officials whose appointments under the Constitution require the consent of the Commission on Appointments:

1. heads of the executive departments,

Not every officers of Cabinet rank needs confirmation. It the vice-president is appointed head of an executive department, it does not need confirmation.

2. ambassadors, other public ministers and consuls,

3. officers of the armed forces from the rank of colonel or naval captain,

Appointment of police generals does not need confirmation because they are not military officers, the Constitution characterized police force as civilian.

4. other officers whose appointments are vested in him in this Constitution.

Appointment of sectoral representatives needs confirmation because they come under the clause "other officers whose appointments are vested in him in this Constitution."

The phrase "all other officers of the Government whose appointments are not otherwise provided for by law" means that when a law creating an office does not specify who shall appoint the officer, the appointment must be made by the President.

Its actuation in the exercise of its power to approve appointments submitted to it by the President of the Philippines is exempt from judicial supervision and interference, except on a clear showing of such arbitrary and improvident use of the powers as will constitute a denial of due process.

Section 16 covers only the presidential appointments that require confirmation by the Commission on Appointments. Thereby, the Constitutional Commission restored the requirement of confirmation by the Commission on Appointments after the requirement was removed from the 1973 Constitution. Yet, because of Section 9 of Article VIII, the restored requirement did not include appointments to the Judiciary.

Par. 2 of Sec. 16 refers to *"ad-interim"* appointments.

It is intended to prevent interruptions in vital government services that would otherwise result from prolonged vacancies in government offices.

It is a permanent appointment because it takes effect immediately and can no longer be withdrawn by the President once the appointee has qualified into office. The fact that it is subject to confirmation by the Commission on Appointments does not alter its permanent character. The Constitution itself makes an ad interim appointment permanent in character by making it effective until disapproved by the Commission on Appointments or until the next adjournment of Congress.

An ad interim appointment can be terminated for two causes specified in the Constitution. The first cause is the disapproval of his ad interim appointment by the Commission on Appointments. The second cause is the adjournment of Congress without the Commission on Appointments acting on his appointment.

There is no dispute that an *ad interim* appointee disapproved by the Commission on Appointments can no longer be extended a new appointment. The disapproval is a final decision of the Commission on Appointments in the exercise of its checking power on the appointing authority of the President. The disapproval is a decision on the merits, being a refusal by the Commission on Appointments to give its consent after deliberating on the qualifications of the appointee. Since the Constitution does not provide for any appeal from such decision, the disapproval is final and binding on the appointee as well as on the appointing power. In this instance, the President can no longer renew the appointment not because of the constitutional prohibition on reappointment, but because of a final decision by the Commission on Appointments to withhold its consent to the appointment. *(Matibag vs. Benipayo, April 2, 2002)*

(3) Midnight Appointments

Section 15. "Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety."

The provision is a limitation on the President's power of appointment. The principal purpose for the ban on midnight appointments is to arrest any attempt to prolong the outgoing President's powers by means of proxies.

Exceptions form the Prohibition:

1. Temporary appointments to executive positions when continued vacancies will prejudice public service or endanger public safety;

2. Members of the Supreme Court. *(DE CASTRO vs. JBC and ARROYO, April 20, 2010)*

In *In re Appoinment of Valenzuela, 1998*, the SC said that the prohibition under section 15 applies even to appointments to the judiciary. The only exception is temporary appointments which can only be extended to executive positions when continued vacancies therein will prejudice public service or endanger public safety.

However, in a recent case decided by SC, *(DE CASTRO vs. JBC and ARROYO, April 20, 2010)* it held that the ban on midnight appointments is placed in Article VII, not in Article VIII, because it limits an executive, not a judicial power. Had the framers intended to extend the prohibition contained in Section 15, Article VII to the appointment of Members of the Supreme Court, they could have explicitly done so. They could not have ignored the meticulous ordering of the provisions. They would have easily and surely written the prohibition made explicit in Section 15, Article VII as being equally applicable to the appointment of Members of the Supreme Court in Article VIII itself, most likely in Section 4 (1), Article VIII. That such specification was not done only reveals that ***the prohibition against the President or Acting President making appointments within two months before the next presidential elections and up to the end of the President's or Acting President's term does not refer to the Members of the Supreme Court.***

Furthermore, SC said as the highest court of the land, may be guided but is not controlled by precedent *(Valenzuela case)*. Thus, the Court, especially with a new membership, is not obliged to follow blindly a particular decision that it determines, after re-examination, to call for a rectification.

(4) Power of Removal

The power of removal may be implied from the power of appointment. However, the President cannot remove officials appointed by him where the Constitution prescribes certain methods for separation of such officers from public service, e.g., Chairmen and Commissioners of Constitutional Commissions who can be removed only by impeachment, or judges who are subject to the disciplinary authority of the Supreme Court. In the cases where the power of removal is lodged in the President, the same may be exercised only for cause as may be provided by law, and in accordance with the prescribed administrative procedure.

c. Power of Control and Supervision

Section 17. "The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed."

The *power of control*- is "the power of the President to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former with that of the latter."

The *power of supervision*- is "the power of superior officer to ensure that the laws are faithfully executed" by inferiors.

The power of control necessarily includes the power of supervision but the power of supervision does not include the power of control.

(1) Doctrine of Qualified Political Agency

This presidential power of control over the executive branch of government extends over all executive officers from Cabinet Secretary to the lowliest clerk and has been held by us, in the landmark case of *Mondano vs. Silvosa,* to mean "the power of the President to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former with that of the latter." It is said to be at the very "heart of the meaning of Chief Executive."

As a corollary rule to the control powers of the President, is the ***"Doctrine of Qualified Political Agency"***. As the President cannot be expected to exercise his control powers all at the same time and in person, 20 he will have to delegate some of them to his Cabinet members.

The Supreme Court recently upheld Memorandum Circular No. 58, promulgated by the Office of the President on June 30, 1993, which bars an appeal or a petition for review to the Office of the President of decisions/orders/resolutions of the Secretary of Justice except those involving offenses punishable by reclusion perpetua or death. *(Angeles v. Gaite, November, GR No. 165276, 25, 2009)*

d. Military Powers

The Military Power provision speaks of the three powers:

1. Calling Out power as a commander-in-chief of the AFP;

2. Martial Law Power;

3. Power to Suspend the Privilege of the Writ of Habeas Corpus

Differences of Treatment of the three powers:

The Martial Law Power and the Power to Suspend the Privilege of the Writ of Habeas Corpus are greater power as it involves the curtailment of fundamental and civil rights/liberties of people, therefore subject to judicial review.

While the Calling Out Power is the lesser and denied power as it does not involve curtailment of fundamental and civil liberties of the people, hence not subject to judicial review, unless, there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the President. And the fact can be clearly shown by the petitioner applying the doctrine of expanded power of judicial review. *(Prof. Sandoval, UP BRI)*

Limitations to the Military Power:

1. He may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion only.

2. The grounds for suspension of the privilege of the writ of habeas corpus and the proclamation of martial law are now limited only to invasion or rebellion.

3. The duration of suspension and proclamation should not exceed 60 days following which it shall be lifted, unless extended by Congress.

4. The President shall submit a report in person or in writing to the Congress within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus.

5. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President.

6. The Congress may 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 initiative for extension, however, can only come from the President.

7. The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus or the extension thereof, and must promulgate its decision thereon within 30 days from its filing.

8. The suspension of the privilege of the writ of habeas corpus shall apply only to persons judicially charged for rebellion or offenses inherent in, or directly connected with, invasion.

9. A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

It means that ordinary legislation continues to belong to the legislative bodies even during martial law.

10. During the suspension of the privilege of the writ of habeas corpus, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released. *(Suarez, 6th Months Before the Bar)*

In the case *David vs. Arroyo,* when President Arroyo issued PP 1017, what power did she actually exercised?

Q. Was it Emergency Power?

A. No. Par. 2, Sec. 23, Art. VI laid down the conditions in the exercise of Emergency power, to wit:

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

Clearly therefore, emergency power is merely a delegated power to the President. The President may not validly exercise it *mutu propio.* At the time of the issuance of PP 1017, no law was enacted by Congress authorizing the President to exercise emergency power.

Q. Was it Martial Law power?

A. No. two conditions in the exercise of this power are found in Sec. 8, Art. VII:

1. In case of invasion or rebellion;

2. when the public safety requires it.

In that case, the SC held that Pres. Arroyo exercised her Calling Out Power as the commander-in-chief of the AFP. This power as a general rule is not subject to judicial review as it is a political question. The only exception is when the president exercises said power with grave abuse of discretion amounting to lack or excess of jurisdiction. And the burden of proof lies on the part of the petitioner assailing the act. In the case at bar, the petitioner fails to meet the burden of proof.

What was declared *ultra vires* in this case is the act of the police officers of affecting warrantless arrest and the taking over of the Tribune Publishing House. *(Prof. Salvador, UP BRI)*

e. Pardoning Power

Section 19. "Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment.

He shall also have the power to grant amnesty with the concurrence of a majority of all the Members of the Congress."

(1) Nature and Limitations

The power of executive clemency is a non-delegable power and must be exercised by the President personally. This power is granted for the purpose of relieving the harshness of the law or correcting mistakes in the administration of justice.

The exercise of Pardoning Power is discretionary in the President and may not be controlled by the legislature or reversed by the Courts, save only when it contravenes the limitations discussed below:

Sec. 19 sets down the 1st three limitations on the power of executive clemency:

1. It cannot be exercised over cases of impeachment;

2. Reprieves, commutations, and pardons, and remission of fines and forfeitures can only be given after conviction by final judgment.

3. A grant of amnesty must be with the concurrence of a majority of all the Members of the Congress.

4. No pardon, amnesty, parole, or suspension of sentence for violation of election laws, rules, and regulations shall be granted by the President without the favorable recommendation of the Commission. *(Art. IX, C, Sec.5)*

5. Pardon cannot be extended to a person convicted of legislative contempt (this would violate the doctrine of separation of powers) or of civil contempt (this would violate the benefit not of State itself but of private litigant whose rights have been violated by contemnor. *(Justice Isagani Cruz)*

6. Pardon cannot be extended for the purpose of absolving the pardoned of civil liability.

7. Pardon also will not restore offices that ha been forfeited.

(2) Forms of Executive Clemency

1. *Pardon*- is an act of grace which exempts the individual on whom it I bestowed from the punishment which the law inflicts for the crime he has committed.

2. *Reprieves*- is merely a postponement of a sentence to a date certain, or a stay of execution. The purpose is to enable the government to secure additional evidence to ascertain the guilt of convict.

3. *Commutations*- is a reduction or mitigation of the penalty, i.e. when death sentence is reduced to life imprisonment.

4. *Amnesty*- grant of general pardon to a class political offenders either after conviction or even before the changes are filed.

5. *Remission of fines and forfeiture*- it is a self-explanatory term. However it should be noted that remission of fines and forfeiture merely prevents the collection of fines of the confiscation of forfeited property; it cannot have the effect of returning the property which has been vested in third parties or money already in the public treasury.

Kinds of Pardon

1. Absolute or Conditional

Absolute pardon- extended without any string attached. The pardonee has no option at all and must accept it whether he likes it or not.

Conditional pardon- under which the convict is required to comply with certain requirements. The offender has the right to reject it since he may feel that condition imposed is more onerous than penalty sought to be remitted.

2. Plenary or Partial

Plenary pardon- extinguishes all the penalties imposed upon offender, including accessory liabilities.

Partial pardon- does not extinguished accessory liabilities.

Mere commission, not necessarily conviction by the Court of any other crime, is enough in order that petitioner, may be deemed to have violated the condition of his parole or pardon. The executive can only allege the commission of an offense; it is for the judiciary to declare such commission in the form of conviction.

Amnesty can be granted by the President only with the concurrence of Congress. This concurrence must be given by the majority of all members of Congress.

Rule on amnesty: it requires a previous admission of guilt since a person would not need the benefit of amnesty unless he were, to begin with, guilty of the offense covered by the proclamation.

Distinctions between Amnesty and Pardon:

1. Amnesty usually addressed to crimes against sovereignty of State; pardon condones infractions of peace of State.

2. Amnesty usually generally addressed to classes or even communities of persons; pardon is usually addressed to individual.

3. In amnesty, there may or may not be distinct acts of acceptance; in pardon, there must be distinct acts od acceptance.

4. Amnesty requires concurrence of Congress; pardon does not.

5. Amnesty is a public act of which the courts take judicial notice; pardon is private act of the President.

6. Amnesty looks backward and abolishes and puts into oblivion the offenses itself; pardon looks forward and relieves the offender from consequences of offense of which he has been convicted.

f. Diplomatic Power

Section 21. "No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate."

The President is supposed to be the spokesman of the nation on external affairs.

1. He may deal with foreign states and government.

2. Extend or withhold recognition.

3. Maintain diplomatic relations.

4. Enter into treaties.

5. Transact business of foreign relations.

International agreement was not intended to include the executive agreement which apparently can still be concluded by the President alone without the necessity of Senate concurrence. Treatties and international agreements concluded by the President are subject to check by the Supreme Court, which has the power to declare them unconstitutional.

g. Residual Powers

In *Marcos vs. Manglapus, 177 SCRA 668*, SC concluded that the President had the authority to prevent the return of Mr. Marcos even in the absence of a specific law granting her such authority, the SC laid down the premise for its inclusion asserting the existence of *"residual powers"* not specifically mentioned in the Constitution."

In *Malaria Employees and Workers Association of the Philippines vs. Romulo, July 31, 2007,* it was held that the President has the authority to carry out a reorganization of the DOH under the Constitution and statutes. This authority is an adjunct of the President's power of control under Art. VII, Sec. 1 and 17, and it is also an exercise of his *"residual powers"*. However, the President must exercise good faith in carrying out the reorganization of any branch or agency of the executive department.

JUDICIAL DEPARTMENT

Judicial power is vested in:

1. Supreme Court – the only Constitutional Court;

2. Such lower courts as may be established by law.

Lower Courts – are statutory creations referred to as other courts below the SC, they includes Court of Appeals, RTC, MTC, MeTC and MCTC.

Judicial power is not simply the power but remains the duty of the court. *(Prof. Sandoval, UP BRI).*

The concept and definition of judicial power under has two parts: *(par. 2, Sec. 1, Art. VIII)*

1. Traditional concept: The duty to settle actual controversies involving rights which are legally demandable and enforceable before the courts of justice or the redress of wrongs for violation of such rights;

2. Expanded power of judicial review: 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.

It also include the power to review even the political decisions of the executive and the legislative and to declare their acts invalid for lack or excess of jurisdiction because tainted with grave abuse of discretion.

Grave abuse of discretion- is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or not to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.*(Bernas,Political Law1)*

Grave abuse of discretion may arise when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence.

Limitations on Judicial Power:

1. By the principle of separation of powers, Courts may neither attempt to assume nor be compelled to perform non-judicial functions.

2. General rule: Political questions are beyond the pale of judicial review.
Exception: It is well within the power and jurisdiction of the Court to inquire whether there is a violation of the Constitution or grave abuse of discretion amounting to lack or excess of jurisdiction.

3. It is not the function of the judiciary to give advisory opinion. The giving of such opinion is not the exercise of judicial function.

4. General rule: In moot and academic cases, the Court has nothing to do but to dismiss the case.
Exceptions: a. there is gross violation of the Constitution; b. in exceptional circumstances and paramount public interest is involve; c. when the issue raised requires formulation o principle to guide the bench, bar and public.

b. Judicial Review

Judicial Review is the assertion of solemn and sacred obligation assigned to the judiciary by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the

parties in an actual controversy the right which that instrument secures and guarantees to them. *(Angara s. Elec. Com. 63Phil. 139)*

The Supreme Court, in the exercise of its power of judicial review, may review decisions of the Office of the President on questions of law and jurisdiction, when properly raised. This does not mean judicial supremacy over the Office of the President but the performance by this Court of a duty specifically enjoined upon it by the Constitution, as part of a system of checks and balances. *(Roche vs. Roche, April 30, 1987)*

Political Question- is a question of policy, which is to be decided by the people in their sovereign capacity or by the legislative or the executive branch of the government to which full discretionary authority has been delegated. It is concerned with issues dependent upon the wisdom, not legality of a particular measure. *(Tanada vs. Cuenco)*

Justiciable Question- Where the vortex of the controversy refers to the legality or validity of the contested act, that matter is definitely justiciable ornon-political, i.e. the determination of whether or nota constitutional provision has been followed or not. *(Suarez, 6th Months Before Bar Outline)*

The qualifications of the Members of Supreme Court are:

1. Natural-born citizen of the Philippines.

2. Must be at least forty (40) years of age,

3. Must have been for fifteen (15) years or more, a judge of a lower court or engaged in the practice of law in the Philippines.

4. Must be a person of proven competence, integrity, probity, and independence.

The qualifications of members of collegiate courts lower than the SC are:

1. Natural-born citizen of the Philippines.

2. A member of the Philippine Bar.

3. Must be a person of proven competence, integrity, probity, and independence.

4. Possessing such qualifications as may be prescribed by Congress.

The principal unction of JBC under Sec. 8 is to form a list of nominees to the judiciary out of which the President chooses appointees as Justices and Judges. The council functions under the supervision of the SC with the Clerk of the SC as ex-officio Secretary. The council is composed of:

3 ex-officio members:

1) Chief Justice as ex officio Chairman,

2) Secretary of Justice, and

3) representative of the Congress

4 regular members:

1) representative of the Integrated Bar,

2) professor of law,

3) retired Member of the Supreme Court, and

4) representative of the private sector

In Sec. 9, for every vacancy the JBC submits to the President a list of at least three (3) names. The President my not appoint anybody who is not in the list. If the President is not satisfied with the names in the list, he may ask for another list. Once the appointment is issued by the President and accepted by the nominee, it needs no further confirmation. For the lower courts, the President is given 90 days from submission of the list within which to issue the appointment.

5. Supreme Court

Section 4. (1) "The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit en banc or in its discretion, in division of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof.

That the division can be of different sizes is supposed to reflect the relative importance of the cases. There can thus be as many as five divisions in the SC thereby allowing for a more speedy disposition of cases before the SC. Except for those cases which by command of the Constitution must be heard by SC en banc, cases may be heard either en banc or by a division as the Rules of Court may provide. *(Bernas, Political Law 1)*

The following cases are to heard and decided en banc:

1. All cases involving the constitutionality of a treaty, international or executive agreement, or law;

2. Cases involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations;

3. Cases heard by a division when the required majority in the division is not obtained;

4. Cases where the Supreme Court modifies or reverses a doctrine or principle of law previously laid down either en banc or in division;

5. Administrative cases where the vote is for the dismissal of a judge of a lower court or otherwise to discipline such a one;

6. All cases which under the Rules of Court may be required to be heard en banc; and

7. Election contests for President or Vice-President.

When the SC sits en banc, cases are decided by the concurrence "of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon. This reflects a two-fold desire of the Commission:

1. not to allow the absence of some members of the SC or their non-participation in deliberations to delay decisions, and

2. to require that only those thoroughly familiar with the case participate in the decision.

CONSTITUTIONAL COMMISSIONS

Civil Service Commission- is the personnel office of the government.

Commission on Audit- is the auditing office of the government.

COMELEC- is charged with the administration of the all important electoral process.

As these Commissions perform vital governmental functions, they have to be protected from external influences and political pressures. Hence, they were made constitutional bodies, independent of and not under any department of the government. Certainly, they are not under the control of the President. *(Carpio vs. Executive Secretary, Feb 14, 1992)*

1. Institutional Independence Safeguards

Reasons why they are called Independent Commissions:

1. The said commissions are independent constitutional bodies.

> **(Sec. 1(a), Art. IX). The Constitutional Commissions, *which shall be independent,* are the Civil Service Commission, the Commission on Elections, and the Commission on Audit.**

2. The Members of Constitutional Commissions cannot be removed from office except by impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.

3. The powers conferred to each of the said commissions cannot be withdrawn or reduced by statute. *(Art. IX (B), (C), and (D)*

4. The term of office of the Chairman and the Commissioners is seven (7) years without re-appointment.

5. Their term of office is staggered in order that the majority of them may not be appointed by the same President.

6. The Chairmen and members may not be re-appointed or appointed in an acting capacity.

7. Their salaries are fixed by law and shall not be decreased during their tenure.

8. All the said commissions enjoy fiscal autonomy.

9. All the said commissions may promulgate its own procedural rules.

10. All the said commissions can appoint their own officials and employees in accordance with law.

11. The chairman and members of all the said commissions are subject to certain disqualifications so they will not be distracted from performing their duties and functions.

> **(Sec. 2, Art. IX (A). No member of a Constitutional Commission shall, during his tenure, hold any other office or employment. Neither shall he engage in the practice of any profession or in the active management or control of any business which, in any way,**

may be affected by the functions of his office, nor shall he be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations or their subsidiaries.

Notes: Practice of profession for the purpose of prohibition does not include teaching.

The prohibition of active management of a business does not prohibit a commissioner from owning a business but it prohibits him from being a managing officer or a member of the governing board of a business "which in any way may be affected by the functions of his office," a qualifying phrase which does not apply to the prohibition of practice of a profession. *(Bernas, Political Law 1)*

12. All the said commissions are created by the Constitution and they may not be abolished by the statute. *(Sec.1, Art.IX (A)*

2. Powers and Functions

THE CIVIL SERVICE COMMISSION

1. To promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service;

2. It shall strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks;

3. To institutionalize a management climate conducive to public accountability;

4. It shall submit to the President and the Congress an annual report on its personnel programs.

CSC as an administrative agency can only perform and can only be given powers proper to an administrative agency. It can perform *executive powers, quasi-judicial powers, and quasi-legislative power or rule-making powers.*

Powers and Functions Under EO No. 292:

1. Administer and enforce the constitutional and statutory provisions on the merit system for all levels and ranks in the Civil Service;

2. Prescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Laws and other pertinent laws;

3. Promulgate policies, standards and guidelines for the Civil Service and adopt plans and programs to promote economical, efficient and effective personnel administration in the government;

4. Formulate policies and regulations for the administration, maintenance and implementation of position classification and compensation and set standards for the establishment, allocation and reallocation of pay scales, classes and positions;

5. Render opinion and rulings on all personnel and other Civil Service matters which shall be binding on all head of departments, offices and agencies and which may be brought to the Supreme Court on certiorari;

6. Appoint and discipline its officials and employees in accordance with law and exercise control and supervision over the activities of the Commission;

7. Control, supervise and coordinate Civil Service examinations. Any entity or official in government may be called upon by the Commission to assist in the preparation and conduct of said examinations including security, use of buildings and facilities as well as personnel and transportation of examination materials which shall be exempt from inspection regulations;

8. Prescribe all forms for Civil Service examinations, appointment, reports and such other forms as may be required by law, rules and regulations;

9. Declare positions in the Civil Service as may properly be primarily confidential, highly technical or policy determining;

10. Formulate, administer and evaluate programs relative to the development and retention of qualified and competent work force in the public service;

11. Hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and action of its offices and of the agencies attached to it. Officials and employees who fail to comply with such decisions, orders, or rulings shall be liable for contempt of the Commission. Its decisions, orders or rulings shall be final and executory. Such decisions, orders, or rulings may be brought to Supreme Court on certiorari by the aggrieved party within thirty (30) days from receipt of the copy thereof;

12. Issues subpoena and subpoena duces tecum for the production of documents and records pertinent to investigations and inquiries conducted by it in accordance with its authority conferred by the Constitution and pertinent laws;

13. Advise the President on all matters involving personnel management in the government service and submit to the President an annual report on the personnel programs;

14. Take appropriate actions on all appointments and other personnel matters in the Civil Service including extension of service beyond retirement age;

15. Inspect and audit the personnel actions and programs of the departments, agencies, bureaus, offices, local government including government-owned or controlled corporations; conduct periodic review of the decisions and actions of offices or officials to whom authority has been delegated by the Commission as well as the conduct of the officials and the employees in these offices and apply appropriate sanctions whenever necessary.

16. Delegate authority for the performance of any functions to departments, agencies and offices where such functions may be effectively performed;

17. Administer the retirement program of government officials and employees, and accredit government services and evaluate qualification for retirement;

18. Keep and maintain personnel records of all officials and employees in the Civil Service; and

19. Perform all functions properly belonging to a central personnel agency such as other functions as may be provided by law.

THE COMMISSION ON ELECTIONS

ARTICLE IX (C), Section 2- implicitly grants the Comelec the power to promulgate rules and regulations in the enforcement of laws relative to elections. It includes:

a. ascertainment of the identity of a political party and its leditimate officers.
b. decide all questions affecting elections.
c. register and regulate political parties.
d. ensure orderly elections.
e. authority to annul the results of a plebiscite.
f. regulate the enjoyment and utilization of all franchises and permits for the operation of transportation and public utilities, media of communication or information.
g. power to declare failure of election.

But it does not authorize the Comelec, *motu propio*, without the proper proceedings, to deny due course to or cancel a certificate of candidacy filed in due form.

The power of direct control and supervision of the DILG over SK elections does not contravene the constitutional grant of power to the Comeles, in as much as the election, and contests involving election of SK officials do not fall within the jurisdiction of the Comelec. *(Nachura, Outline Reviewer in Political Law)*

(2) Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.

Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.

It may include:

a. Exclusive jurisdiction over pre-proclamation cases
b. Power to issue writs of certiorari, prohibition and mandamus.
c. Exclusive appellate jurisdiction over decisions of MTC in electoral cases involving elective barangay officials.
d. Authority to suspend the reglementary periods provided by its rules, or requirement of non-forum shopping, in the interest of justice and speedy resolution of cases.
e. Power to cite for contempt, but this power may be exercised only while the Comelec is engaged in the performance of quasi-judicial functions.

The jurisdiction over elections for Sangguniang Kabataan is given to the department of Local Government.

Decisions, final orders, or rulings of the Comelec of all contest involving elective municipal and barangay offices shall be final, executory, and not appealable. But the non-appealable character refers only to questions of fact and not of law. Such decisions remain subject to the jurisdiction of SC through the special civil action of certiorari under Rule 65 within thirty (30) days from receipt of a copy thereof in accordance with Art. IX, A, Sec.7.

(3) Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.

The only questions that *may not be touched* by the Comelec are *"those involving the right to vote"*. The power to determine whether or not a person can exercise or is precluded from exercising the right to vote is a judicial question.

When exercising its purely administrative powers under this paragraph, the Comelec may not punish contempt.

Decisions/ determinations made by Comelec in the exercise of this power, being merely administrative in character, may be questioned in an ordinary civil action before trial courts.

(4) Deputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections.

The Comelec may recommend to the President the removal of any officer it has deputized, or the imposition of any sanction, for disobedience, violation, or disregard of its orders.

(5) Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.

Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections, constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law.

Instances when the Comelec can refuse registration:

1. Religious denominations and sects shall not be registered;
2. Those which seek to achieve their goal through violence and unlawful means shall not be registered;
3. Those which refuse to uphold and adhere to the Constitution shall also be refused registration; and
4. Those which are supported by any foreign government.

The last paragraph of Sec. 2(5) refers to a situation where one political party is already registered but it has accepted financial contributions from foreign governments. This is a ground for cancellation of registration.

The prohibition does not refer to political parties which draw their inspiration from religious beliefs, such as the Christian Democrats or the Christian Social Movement. These are not religious sects or denominations. Nor is the prohibition intended to prevent priests or religious leaders from registering as candidates.

(6) File, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses, and malpractices.

The power to investigate and prosecute violations of election laws is an exclusive power of the Comelec. Thus, Fiscals or Prosecutors can file information charging an election offense only when they have been deputized by the Commission. However, disciplinary authority over such Fiscals and Prosecutors remain with the Secretary of Justice. The most that the Comelec can do is recommend disciplinary action.

(7) Recommend to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidacies.

(8) Recommend to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to, its directive, order, or decision.

(9) Submit to the President and the Congress, a comprehensive report on the conduct of each election, plebiscite, initiative, referendum, or recall.

Sec. 2 (7), (8) and (9) enumerates some specific recommendatory powers.

Like the CSC, Comelec is an administrative agency, As such, the powers it possesses are *executive, quasi-judicial, and quasi-legislative*. By exception, however, it has given *judicial power* as "sole judge of all contests relating to the election, returns, and qualifications of all regional, provincial and city officials. However, Comelec cannot claim to exercise the so-called inherent powers of the regular courts. *(Bernas, Political Law 1)*

***Executive Power**:* It shall enforce and administer all laws relative to the conduct of an election, plebiscite, initiative, referendum and crecall.

Legislative Power: It shall issue rules and regulations to implement the election laws. It has the power to exercise such legislative functions as may be expressly delegated to it by Congress.

Judicial Power: It has the power to resolve all cases or controversies that may arise in the enforcement of election laws. It is the sole judge of all pre-proclamation disputes and all contests relating to election, returns and qualifications of all regional, provincial and city officials. *(Suarez, 6th Months Before the Bar Outline)*

Specific Executive Powers:

1. To require compliance with the rules for the filing of certificate of candidacy.

2. To take preventive measures to avoid fraud and other election offenses.

3. To supervise registration of voters.

4. To supervise holding of polls.

5. To see to it that votes are canvassed properly.

6. To proclaim the winners.

Ancillary to and in support of the said powers, the Comelec can do the following:

a. To annul illegal registry of voters.

b. To proclaim winning candidates.

c. To annul canvass.

d. To suspend canvass.

e. To relieve election inspectors and canvassers.

f. To supervise and control election inspectors and canvassers.

g. To register political parties, or to decide whether a party is a political party.

h. To supervise and regulate use of franchise. *(Suarez, 6th Months Before the Bar Outline)*

The power to enforce and administer election laws and to insure free, orderly and honest elections includes:

1. The power to determine the validity or nullity of the votes questioned by either of the contestants;

2. The power to exclude election returns on the ground of statistical improbability;

3. The power to exclude election returns which were the products of coercion;

4. The power to obtain the testimony of handwriting experts to be able to determine if the election returns are falsified or not. *(Suarez, 6th Months Before the Bar Outline)*

THE COMMISSION ON AUDIT

ARTICLE IX (D), Section 2 gives a broad outline of the ***powers and functions*** of the Commission on Audit:

1. To examine and audit all forms of government revenues;

2. To examine and audit all forms of government expenditures;

3. To settle government accounts;

It means the power to settle liquidated accounts, that is, those accounts which may be adjusted simply by an arithmetical process. It does not include the power to fix the amount of an unfixed or undetermined debt.

4. To define the scope and techniques for its own auditing procedures;

5. To promulgate accounting and auditing rules "including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures; and

6. To decide administrative cases involving expenditure of public funds.

The power of the COA to define the scope of its audit and examination and to establish the techniques it will follow is exclusive. This is intended to prevent conflict. These matters, after all, require special expertise. *(Bernas, Political Law 1)*

The auditing authority of the COA over government-owned corporations extends only to those "with original charter". It has authority not just over accountable officers but also over other officers who perform functions related to accounting such as verification of evaluations and computation of fees collectible, and the adoption of internal rules of control. *(Mamaril vs. Domingo, 227 SCRA 206)*

COA has only post-audit authority over:

1. Constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution;

2. Autonomous state colleges and universities;

3. Other government-owned or controlled corporations and their subsidiaries; and

4. Such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity.

Judicial Review

a. Quasi-Judicial Functions

Section 1, Rule 43 of the Rules of Court provides:

SECTION 1. Scope. - This Rule shall apply to appeals from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the *Civil Service Commission*, x x x.

The remedy of an aggrieved party from a resolution issued by the CSC is to file a petition for review thereof under Rule 43 of the Rules of Court within fifteen days from notice of the resolution. Recourse to a petition for certiorari under Rule 65 renders the petition dismissible for being the wrong remedy. Nonetheless, there are exceptions to this rule, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the

b. Administrative

The Comelec, under Art. IX (B), Sec. 2 (1) and (3), has the power to decide all administrative cases before proclamation or "pre-proclamation proceeding. The only questions that may not be touched by the Comelec are "those involving the right to vote." Comelec has the authority to decide whether a person has the constitutional qualifications needed to be voted for even on the national level.

After proclamation, the neat rule should be that the Tribunal and the courts should have jurisdiction.

The power of the Comelec to examine the validity of proclamations and to nullify or approve them according to its findings ha been recognized. The broad discretion of the Comelec is subject to a

review power of the Supreme Court which has been narrowed within the limits of review by certiorari under Rule 65.