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POLITICAL LAW



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CONSTITUTIONAL LAW 1

PRELIMINARY CONCEPTS

I. INTRODUCTION: THE CONSTITUTION, CONSTITUTIONALISM AND CONSTITUTIONAL LAW

A. Political Law

1. Definition:

branch of public law which deals with the organization and operation of the government organs of the state and defines the relations of the state with the inhabitants of its territory. (Sinco, Phil Political Law 1, 11th ed., 1962)

2. Scope of Political Law (Sinco)

law of public administration - deals with the organization and management of the different branches of the government, constitutional law – deals with the guaranties of the constitution to individual rights and the limitations on governmental action

administrative law – deals with the exercise of executive power in the making of rules and the decision of questions affecting private rights and

the law of public corporations – deals with governmental agencies for local government or for other special purposes.

B. Constitutional Law

1. Definition

* As understood in American and Philippine Jurisprudence, a term used to designate the law embodied in the constitution and the legal principles growing out of the interpretation and application made by courts of the provisions of the constitution in specific cases. xxx

* A distinct branch of jurisprudence dealing w/ the legal principles affecting the nature, adoption, amendment, and operation of the constitution. (Sinco 67.)

C. Constitution

1. Definition

* Tanada and Fernando: "a written instrument organizing the government, distributing its powers and safeguarding the rights of the People."

* Malcolm and Laurel: "the written instrument by which the fundamental powers of 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."

II. THE 1987 CONSTITUTION

A. Basis of Aquino Government

1. Proclamation No. 1, 25 February 1986.

* announced the Provisional Constitution

* seemed to suggest that it was a revolutionary government, since it announced that the "new government was installed, through a direct exercise of the power of the Filipino people assisted by units of the New Armed Forces," referring to the EDSA revolution.

2. Proclamation No. 3, March 25, 1986

* adopted the Provisional Constitution or Freedom Constitution

* abrogated the legislative provisions of the 1973 Constitution, modified the provisions regarding the executive department, and totally reorganized the government.

* provided for the calling of a Constitutional Commission, composed of 30 to 50 members appointed by the President within 60 days.

* Contents of Provisional Constitution:

- Art I – Adoption of certain provision of the 1973 Constitution as amended
- Art II – on the President, Vice President and Cabinet
- Government reorganization promoting economy, efficiency and the eradication of graft and corruption
- Existing laws, treaties and contracts shall remain

operative until amended, modified or repealed

- Art V – Adoption of a new Constitution (Constitutional Commission)
- Art VI – Holding of Elections
- Art VII – Effective Date

3. Adoption and Effectivity

a. Art. V., Provisional Constitution

ADOPTION OF A NEW CONSTITUTION

Process

A Commission shall be appointed by the President to draft a new Constitution within 60 days from the date of this proclamation (Sec 1, Proclamation No. 3)

New Constitution shall be presented by the Commission to the President (Sec 5, Proclamation No. 3)

The President shall fix the date for the holding of a plebiscite within 60 days following its submission to the President (Sec 5, Proclamation No. 3)

New Constitution shall become valid and effective upon ratification by a majority of the votes cast in such plebiscite (Sec 5, Proclamation No. 3)

Composition of Commission

Number: 30-50 members

Requirements (Sec 1, Proclamation No 3)

Natural-born citizen

Of recognized probity, known for their independence, nationalism and patriotism

Chosen by the President after consultation with various sectors

b. 1987 Constitution, Art. XVIII, sec. 27.

EFFECTIVITY

* This Constitution shall take effect immediately upon its ratification by a majority of the votes cast in a plebiscite held for the purpose and shall supersede all previous Constitutions.

* Approved by the Constitutional Commission of 1986 on the twelfth day of October 1986

* Accordingly signed on the fifteenth day of October 1986 at the Plenary Hall, National Government Center, Quezon City, by the Commissioners whose signatures are hereunder affixed.

c. Proclamation No. 58, February 11, 1987

* Proclaimed the ratification of the 1987 Constitution

B. CASE LAW:

Lawyer's League vs. Aquino

The legitimacy of the Aquino government was being contested The Court ruled that the legitimacy of this government is a non-justiciable matter. "It is only the people of the Philippines who may be the judge of its legitimacy. Since such government is accepted by the people, it is not merely a de facto government but also a de jure government. Moreover, the community of nations has recognized its legitimacy"

In re: Saturnino Bermudez

The petitioner is asking for a declaratory relief and to explain the 'ambiguity' in the proposed 1986 Constitution as to who was being referred to as President and Vice-President in Art XVIII Sec 7.

The Court ruled that they do not have original jurisdiction over declaratory reliefs

"There is lack of personality to sue and such petition amounts in effect to a suit against the incumbent President... it is equally elementary that incumbent Presidents are immune from suit or being brought to court during the period of their incumbency and tenure."

III. CONSTITUTIONALISM AND CONSTITUTIONAL SUPREMACY: JUDICIAL REVIEW UNDER THE 1987 CONSTITUTION

A. Nature of Judicial Power/Review

The judicial power shall be vested in one supreme court and in such lower courts as may be established by law. (Sec 1 Art VIII)

Scope:

- to settle actual controversies involving rights which are legally demandable and enforceable
- 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.

Theory of Judicial Review

• **Angara v Electoral Commission**

When the Court allocates constitutional boundaries, it neither asserts supremacy, nor annuls the acts of the legislature. It simply carries out the obligations imposed upon it by the constitution to determine conflicting claims and to establish for the parties the rights which the constitution grants to them.

• **Ashwander vs. Tennessee Valley Authority**

In the following cases, the court must refrain from passing on the issue of constitutionality or from exercising judicial review:

- Friendly, non-adversary proceedings. (no vital conflict)
- Anticipation of a question of constitutional law in advance of the necessity of deciding it. (premature case)
- Formulation of a rule broader than is required by the precise facts to which it is applied.
- Existence of other grounds upon which the case may be disposed of (not the very *lis mota*)
- A complaint made by one who fails to show injury as to its operation. (no standing)
- Instance of one who has availed himself of its benefit.
- Possibility of a construction of the statute which can avoid the resolution of the constitutional question.

B. Requisites for the Exercise of Judicial Review

Conditions for exercise of judicial review:

1. **Appropriate case**
2. **Personal and substantial interest**
3. **Question raised at the earliest opportunity**
4. ***Lis mota* of the case**
5. **Violates the constitution clearly, plainly and palpably**

→ **1. Appropriate Case - Actual Case or Controversy**

→ conflict of legal rights or an assertion of opposite legal claims susceptible of judicial determination (*Nachura*)

The court must resolve constitutional issues only when they come to it at the right time (ripeness).

• **Gonzales vs. COMELEC**

“The exceptional character of the situation that confronts this Court, the paramount public interest, and the undeniable necessity for a ruling, the national elections being barely six months away, reinforce this stand. It would appear undeniable, therefore, that before this Court is an appropriate invocation of this Court’s jurisdiction to prevent the enforcement of an alleged unconstitutional statute. The Court is left with no choice. Then, it must act on the matter.”

- **Mootness.** A case becomes moot when there are facts, injuries and heated arguments but for some reason the legal problem has become stale. When a case is moot and academic, it ceases to be a case and controversy. Any decision reached by the court would not be conclusive on the parties.

* Exceptions to mootness:

- 1) If the question is capable of repetition and evasive of review.
- 2) If there exists a mere possibility of collateral legal consequences if the court does not act.
- 3) Voluntary cessation from the wrongful act by the

defendant, if he is free to return to his old ways.

→ **2. Personal and Substantial Interest – Standing**

A proper party is one who has sustained, or is in imminent danger of sustaining, an injury as a result of the act complained of.

→ May be established by two nexuses:

1. party’s status and the type of legislative act being questioned
2. status and the precise nature of the constitutional infringement.

→ General Rule: validity of a statute may be contested only by one who will sustain a direct injury, in consequence of its enforcement

• **Baker v Carr**

The test of standing is whether the party has alleged such a personal stake in the outcome of the controversy as to assure such concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions

• **People v Vera**

A person has standing to challenge the governmental act only if he has a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement.

• **Exceptions:**

• **Ople v Torres**

A senator has the requisite standing to bring a suit assailing the issuance or implementation of a law as a usurpation of legislative power.

• **Kilosbayan Inc vs Morato; Tatad v Secretary of Department of Energy**

A party’s standing in court is a procedural technicality which may be set aside by the Court in view of the importance of the issues involved. Thus, where the issues raised by petitioners are of paramount public interest or of transcendental importance, the Court may brush aside the procedural barrier

• **Ople v Torres and Pascual v The Secretary of Public Works**

A taxpayer may impugn the misuse of public funds

→ **3. Question Raised at the Earliest Opportunity**

General Rule: the question must be raised in the pleadings.

→ **4. Lis Mota**

Because of the doctrine of separation of powers which demands that proper respect be accorded the other branches of government, courts are loath to decide on constitutional questions as long as there is some other basis that can be used to resolve the case.

It must appear conclusively that the case before the court may not be legally settled unless the constitutionality of the statute involved is determined (*Sinco*)

C. Functions of Judicial Review

Functions:

- Checking
- Legitimizing (Legitimizing)
- Symbolic

Discussion of Functions:

1. **Checking** - invalidating a law or an executive act that is found to be contrary to the Constitution.

2. **Legitimizing (legitimizing)** - upholding the validity of the law which results from a mere dismissal of a case challenging the validity of that law.

Anyone who challenges the validity of a law has the burden of proof to show its invalidity. Declaring that the law is not unconstitutional is tantamount to saying that the challenger has not met the burden required.

• **Occena v COMELEC and Mitra v COMELEC**

The failure of the Court in *Javellana v Executive Secretary* to muster the votes required to declare the 1973 Constitution as being invalidly ratified,

which resulted in the dismissal of the suit questioning the validity of the ratification of the Constitution, in effect legitimated the ratification.

3. Symbolic - to educate the bench and bar as to the controlling principles and concepts on matters of great public importance.

• **Javier v COMELEC**

The case was already mooted not only by the death of Evelio Javier, but also by the abolition of Batasan, the Antique seat which he and Pacificador were contesting for. And yet the SC, claiming to be "not only the highest arbiter of legal questions but also the conscience of the government," decided the case anyway "for the guidance of and as a restraint upon the future.

D. Who can exercise judicial review?

- All courts can exercise judicial review
- Powers of the Supreme Court (Sec 5(2), Art VIII)
 1. Review
 2. Reverse
 3. Reverse,
 4. Modify, or
 5. Affirm on appeal or certiorari as the law or the Rules of Court may provide, final judgments and orders of lower courts in all cases in which:
 - i. Constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
 - ii. Legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto is involved.
 - iii. Jurisdiction of any lower court is in issue.
 - iv. Criminal cases in which the penalty imposed is reclusion perpetua or higher.
 - v. An error or question of law is involved.

E. Political Question

- An issue is a political question when it does not deal with the interpretation of a law and its application to a case, but with the very wisdom of the law itself.
- Guidelines for determining whether a question is political or not (**Baker v Carr**):
 - a. Textually demonstrable constitutional commitment of the issue to a political department
 - b. Lack of judicially discoverable and manageable standards for resolving it
 - c. Impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion
 - d. Impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government
 - e. An unusual need for unquestioning adherence to a political decision already made
 - f. Potentiality of embarrassment from multifarious pronouncements by various departments on one question

* **Tanada v Cuenco**

The term "political question" connotes a question of policy: those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the Government. It is concerned with issues dependent upon the wisdom, not legality, of a particular measure.

F. Advisory Opinion

A case becomes an advisory opinion when:

- no actual case and controversy that demands constitutional construction for its resolution
- may take the form of declaratory relief.

G. Effect of a Declaration of Unconstitutionality

- When the courts declare a law to be inconsistent with the constitution, the former shall be void and the latter shall

govern. (**Art 7, CC**)

- The effect of a declaration that a law is unconstitutional is to make the law either void or voidable.
- **Void:** It is void if on its face, it does not enjoy any presumption of validity.
 - It produces no effect whatsoever, creates no right or office, it imposes no duty.
 - Whatever penalty was paid during the period of its operation must be remitted.
- * **Igot v COMELEC**
BP 52 provides that anyone who has been charged of rebellion, etc. is *prima facie* presumed to be disqualified from running for a local post. On its face, it blatantly goes against the constitutional presumption of innocence.
- **Voidable:** On its face, it enjoys the presumption of validity.
 - becomes inoperative only upon the judicial declaration of its invalidity
 - invalidation produces no retroactive effect.

THE STATE

I. STATE

= a community of persons, more or less numerous, permanently occupying a fixed territory and possessed of an independent government organized for political ends to which the great body of inhabitants render habitual obedience.

* **CIR v. Campos Rueda**

A State is a politically organized sovereign community, independent of outside control, bound by ties of nationhood, legally supreme within its territory, and acting through government functioning under a regime of law.

• **ELEMENTS:**

- People --- inhabitants of the State
- Territory --- fixed portion of the surface of the earth inhabited by the people of the State
- Government --- agency/ instrumentality through which the will of the State is formulated, expressed, and realized
- Sovereignty --- supreme and uncontrollable power inherent in a State by which that State is governed

II. COMPONENTS OF THE PHIL STATE

A. TERRITORY

Philippine territory consists of:

the Philippine archipelago; and
all territories over which the Philippines has sovereignty or jurisdiction

The Archipelagic Doctrine: Bodies of water within the baseline, regardless of breadth, form part of the archipelago and are considered as internal waters.

B. PEOPLE – 3 meanings

1. **Inhabitants**, as used in:

- a. "The State shall protect and promote the right to health of the people and instill health consciousness among them." (Sec 15, Art II)
- b. "The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature." (Sec 16, Art II)
- c. "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable x x x" (Sec 2, Art III)

* **Qua Chee Gan v Deportation Board (1963):**

The right of an individual to be secure in his person is guaranteed by the Constitution. The same is declared a popular right of the people and indisputably applies to both citizens and foreigners in this country.

- d. "The Congress shall give highest priority to the

enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.” (Sec 1, Art XIII)

2. **Electors**, as used in:
 - a. “The President and the Vice-President shall be elected by direct vote of the people” (Sec 4, Art VII)
 - b. “The Congress may, by law, adopt a new name for the country, a national anthem, or a national seal, which shall all be truly reflective and symbolic of the ideals, history, and traditions of the people. Such law shall take effect only upon its ratification by the people in a national referendum.” (Sec 2, Art XVI)
 - c. “After the expiration in 1991 of the Agreement between the RP and USA concerning Military Bases, foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the other contracting State.” (Sec 25, Art XVIII)
3. **Citizens**, as used in:
 - a. Preamble, 1987 Const
 - b. “The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.” (Sec 1, Art II)
 - c. “The prime duty of the Government is to serve and protect the people. The Government may call upon the people to defend the State and, in the fulfillment thereof, all citizens may be required, under conditions provided by law, to render personal military, or civil service.” (Sec 4, Art II)
 - d. “The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.” (Sec 7, Art III)

Who are citizens: Section 1, Art IV

- = citizens of the Philippines at the time of the adoption of this Constitution;
 - = those whose fathers or mothers are citizens of the Philippines;
 - = those naturalized in accordance with law.
 - = those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority
- * The right of election permitted under ARTICLE IV, Section 1 (3), 1987 Constitution, is available only to those born to Filipino mothers under the 1935 Constitution, who, had that charter not been changed, would have been able to elect Philippine citizenship upon attaining majority age.

*** Co v. Electoral Tribunal of the House of Representatives (1991)**

ARTICLE IV, Section 1 (3), 1987 Constitution applies not only to those who elect Philippine citizenship after February 2, 1987, but also to those who, having been born of Filipino mothers, elected citizenship before that date. This is to correct the anomalous situation where one born of a Filipino father and an alien mother was automatically granted the status of a natural-born citizen, while one born of a Filipino mother and an alien father would still have to elect Philippine citizenship.

Who are natural-born citizens (Sec 2, Art IV):

- citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship; and
- those who elect Philippine citizenship in accordance with

ARTICLE IV, Section 1 (3)

The following are natural-born citizens:

- citizens of the Philippines at the time of the adoption of the 1987 Constitution
 - those born of Filipino mothers/ fathers (after 17 January 1973)
 - those born before 17 January 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority
 - those naturalized in accordance with law
- Who must be natural-born citizens:**
- o President: Section 2, Art VII
 - o Vice-President: Section 3, Art VII
 - o Members of Congress : Sections 3 and 6, Art VI
 - o Justices of SC and lower collegiate courts: Section 7 (1), Art VIII
 - o Ombudsman and his deputies: Section 8, Art XI
 - o Members of Constitutional Commissions
 - CSC: Section 1 (1), Art IX B
 - COMELEC: Section 1 (1) Art IX C
 - COA: Section 1 (1), Art IX D
 - o Members of the Central Monetary Authority, Section 20, Art XII
 - o Members of the Commission on Human Rights: Section 17 (2), Art XIII

* Note: As per ARTICLE XII, Section 8, 1987 Constitution, a natural-born citizen of the Philippines who has lost his Philippine citizenship may still be a transferee of private lands, subject to limitations provided by law.

• Grounds for Loss of Citizenship:

- Naturalization in a foreign country [Sec.1 (1), CA 63]
- Express renunciation or expatriation [Sec.1 (2), CA 63]
- Taking an oath of allegiance to another country upon reaching the age of majority
- Accepting a commission and serving in the armed forces of another country, unless there is an offensive/ defensive pact with the country, or it maintains armed forces in RP with RP’s consent
- Denaturalization
- Being found by final judgment to be a deserter of the AFP
- Marriage by a Filipino woman to an alien, if by the laws of her husband’s country, he becomes a citizen thereof

*** Go Gullian v. Government**

Expatriation is a constitutional right. No one can be compelled to remain a Filipino if he does not want to.

→ EXCEPTION: A Filipino may not divest himself of Philippine citizenship in any manner while the Republic of the Philippines is at war with any country. (Sec. 1 (3), Com. Act No. 63)

*** Aznar v COMELEC**

Loss of Philippine citizenship CANNOT BE PRESUMED. Considering the fact that admittedly, Osmeña was both a Filipino and an American, the mere fact that he has a certificate stating that he is an American does not mean that he is not still a Filipino, since there has been NO EXPRESS renunciation of his Philippine citizenship.

• How may citizenship be reacquired?

1. Naturalization (CA No. 63 and CA No. 473)
 - now an abbreviated process, with no need to wait for 3 years (1 year for declaration of intent, and 2 years for the judgment to become executory)
 - requirements:
 - a.) be 21 years of age
 - b.) be a resident for 6 months
 - c.) have good moral character
 - d.) have no disqualification
- * **Republic vs. Guy**
Naturalization is never final and may be revoked if one commits acts of moral turpitude.

2. Repatriation

- woman who by her marriage lost her citizenship

- those declared by authorities to be deserters of the Armed Forces
- * **Bengson III vs. HRET**
Repatriation results in the recovery of the original nationality. Therefore, if he is a natural-born citizen before he lost his citizenship, he will be restored to his former status as a natural-born Filipino.
- * **Frivaldo v COMELEC**
Mere filing of certificate of candidacy is not a sufficient act of repatriation. Repatriation requires an express and unequivocal act.
- * **Labo v COMELEC**
In the absence of any official action or approval by proper authorities, a mere application for repatriation does not, and cannot, amount to an automatic reacquisition of the applicant's Philippine citizenship.

3. Legislative Act

- both a mode of acquiring and reacquiring citizenship
- **Dual allegiance (Sec 5, Art IV)**
= aliens who are naturalized as Filipinos but remain loyal to their country of origin
= public officers who, while serving the government, seek citizenship in another country
* disqualified from running for any elective local position. (Sec 40d, Local Government Code)
→ **Mercado v. Manzano (1999)**
Once a candidate files his candidacy, he is deemed to have renounced his foreign citizenship.

B. GOVERNMENT

• **Definition**

- **Sec. 2(1) Administrative Code**
"Government of the Republic of the Philippines" is defined as:
"the corporate governmental entity through which the functions of government are exercised throughout the Philippines, including, save as the contrary appears from the context, the various arms through which political authority is made effective in the Philippines, whether pertaining to the autonomous regions, the provincial, city, municipal, or barangay subdivisions, or other forms of local government."
- **US v Door**
"Government" is that institution or aggregate of institutions by which an independent society makes and carries out those rules of action which are necessary to enable men to live in a social state or which are imposed upon the people forming that society by those who possess the power or authority of prescribing them.

1. Functions

a. *Constituent functions* - constitute the very bonds of society; compulsory

- keeping of order and providing protection
- fixing of legal relations between man and wife, and children
- regulation of the holding, transmission and interchange of property
- define crime and punishment
- regulates and determines contract between individuals
- dealings of state with foreign powers

b. *Ministrant functions* - undertaken to advance the general interests of society; optional

- public works
- public education
- public charity
- health and safety regulations
- trade and industry

- HOWEVER, the distinction between constituent and ministrant functions is not relevant in our jurisdiction. **ACCFA v.**

Federation of Labor Unions

2. Doctrine of *parens patriae*

- *Parens patriae* is the task of the government to act as guardian of the rights of the people.
- This prerogative of *parens patriae* is inherent in the supreme power of every state, whether that power is lodged in a royal person or in the legislature

3. *De jure* and *de facto* governments

- De jure government
 - has rightful title
 - no power or control, either because this has been withdrawn from it, or because it has not yet actually entered into the exercise thereof.
- De facto government –
 - government of fact, that is, it actually exercises power or control
 - without legal title.

D. SOVEREIGNTY

- Supreme and uncontrollable power inherent in a State by which the State is governed

1. Kinds

- Legal sovereignty - power to issue final commands
- Political sovereignty - power behind the legal sovereign, or the sum total of the influences that operate upon it
- Internal sovereignty - power to control domestic affairs
- External sovereignty (also known as independence) - power to direct relations with other states

2. Theory of Auto-Limitation

- It is the property of the State-force due to which a State has exclusive legal competence of self-limitation and self-restriction.
- **Tanada v Angara**
Sovereignty is subject to restrictions and limitations voluntarily agreed to by the Philippines, expressly or impliedly, as a member of the family of nations.

3. "Dominium" v "imperium"

- "Dominium" –
 - capacity of the State to own property.
 - covers such rights as title to land, exploitation and use of it, and disposition or sale of the same. The
 - **Regalian doctrine**
 - all lands of the public domain belong to the State, and anyone claiming title has the burden to show ownership, comes within this concept. In this capacity, the State descends to the status of ordinary persons and thus becomes liable as such.
- "Imperium"
 - State's authority to govern.
 - covers such activities as passing laws governing a territory, maintaining peace and order over it, and defending it against foreign invasion.
 - When the State acts in this capacity, it generally enjoys sovereign immunity.

4. Jurisdiction

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

KINDS:

- Territorial jurisdiction
 - authority of the State to have all persons and things within its territorial limits to be completely subject

to its control and protection

- 2.) Personal jurisdiction
 - authority of the State over its nationals, their persons, property, and acts, whether within or outside its territory. (e.g. Art 15, CC)
- 3.) Extraterritorial jurisdiction
 - authority of the State over persons, things, or acts, outside its territorial limits by reason of their effects to its territory

5. Suits Against the State and the Doctrine of Sovereign Immunity

- The State may not be sued without its consent. (Sec 3, Art XVI)
- There can be no legal right as against the authority that makes the laws on which the right depends. [**Kawananakoa v. Polyblank** 205 US 349] → also called the doctrine of **Royal Prerogative of Dishonesty**
- If the State is amenable to suits, all its time would be spent defending itself from suits and this would prevent it from performing its other functions. [**Republic v. Villamor**]

A. A suit is against the State regardless of who is named the defendant if:

- it produces adverse consequences to the public treasury in terms of disbursement of public funds and loss of government property.
- cannot prosper unless the State has given its consent.

B. In the following cases, it was held that the suit is not against the State:

- a) when the purpose of the suit is to compel an officer charged with the duty of making payments pursuant to an appropriation made by law in favor of the plaintiff to make such payment, since the suit is intended to compel performance of a ministerial duty. (**Begoso v. PVA**)
- b) when from the allegations in the complaint, it is clear that the respondent is a public officer sued in a private capacity;
- c) when the action is not in personam with the government as the named defendant, but an action in rem that does not name the government in particular.

C. How the State's consent to be sued is given:

1. Express consent

- It is effected only by the will of the legislature through the medium of a duly enacted statute.
- may be embodied either in a:
 - general law
 - authorizes any person who meets the conditions stated in the law to sue the government in accordance with the procedure in the law
 - CA 327: an act fixing the time within which the Auditor General should render his decision and prescribing the manner of appeal
 - decision rendered within 60 days after receipt of necessary information for cases involving settlement of accounts or claims
 - decision rendered within 100 days from submission for accounts for accountable officers
 - decision may be appealed in writing to the President or the Supreme Court within 30 days if aggrieved party is a private person
 - appeal may be taken by the proper head of department or head of office or branch immediately concerned
 - special law
 - may come in the form of a private bill authorizing a named individual to bring suit on a special claim
 - Act 2189: Provinces, cities and municipalities shall be liable for damages for the death or injuries suffered by any person by reason of the defective conditions of roads, streets, public buildings and other public works under their

control and supervision

2. Implied consent

- when the State enters into a business contract or itself commences litigation.
 - State may only be liable for proprietary acts (jure gestioni) and not for sovereign acts (jure imperii)
 - When state files complaint, suability will result only where the government is claiming affirmative relief from the defendant
- when it would be inequitable for the State to invoke its immunity
- in instances when the State takes private property for public use or purpose.

3. When does liability attach?

- The Government is only liable for the acts of its agents, officers and employees, when they act as special agents within the meaning of (ART. 2180 (6) CC).
 - Special agent
 - one who receives a definite and fixed order or commission, foreign to the exercise of the duties of his office if he is a special official.
 - This concept does not apply to any executive agent who is an employee of the active administration and who on his own responsibility performs the functions which are inherent in and naturally pertain to his office and which are regulated by law and the regulations (**Merritt v. Govt of the Philippine Islands**)
 - **Shauf v CA**
 - Unauthorized acts of government officials or officers are not acts of the State, and an action against the officials or officers by one whose rights have been invaded or violated by such acts, for the protection of his rights, is not a suit against the State.
 - The doctrine of immunity from suit will not apply and may not be invoked where the public official is being sued in his private and personal capacity as an ordinary citizen, for acts without authority or in excess of the powers vested in him.
- When the Government creates a corporation, it invariably provides this corporation a separate entity and with the capacity to sue and be sued.
 - Consent to be sued includes actions based on quasi-delict even though committed by regular, and not special, agents.
 - Rule: a government entity can be sued for tort, but if it is, it can invoke the defense that it acted through its regular employee, and not through a special agent.
 - The principle of State immunity from suit does not apply when the relief demanded requires no affirmative official action on the part of the State no the affirmative discharge of any obligation which belongs to the State in its political capacity, even though the officers or agents who are made defendants claim to hold or act only by virtue of a title of the State and as its agents and servants. (**Republic v Sandoval**)

STRUCTURE AND POWERS OF THE NATIONAL GOVERNMENT

I. LEGISLATIVE DEPARTMENT

A. Nature and Classification Legislative Power

1. Nature:

- The authority to make laws and to alter or repeal them.
- Vested in Congress, except to the extent reserved to the people by provision on initiative and referendum
- Plenary (The Congress may legislate on any subject matter provided that the limitations are observed.)

2. Classification of Legislative Power:

1. Original - possessed by the sovereign people
2. Derivative - delegated by the sovereign people to legislative bodies and is subordinate to the original power of the people

3. Constituent - power to amend and revise the Constitution
4. Ordinary - power to pass ordinary laws

B. Composition, Qualifications and Term of Office

a. Senate (Art. VI secs. 2-4)

- **Composition:** 24 senators elected at large
- **Qualifications:**
 1. Natural-born citizen
 2. At least 35 years old on the day of the election
 3. Able to read and write
 4. A registered voter
 5. Resident of the Philippines for at least 2 years immediately preceding the day of the election
- **Term of Office:** 6 years, commencing at noon on the 30th day of June next following their election
- **Term Limits:** only up to 2 consecutive terms. However, they may serve for more than 2 terms provided that the terms are not consecutive.

b. House of Representatives (Art. VI secs. 5-8)

- **Composition:** Not more than 250 members, unless otherwise provided by law, consisting of:

1. District Representatives

- elected from legislative districts apportioned among the provinces, cities, and the Metro Manila area.
- *Rules on Apportionment of Legislative Districts:*
 1. proportional representation based on number of inhabitants
 - a. Each city with a population of at least 250,000, or each province, shall have at least 1 representative. Each province, irrespective of the number of inhabitants, shall have at least 1 representative.
 - b. Each legislative district shall comprise, as far as practicable, contiguous, compact, and adjacent territory.
 2. re-apportionment by Congress within 3 years after the return of each census

2. Party-List Representatives –

- 20% of the total number of representatives
- chosen indirectly through a party selected by voters
- RA 7941
 - Parties, organizations, and coalitions must obtain at least 2% of all votes cast to obtain a party-list seat
 - Those garnering more than 2% are entitled to additional seats in proportion to their total number of votes, *but* may not have more than 3 seats
 - Disqualified:
 1. religious sects
 2. foreign organizations
 3. those advocating violence or unlawful means
 - Qualified Sectors:
 1. Labor
 2. Peasant
 3. Fisherfolk
 4. Urban poor
 5. indigenous cultural communities
 6. elderly
 7. handicapped
 8. women
 9. youth
 10. veterans
 11. overseas workers
 12. professionals
- In the Party-list System:
 - 1) The parties must represent the marginalized and underrepresented.

- 2) Major political parties must comply with this statutory policy
- 3) Religious sects are prohibited by the Constitution
- 4) The party must not be disqualified under RA 7941
- 5) The part must not be an adjunct of an entity or project funded by the government
- 6) The party and its nominees must comply with the requirements of the law
- 7) The members must come from the marginalized and underrepresented sectors
- 8) The nominee must be able to contribute to the formulation and enactment of appropriate legislation that will benefit the nation

Their nominees must come from the same party. **Ang Bagong Bayani v. COMELEC (2001)**

3. Sectoral Representatives

- For 3 consecutive terms from 2 February 1987, 25 seats shall be allotted to sectoral representatives.
- to be chosen by appointment or election, as may
- be provided by law.
- Until a law is passed, they are appointed by the President from a list of nominees by the respective sectors. (Art. XVIII, sec. 7)

Qualifications of Representatives:

1. 1. Natural-born citizens
2. 2. At least 25 years old on the day of the election
3. 3. Able to read and write
4. 4. Registered voter in the district he seeks to represent
5. 5. A resident of the said district for at least 1 year immediately preceding the day of the election

Term of Office: 3 years, commencing at noon on the 30th day of June next following their election.

• **Dimaporo v. Mitra (1991)**

In B.P. Blg. 881 members of the legislature included in the enumeration of elective public officials are to be considered resigned from office from the moment of the filing of their certificates of candidacy for another office, except for President and Vice-President. The term of office prescribed by the Constitution may not be extended or shortened by the legislature, but the period during which an officer actually holds the office (tenure) may be affected by circumstances within or beyond the power of said officer. Tenure may be shorter than the term or it may not exist at all. These situations will not change the duration of the term of office.

Term Limits: No member of the House of Representatives shall serve for more than 3 consecutive terms.

c. Synchronized terms of office (Secs 1-2, Art XVIII)

- The first elections of Members of the Congress under this Constitution shall be held on the second Monday of May, 1987.
- The first local elections shall be held on a date to be determined by the President, which may be simultaneous with the election of the Members of the Congress.
 - It shall include the election of all Members of the city or municipal councils in the Metropolitan Manila area.
- The Senators, Members of the House of Representatives, and the local officials first elected under this Constitution shall serve until noon of June 30, 1992.
 - 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.

3. Election

a. Regular Elections

- Unless otherwise provided by law, the regular election of the Senators and the Members of the House of Representatives shall be held on the second Monday of May. (Sec 8, Art VI)

b. Special Election

- In case of vacancy in the Senate or in the House of

Representatives, a special election may be called to fill such vacancy in the manner prescribed by law, but the Senator or Member of the House of Representatives thus elected shall serve only for the unexpired term. (Sec 9, Art VI)

- *Lozada v. COMELEC*

The Constitution mandates that there should always be adequate representation for every province or legislative district. If a vacancy occurs in a manner contemplated in the Constitution, then Congress has the authority if not the duty to call for special elections

4. Salaries, Privileges and Disqualifications

a. Salaries

- The salaries of Senators and Members of the House of Representatives shall be determined by law.
- No increase in said compensation shall take effect until after the expiration of the full term of all the Members of the Senate and the House of Representatives approving such increase.
 - *Ligot v. Mathay*
While it is Congress, thru a salary law, that possess the authority to determine the salary of each member, the Constitution prohibits any increase in said compensation to take effect until after the expiration of the full term of all the members of the two houses approving such increase.
- Until the Congress provides otherwise, the President shall receive an annual salary of three hundred thousand pesos;
- the Vice-President, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court, two hundred forty thousand pesos each;
- the Senators, the Members of the House of Representatives, the Associate Justices of the Supreme Court, and the Chairmen of the Constitutional Commissions, two hundred four thousand pesos each; and
- the Members of the Constitutional Commissions, one hundred eighty thousand pesos each.

b. Freedom from arrest

- A Senator or Member of the House of Representatives shall, in all offenses punishable by not more than six years imprisonment, be privileged from arrest while the Congress is in session.
- 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.

c. Speech and Debate Clause

- **Case Law**
 - a. *Jimenez v. Cabangbang*
In this case, a clarification of the scope and limitation of the parliamentary immunity was made. There was reiteration that, first, Congressional immunity is a guarantee of immunity from answerability before an outside forum but not from answerability to the disciplinary authority of congress itself; second, to come under the guarantee the speech or debate" must be one made "in Congress or in any committee thereof."

- b. *Osmena v. Pedantun*

Each House of the Congress can discipline its members for disorderly conduct or behavior. What constitutes disorderly behavior is entirely up to Congress to define. Although a member of Congress shall not be held liable in any other place for any speech or debate in the Congress or in any committee thereof, such immunity, although absolute in its protection of the member of Congress against suits for libel, does not shield the member against the disciplinary authority of the Congress.

d. Disqualifications

1. May not hold any other office or employment in the government during his term without forfeiting his seat.
2. May not be appointed to any office created or the emoluments thereof were increased during the term for which

he was elected.

3. Cannot personally appear as counsel before any court, electoral tribunal, quasi-judicial and administrative bodies during his term of office.
4. Shall not be financially interested, directly or indirectly, in any contract with, or franchise or special privilege granted by the government during his term of office.
5. Shall not intervene in any matter before any office of the government when it is for his pecuniary benefit or where he may be called upon to act on account of his office.

e. Duty to Disclose

- A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth.
- Cases wherein declaration shall be disclosed to the public in the manner provided by law:
 - President
 - Vice-President
 - the Members of the Cabinet
 - the Congress
 - the Supreme Court
 - the Constitutional Commissions and other constitutional offices
 - officers of the armed forces with general or flag rank
- All Members of the Senate and the House of Representatives shall, upon assumption of office, make a full disclosure of their financial and business interests.
 - They shall notify the House concerned of a potential conflict of interest that may arise from the filing of a proposed legislation of which they are authors.
- The records and books of accounts of the Congress shall be preserved and be open to the public in accordance with law,
 - such books shall be audited by the Commission on Audit which shall publish annually an itemized list of amounts paid to and expenses incurred for each Member.

5. Internal Government of Congress

a. Election of officers

OFFICERS:

1. Senate President
2. Speaker of the House
3. Such officers as deemed by each house to be necessary

Election of officers: By a majority vote of all respective members

b. Quorum

- Majority of each House shall constitute a quorum.
- A smaller number may adjourn from day to day and may compel the attendance of absent members.
- In computing a quorum, members who are outside the country, thus outside of each House's coercive jurisdiction, are not included.
- *Avelino v. Cuenco*
There is a difference between a majority of "all members of the House" and a majority of "the House", the latter requiring less number than the first. Therefore, an absolute majority (12) of all members of the Senate less one (23) constitutes constitutional majority of the Senate for the purpose of the quorum.

"majority" refers to the number of members within the "jurisdiction" of the Congress (those it can order arrested for the purpose of questioning). In this case, one Senator was out of the Philippines which is not within the "jurisdiction" of the Senate, so that the working majority was 23 Senators.

c. Rules of Proceedings

- Each House shall determine its own procedural rules.
- Corollary to Congress' power to make rules is the power to ignore them when circumstances so require.
- Issues may either be:
 - Political- On matters affecting only internal operation of the legislature, the legislature's formulation and implementation of its rules
 - Justiciable - when the legislative rule affects private rights

d. Discipline of Members

- Each house may punish its members for disorderly behavior, and with the concurrence of 2/3 of ALL its members:
 1. Suspension (shall not exceed 60 days)
 2. Expulsion
- Other disciplinary measures:
 1. deletion of unparliamentary remarks from the record
 2. fine
 3. imprisonment
 4. censure
- *Alejandrino v. Quezon*
Senate expelled Senator Alejandrino for disorderly conduct for assaulting Senator de Vera during one of their debates in session. Senate adopted a resolution depriving Senator Alejandrino of all the prerogatives, privileges and emoluments of his office for the period of one year.
The Court held that the resolution was illegal since it amounted to expulsion and it would deprive the electoral district of representation without any means to fill the vacancy. The Senate had no authority to suspend an appointed Senator like Senator Alejandrino.

e. Journal and Congressional Records**(1) The Enrolled Bill Theory**

- An enrolled bill is the official copy of approved legislation and bears the certifications of the presiding officers of each House.
- where the certifications are valid and are not withdrawn, the contents of the enrolled bill are conclusive upon the courts
- respect due to a co-equal department requires the courts to accept the certification of the presiding officer of the legislative body. (*Casco v Gimenez*)
- Case Law:
 - *Mabanag v. Lopez Vito*
A duly authenticated bill or resolution imports absolute verity and is binding on the courts.

(2) Probative value of the Journal

- The Journal is conclusive upon the courts.
- But when the contents of the journal conflicts with that of an enrolled bill, the enrolled bill prevails over the contents of the journal.
 - **US v. Pons**
Congress may validly continue enacting bills even beyond the reglementary period of adjournment. When the journal shows that Congress conducted a sine die session where the hands of the clock are stayed in order to afford Congress the opportunity to continue its session. All bills enacted during the sine die session are valid and conclusive upon the Courts.
The Journals are conclusive evidence of the contents thereof and Courts are bound to take judicial notice of them.

(3) Matters required to be entered in the Journal

- Yeas and Nays on third and final reading of a bill
- Veto message of the President
- Yeas and Nays on the repassing of a bill vetoed by the President
- Yeas and Nays on any question at the request of 1/5 of members present

(4) Journal Entry Rule v. Enrolled Bill Theory

- *Astorga v. Villegas*
The bill was not duly enacted and therefore did not become law as indeed both the President of the Senate and the Chief Executive withdrew their signatures therein.

(5) Congressional Record**f. Sessions****(1) Regular Sessions**

- Convenes once every year on the 4th Monday of July.
- Continues to be in session until 30 days before the start of its next regular session, exclusive of Saturdays, Sundays, and legal holidays.

(2) Special Sessions

- Called by the President at any time when Congress is not in session

(3) Adjournments

- Neither House can adjourn for more than 3 days during the time Congress is in session without the consent of the other House.
- Neither can they adjourn to any other place than that where the two houses are sitting, without the consent of the other.

(4) Joint Sessions**(a) Voting separately**

- Choosing the President (sec. 4, Art VII)
- Determining the President's temporary disability (Id., sec. 11, par 4)
- Confirming the nomination of a Vice-President (Id., sec. 9)
- Declaring a state of war (sec. 23(1), Art VI)
- Amending the Constitution (sec. 1(1), Art XVII)

(b) Voting Jointly

- To revoke or extend martial law or suspension of privilege of habeas corpus (Sec. 18 Art VII)

6. Electoral Tribunals**a. Composition**

1. 3 Supreme Court Justices to be designated by the Chief Justice (The senior Justice in the Electoral Tribunal shall be its Chairman.)
2. 6 Members of the Senate or House, as the case may be, chosen on the basis of proportional representation from the political parties and party-list organizations

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

Members chosen enjoy security of tenure and cannot be removed by mere change of party affiliation.

Abbas v. SET

The five LDP members who are also members of the Senate Electoral Tribunal may not inhibit themselves since it is clear that the Constitution intended legislative and judiciary membership to the tribunal. As a matter of fact, the 2 :1 ratio of legislative to judiciary indicates that legislative membership cannot be ignored. To exclude themselves is to abandon a duty that no other court can perform.

b. Nature of Function

Jurisdiction: be the sole judge of all CONTESTS relating to the election, returns, and qualifications of their respective members. ET has jurisdiction only when there is an election contest.

- 'election contest' - one where a defeated candidate challenges the qualification and claims for himself the seat of a proclaimed winner.
- *Angara v. Electoral Commission*

The Electoral Tribunal of each House is the SOLE judge of all contests relating to the election, returns, and qualifications of the members of Congress. In the absence of election contest, the

Electoral Tribunal has no jurisdiction. The Electoral Tribunals are independent constitutional bodies and cannot be regulated by Congress.

Supreme Court has jurisdiction over the Electoral Commission and the subject matter of the present controversy for the purpose of determining the character, scope and extent of the constitutional grant to the Electoral Commission as "the sole judge of all contests relating to the election, returns and qualifications of the members of the National Assembly."

c. Independence of the Electoral Tribunals

Since the ET's are independent constitutional bodies, independent even of the respective House, neither Congress nor the Courts may interfere with procedural matters relating to the functions of the ET's.

◦ *Bondoc v. Pineda*

The tribunal was created to function as a nonpartisan court although two-thirds of its members are politicians. It is a non-political body in a sea of politicians.

To be able to exercise exclusive jurisdiction, the House Electoral Tribunal must be independent. Its jurisdiction to hear and decide congressional election contests is not to be shared by it with the Legislature nor with the Courts. "The Electoral Commission is a body separate from and independent of the legislature and though not a power in the tripartite scheme of government, it is to all intents and purposes, when acting within the limits of its authority, an independent organ; while composed of a majority of members of the legislature it is a body separate from and independent of the legislature."

- Valid grounds / Just cause for termination of membership to the tribunal.
 - Expiration of Congressional term of office
 - Death or permanent disability
 - Resignation from political party which one represents in the tribunal
 - Removal from office for other valid reasons

d. Powers

• *Lazatin v. HRET*

The HRET will only gain jurisdiction upon proclamation of the candidate. Until such proclamation, he is not yet a member of the House; hence, the HRET will not have jurisdiction over him. Jurisdiction over such remains with the COMELEC.

• *Co v. HRET*

As constitutional creations invested with necessary power, the Electoral Tribunals are, in the exercise of their functions independent organs — independent of Congress and the Supreme Court. The power granted to HRET by the Constitution is intended to be as complete and unimpaired as if it had remained originally in the legislature (*Angara vs. Electoral Commission* [1936]).

e. Judicial review of decisions of Electoral Tribunals

- may be had with the SC only insofar as the decision or resolution was rendered
 - without or in excess of jurisdiction, or
 - with grave abuse of discretion tantamount to denial of due process.

6. Commission on Appointments (Sec, Art VII)

Composition:

1. Senate President as ex-officio chairman (shall not vote except in case of a tie.)
2. 12 Senators
3. 12 Members of the House

The 12 Senators and 12 Representatives are elected on the basis of proportional representation from the political parties and party-list organizations.

- *Daza v. Singson*

The authority of the House of Representatives to change its representation in the Commission on Appointments to reflect at any time the changes that may transpire in the political alignments of its membership. It is understood that such changes in membership must be permanent and do not include the temporary alliances or factional divisions not involving severance of political loyalties or formal disaffiliation and permanent shifts of allegiance from one political party to another.

• *Guingona, Jr. v. Gonzales*

The provision of Section 18 on proportional representation is mandatory in character and does not leave any discretion to the majority party in the Senate to disobey or disregard the rule on proportional representation; otherwise, the party with a majority representation in the Senate or the house of Representatives can by sheer force of numbers impose its will on the hapless minority. By requiring a proportional representation in the Commission on Appointments, Section 18 in effect works as a check on the majority party in the Senate and helps to maintain the balance of power. No party can claim more than what it is entitled to under such rule.

- The CA shall be constituted within 30 days after the Senate and the House of Representative shall have been organized with the election of the President and the Speaker.
- The CA shall act on all appointments within 30 session days from their submission to Congress.
- The CA shall rule by a majority vote of all its members.

Meetings:

- CA meets only while Congress is in session.
- Meetings are held either at the call of the Chairman or a majority of all its members.
- Since the CA is also an independent constitutional body, its rules of procedure are also outside the scope of congressional powers as well as that of the judiciary.

Jurisdiction:

1. CA shall confirm the appointments by the President with respect to the following positions:
 - a) Heads of the Executive Departments (except if it is the Vice-President who is appointed to the post)
 - b) Ambassadors, other public ministers or consuls
 - c) Officers of the AFP from the rank of Colonel or Naval Captain
 - d) Other officers whose appointments are vested in him by the Constitution (e.g. COMELEC members)

2. Congress cannot by law require that the appointment of a person to an office created by such law shall be subject to confirmation by the CA.

3. Appointments extended by the President to the above-mentioned positions while Congress is not in session shall only be effective until disapproval by the CA or until the next adjournment of Congress.

7. Powers of Congress

A. Kinds:

1. General (Sec Art VI)
 - a. Legislative Powers (Scope)
 - powers of appropriation, taxation and expropriation
 - authority to make, frame and enact laws
 - vested in Congress by the Constitution except to the extent reserved to the people by the provision on initiative and referendum
 - b. Non-legislative Powers (Scope)
 - power to canvass the presidential elections
 - declare the existence of war
 - give concurrence to treaties and amnesties
 - propose constitutional amendments
 - impeach
 - derivative and delegated power
 - implied powers such as the power to punish contempt in legislative investigations
2. Specific Powers

- a. Constituent power
- b. Legislative Inquiries
- c. Appropriation
- d. Taxation
- e. Concurrence in treaties and international agreements
- f. War powers and delegations powers

3. Inherent Powers

a. Police Power

- Make, ordain, and establish all manner of wholesome and reasonable laws, statutes and ordinances, as they shall judge for the good and welfare of the commonwealth and of the subjects of the same
- Includes maintenance of peace and order, protection of life, liberty and property and the promotion of general welfare

b Power of Taxation

c Power of Eminent Domain

d. Implied Powers

- Contempt power

B. Limitations:

1. Formal or Procedural Limitations

- Prescribes the manner of passing bills in the form they should take
- Limitations provided by Sec 26, Art VI
 - Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title
 - No bill passed by either house shall become law unless it has passed 3 readings on separate days
 - Printed copies in its final form have been distributed to its members 3 days before the passage of the bill
- Exception: president certifies to the necessity of its immediate enactment to meet a public calamity or emergency

2. Substantive Limitations

- Circumscribe both the exercise of the power itself and the allowable subject of legislation
- Express limitations:
 - Sec 24-26, 28-30, Art VI
- Express limitations on general powers
 - Bill of rights
- Implied Limitations
 - No power to pass irrevocable law
 - Non-encroachment on powers of other departments
 - Non-delegability of powers

C. Discussion of Specific Powers:

a. Constituent Powers

- Power to propose amendments to the Constitution

b. Legislative Inquiries (Sec 21, Art VI)

- Requisites:
 - Must be in aid of legislation
 - In accordance with duly published rules of procedure
 - Right of persons appearing in or affected by such inquiries shall be respected

c Appropriation

- General Limitations:
 - Appropriations must be for a PUBLIC PURPOSE
 - Cannot appropriate public funds or property, directly or indirectly, in favor of
 1. Any sect, church, denomination, or sectarian institution or system of religion or
 2. Any priest, preacher, minister, or other religious teacher or dignitary as such.
 EXCEPT if the priest, etc is assigned to:
 1. the Armed Forces; or
 2. any penal institution; or

- 3. government orphanage; or
- 4. leprosarium

- The government is not prohibited from appropriating money for a valid secular purpose, even if it incidentally benefits a religion, e.g. appropriations for a national police force is valid even if the police also protects the safety of clergymen.
- Also, the temporary use of public property for religious purposes is valid, as long as the property is available for all religions.

• Specific Limitations

- For General Appropriations Bills Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget. Form, content and manner of preparation of the budget shall be prescribed by law.

No provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein.

Procedure in approving appropriations FOR THE CONGRESS shall strictly follow the procedure for approving appropriations for other departments and agencies.

No law shall be passed authorizing any transfer of appropriations. However, the following may, BY LAW, be authorized to AUGMENT any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations:

1. President
2. Senate President
3. Speaker of the House
4. Chief Justice of the Supreme Court
5. Heads of the Constitutional Commissions

- DISCRETIONARY FUNDS appropriated FOR PARTICULAR OFFICIALS shall be disbursed only:

For public purposes

To be supported by appropriate vouchers Subject to such guidelines as may be prescribed by law

No public money or property shall be appropriated

If Congress fails to pass the general appropriations bill by the end of any fiscal year:

The general appropriations bill for the previous year is deemed reenacted

It shall remain in force and effect until the general appropriations bill is passed by Congress.

- For Special Appropriations Bill Shall specify the purpose for which it is intended

Shall be supported by funds actually available as certified by the National Treasurer or to be raised by corresponding revenue proposal therein

- **Limitation on Use of Public Funds (Sec 29, Art VI)**

No money shall be paid out of the National Treasury EXCEPT in pursuance of an appropriation made by law.

However, this rule does not prohibit continuing appropriations, e.g. for debt

servicing, for the reason that this rule does not require yearly or annual appropriation.

- o Four phases of Government's budgeting process.
 - Budget preparation
 - Legislative authorization
 - Budget execution
 - Budget accountability

d. Taxation (Sec 28, Art VI)

- Nature
 - o Sec 28 is an enumeration of the limits on the inherent and otherwise unlimited power
- Purpose
 - o Pay debts and provide for the common defense and general warfare
 - o Raise revenue
 - o Instrument of national and social policy
 - o Instrument for extermination of undesirable acts and enterprises
 - o Tool for regulation
 - o Imposition of tariffs designed to encourage and protect locally produced goods against competition for imports
- Limitations
 - o *Public.* Power to tax should be exercised only for a public purpose
 - o *Uniform and Equitable.*
 - Operates with the same force and effect in every place where the subject of it is found
 - Does not prohibit classification for the purpose o taxation
 - Requirements for valid classification:
 - Based on substantial distinctions which make real differences
 - Germane to the purpose of law
 - Applies to present and future conditions substantially identical to those of the present
 - Applies equally to those who belong to the same class
 - o *Progressivity.*
 - The rate increases as the tax base increases
 - Tax burden is based on the taxpayers' capacity to pay
 - Suited to the social conditions of the people
 - Reflects aim of the Convention that legislature following social justice command should use taxation as an instrument for more equitable distribution of wealth
 - o *Constitutional Tax Exemptions:*
 - Religious, charitable, educational institutions and their properties
 - All revenues and assets of NON-STOCK NON-PROFIT EDUCATIONAL institutions are exempt from taxes and duties PROVIDED that such revenues and assets are actually, directly and exclusively used for educational purposes (sec. 4 (3) Art XIV).
 - Grants, endowments, donations or contributions used actually, directly and exclusively for educational purposes shall be exempt from tax, subject to conditions prescribed by law (sec. 4 (4) Art XIV).
 - o *Special Funds*
 - Special Funds
 - o Money collected on a tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only.
 - o Once the special purpose is fulfilled or abandoned, any balance shall be transferred to the general funds of the Government

e. Concurrence in Treaties and international agreements (Sec 21, Art VII)

- Treaties and other international agreements which are in

the nature of original agreements of a permanent nature or which establish national policy, or involve political issues or changes in national policies need the concurrence of 2/3 of the members of the Senate

- Executive agreements which are merely implementation of treaties or statutes or of well-established policies or are of transitory effectivity do not require Senate concurrence

f. War Powers (Sec 23 (1), Art VI)

- Congress in joint session assembled and voting separately shall have the sole power to declare the existence of war
- Philippines renounces war as an instrument of national policy
- Even though the legislature can declare existence of war and enact measures to support it, the actual power to make war is lodged nonetheless in the executive

g Delegation of Powers

- Emergency Powers (Sec 23 (2), Art VI)

o Preconditions:

Limited time period

CA 671 – passed delegative emergency powers to the president in times of war and other national emergencies. Since said grant was given to meet the emergencies incidental to the war, such powers ceased at the time the war stopped. Power may be withdrawn by resolution, not necessary that it be done through statute. Subject to restrictions as the congress may provide

As a general rule, Congress cannot delegate its legislative power (Potestas delegate non potest delegare)

Exceptions

1. Delegation of tariff powers to the President (Art VI sec. 28(2)).
2. Delegation of emergency powers to the President (Art VI sec. 23(2)).
3. Delegation to the people at large.
4. Delegation to local governments.
5. Delegation to administrative bodies (rule-making power).

Tests for a Valid Delegation (Pelaez vs. Auditor General):

1. The **Completeness Test**

- The law must be complete in all its 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 enforce it.

2. The **Sufficient Standard Test**

The law must fix a standard, the limits of which are sufficiently determinate or determinable, to which the delegate must conform in the performance of his functions.

D Legislative Process

a Procedure for the passage of bills

Bills that Must Originate EXCLUSIVELY from the House of Representatives (Sec. 24, Art VI):

Appropriation bills (A bill appropriating a sum of money from the public treasury.) A bill creating a new office, and appropriating funds therefor is NOT an appropriation bill.

Revenue bills (A bill specifically designed to raise money or revenue through imposition or levy.)

A law regulating an industry, though incidentally imposing a tax, does not make the law a revenue bill.

Tariff bills

Bills authorizing the increase of public debt

Bills of local application

Private bills

* **Tolentino vs. Secretary of Finance**

RA 7716 (EVAT Law) did not violate Sec. 24, Art. VI (Origination Clause). It is important to emphasize that it is the law, and not the bill, which is required to originate exclusively from the HoR, because the bill may undergo such extensive changes in the Senate that the result may be the rewriting of the whole. To insist that a

revenue statute, and not just the bill, must be substantially the same as the House bill would be to deny the Senate's power not only to "concur with amendments" but also to "propose amendments". It would violate the co-equality of legislative power of the Senate.

A. Procedure for enactment:

Introduction: must be by any member of the House of Representatives or Senate except for some measures that must originate only from the former chamber

First reading: The reading of the title and the number; the bill is passed by the Senate President or Speaker to the proper committee

Second reading: Entire text is read and debates are held, and amendments introduced.

The bill as approved in the second reading is printed in its final form and copies are distributed three days before the third reading

Third reading: Only the title is read, no amendments are allowed. Vote shall be taken immediately thereafter and the yeas and nays entered in the journal.

Sent to the other chamber: once the bill passes the third reading, it is sent to the other chamber where it will also go under three readings

Enrolled Bill: The bill is printed as finally approved by the Congress, authenticated with the signatures of the Senate President or the Speaker and the Secretary and approved by the President

B. Submission to the President

The President's Veto power (Sec 27, Art VI)

Every bill, in order to become a law, must be presented to and signed by the President.

If the President does not approve of the bill, he shall veto the same and return it with his objections to the House from which it originated. The House shall enter the objections in the journal and proceed to reconsider it.

The President must communicate his decision to veto within 30 days from the date of receipt thereof. If he fails to do so, the bill shall become a law as if he signed it.

To override the veto, at least 2/3 of ALL the members of each House must agree to pass the bill. In such case, the veto is overridden and becomes a law without need of presidential approval.

Item veto

The President may veto particular items in an appropriation, revenue or tariff bill.

This veto will not affect items to which he does not object.

Veto of a Rider

A rider is a provision which does not relate to a particular appropriation stated in the bill.

Since it is an invalid provision under Section 25(2), the President may veto it as an item.

Bolinao Electronics Corp vs. Valencia

An invalid veto is as if the President did not act on the bill at all. Bill becomes a law by executive inaction. A condition in an appropriation bill may be not be vetoed without vetoing the item to which it is attached. The veto made by the President is invalid since the Executive's veto power does not carry with it the power to strike out conditions attached to an item. Further, the conditions vetoed were germane to the appropriation hence should have not been vetoed. If the veto is unconstitutional, it produces no effect whatsoever. The restriction /condition imposed by the appropriation bill remains.

Gonzales vs. Macaraig

DOCTRINE OF INAPPROPRIATE PROVISIONS

A provision that is constitutionally inappropriate for an appropriation bill may be singled out for veto even if it is not an appropriation or revenue item. President may veto "riders".

Bengzon vs. Drilon

The Constitution provides that only a particular item or items may be vetoed. The power to disapprove any item or items in an appropriate bill does not grant the authority to veto a part of an item and to approve the remaining portion of the same item.

"The terms item and provision in budgetary legislations and practice are concededly different. An **item** in a bill refers to the particulars, the details, the distinct and severable parts . . . of the bill. It is an indivisible sum of money dedicated to a stated purpose. An 'item' of an appropriation bill means an item which in itself is a specific appropriation of money, not some general provision of law, which happens to be put into an appropriation bill."

The president cannot veto unavoidable obligations such as the payment of Pensions which has already been vested by the law. The veto is invalid since it is violated the separation of property and the judiciary's fiscal autonomy.

d. Effectivity of laws

Article 2 (CC)

Laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided. This code shall take effect one year after such publication.

→ "unless otherwise provided" – this phrase refers to the date of effectivity, and not the publication. Complete publication is indispensable.

- Executive Order No. 200 (June 18, 1987)
 - amended Art II of CC to include any newspaper of general circulation as a means of publication other than the official gazette

E. Initiative and Referendum (Sec 32, Art VI)

Limited only to the proposal of amendments

Requirements for people's initiative:

12 % of the total number of registered voters

at least 3% of all registered voters in every district should be represented

no amendments shall be authorized within 5 years following the ratification of the new Constitution

II. EXECUTIVE DEPARTMENT

A. THE PRESIDENT

1. Qualifications, election, term and oath

a. Qualifications Sec. 2, Art VII

* natural-born citizen of the Philippines

* a registered voter

* able to read and write

* at least forty years of age on the day of the election

* a resident of the Philippines for at least ten years immediately preceding such election.

> residency and domicile mean the same thing under election law

> The ff must be taken into consideration:

1. bodily presence

2. animus manendi

3. animus revertendi

* The candidate must be qualified on the day of the elections.

b. Term and Election Sec. 4, Art VII

* elected by direct vote of the people

* unless otherwise provided by law, the regular election for President and Vice-President shall be held on the second Monday of May.

* Canvassing of votes:

> The Congress shall promulgate its rules for the canvassing of the certificates.

> returns of every election for President and

Vice- President, duly certified by the board of canvassers of each provinces or city, shall be transmitted to the Congress, directed to the President of the Senate.

>Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of election (2nd Tuesday of June), open all the certificates in the presence of the Senate and House of Representatives in joint public session, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass (i.e., tally the certificates of canvass) the votes.

>The persons having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes (tie), one of them shall forth with be chosen by the vote of a majority of all the members of Congress, voting separately.

>The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President, or Vice-President, and may promulgate its rules for the purpose.

(1.) Regular Election and Term

*The President and Vice-President (who shall be elected with and in the same manner as the President) shall be elected by direct vote of the people for a term of 6 years

* Term shall begin on the noon of June 30 next following the day of election. *The regular election for President and Vice-President shall be held on the 2nd Monday of May. (Art. VII, Sec. 4 pars. 1 & 3).

(2.) Special Election and Term

* If a vacancy occurs in the offices of President and Vice-President more than 18 months before the date of the next regular presidential election, a special election to elect the President and Vice-President shall be called by Congress, pursuant to VII, 10.

*** Philippine Bar Association, Inc. v COMELEC**

The failure of the SC to issue an injunction on time is a decision in itself in favor of the validity of the law calling for Snap Elections despite the absence of vacancy

* The Constitution is silent as to whether the persons elected in the special election shall serve only for the unexpired portion of the term, and whether the new President can run for re- election if he has not served more than 4 years, which depends on the construction of the phrase "has succeeded as the President."

(3.) Re-election

A. President

*Not eligible for any re-election.

*No person who has "succeeded" as President and has served as such for more than 4 years, shall be qualified for any election to the same office (the Presidency) at any time. (par. 1 Sec. 4, Art VII)

>The person who succeeds as President and not just in an acting capacity, could either be

(i) the Vice-President, or

(ii) one who was elected President in a special election.

B. Vice President

*shall not serve for more than 2 successive terms.

* a voluntary (but not involuntary) renunciation of office for any length of time, shall not be considered an interruption in the continuity of the service for the full terms for which he was elected. (par 2, Sec. 4, Art VII).

>applicable beginning 1992, because of the Transitory Provisions.

>This prohibition is similar to that applicable to Senators

(4.) Canvassing of Election Returns

* Congress acts as Board of Canvassers of every election for President and Vice-President.

(5.) Electoral Tribunal for the Election of the President and Vice- President

* The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for that purpose. (par 7, Sec. 4, Art VII.)

>while election controversies in the Congress are under the exclusive jurisdiction of their respective Electoral Tribunals, those in the Executive are under the Supreme Court itself.

c. Oath of Office, Sec 5, Art VII

*Before they enter on the execution of their office, the President, the Vice-President or the Acting President shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully and conscientiously fulfill my duties as President (or Vice-President or Acting President) of the Philippines, preserve and defend its Constitution, execute its laws, do justice to every man, and consecrate to myself to the service of the Nation. So help me God." (In case of affirmation, last sentence will be omitted.)

2. Privilege and salary

* The President shall have an official residence.

* The salaries of the President and Vice-President shall be determined by law and shall not be decreased during their tenure.

>No increase in said compensation shall take effect until after the expiration of the term of the incumbent during which such increase was approved.

> Unless the Congress provides otherwise, the President shall receive an annual salary of P 300,000 (Sec 17, Art XVIII)

* They shall not receive during their tenure any other emolument from the Government or any other source.

3. Prohibitions (Sec 13, Art VII)

*Who are prohibited?

1. President
2. Vice-President,
3. the Members of the Cabinet, and their deputies or assistants

* Prohibited acts:

1. unless otherwise provided in this Constitution, hold any other office or employment during their tenure.

2. directly or indirectly practice any other profession

3. directly or indirectly participate in any business

4. 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.

5. spouse and relatives by consanguinity or affinity within the fourth civil degree of the President shall not 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.

*** Civil Liberties Union v Executive Secretary**

Exec. Order No. 284 which allowed Cabinet members, their undersecretaries and asst. secretaries and other appointive officials of the Executive Department to hold other positions in the govt., albeit, subject of the limitations imposed therein is declared unconstitutional .

EO 284 actually allows them to hold multiple offices or employment in direct contravention of the express mandate of Art. VIII, Sec. 13 prohibiting them from doing so, unless otherwise provided in the 1987 Constitution itself.

The stricter prohibition applied to the Pres. and his official family under Sec. 13, Art. VII as compared to the prohibition applicable to appointive officials in general under Art. IX, B, Sec. 7, par. 2 are proof of the intent of the 1987 Constitution to treat them as a class by itself and to impose upon said class stricter prohibitions. Thus, while all other appointive officials in the civil service are allowed to hold other office or employment in the government during their tenure when such is allowed by law or by the primary functions of their positions, members of the Cabinet, their deputies and assistants may do so only when expressly authorized by the Constitution itself. xxx

However, the prohibition against holding dual or multiple offices or employment under Art. VII, Sec. 13 must not be construed as applying to posts occupied by the Executive officials specified therein w/o addition compensation in an ex-officio capacity as provided by law and as required by the primary functions of said official's office. The reason is that these posts do not comprise "any other office" w/in the contemplation of the constitutional prohibition but are properly an imposition of additional duties and function on said officials.

Prohibitions against other officials

(1.) Sec. 13, Art VI

* 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.

* He shall not be appointed to any office which may have been created or the emoluments thereof increased during the term for which he was elected.

(2.) Sec. 2, Art IX-A

*** No member of the Constitutional Commission:**

- Shall, during his tenure, hold any other office or employment.
- Shall engage in the practice of any profession or in the active management or control of any business which in any way may be affected by the functions of his office
- shall 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.

(3.) Sec. 7, Art IX B

* No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.

* Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

(4.) Sec. 12, Art VIII

* The Members of the Supreme Court and of other courts established by law shall not be designated to any agency performing quasi-judicial or administrative functions.

Exceptions to rule prohibiting executive officials from holding additional positions:

a. President

(1) The President can assume a Cabinet post, (because the departments are mere extensions of his personality, according to the Doctrine of Qualified Political Agency, so no objection can be validly raised based on **Sec. 13, Art VII.**)

(2) The President is the Chairman of NEDA. (**Sec. 9, Art XII**)

b. Vice-President

xxx The Vice-President may be appointed as member of the Cabinet. Such appointment requires no confirmation (Sec 3, Art VII)

c. Cabinet

(1) The Secretary of Justice shall be an ex-officio member of the Judicial and Bar Council. (**Sec. 8[1], Art VIII**)

2) Unless otherwise allowed by law or by the primary functions of his position, appointive officials shall not 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. (**Art. IX, B, 7, par. 2**)

Art. VII, Sec. 13 talks of "unless otherwise provided by the Constitution." In the case of Cabinet members, this refers to Art. IX, B, 7, par. 2.

Thus, the Constitution allows a Cabinet member to hold another office provided either

- (1) such is necessitated by the primary functions of his position
 - a. Secretary of Trade and Industry as Chairman of NDC
 - b. Secretary of Agrarian Reform as Chairman of the Land Bank
- (2) (is allowed by law.

4. Succession

*** Vacancy in the Presidency**

Two sets of rules in succession:

- (1) vacancy took place before the beginning of the term on June 30
- (2) vacancy during the pendency of the terms that commences on June 30

A. Temporary or permanent vacancy in the Presidency before the term

1. If the President-elect cannot assume his post at the beginning of his term because

- i) he has not qualified as yet (e.g. he had an operation and so he could not take his oath of office on June 30),
- ii) or a President has not been "chosen" and qualified as yet (e.g. there is a tie and Congress has not yet broken the tie),

then the Vice-President shall act as President until the President-elect shall have qualified, or shall have been "chosen: and qualified, as the case may be. (pars. 2 & 3, sec 7, Par VII).

2. If the President-elect

- i) dies, or
- ii) becomes permanently disabled "at the beginning of the term of the President" (i.e., before the term),

then the Vice-President elect shall become the President. (par. 4, Sec 7, Art VII)

3. If both President and Vice-President

- (i) have not been "chosen" or
- (ii) have not qualified, or
- (iii) die, or
- (iv) become permanently disabled,

then the President of the Senate, or in case of his inability, the Speaker of the House, shall act as President until a President or a Vice-President shall have been "chosen" and qualified. (par. 5)

In case both the President of the Senate and the Speaker of the House are unable to act as President, then Congress shall by law, provide for the "manner of selecting" the one who will act as President until a President or Vice-President shall have (been either "chosen" or "elected" pursuant to the special election referred to in VII, 10, and qualified.

Special election in Sec. 10, Art VII.

1. The Congress shall, at ten o'clock in the morning of the third day after the vacancy in the offices of the President and Vice-President occurs, convene in accordance with its rules without need of a call
2. Within seven days enact a law calling for a special election to elect a President and a Vice-President to be held not earlier than forty-five days nor later than sixty days from the time of such call.

* The bill calling such special election:

1. is deemed certified under paragraph 2, Section 26, Article VI (xxx the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency xxx)
2. shall become law upon its approval on third reading by the Congress. *Appropriations for the special election
 1. charged against any current appropriations
 2. exempt from the requirements of paragraph 4, Section 25, Article VI of this Constitution. ("A special appropriations bill shall specify the purpose for which it is intended, and shall be supported by funds actually available as certified by the National Treasurer, or to be raised by a corresponding revenue proposal therein")

3. The convening of the Congress cannot be suspended nor the special election postponed.

4. No special election shall be called if the vacancy occurs within eighteen months before the date of the next presidential election.

B. Permanent Vacancy in the Presidency during the term

1. In case of the President's

- (i) death
- (ii) permanent disability,
- (iii) removal from office (the only way is by impeachment), or
- (iv) resignation

the Vice-President shall become President for the unexpired portion of the term. (par. 1)

2. In case of both the President's and Vice-President's

- (i) death
- (ii) permanent disability
- (iii) removal from office (by impeachment)
- (iv) resignation

the Senate President or, in case of his inability, the Speaker of the House, shall act as President until the President or Vice-President shall have been "elected" (pursuant to the special election in Art. VII, Sec. 10) and qualified. (par. 1.)

3. When the Acting President (i.e., the Senate President, or Speaker of the House)

- (i) dies
- (ii) becomes permanently disabled
- (iii) resigns (but is not removed, because there is no need to impeach him, his stay being temporary)

then the Congress shall by law, provide "who" shall be Acting President until the President or Vice-President shall have been "elected" (pursuant to the special election in Art. VII, Sec. 10) and qualified. This Acting President shall be subject to the same restrictions of powers and disqualifications. (par. 2)

Estrada v. Desierto (2001)

The president's resignation must be willful and intentional, and it must be strictly construed. When impeachment proceedings have become moot due to the resignation of the Pres, proper criminal and civil cases may already be filed against him.

Res'n on the Motion for Recon (2001)

The totality test was applied to determine whether or not the president has indeed resigned. Many things were considered including the Angara Diary.

Comparisons and distinctions between the two vacancies:

a) The incumbent President never holds-over the Presidency in any case.

b) The vacancy must occur in the offices of both the President and Vice-President in order for the Senate President, or the Speaker, or, in their inability, the one provided to succeed according to the Law of Succession passed by the Congress, to succeed as Acting President until the qualification of the President.

c) The Law on Succession must be passed by the Congress in both cases in the event that the President, Vice-President, Senate President and the Speaker are all unable to act as President. But in the case of a vacancy occurring before the term, the law provides only for the "manner of selecting" the Acting President, while in the case of a vacancy occurring during the term, it provides for "the person" who shall act as President. In both cases, the stint of the Acting President is temporary.

d) When the vacancy comes before the term, the Constitution talks of the successor acting as President until a President has been "chosen" and "qualified"; when it comes during, it talks of "elected" and qualified. The reason is that before the term, the vacancy in the Presidency need not be filled up by election, since it may be filled up by a vote of Congress in case of a tie (Art. VII, Sec. 4, par. 5); but during the term, the only way to fill up the vacancy is by special election.

e) A special election in both cases is held, pursuant to Art. VII, Sec. 10, only when both offices of President and Vice-President are vacant. However, if the vacancy occurs before the term, the grounds are limited to 2 (death and permanent disability or both), while if the vacancy occurs during the term, the grounds are 4 (death, permanent disability, removal, and resignation).

f) The vacancy that occurs before the term of office may be temporary or permanent; the vacancy that occurs during the term of office can only be a permanent one. Thus, a different set of rules applies, to be discussed next following, in case of the temporary inability of the President during the term of office.

C. Temporary Vacancy in the Presidency during the term

* A vacancy in the Presidency arising from his disability can occur in any of the ff ways:

1. A written declaration by the President
2. Written declaration by the Cabinet
3. Finding by Congress by 2/3 vote that the President is disabled.

In all these cases, the Vice-President temporarily acts as the President.

* Voluntary declaration of inability by President

a. When the President transmits to the Senate President and the Speaker his written declaration that he is unable to discharge the powers and duties of his office, such powers and duties shall be discharged by the Vice-President as Acting President.

b. The Vice-President shall so act until the President transmits to the Senate President and the Speaker a written declaration that he is no longer unable to discharge his office.

* Contested inability of the President

a. When majority of all the members of the Cabinet transmit to the Senate President and Speaker their written declaration that the President is unable to discharge his office, then the Vice-President shall immediately assume the Presidency in an acting capacity.

b. The President can contest this by sending his own written declaration to the Senate President and Speaker, that no inability exists. Upon such transmittal, the President shall automatically assume his office.

c. Should the majority of the Cabinet insist on their original stand by transmitting a second written declaration of the President's inability within 5 days from resumption of office of the President, then Congress shall step in.

d. Upon receipt of this second declaration by the Cabinet, Congress shall convene, if it is not in session, within 48 hours, without need of call, in accordance with its rules. (If it is already in session, it must meet right away, as glimpsed from the fact that they only have 10 days to decide, whereas if it is not in session, it must convene in 2 days and decide before the 12th day.)

e. Congress shall determine the President's inability within 10 days after receipt of the second written declaration by the Cabinet if it is in session, or within 12 days after it is required to assemble by its respective presiding officer if it is not in session.

f. If the President, by a 2/3 vote of both houses voting separately, determined to be "unable" to discharge his office, then the Vice-President shall act as President. If less than 2/3 find him unable, then the President shall continue exercising the powers and duties of his office.

* Serious Illness of the President (Sec 12, Art VII)
 >the public shall be informed of the state of his health.
 >The members of the Cabinet in charge of national security and foreign relations and the Chief of Staff of the Armed Forces of the Philippines, shall not be denied access to the President during such illness.

5. Removal

Impeachment, Sec. 2, Art XI.

- Who are subject to impeachment:
 - The President
 - the Vice-President
 - the Members of the Supreme Court
 - the Members of the Constitutional Commissions
 - Ombudsman
- Reasons for impeachment
 - culpable violation of the Constitution
 - treason
 - bribery
 - graft and corruption
 - other high crimes
 - betrayal or public trust.
- All other public officers and employees may be removed from office as provided by law, but not by impeachment.

Impeachment Process Art. XI, Sec. 3.

(1) Who may initiate:
 The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

(2) Verified Complaint

- a. A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon resolution of endorsement by any Member thereof
- b. Verified Complaint shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter.
- c. The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution.
- d. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

(3) Number of votes necessary

A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each Member shall be recorded.

(4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.

(5) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

(6) The Senate shall have the sole power to try and decide all cases of impeachment. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

>When sitting for that purpose, the Senators shall be on oath or affirmation.

>When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote.

(7) Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment according to law.

Bernas: The officer can still be tried for a criminal case aside from impeachment

"Initiation" - governed by the rules of the House of Reps;
 "trial"-governed by the rules of the Senate.

6. Powers and Functions of the President

- executive power
- control of executive departments
- general supervision of local governments
- power of appointment
- executive clemencies
- commander in chief powers
 - military powers
 - suspension of the writ of habeas corpus
 - martial law
- emergency powers
- contracting and guaranteeing foreign loans
- powers over foreign affairs
- power over legislation
- immunity from suit

(1) Executive Power

*the duty to implement the laws within the standards imposed by the legislature. *this power is exercised by the President. (Sec 1 Art VII)

* The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed (Sec 17).

>National Electrification Commission vs. CA

The Court held that as administrative head of the government, the President is vested with the power to execute, administer and carry out laws into practical operation.

> Marcos vs Manglapus

Although the 1987 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. Corollarily, the powers of the President cannot be said to be limited only to the specific power enumerated in the Constitution. In other words, executive power is more than the sum of specific powers so enumerated. The framers did not intend that by enumerating the powers of the Pres, he shall exercise those powers and no other. These unstated residual powers are implied from the grant of executive power and which are necessary for the Pres to comply with his duties under the Consti.

(2) Control of executive departments (Sec 17, Art VII)

Control is the power of an officer to alter or modify or nullify or to set aside what a subordinate has done in the performance of his duties and to substitute one's own judgment in that of a subordinate.

qualified political agency doctrine (also alter ego principle),

"all the different executive and administrative organizations are mere adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases wherein the Chief Executive is required by the Consti or by the law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive depts., performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively acts of the Chief Executive." (**Free Telephone Workers Union vs. Minister of Labor and Employment**)

(3) General supervision of local governments and autonomous regions

The President shall exercise general supervision over local governments. (sec 4, Art X)

The President shall exercise general supervision over autonomous regions to ensure that laws are faithfully executed. (sec 16, Art X)

Supervision

* means the mere overseeing, or the power or authority of the officer to see that subordinate officers perform their duties, and if the latter fail or neglect to fulfill them, then the former may take such action or steps as prescribed by law to make them perform these duties.

* this does not include the power to overrule their acts, if these acts are within their discretion.

(4) Power of appointment

* Definition : the selection, by the authority vested w/ the power, of an individual who is to exercise the functions of a given office.

* Appointment is distinguished from:

1. Designation – imposition of additional duties, usually by law, on a person already in the public service
2. Commission – written evidence of the appointment

A. Classification of Power of Appointment:

1. With the consent of the Commission on Appointments**(Sarmiento vs Mison)**

There are 4 groups of officers whom the Pres may appoint:

1. heads of the exec dept, ambassadors, other public ministers and consuls, officers of the armed forces from the rank of colonel or naval capt and other officers whose appointments are vested in him;
2. all other officers of the gov't whose appointments are not otherwise provided by law;
3. those whom the Pres may be authorized to appoint;
4. officers lower in rank whose appointments Congress may by law vest in the Pres alone

Heads of bureaus were deliberately moved from the provision of appointments requiring confirmation and were included in the 4th group and hence, their appointments no longer need confirmation.

Quintos-Deles vs Commission on Appointments

The seats reserved for sectoral reps may be filled by appointment by the Pres under Art XVIII, Sec7. It is indubitable that sectoral reps to the House are among the "other officers whose appointments are vested in the Pres in this Consti", referred to in the 1st sentence of ArtVII, Sec16. These appointments require the confirmation of the Commission on Appointments.

Notes: From the rulings in *Sarmiento III v. Mison*, 156 S 549), *Bautista v. Salonga*, 172 S 160, and *Deles v. Constitutional Commission*, 177 S 259, these **doctrines** are deducible:

1. Confirmation by the CA is required only for presidential appointees as mentioned in the first sentence of Sec. 16, Art. VII, including, those officers whose appointments are expressly vested by the Constitution itself in the president (like sectoral representatives to Congress and members of the constitutional commissions of Audit, Civil Service and Election).

(a) Heads of the executive departments

(b) Ambassadors, other public ministers and consuls

(c) Officers of the Armed Forces of the Philippines with the rank of colonel or naval captain (because these are officers of a sizeable command enough to stage a coup)

(d) Other officers whose appointments are vested in the President in the Constitution:

(i) Chairman and Commissioners of the Constitutional Commissions (Sec 1 Art IX-B, Sec 1 (2) Art IX-B, Sec 1(2) Art IX-D)

(ii) Regular members of the Judicial and Bar Council (Sec 8 (2) Art VII)

(iii) Sectoral representatives (Sec 7 Art XVIII, Sec 18 Art X)

2. Confirmation is not required when the President appoints other government officers whose appointments are not otherwise provided for by law or those officers whom he may be authorized by law to appoint (like the Chairman and Members of the Com. on Human Rights). Also, as observed in *Sarmiento v. Mison*, when Congress creates inferior offices but omits to provide for appointment thereto, or provides in an unconstitutional manner for such appointments, the officers are considered as among those whose appointments are not otherwise provided for by law.

2. Upon recommendation of the Judicial and Bar Council

(a) Members of the Supreme Court and all other courts. (sec 9, Art VIII)

a. Appointments need no confirmation

b. For lower courts, appointment shall be issued within 90 days from submission of the list

(b) Ombudsman and his 5 deputies (for Luzon, Visayas, Mindanao, general and military) Sec 9 Art XI

a. Such appointments shall require no confirmation.

b. All vacancies shall be filled within three months after they occur.

3. Appointment of Vice-President as Member of the Cabinet (Sec 3, Art VIII)

* appointment requires no confirmation

4. Appointments solely by the President (Sec. 16, Art VII)

1. Those vested by the Constitution on the President alone (e.g. appointment of Vice-President to the Cabinet) [Art. VII, Sec. 3(2)]

2. Those whose appointments are not otherwise provided by law.

3. Those whom he may be authorized by law to appoint.

4. Those other officers lower in rank whose appointment is vested by law in the President (alone). The phraseology is muddled.

> **Sarmiento v Mison.**

In arguing that even bureau chiefs needed confirmation even if they are of inferior rank, the argument was the phrase, "The Congress may, by law, vest in the appointment of other officers lower in rank in the President alone" meant that until a law is passed giving such appointing power to the President alone, then such appointment

has to be confirmed. Only after such law is passed does the necessity for confirmation no longer hold. The SC dismissed this view however, saying that the inclusion of the word "alone" was an oversight. Thus, the Constitution should read "The Congress may, by law, vest the appointment of other officers lower in rank in the President."

B. Limitations on appointing power of the President`

a. The spouse and relatives by consanguinity or affinity within the 4th civil degree of the President shall not, during his "tenure". be appointed as (sec 13, Art VII)

- (i) members of the Constitutional Commissions,
- (ii) member of the Office of Ombudsman,
- (iii) Secretaries,
- (iv) Undersecretaries,
- (v) Chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries.

b. The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress. (Sec 16, Art VI)

c. Two months immediately before the next presidential elections (2nd Monday of March), and up to the end of his "term" (June 30), a President (or Acting President) shall not make appointments. (Sec 15, Art VII)

Exception:

Temporary appointments, to executive positions, when continued vacancies will

- (1) prejudice public service (e.g Postmaster) or
- (2) endanger public safety (e.g. Chief of Staff).

> Aytona v Castillo

The SC ruled that while "midnight appointments" (note: made by outgoing President near the end of his term) are not illegal, they should be made in the capacity of a "caretaker" doubly careful and prudent in making the selection, so as not to defeat the policies of the incoming administration. The filling up of vacancies in important posts, if few, and so spaced as to afford some assurance of deliberate action and careful consideration of the need for the appointment and the appointees qualifications, may be undoubtedly permitted. But the issuance of 350 appointments in one night, and the planned induction of almost all of them a few hours before the inauguration of the new President may be regarded as abuse of presidential prerogatives.

> Quisumbing v Tajanglangit

The SC emphasized that the Aytona ruling does not declare all midnight appointments as invalid, and that the ad interim appointment of the petitioner chief of police here, whose qualification and regularity were not disputed, except for the fact that it was made during the last few days of the old administration, is thus not invalid.

> De Rama v. CA (2001)

The prohibition against midnight appointments applies only to the president and does not extend to local elective officials. Moreover, there is no law that prohibits local elective officials from making appointments during the last days of his or her tenure.

C. Interim or recess appointments

Regular and recess (ad-interim) appointments

Appointments requiring confirmation are of two kinds

- (i) regular, if the CA, that is, Congress, is in session
- (ii) during the recess of Congress (because the Commission shall meet only while Congress is in session [Art. VI, Sec. 19]).

Regular appointment - 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.

Ad-interim appointment - 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. (Art. VII, Sec. 16, par. 2)

>Matibag vs Benipayo

Ad interim appointment – a permanent appointment made by the Pres in the meantime that Congress is in recess. It is permanent as 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 the confirmation of the Commission on Appointments does not alter its permanent character. Hence, said appointment is effective until (1) disapproved by the CA or (2) the next adjournment of Congress

Acting/Temporary appointment – can be withdrawn or revoked at the pleasure of the appointing power. The appointee does not enjoy security of tenure. This is the kind of appointment that the Constitution prohibits the Pres from making to the independent constitutional commissions.

>Pacete vs Secretary

The mere filing of a motion for reconsideration of the confirmation of an appointment cannot have the effect of recalling or setting aside said appointment. The Consti is clear – there must either be a rejection by the Commission on Appointments or non-action on its part for the confirmation to be recalled.

Also, the power to approve or disapprove appointments is conferred on the CA as a body and not on the individual members.

* Temporary Designations:

Admin Code of 1987, Book III Sec. 17

The President may designate an officer already in the govt. service or any other competent person to perform the functions of any office in the executive branch, appointment to which is vested in him by law, when:

- (a) The officer regularly appointed to the office is unable to perform his duties by reason of illness, absence or any other cause; or
- (b) There exists a vacancy;
In no case shall a temporary designation exceed one (1) year.

D. Limitations on the appointing power of the Acting President

1. 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. **Sec. 14 Art VII**

2. A President or Acting President shall not make appointments two months immediately before the next presidential elections and up to the end of his term

> except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety. Sec 15, Art VII

(5) Executive clemencies

*The President may grant:

- (i) reprieves
 - > a temporary relief from or postponement of execution of criminal penalty or sentence or a stay of execution. (Black)
 - > It is the withholding of a sentence for an interval of time, a postponement of execution, a temporary suspension of execution. (People vs. Vera)
- (ii) commutations
 - > reduction of sentence. (Black)
 - > It is a remission of a part of the punishment; a substitution of a less penalty for the one originally imposed. (People vs. Vera)
- (iii) pardons, and
 - > permanent cancellation of sentence. (Black)
 - > It is an act of grace proceeding from the power

entrusted with the execution of the laws, which exempts the individual on whom it is bestowed, from the punishment the law inflicts for the crime he has committed. It is a remission of guilt, a forgiveness of the offense. (People v Vera)

- Plenary or partial
 - Plenary - extinguishes all the penalties imposed upon the offender, including accessory disabilities
 - Partial – does not extinguish all penalties imposed
- Absolute or conditional
 - Conditional - the offender has the right to reject the same since he may feel that the condition imposed is more onerous than the penalty sought to be remitted.
 - absolute pardon - pardonee has no option at all and must accept it whether he likes it or not. In this sense, an absolute pardon is similar to commutation, w/c is also not subject to acceptance by the offender.

(iv) remit fines and forfeitures, after conviction by final judgment

Except:

- (a) In cases of impeachment, and
- (b) As otherwise provided in this Constitution
 - > 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 by the Commission (on Elections.) (Sec 5, Art IX)

* The President shall also have the power to grant amnesty with the concurrence of a majority of all the Members of the Congress. (Sec 19, Art VII)

> Amnesty - a sovereign act of oblivion for past acts, granted by government generally to a class of persons who have been guilty usually of political offenses and who are subject to trial but have not yet been convicted, and often conditioned upon their return to obedience and duty within a prescribed time. (Black; Brown v Walker, 161 US 602).

> Probation - a disposition under which a defendant after conviction and sentence is released subject to conditions imposed by the court and to the supervision of a probation officer. [Sec. 3 (a), PD 968.]

> Parole - suspension of the sentence of a convict granted by a Parole Board after serving the minimum term of the indeterminate sentence penalty, without granting a pardon, prescribing the terms upon which the sentence shall be suspended.

* Effects of Pardon (Case Law)

Cristobal v Labrador

There are 2 limitations upon the exercise of the constitutional prerogative of the Pres. to grant pardon: (1) that the power be exercised after conviction; (2) that such power does not extend to cases of impeachment.

Pelobello v. Palatino

Absolute pardon has the effect of removing the disqualification from voting and being elected incident to criminal conviction under Sec 94(a) of the Election Code.

The Chief Executive, after inquiry into the environmental facts, should be at liberty to atone the rigidity of the law to the extent of relieving completely the party or parties concerned from the accessory and resultant disabilities of criminal conviction.

Monsanto vs Factoran

Pardon implies guilt and does not erase the fact of the commission of the crime and the conviction thereof. It does not ipso facto restore a convicted felon to a public office necessarily relinquished or forfeited by reason of the conviction although

*Notes: "Pardon granted after conviction frees the individual from all the penalties and legal disabilities and restores him to all his civil rights. But unless expressly grounded on the person's innocence (w/c is rare), it cannot bring back lost reputation for honesty, integrity and fair dealing. This must be constantly kept in mind lest we lose track of the true character and purpose of the privilege. xxx"

* Application of Pardoning Powers to Administrative Cases

>Llamas v Executive Secretary

If the President can grant reprieves, commutations and pardons, and remit fines and forfeitures in criminal cases, with much more reason can she grant executive clemency in administrative cases, which are clearly less serious than criminal offenses. However, the power of the President to grant executive clemency in administrative cases refers only to administrative cases in the Executive branch and not in the Judicial or Legislative branches of the govt.

>Sec. 53, Chapter 7, Subtitle A, Title I, Book V, Administrative Code of 1987

Removal of Administrative Penalties or Disabilities.-- In meritorious cases and upon recommendation of the (Civil Service) Commission, the President may commute or remove administrative penalties or disabilities imposed upon officers or employees in disciplinary cases, subject to such terms and conditions as he may impose in the interest of the service

* Who may avail of amnesty? (Case Law)

>Tolentino vs Catoy

Amnesty Proclamation No. 76 applies even to Hukbalahaps already undergoing sentence upon the date of its promulgation. The majority of the Court believe that by its context and pervading spirit the proclamation extends to all members of the Hukbalahap. It makes no exception when it announces that the amnesty is proclaimed in favor of the leaders and members of the associations known as the Hukbalahap and Pambansang Kaisahan ng Magbubukid (PKM).

>Macaga-an vs People

Petitioners were charged and convicted of estafa through falsification of public and commercial documents by the Sandiganbayan. They claimed that they had been granted amnesty by President Marcos. The Sandiganbayan claimed that the benefits of amnesty were never available to petitioners under PD 1182. The SC agreed with the Sandiganbayan that in fact the petitioners were expressly disqualified from amnesty. The acts for which they were convicted were ordinary crimes without any political complexion and consisting only of diversion of public funds to private profit. The amnesty proclamation covered only acts in the furtherance of resistance to duly constituted authorities of the Republic and applies only to members of the MNLf, or other anti-gov't groups.

(5) Powers as commander-in-chief

* Powers as Commander-in-Chief:

- a. He may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion.
- b. He may suspend the privilege of the writ of habeas corpus, or

c. He may proclaim martial law over the entire Philippines or any part thereof.

> Subject to judicial review to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction (par. 2, Sec 1, Art VIII)

a. **Call out the AFP to prevent lawless violence** - This is merely a police measure meant to quell disorder. As such, the Constitution does not regulate its exercise radically

b. **Suspend the privilege of the writ of habeas corpus** - A "writ of habeas corpus" is an order from the court commanding a detaining officer to inform the court

- (i) if he has the person in custody, and
- (ii) what his basis in detaining that person.

The "privilege of the writ" is that portion of the writ requiring the detaining officer to show cause why he should not be tested. Note that it is the privilege that is suspended, not the writ itself.

Requisites:

- 1) There must be an invasion or rebellion, and
- 2) The public safety requires the suspension.

Effects of the suspension of the privilege:

1) The suspension of the privilege of the writ applies only to persons "judicially charged" for rebellion or offenses inherent in or directly connected with invasion (Art. VII, Sec. 18, par. 5).

>Such persons suspected of the above crimes can be arrested and detained without a warrant of arrest.

> The suspension of the privilege does not make the arrest without warrant legal. But the military is, in effect, enabled to make the arrest, anyway since, with the suspension of the privilege, there is no remedy available against such unlawful arrest (arbitrary detention).

>The arrest without warrant is justified by the emergency situation and the difficulty in applying for a warrant considering the time and the number of persons to be arrested.

>the crime for which he is arrested must be one related to rebellion or the invasion. As to other crimes, the suspension of the privilege does not apply.

2) During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within 3 days, or otherwise he shall be released. (Art. VII, Sec. 18, par. 6).

> The effect of the suspension of the privilege, therefore, is only to extend the periods during which he can be detained without a warrant. When the privilege is suspended, the period is extended to 72 hours.

> What happens if he is not judicially charged nor released after 72 hours? The public officer becomes liable under Art. 125 for "delay in the delivery of detained persons."

3) The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. (Art. III, Sec. 13)

c. Proclaim Martial Law

Requisites:

- 1) There must be an invasion or rebellion, and
- 2) Public safety requires the proclamation of martial law all over the Philippines or any part thereof.

Effects of the proclamation of martial law:

The President can:

- 1) Legislate
- 2) Order the arrest of people who obstruct the war effort.

But the following cannot be done (Art. VII, Sec. 18, par. 4)

- a. Suspend the operation of the Constitution.
- b. Supplant the functioning of the civil courts and the legislative assemblies.
 - > martial law is proclaimed only because the courts and other civil institutions like Congress have been shut down. It should not happen that martial law is declared in order to shut down the civil institutions.
- c. Confer jurisdiction upon military courts and agencies over civilians, where civil courts are able to function.
 - "open court" doctrine
 - holds that civilians cannot be tried by military courts if the civil courts are open and functioning.
 - if the civil courts are not functioning, then civilians can be tried by the military courts.
 - Martial laws usually contemplates a case where the courts are already closed and the civil institutions have already crumbled, that is a

"theater of war." If the courts are still open, the President can just suspend the privilege and achieve the same effect.

- d. Automatically suspend the privilege of the writ of habeas corpus.

> The President must suspend the privilege expressly.

The Role of Congress

a. Congress may revoke the proclamation of martial law or suspension of the privilege of the writ of habeas corpus before the lapse of 60 days from the date of suspension or proclamation

b. Upon such proclamation or suspension, Congress shall convene at once. If it is not in session, it shall convene in accordance with its rules without need of a call within 24 hours following the proclamation or suspension.

c. Within 48 hours from the proclamation or the suspension, the President shall submit a report, in person or in writing, to the Congress (meeting in joint session of the action he has taken).

d. The Congress shall then vote jointly, by an absolute majority. It has two options:

- (i) To revoke such proclamation or suspension.

>When it so revokes, the President cannot set aside (or veto) the revocation as he normally would do in the case of bills.

- (ii) To extend it beyond the 60-day period of its validity.

Congress can only so extend the proclamation or suspension upon the initiative of the President. The period need not be 60 days; it could be more, as Congress would determine, based on the persistence of the emergency. If Congress fails to act before the measure expires, it can no longer extend it until the President again redeclares the measure.

* Congress cannot "validate" the proclamation or suspension, because it is already valid.

* If Congress extends the measure, but before the period of extension lapses, the requirements for the proclamation or suspension no longer exist, Congress can lift the extension, since the power to confer implies the power to take back.

* If Congress does not review or lift the order, this can be reviewed by the Supreme Court pursuant to the next section.

The Role of the Supreme Court

The Supreme Court may review, in an appropriate proceeding filled by any citizen, the sufficiency of the factual basis of:

- (a) the proclamation of martial law or the suspension of the privilege of the writ, or
- (b) the extension thereof. It must promulgate its decision thereon within 30 days from its filing. (Sec 18 (3), Art. VII)

* The jurisdiction of the SC may be invoked in a proper case.

- > A petition for habeas corpus
- When a person is arrested without a warrant for complicity in the rebellion or invasion, he or someone else in his behalf has the standing to question the validity of the proclamation or suspension.
- before the SC can decide on the legality of his detention, it must first pass upon the validity of the proclamation or suspension.

* Test of Arbitrariness:

- >test to be used by the Supreme Court in so reviewing the act of the President in proclaiming or suspending, or the act of Congress in extending
- > seeks to determine the sufficiency of the factual basis of the measure.

> The question is not whether the President or Congress acted correctly, but whether he acted arbitrarily in that the action had no basis in fact.

>> amounts to a determination of whether or not there was grave abuse of discretion amounting to lack or excess of jurisdiction Sec 1(2) Art. VIII.

*** Lansang v Garcia,**

> The issue there raised was whether in suspending the privilege of the writ in 1971, Marcos had a basis for doing so. The SC, in considering the fact that the President based his decision on (a) the Senate report on the condition in Central Luzon and (b) a closed door briefing by the military showing the extent of subversion, concluded that the President did not act arbitrarily. One may disagree with his appreciation of the facts, but one cannot say that it is without basis.

>2 conditions must concur for the valid exercise of authority to suspend the privilege:

- (a) there must be an actual invasion, insurrection, rebellion or imminent danger and
- (b) public safety must require the suspension of the privilege. This holding of the SC is now found in Art. VII, Sec. 18, par. 3.] The function of the court is to check and not supplant the executive or to ascertain merely whether he has gone beyond the constitutional limits of jurisdiction. The proper standard is not correctness but arbitrariness.

There are 4 ways, then, for the proclamation or suspension to be lifted:

- 1) Lifting by the President himself
- 2) Revocation by Congress
- 3) Nullification by the Supreme Court
- 4) Operation of law after 60 days

* Military Trial of Civilians Void Even Under Martial Law, If Civil Courts Are Open. **(Sec 18(5) Art. VII).**

Olague vs Military Commission No. 34

The **Aquino vs. Military Commission No. 2** decision was reversed. (In that case, the SC upheld the power of the President to create military tribunals authorized to try not only military personnel but civilians even if civil courts were open). According to the SC, civilians who are placed on trial for civil offenses under general law are entitled to trial by judicial process. Since we are not enemy-occupied territory nor are we under a military govt. and even on the premise that martial law continues in force, the military tribunals cannot try and exercise jurisdiction over civilians for civil offenses committed by them which are properly cognizable by the civil courts that have remained open and have been regularly functioning. The assertion of military authority over civilians cannot rest on the President's power as Commander in Chief or on any theory of martial law. As long as civil courts remain open and are regularly functioning, military tribunals cannot try and exercise jurisdiction over civilians for offenses committed by them and which are properly cognizable by civil courts. To hold otherwise is a violation of the right to due process.

(6) Emergency powers (Sec 23, Art. VI).

> The Congress may by law authorize the President to exercise powers necessary and proper to carry out a declared national policy

> Different from the Commander-in-Chief clause:

>>When the President acts under the Commander-in-Chief clause, he acts under a constitutional grant of military power, which may include the law-making power.

>>When the President acts under the emergency power, he acts under a Congressional delegation of law-making power.

> meaning of power necessary and proper

>> Power to issue rules and regulations

This power is

- (1) for a limited period, and
- (2) subject to such restrictions as Congress may provide.

The power ceases

(a) upon being withdrawn by resolution of the Congress, or, if Congress fails to adopt such resolution,

(b) upon the next (voluntary) adjournment of Congress. For the fact that Congress is able to meet in session uninterruptedly and adjourn of its own will proves that the emergency no longer exists is to justify the delegation.

This rule or the termination of the grant of emergency powers is based on decided cases, which in turn became **Art. VII, Sec. 15 of the 1973 Constitution.**

Araneta v Dinglasan,

The Congress granted the President certain emergency powers. (CA671) After the war, Congress held a special session. The SC held that the emergency power lasted only until Congress held its regular session. The fact that Congress could now meet meant that there was no emergency anymore that would justify the delegation. The assertion that new legislation is needed to repeal CA671 is not in harmony with the Consti. If a new law were necessary to terminate it, then it would be unlimited and indefinite. This would create an anomaly since what was intended to meet a temporary emergency becomes a permanent law.

Rodriguez v Gella,

The specific power to continue in force laws and appropriations which would lapse or otherwise become inoperative is a limitation on the general power to exercise such other powers as the executive may deem necessary to enable the government to fulfill its responsibilities and to maintain and enforce its authority.

> Inconsistency between the Constitution and the cases: (Barlongay)

>> The Consti. [Art. VI, Sec. 23 (2)] states that the emergency powers shall cease upon the next adjournment of Congress unless sooner withdrawn by resolution of Congress

>> cases tell us that the emergency powers shall cease upon resumption of session.

>> Reconciling the two: it would not be enough for Congress to just resume session in order that the emergency powers shall cease. It has to pass a resolution withdrawing such emergency powers, otherwise such powers shall cease upon the next adjournment of Congress.

(7) Contracting and guaranteeing foreign loans

Requisites for contracting and guaranteeing foreign loans:

1. With the concurrence of the monetary board (Sec 20, Art VII)
2. subject to limitations as may be provided by law (Sec 21, Art XII)
3. information on foreign loans obtained or guaranteed shall be made available to the public (sec 21, Art XII)

> Cf Republic Act 4860

>> An Act Authorizing The President Of The Philippines To Obtain Such Foreign Loans And Credits, Or To Incur Such Foreign Indebtedness, As May Be Necessary To Finance Approved Economic Development Purposes Or Projects, And To Guarantee, In Behalf Of The Republic Of The Philippines, Foreign Loans Obtained Or Bonds Issued By Corporations Owned Or Controlled By The Government Of The Philippines For Economic Development Purposes Including Those Incurred For Purposes Of Re-Lending To The Private Sector, Appropriating The Necessary Funds Therefore, And For Other Purposes

>> Approved, September 8, 1966.

Role of Congress:

1. The President does not need prior approval by the Congress
 - a. Because the Constitution places the power to check the President's power on the monetary Board
 - b. Congress may provide guidelines and have them enforced through the Monetary Board

(8) Powers over foreign affairs

(a) Treaty-making power

* 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. (Sec 21, Art VII)

Treaty distinguished from executive agreements

- a. Executive agreements
 - entered into by the President
 - need no concurrence.

Commissioner of Customs vs. Eastern Sea Trading

International agreements involving political issues or changes in national policy and those involving international agreements of permanent character usually take the form of TREATIES. But the international agreements involving adjustments in detail carrying out well-established national policies and traditions and those involving a more or less temporary character usually take the form of EXECUTIVE AGREEMENTS.

USAFFE Veterans Assn. vs Treasurer

The central issue in this case concerns the validity of the Romulo-Snyder Agreement (1950) whereby the Phil. Govt. undertook to return to the US Govt. in ten annual installments, a total of \$35 M dollars advanced by the US to, but unexpended by, the National Defense Forces of the Philippines.

The agreement is not a "treaty" as the term is used in the Constitution. The agreement was never submitted to the Senate for concurrence. It must be noted that a treaty is not the only form that an international agreement may assume. For the grant of treaty making power to the Executive and the Senate does not exhaust the power of the govt. over international relations.

Consequently, executive agreements may be entered into with other states and are effective even without the concurrence of the Senate. From the point of view of international law, there is no difference between treaties and executive agreements in their binding effect upon states concerned as long as the negotiating functionaries have remained within their powers. The distinction between an executive agreement and a treaty is purely a constitutional one and has no international legal significance.

Nature of Executive Agreements :

There are 2 classes :

- (1) agreements made purely as executive acts affecting external relations and independent of or without legislative authorization, which may be termed as presidential agreements, and
- (2) agreements entered into in pursuance of acts of Congress, or Congressional-Executive Agreements.

The Romulo-Snyder Agreement may fall under any of these two classes, for precisely on Sept. 18, 1946, Congress specifically authorized the President to obtain such indebtedness w/ the Govt of the US, its agencies or instrumentalities. Even assuming, arguendo, that there was no legislative authorization, it is hereby maintained that the Romulo-Snyder Agreement was legally and validly entered into to conform to the second category. This 2nd category usually includes money agreements relating to the settlement of pecuniary claims of citizens.

Bayan vs Executive Secretary

The issue in this case is the constitutionality of the VFA. The SCH held that once the Senate performs the power to concur with treaties or exercise its prerogative within the boundaries prescribed by the Constitution, the concurrence cannot be viewed as an abuse of power, much less a grave abuse of discretion. The Pres, in ratifying the VFA and submitting the same for concurrence of the Senate, acted within the confines and limits of the power vested in him by the Constitution. The Pres merely performed a constitutional task and exercised a prerogative that chiefly pertains to the functions of his office.

(b) Deportation of undesirable aliens**Qua Chee Gan v Deportation Board**

1. The Pres may deport only according to grounds enumerated by law since it would be unreasonable and undemocratic to hold that an alien be deported upon an unstated or undefined ground depending merely on the use of an unlimited discretion by the Pres.

2. 2 ways of deporting an undesirable alien:
 - (a) by order of the Pres after due investigation
 - (b) by the Commissioner of Immigration

3. The Pres can delegate the power of investigation not to order the arrest of an alien.

4. The Deportation Board may not order the arrest of the alien in this case. If an implied grant of power, considering that no express authority was granted by law, would curtail the right of a person then a delegation of the implied power must be rejected as inimical to the liberties of the people.

Go Tek v Deportation Board

1. The Deportation Board can entertain deportation based on grounds not specified in Sec 37 of the Immigration Law. The Board has jurisdiction to investigate Go Tek even if he had not been convicted yet.

2. The President's power to deport aliens and to investigate them subject to deportation are provided in the Revised Admin Code.

3. The State has inherent power to deport undesirable aliens. This power is exercised by the Pres. There is no legal nor constitutional provision defining the power to deport aliens because the intention of the law is to grant the Chief Executive the full discretion to determine whether an alien's residence in the country is so undesirable as to affect the security, welfare or interest of the state. The Chief Executive is the sole and exclusive judge of the existence of facts which would warrant the deportation of aliens.

(8) Power over legislation**(a) Message to Congress**

>The President shall address the Congress at the opening of its regular session. He may also appear before it at any other time. (Sec 23, Art VII)

> Every 4th Monday of July, the President delivers the State of the Nation Address, which contains his proposals for legislation. Through this speech, he can influence the course of legislation that Congress can take during the regular session.

(b) Prepare and submit the budget

The President shall submit to Congress within thirty days from the opening of every regular session, as the basis of the general appropriations bill, a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures. (Sec 22, Art VII)

*The budget is the plan indicating the

- (a) expenditures of the government,
- (b) sources of financing, and
- (c) receipts from revenue-raising measures.

This budget is the upper limit of the appropriations bill to be passed by Congress. Through the budget, therefore, the President reveals the priorities of the government.

(c) Veto power

As a general rule, all bills must be approved by the President before they become law, except when

- (i) the veto of the President is overridden by 2/3 vote, and
- (ii) the bill passed is the special law to elect the President and Vice-President.

This gives the President an actual hand in legislation. However, his course of action is only to approve it or veto it as a whole. (See Legislative Power of Congress)

(d) Emergency Power

(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. (Sec 23, Art VI see discussion above)

(e) Fixing of tariff rates (Sec 28, Art VI)

The Congress may, by law, authorize the President to fix:

- within specified limits, and
- subject to such limitations and restrictions as it may impose,
 - tariff rates
 - import and export quotas
 - tonnage and wharfage dues
 - other duties or imposts within the framework of the national development program of the Government.

Reason for delegation: highly technical nature of international commerce, and the need to constantly and with relative ease adapt the rates to prevailing commercial standards.

(9) Immunity from suit

Carillo vs. Marcos

The President as such cannot be sued, enjoying as he does immunity from suit, but the validity of his acts can be tested by an action against the other executive officials or such independent constitutional agencies as the Commission on Elections and the Commission on Audit.

In Re Bermudez

The petition seeks clarification as to whom the Consti refers to as the incumbent Pres and Vice Pres. Prescinding from the petitioner's lack of capacity to sue, it is elementary that this Court assumes no jurisdiction over petitions for declaratory relief. More importantly, the petition amounts in effect to a suit against the incumbent Pres. Aquino and it is equally elementary that incumbent Presidents are immune from suit or from being brought to court during the period of their incumbency and tenure.

*The President's immunity from suit does not extend to his alter-egos

Soliven vs Makasiar; Beltran vs Makasiar

The SC held that the 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 where the President is a complainant cannot raise the presidential privilege as a defense to prevent the case from proceeding against the accused. Moreover, there is nothing in our laws that would prevent the President from waiving the privilege. The President may shed the protection afforded by the privilege and submit to the court's jurisdiction.

The President's immunity from suit extends beyond his term so long as the act in question was done during his term.

B. VICE PRESIDENT

(1) Qualifications, election, term and oath

a. Qualifications Sec. 3, Art VII.

- * natural-born citizen of the Philippines
 - * a registered voter
 - * able to read and write
 - * at least forty years of age on the day of the election
 - * a resident of the Philippines for at least ten years immediately preceding such election.

* The candidate must be qualified on the day of the elections.

b. Term and Election Sec. 4, Art VII

- * elected by direct vote of the people
- * unless otherwise provided by law, the regular election for President and Vice-President shall be held on the second Monday of May.
- * term of six years beginning at noon on the 30th day of June next following the day of the election and ending at noon of the same date six years after
- * no vice-president shall serve for more than two successive terms

c. Oath

"I do solemnly swear (or affirm) that I will faithfully and conscientiously fulfill my duties as President (or Vice-President or Acting President) of the Philippines, preserve and defend its Constitution, execute its laws, do justice to every man, and consecrate to myself to the service of the Nation. So help me God." (In case of affirmation, last sentence will be omitted.)

(2) Privilege and salary

* The salaries of the President and Vice-President shall be determined by law and shall not be decreased during their tenure.

>No increase in said compensation shall take effect until after the expiration of the term of the incumbent during which such increase was approved.

> xxx the Vice-President, xxx P240,000 (Sec 17, Art XVIII)

(3) Prohibitions

Art. VII, Sec. 13.

* Prohibited acts:

1. unless otherwise provided in this Constitution, hold any other office or employment during their tenure.
2. directly or indirectly practice any other profession
3. directly or indirectly participate in any business
4. 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.
5. spouse and relatives by consanguinity or affinity within the fourth civil degree of the President shall not 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.

* Xxx The Vice-President may be appointed as member of the Cabinet. Such appointment requires no confirmation. (Sec 3, Art VII)

(4) Succession

Art. VI, Sec. 9.

Whenever there is a vacancy in the Office of the Vice- President during the term for which he was elected,

> the President shall nominate a Vice-President from among the members of the Senate and the House of Representatives

> candidate shall assume office upon confirmation by a majority vote of all the members of both houses, voting separately.

(5) Removal

Impeachment Process Art. XI, Sec. 3.

(1) Who may initiate:

The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

(2) Verified Complaint

- a. A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon resolution of endorsement by any Member thereof
- b. Verified Complaint shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter.
- c. The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution.
- d. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

(3) Number of votes necessary

A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each Member shall be recorded.

(4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.

(5) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

(6) The Senate shall have the sole power to try and decide all cases of impeachment. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

(7) Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment according to law.

(6) Functions

(a) Right of succession

The Vice-President shall assume the functions of the president in case of

- 1. death, permanent disability, removal from office, or resignation of the President (Sec 8, Art VII)
- 2. Whenever the President transmits to the President of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary (Sec 11, Art VII)

3. Whenever a majority of all the Members of the Cabinet transmit to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office

(b) Membership in Cabinet

xxx The Vice-President may be appointed as member of the Cabinet. Such appointment requires no confirmation. (sec 3, Art VII)

III. JUDICIAL DEPARTMENT

A. THE SUPREME COURT

Barlongay:

- The Judiciary, unlike the Executive and the Legislative which are active, is passive and reactive as it has to wait for a case to be filed before it will act to settle the controversy

Cruz: To maintain the independence of the Judiciary, the following safeguards have been embodied in the Constitution:

(1) As a constitutional body, the Suoreme Court cannot be abolished nor may its membership or the manner of its meetings be changed by ordinary legislation. The lower courts on the other hand, are established by law, and so could be abolished by law, provided the security of tenure is not undermined. [Art. VIII, Sec. 4 (1)]

(2) The members of the judiciary are not subject to confirmation by the Commission on Appointments. [Art. VIII, Sec. 9 (1)]

(3) The members of the SC may not be removed except by impeachment. (Art. IX, Sec. 2)

(4) The SC may not be deprived of its minimum original and appellate jurisdiction. (Art. VIII, Sec. 2)

(5) The appellate jurisdiction of the SC may not be increased by law w/o its advice and concurrence. (Art. VI, Sec. 30)

(6) The SC has administrative supervision over all lower courts and their personnel (Art. VIII, Sec. 6).

(7) The SC has exclusive power to discipline or dismiss judges of lower courts. (Art. VIII, Sec. 11.)

(8) The members of the SC and all lower courts have security of tenure, which cannot be undermined by a law reorganizing the judiciary. (Id.)

(9) They shall not be designated to any agency performing quasi-judicial or administrative functions. (Art. VIII, Sec. 12)

(10) The salaries of judges are fixed by law and may not be reduced during their continuance in office. (Art. VIII, Sec. 10)

(11) The judiciary shall enjoy fiscal autonomy. (Art. VIII, Sec. 3)

(12) The SC alone may initiate rules of court. [Art. VIII, Sec. 5 (5)]

(13) Only the SC may order the temporary detail of judges. [Art. VIII, Sec. 5 (3)]

(14) The SC shall appoint all officials and employees of the judiciary. [Art. VIII, Sec. 5 (6)]

(1) Composition

Art. VIII, Sec. 4.

(1) The Supreme Court

- Composed of a Chief Justice and fourteen (14) Associate justices

- May sit en banc or in its discretion, in divisions of three, five, or seven Members

- Vacancy shall be filled within ninety days from the occurrence thereof.

(2) Cases to be heard en banc and decided with the concurrence of a majority of the Members who actually took part in the deliberations must involve the constitutionality, application, or operation of:

- a. a treaty,
- b. international or executive agreement,
- c. law,
- d. presidential decrees,

e. proclamations,

- f. orders,
- g. instructions,
- h. ordinances, and
- i. other regulations.

Vargas v Rilloraza

- Grounds to disqualify a justice of the SC cannot be legislated. To allow this would in effect deprive the SC of jurisdiction as established by the Constitution.

- Only the President can appoint justices to the SC. In this case, the designation of the CFI judges was made by Congress and therefore constitutionally repugnant.

- The designated judge, even if his action or participation is temporary, would be acting as a SC justice and his vote will be counted as that of a regular justice

One Supreme Court

The SC remains and functions as "one Supreme Court" even when it sits in divisions (**US v Limsiongco**). This doctrine is strengthened by the provision that "when the required number (in a division) is not obtained, the case shall be decided en banc: provided, that no

doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc. [Art. VIII, Sec. 4(3)]

(2) Appointment & qualifications

Art. VIII, Sec. 7.

- (1) Supreme Court justice must
- be natural born Filipino citizen
 - be at least 40 years old
 - have been for 15 years or more
 - = a judge of a lower court or
 - = engaged in the practice of law in the Philippines
- xxx

- (3) A member of the judiciary must be a person of proven
- competence,
 - integrity,
 - probity, and
 - independence

Sec. 8.

- (5) The Judicial and Bar Council
- shall have the principal function of recommending appointees to the judiciary
 - may exercise such other functions and duties as the Supreme Court may assign to it.

Sec. 9.

The members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.

xxx

(3) Salary

Art. VIII, Sec. 10.

The salary of the Chief Justice and of the Associate Justices of the Supreme Court and of judges of lower courts shall be fixed by law. During their continuance in office, their salary shall not be decreased.

Art. XVIII, Sec. 17.

- Unless the Congress provides otherwise, xxx;the annual salary of
- the Chief Justice shall receive an annual salary of P 240,000 and xxx;
 - the Associate Justices shall receive P 204,000 each; xxx.

Although the salaries may not be decreased, they may be increased by law, to take effect at once. Reasons:

- (1) the Constitution does not prohibit it;
- (2) the Judiciary plays no part in the passage of the law increasing their salary unlike the Congress and the Executive, and so there can be no conflict of interest; and
- (3) this will promote the independence of the Judiciary.

Is the imposition of income tax on the salary of the Justices and Judges a diminution of their salary as prohibited by the Constitution?

NO. In the **Nifatan v CIR** case, the SC, based on the deliberation of the Constitutional Commission which ultimately deleted the tax exemption original included in the draft **Art. VIII, Sec 10**, ruled that salaries of members of the judiciary are not exempt from taxes.

(4) Security of Tenure

Art. VIII, Sec. 11.

- Members of the judiciary shall hold office during good behavior until
 - =they reach the age of 70 or
 - =they become incapacitated to discharge the duties of their office.
- The SC en banc shall have the power
 - = to discipline judges of the lower courts Or

= order their dismissal by a vote of a majority of the Members who took part in the deliberations in the issues in the case and voted thereon.

Id., Sec. 2.

xxx No law shall be passed reorganizing the Judiciary when it undermines the security of tenure of its Members.

Reorganization

De la Llana vs. Alba

Sec. 144 of BP 129 replaced the existing court system, with the exception of the SC and the SB, with a new one and provided that upon the completion of the reorganization by the President, the courts affected "shall be deemed automatically abolished and the incumbents thereof shall cease to hold office." The validity of the Act was questioned on the grounds that it contravened the security of tenure of judges and that there was lack of good faith.

The abolition of an office is within the competence of a legislative body if done in good faith. In this case there was good faith in that the Act was the product of careful study and deliberation not only by the BP but also by a Presidential study committee (where CJ and justices were members). As that element is present in the enactment of BP 129, the lack of merit of the petition becomes apparent.

(5). Removal

Art. XI, Sec. 2.

- The xxx Members of the Supreme Court xxx may be removed from office, on impeachment for, and conviction of
- culpable violation of the Constitution,
 - treason,
 - bribery,
 - graft and corruption,
 - other high crimes, or
 - betrayal of public trust.

All other public officers and employees may be removed from office as provided by law, but not by impeachment.

Members of the SC cannot be removed except by impeachment.

Thus, a SC justice cannot be charged in a criminal case or a disbarment proceeding, because the ultimate effect of either is to remove him from office, and thus circumvent the provision on removal by impeachment thus violating his security of tenure (**In Re: First Indorsement from Hon. Raul M. Gonzalez, A.M. No. 88-4-5433**).

(6) Fiscal Autonomy

Art. VIII, Sec. 3.

The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released.

(7) Jurisdiction

Supreme Court

A) Original jurisdiction [Art. VIII, Sec. 5(1)]

- (1) Cases affecting ambassadors, other public ministers and consuls.
- (2) Petitions for certiorari, prohibition, mandamus, quo warranto and habeas corpus.
- (3) Sufficiency of factual basis of proclamation of martial law and suspension of privilege of writ of HC

Note: The SC does not have jurisdiction over declaratory relief cases, which must be filed with the RTC (In Re Bermudez said so too, and yet gave due course to the petition.)

The first case (ambassadors, etc.) is made concurrent with RTCs by law (Judiciary Act of 1948). The second case (special civil actions) is concurrent with the CA and the RTC, with respect to inferior bodies.

B) Appellate Jurisdiction [Art VIII, Sec 5 (2)]

The Supreme Court shall have the power to review, revise, reverse, modify, or affirm on (i) ordinary appeal, or (ii) petition for review on certiorari, as the law or the Rules of Court may provide, final judgment and orders of lower courts in the following cases:

- (1) Cases questioning the constitutionality or validity of any (a) treaty, (b) international and executive agreement, (c) law or statute, (d) presidential decree, (e) proclamation, (f) order, (g) instruction, (h) ordinance, or (i) regulation.
- (2) Cases questioning the legality of an (a) tax, (b) impost, (c) assessment, or (d) toll, or (e) any penalty imposed in relation thereto.
- (3) Cases in which the jurisdiction of lower courts is in issue.
- (4) Criminal cases in which the penalty imposed is reclusion perpetua or higher.
- (5) Cases in w/c only an error or question of law is involved.
- (6) Orders of the Constitutional Commissions.

Jurisdiction over criminal cases where penalty imposed is reclusion perpetua

Art. VIII, Sec. 5.

The Supreme Court shall have the following powers:

xxx

(2) Review, revise, reverse, modify, or affirm on appeal or certiorari as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

(d) All criminal cases in which the penalty imposed is reclusion perpetua or higher.

People v Daniel; People v Ramos

Both are rape cases where the trial court imposed lesser penalties because of misappreciation of the aggravating and qualifying circumstances and on appeal the penalty was increased.

Chief Justice Castro, for the majority, explained: Art. X, Sec. 5 (2) (d) [now Art. VIII, Sec. 5 (2) (d)] provides that the SC shall have appellate jurisdiction over "final judgements and decrees of inferior courts" in criminal cases in w/c the "penalty imposed is death or life imprisonment." Unless the CA renders judgment and imposes the penalty of death or reclusion perpetua, there would be no judgment for SC to review. Indeed, Section 34 of the Judiciary Act of 1948 and the present Rule 124, Sec. 13 provide that, whenever the CA should be of the opinion that the penalty of death or life imprisonment should be imposed, "the said court shall refrain from entering judgment thereon, and shall forthwith certify the case brought before it on appeal," which that it is not prohibited from rendering judgment. In other words, the CA is not prohibited from rendering judgment but from "entering judgment." The distinction between the two is well established.

The phrase "entering judgment" is not to be equated w/ an "entry of judgment" as the latter is understood in R36 in relation to Sec. 8, R 121 and Sec. 16, R 124, ROC. "Entry of judgment" presupposes a final judgment-- final in the sense that no appeal was taken from the decision of the trial court or appellate court w/in the reglamentary period. A judgment in a criminal case becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or the defendant has expressly waived in writing his right to appeal. It is only then that there is a judgment which is to be entered or recorded in the book of entries of judgments.

Rule 124, Sec. 13.

xxx Whenever the Court of Appeals should be of the opinion that the penalty of reclusion perpetua or higher should be imposed in a case, the Court after discussion of the evidence and the law involved, shall render judgment imposing the penalty of reclusion perpetua or higher as the circumstances warrant, refrain from entering judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review.

Jurisdiction over proclamation of Martial law or suspension of the writ of Habeas Corpus

Art. VII, Sec. 18.

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

Jurisdiction over Presidential and Vice Presidential election contests

Art. VII, Sec. 4.

xxx The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President, Vice-President, and may promulgate its rule for the purpose.

Jurisdiction over decision, order, or ruling of the Constitutional Commissions

Art. IX, A, Sec. 7.

Each Constitutional commission shall decide any case or matter brought before it

- by a majority vote of all its members and
- within 60 days from the date of its submission for decision or resolution.

A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. **Unless otherwise provided by this Constitution or by law, any decision, order or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of the copy thereof.**

(8) Congressional Power over Jurisdiction of the Supreme Court

Art. VIII, Sec. 2.

"The Congress shall have the power to define, prescribe and apportion the jurisdiction of various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof.

Xxx"

While the jurisdiction of lower courts is a matter of legislative apportionment, the Constitution sets certain limitations on this prerogative when it involves the SC:

- 1. It cannot decrease the constitutionally set jurisdiction of the Supreme Court. (It may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof.)
- 2. It cannot increase the constitutionally set appellate jurisdiction of the Supreme Court. **(Art. VI, Sec. 30).**

Thus, in the case of **Fabian vs. Desierto**, Sec. 27, RA 6770, which authorizes an appeal to the Supreme Court from decisions of the Ombudsman in administrative disciplinary cases, was declared unconstitutional because the provision was passed without the advice and consent of the Supreme Court.

- 3. It cannot pass a law reorganizing the judiciary when it undermines the security of tenure of its members. **(Art. VI, Sec. 2, par. 2)**

However, Congress can:

- increase the original jurisdiction of the SC (pursuant to its general power).
- It can make the jurisdiction of the SC concurrent with lower courts (pursuant to its general power).

Thus, under the Rules of Court, the original jurisdiction of the SC is concurrent with the RTC and in the case of the special civil actions, with the CA.

Mantruste Systems, Inc. vs CA

Section 31 of Proclamation No. 5-A (Privatization law) which prohibited courts and administrative agencies from issuing any restraining order or injunction against the Asset Privatization Trust in connection with the acquisition, sale or disposition of assets transferred to it, nor against any purchaser of assets sold by the Trust to prevent such purchaser from taking possession of any assets purchased by him, does not infringe any provision of the constitution as it does not impair the inherent power of the courts to settle actual controversies which are legally demandable and enforceable and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

Administrative powers

(9) Supervision of lower courts

Art. VIII, Sec. 6.

The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

Noblejas v Teehankee,

The Commissioner of Land Registration is given the rank of judge of the CFI but he is still an administrative official. Hence he is outside the jurisdiction of the SC and cannot be investigated by it as if he were a lower court judge. Otherwise, the SC would be performing a non-judicial work.

(10) Temporarily assign judges to other stations in the public interest

Art. VIII, Sec. 5.

The Supreme Court shall have the xxx power (to)

xxx

(3) Assign temporarily judges of lower courts to other stations as public interest may require. Such temporary assignment shall not exceed six months without the consent of the judge concerned.

(11) Order a change of venue or place of trial to avoid miscarriage of justice [Art. VIII, Sec. 5 (4)]

(12) Discipline of lower court judges

Art. VIII, Sec. 11.

xxx

The Supreme Court en banc shall have the power to discipline judges of lower courts, or order their dismissal, by a vote of a majority of the members who actually took part in the deliberations on the issues in the case and voted thereon.

(13) Appointment of officials and employees of entire judiciary

Art. VIII, Sec. 5.

The Supreme Court shall have the xxx power (to)

xxx

(6) Appoint all officials and employees of the Judiciary in accordance with the Civil Service Law.

(14) Rule making

Art. VIII, Sec. 5.

The Supreme Court shall

- Promulgate rules concerning (a) the protection and enforcement of constitutional rights, (b) pleading, practice and procedure in all courts, (c) the administration to the practice of law, (d) the Integrated Bar, and (e) legal assistance to the under-privileged.

= Such rules shall

- (i) provide simplified and inexpensive procedure, for the speedy disposition of cases
- (ii) be uniform for all courts of the same grade, and
- (iii) not diminish, increase or modify substantive rights.

In Re: request for a Creation of a Special Divison, A.M. No. 02-1-09-SC, it was held that it is within the competence of the Supreme Court to create a Special Division in the Sandiganbayan which will hear and decide the plunder case against former President Joseph Estrada.

Power of Congress to repeal Rules of Court -

Article XVIII, Sec. 10.

All courts existing at the time of the ratification of this Constitution shall continue to exercise their jurisdiction, until otherwise provided by law. The provisions of the existing Rules of Court, judiciary acts, and procedural laws not inconsistent with this Constitution shall remain operative unless amended or repealed by the Supreme Court or the Congress.

In Echegaray vs. Secretary of Justice, G.R. No. 132601, Justice Puno, in an obiter, declared that the 1987 Constitution took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice, and procedure. In fine, the power to promulgate such rules is no longer shared by this Court with Congress, more so with the Executive.

Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the SC. **[Art. VIII, Sec. 5(5)]**

It is on the basis of this power, that the Rules of Court, the Bar, IBP, Legal Aid Office were adopted.

Practice of Professions

Art. XII, Sec. 14.

xxx The practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law.

(15) No quasi-judicial and administrative work of judges

Generally: No non-judicial work for judges; No quasi-judicial and administrative work for judges.

As a general rule, members of the judiciary shall only have judicial functions, in line with the separation of powers principle of the Constitution. Thus:

Art. VIII, Sec. 12.

The members of the Supreme Court and of other courts established by law shall not be designated to any agency performing quasi-judicial or administrative function.

Meralco v Pasay Transportation Co

The issue concerns the legal right of the members of the SC, sitting as a board of arbitrators, the decision of a majority of whom shall be final, to act in that capacity. It was held that the SC and its members should not and cannot be required to exercise any power or to perform any trust or to assume any duty not pertaining to or connected w/ the administering of judicial functions.

Garcia v Macaraig

A judge in the CFI shall not be detailed with the Department of Justice to perform administrative functions as this contravenes the doctrine of separation of powers

In Re : Rodolfo Manzano

The Provincial/City Committees on Justice as created by EO 856 performs administrative functions. Hence the appointment of a judge as a member of the said committee violates the constitutional provision that member of the court shall not be designated to any agency performing quasi-judicial or administrative functions. He can only render assistance to such committee and only when such assistance may be reasonably incidental to the fulfillment of his judicial duties.

Exceptions: Constitutionally mandated non-judicial functions of the Supreme Court

- a. Act as Presidential Electoral Tribunal

While Congress acts as the National Board of Canvassers for the Presidential election, the Supreme Court acts as the Electoral Tribunal for such election as provided in **Art. VII, Sec. 4, last par.**

This means that before the proclamation by the Congress of the winner, Congress is the judge of any electoral issue, but the proclamation, when there is an electoral contest already, then the SC becomes the sole judge.

b. Chief Justice as presiding officer in impeachment trial of the President. [**Art. XI, Sec. 3(6)**]

c. Chief Justice as Chairman of the Judicial and Bar Council.

(16) Report on the judiciary

Art. VIII, Sec. 16.

The Supreme Court shall, within thirty days from the opening of each regular session of the Congress, submit to the President and the Congress an annual report on the operations and activities of the Judiciary.

(17) Manner of sitting and votes required

In the 1987 Constitution, not only was the discretion (to sit en banc or in 2 divisions) retained, but also the divisions were increased. There may be 5, 3 or 2 divisions made up of 3, 5 or 7 members, respectively. At present, the SC sits either en banc or in 3 divisions.

Art. VIII, Sec. 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 divisions of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof.

(2) Cases to be heard en banc are:

- those involving the constitutionality of :
 - = a treaty, international or executive agreement, or
 - = law,
- those involving the constitutionality, application, operation of:
 - = presidential decrees,
 - = proclamations,
 - = orders,
 - = instructions,
 - = ordinances, and other regulations,

- to be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

(3) In divisions - Cases or matters heard by a division shall be decided or resolved

(a) with the concurrence of a majority of the members who actually took part in the deliberations on the issues in the case and voted thereon, and

(b) in no case without the concurrence of at least 3 of such members. When the required number is not obtained, the case shall be decided en banc. No doctrine or principle of law laid by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc.

- In a division of 7 members, the majority if all are present is 4. If only 6 are present, 4. If only 5 or 4, 3. If only 3, no quorum.

- In a division of 5 members, 3 votes are needed regardless of whether 5, 4, or 3 are present.

- In division of 3 members, 3 votes are needed.

(c) In any of these cases, when the votes cannot be mustered, the case must be raised to the court en banc.

(d) Provided, that no doctrine or principle or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc.

The following additional cases shall be heard by the SC en banc:

1. All other cases which under the Rules of Court are required to be heard by the SC en banc. [Id., Sec. 4(2)]
2. Cases or matters heard by a division where the required number of votes to decide or resolve (the majority of those who took part in the deliberations on the issues in the case and voted thereon and in no case less than 3 members) is not met. [Id., Sec. 4(3)]
3. To modify or reverse a doctrine or principle of law laid down by the court in a decision rendered en banc or in division. [Id., Sec. 4(3)]
4. Administrative disciplinary cases involving judges of lower courts. (Id., Sec. 11.)
5. Actions instituted by citizen to test the validity of a proclamation of martial law or suspension of the privilege of the writ. (Art. VII, Sec. 18.)
6. The court sitting as Presidential Electoral Tribunal. (Art. VII, Sec. 4, par. 7.)

Rule 56 Sec. 11. Procedure if opinion is equally divided:

- a re-hearing shall be done if opinion is equally divided or the necessary majority cannot be had
- if after rehearing the opinion is still equally divided, then:
 - the action shall be dismissed if originally commenced in the court
 - in appealed cases, the judgment or order appealed from shall stand affirmed except where the lower court declared a law, etc. unconstitutional, the judgment is reversed, and the validity of the law is deemed sustained, pursuant to the presumption of constitutionality under Sec. 9 of the Judiciary Act of 1948. (If the lower court declared the law as not unconstitutional, this judgment is deemed affirmed pursuant to the general rule above.)
- (Thus, if 12 are present, 5 voted the law unconstitutional, 4 voted for its validity, and 3 abstained, there is no decision and so the law remains valid.); and
- on all incidental matters, the petition or motion shall be denied.

Rule 125, Sec. 3. Decision if opinion is equally divided in criminal cases:

- a re-hearing shall be done if opinion is equally divided or the necessary majority cannot be had
- if after rehearing the opinion is still equally divided, then:
 - the judgment of conviction of the lower court shall be reversed and the accused acquitted

(18) Requirement as to decisions

Deliberations

Art. VIII, Sec. 13.

- Conclusion shall be reached in consultation before assigned to ponente
- CJ shall issue certification to this effect with copy attached to court records and served upon all parties
- Justices who did not participate, dissented or obtained must state his reason therefor
- Above is requirement for all lower collegiate courts

The reason for the requirement that the decision must be reached "in consulta" (i.e., after deliberations by the group):

- to emphasize that the SC is one body, albeit collegiate, so that the decision of the case is by the court itself and not the ponente. The writer of the opinion is merely the spokesman of the body.

Consing V CA

- Absence of certification by the Court of Appeals does not render that decision invalid.
- It only serves as evidence of failure to observe requirement but it would not have the effect of invalidating the decision

Art. VIII, Sec. 14.

- Decision rendered must clearly and distinctly express the facts and the law in which it is based
- petition for review or motion for reconsideration shall not be refused due course or denied without stating the legal basis therefor.

In the case of the SC and lower collegiate court, this rule is addressed to the one to whom the writing of the opinion was

assigned after consultation, that is, the ponente. In the case by other courts, this rule is addressed to the judge.

Decisions on the merit.

The rule requiring statement of the relevant facts, the issues, the ruling, and the reasoned opinion in support of the ruling, applies only to decisions on the merit by a court of record, based on the following rulings of the SC:

Valladolid v Inciong

- lack of the statement of facts and conclusion in this case is not covered by the constitutional requirement for decisions of a court of record as this is an administrative case.
- the Ministry of Labor being an administrative agency with quasi-judicial functions, with rules of procedure mandated to be non-litigious, summary and non-technical.

Section 14, Chapter 3, Book VII, Administrative Code of 1987.

Decision.-- Every decision rendered by the agency in a contested case shall be in writing and shall state clearly and distinctly the facts and the law on which it is based. xxx

Bacolod Murcia Milling Co. v Henares,

The SC ruled that orders of a court on an incidental matter (in this case, the order imposing the payment of attorney's fees) need not state the legal basis of the ruling.

Minute Resolutions

Cruz: Minute resolutions denying due course or dismissing a petition always gives the legal basis and are used:

- where a case is patently without merit
- where the issues raised are factual in nature,
- where the decision appealed from is supported by substantial evidence and is in accord w/ the facts of the case and the applicable laws,
- where it is clear from the records that the petitions were filed merely to forestall the early execution of judgment and for non-compliance w/ the rules. .

x x x x

The Court is not duty bound to render signed decisions all the time. It has ample discretion to formulate decisions and/ or minute resolutions, provided a legal basis is given, depending on its evaluation of a case."

Prudential Bank v. Castro

- an administrative case disposed of by the SC via a minute resolution
- in an administrative case, the constitutional mandate that 'no *** motion for reconsideration of a decision of the court shall be *** denied without stating the legal basis therefor is inapplicable.
- And even if it were, said resolution stated the legal basis for the denial, and, therefore, adhered faithfully to the constitutional requirement. 'Lack of merit,' as a ground for denial is legal basis.

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied, without stating the legal basis therefor. (Art. VIII, Sec. 14, par. 2.)

The past practice used to be that when the appellate court denied a petition for review, or denied a MFR, it simply did so in a Minute Resolution, stating that the case was dismissed for lack of basis. This aggrieved many a lawyer, specially those who would spend days preparing pages of briefs, only to find out that all their effort was answered by a one-liner "Dismissed for lack of basis".

This prompted the framers of the 1987 Constitution to force the Court to at least write down the legal basis for the denial. This means that while a fully detailed decision is not required, neither is a skimpy one-liner allowed. The legal reason for the dismissal must be written.

This rule applies to a dismissal of a motion for reconsideration of a "decision on the merits", said the SC in **Mendoza v CFI**. It does not apply, as in this case, to a dismissal of a motion for reconsideration of a previous dismissal of a petition for habeas corpus. (The dismissal of the petition for habeas corpus is not a decision on the

merits, but is similar to a dismissal of a petition for review, which is a decision not to give due course to the petition.)

Dissenters and Abstainers

In the case of a decision on the merits, a member must state his reason if

- (a) took no part, or
- (b) dissented, or
- (c) abstained

from a decision or resolution. (Art. VIII, Sec. 13.)

Even those who took no part in the deliberations but were present and those who abstained are required to write their reasons for these are really forms of casting their vote. Those who inhibited themselves are, of course, not required to vote, since they did not really participate.

Procedurally, the purpose is to enable the party to find out the reason for the action taken. For courts lower than the SC, and even the SC itself, this is important for appeal or motion for reconsideration purposes, as the basis for the assignment of error.

(19) Mandatory period for deciding cases

Art. VIII, Sec. 15.

- (1) All cases or matters filed after the effectivity of this constitution must be decided or resolved within
 - twenty-four months from the date of submission for the Supreme Court,
 - twelve months for all lower collegiate courts unless reduced by the Supreme Court, and
 - three months for all other lower courts, unless reduced by the Supreme Court.

- (2) A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief or memorandum required by the Rules of Court or by the court itself.

- (3) Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice or the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, and served upon the parties. The certification shall state why a decision or resolution has not been rendered or issued within said period.

- (4) Despite the expiration of the applicable mandatory period, the court, without prejudice to such responsibility as may have been incurred in consequence thereof, shall decide or resolve the case or matter submitted thereto for determination, without further delay.

Art. VII, Sec. 18.

xxx - As an exception to the mandatory decision period, Martial law or suspension of habeas corpus cases, decision must be promulgated within 30 days from filing.
xxx (par. 3 thereof.)

Art. XVIII, Sec. 12.

Constitutional mandate for the SC to adopt a specific plan to expedite resolution or decision of cases filed in all Courts and quasi-judicial bodies prior to effectivity of the constitution

Id., Sec. 13.

The legal effect of the lapse, before the ratification of this Constitution, of the applicable period for the decision or resolution of the cases or matters submitted for adjudication by the courts, shall be determined by the Supreme Court as soon as practicable.

Id., Sec. 14.

The provisions of paragraphs (3) and (4), Section 15 of Article VIII of this Constitution shall apply to cases or matters filed before the ratification of this Constitution, when the applicable period lapses after such ratification.

But what happens if the judge or court fails to meet the deadline anyway? The Constitution provides:

- the CJ or the Presiding Judge shall issue a certification as to why a decision or resolution has not been rendered or issued within the

prescribed period and a copy is attached to the record with copy given to all parties. [Art. VIII, Sec. 15 (3)]

- Despite the expiration of the applicable mandatory period, the court, without prejudice to such responsibility (administrative disciplinary action against the judge or justices) shall decide or resolve the case or matter submitted thereto for determination without further delay. [Art. VIII, Sec. 15(4)]

=The consequences are on the judge: (a) he could not draw out his salary, since he would not be able to certify that he has resolved all cases submitted to him in 90 days and (b) he is subject to administrative sanctions.

- Failure to decide the case [for reasons other than the inability to reach the necessary majority] has no consequence on the case.

B. LOWER COURTS

(1) Qualifications and appointment

Art. VIII, Sec. 7.

xxx
(2) the Congress shall prescribe the qualifications of judges of lower courts, but no person may be appointed judge thereof unless he is a citizen of the Philippines and a member of the Philippine Bar.

Id., Sec. 8.

(5) The (Judicial and Bar) Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

Id., Sec. 9.

The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at list three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.

For the lower courts, the President shall issue the appointment within ninety days from the submission of the list.

Composition

The composition of lower courts shall be provided by law. The laws are the Judiciary Act of 1948 and BP 129.

Qualifications

Lower Collegiate Court (Court of Appeals)

(1) Must be natural born Filipino [Art. VIII, Sec. 7(1)] and a member of Philippine Bar.

(2) The Congress shall prescribe qualifications of judges of lower courts. [Art. VIII, Sec. 7(2)]

(3) A member of the judiciary must be a person of proven competence, integrity, probity, and independence. [Art. VIII, Sec. 7(3)]

Lower Courts

(1) The Congress shall prescribe qualifications of judges of lower courts, but no person may be appointed judge thereof unless he is a citizen of the Philippines and a member of the Philippine bar. [Art. VIII, Sec. 7(2)]

(2) He must be a person of proven competence, integrity, probity and independence. [Art. VIII, Sec. 7(3)]

(2) Salary

Art. VIII, Sec. 10.

The salary of the Chief Justice and of the Associate Justices of the Supreme Court and of judges of lower courts shall be fixed by law. During their continuance in office, their salary shall not be decreased.

(3) Congressional power to reorganize and security of tenure

Art. VIII, Sec. 11.

The members of the Supreme Court and judges of lower courts shall hold office during good behavior until they reach the age of seventy years, or become incapacitated to discharge the duties of their office. The Supreme Court en banc shall have the power to discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

Id., Sec. 2.

xxx No law shall be passed reorganizing the Judiciary when it undermines the security of tenure of its Members.

The power of Congress to reorganize lower courts has been upheld by the SC prior to 1987.

Ocampo v Secretary of Justice,

- The abolition of an office ((judges-at-large and cadastral judges) made in good faith does not violate the security of tenure.
- Security of tenure presupposes the continued existence of the office from which one was removed.
- Validity of the law sustained after the SC failed to muster the majority required

(4) Removal

Art. VIII, Sec. 11.

- judges of the lower courts shall hold office during good behavior until
 - they reach the age of seventy or
 - they become incapacitated to discharge the duties of their office
- the SC en banc shall have the power to discipline or dismiss judges of the lower court by a majority of the members who actually took part in the deliberations on the issues in the case and voted thereon.

Cruz: "Judges of lower court," as here used, includes justices of the Sandiganbayan. This rule casts much doubt on the legality of the presidential decree making them removable only by the legislature through the process of impeachment.

(5) Jurisdiction

Art. VIII, Sec. 1.

Judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to:

- a. settle actual controversies involving rights which are legally demandable and enforceable, and
- b. 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.

J.M. Tuason & Co. v CA; Ynot v IAC,

There is in effect a "constitutional conferment of original jurisdiction on the lower courts in those five cases for which the Supreme Court is granted appellate jurisdiction in 5(2)."

Under the provision granting the SC jurisdiction "to review, revise, reverse, modify or affirm on appeal or certiorari as the law or Rules of Court may provide, judgments of lower courts," lower courts can pass upon the validity of a statute in the first instance.

(6) Requirements as to preparation of decisions

Art. VIII, Sec. 14.

No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

Manner of sitting

- CA sits en banc only to take up administrative matters

- CA sits in divisions when it hears cases; the only time it convenes as one body is to take up matters of administration.

- The trial and inferior courts, of course, do not have this problem since there is only one judge.

Deliberations

- CA and othe collegial courts observe the same requirements (for consulta) as the SC in reaching decision (Art. VIII, Sec 13)The same requirements (for consulta) shall be observed by all lower collegiate courts. (Art. VIII, Sec. 13).

- For obvious reasons, this requirement does not apply to the trial and inferior courts.

Voting

- For collegiate courts, like the Court of Appeals, the law provides that it sits only in divisions when deciding cases.

- For trial and inferior courts, no problem arises since only one judge is involved.

Effect of failure to muster the necessary majority

Court of Appeals.- The same rules apply, except that the decision can now be appealed to the SC.

Inferior Courts.- Failure to decide has no consequence on the decision of the court. The Court is not ousted of its jurisdiction, but the judge suffers administrative consequences.

(7) Mandatory period for deciding

Art. VIII, Sec. 15.

(1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved unless reduced by the Supreme Court,

- twelve months for all lower collegiate courts, and
- three months for all other lower courts.

(2) A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief or memorandum required by the Rules of Court or by the court itself.

(3) Presiding Judge shall issue a certification on why the decision or resolution has not been redendred or issued within the prescribed period

- copy of the certification attached to the record
- copy shall be served on all parties

(4) Decision must be submitted without further delay and the responsible judge may be subject to disciplinary action

Mandatory Period

- Lower collegiate courts: 12 months, unless reduced by the SC
- Other lower courts: 3 months, unless reduced by the SC

The Constitution now explicitly provides in Sec. 15 (1) that the periods are mandatory, aside from using the word "must" (not "shall" as in 1973) in Sec. 15 (1). The case of **Marcelino v Cruz**, which held that the periods in the 1973 Constitution were only directory, is thus now, overruled.

Cruz:

- The maximum period is now mandatory.
- Failure to comply with the same will not divest the court of jurisdiction without prejudice to any responsibility that may attach to the judge.
- The court must still resolve the case w/o further delay, unlike the old rule when the decision appealed was deemed automatically affirmed and the petition was deemed automatically dismissed as a result of the inaction of the court.

C. JUDICIAL AND BAR COUNCIL

Art. VIII, Sec. 8.

(1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the:

Ex-officio members

- (1) Chief Justice as ex-officio Chairman

- (2) Secretary of Justice
- (3) Representative of Congress

Regular members

- (4) Rep of the Integrated Bar
- (5) Professor of Law
- (6) Retired member of the SC
- (7) Representative of private sector

Secretary ex-officio [Art. VIII, Sec. 8(3)]

(2) The regular members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year.

(3) The Clerk of the Supreme Court shall be the Secretary ex officio of the Council and shall keep a record of its proceedings.

(4) The regular Members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council.

(5) The Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other function and duties as the Supreme Court may assign to it.

Appointment, Tenure, Salary

- Ex-officio members - For obvious reasons this does not apply since the position in the Council is good only while the person is the occupant of the office.

- Regular members [Art. VIII, Sec. 8(2)] - The regular members shall be appointed by the President with the consent of the Commission on Appointments.

The term of the regular members is 4 years. But the term of those initially appointed shall be staggered in the following way so as to create continuity in the council:

- IBP representative - 4 years
- Law professor - 3 years
- Retired justice - 2 years
- Private sector - 1 year

Regular members shall receive such emoluments as may be determined by the SC. The SC shall provide in its annual budget the appropriations for the Council. [Art. VIII, Sec. 8(4)]

Functions

1. Recommend appointees to the Judiciary [Art. VIII, Sec. 8(5)]

2. Recommend appointees to the Office of the Ombudsman and his 5 deputies. (Art. XI, Sec. 9)

3. Such other functions and duties as the SC may assign [Art. VIII, Sec. 8(5)]

Id., Sec. 9.

The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.

For the lower courts, the President shall issue the appointments within ninety days from the submission of the list.

D. AUTOMATIC RELEASE OF APPROPRIATION FOR THE JUDICIARY

Art. VIII, Sec. 3.

The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released.

THE CONSTITUTIONAL COMMISSIONS
Independent Constitutional Commissions

Art. IX, A, Sec. 1.

The Constitutional Commissions, which shall be independent, are the Civil Service Commission (CSC), the Commission on Elections and (COMELEC), and the Commission on Audit (COA).

I. CIVIL SERVICE COMMISSION

A. CIVIL SERVICE COMMISSION

(1) Composition and qualifications of Commissioners

Art. IX, B, Sec. 1.

“(1) The civil service shall be administered by the Civil Service Commission composed of a Chairman and two Commissioners who shall be - natural-born citizens of the Philippines and, at the time of their appointment,

- at least thirty-five years of age,
- with proven capacity for public administration, and
- must not have been candidates for any elective position in the elections immediately preceding their appointment.”

Art. VII, sec. 13.

“xxx 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.”

(2) Appointment and term of Office of Commissioners

Art. IX, B, Sec. 1.

“xxx (2) The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, the Chairman shall hold office for seven years, a Commissioner for five years, and another Commissioner for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity.”

Transitional terms

Of the first appointment, the Chairman shall serve for 7 years, without reappointment. Of the Commissioners, the following periods apply: 1 Commissioner for 5 years; another for 3 years without reappointment

(3) Appointment of CSC personnel

Art. IX, A, Sec. 4.

“The Constitutional Commissions shall appoint their officials and employees in accordance with law.”

(4) Salary

Art. XVIII, Sec. 17.

“Until the Congress provides otherwise xxx the Chairmen of the Constitutional Commissions (shall receive an annual salary of) two hundred four thousand pesos each; and the Members of the Constitutional Commissions, one hundred eighty thousand pesos each.”

Art. IX, A, Sec. 3.

“The salary of the Chairman and the Commissioners shall be fixed by law and shall not be decreased during their tenure.”

The salary, of course, can be increased and the increase can take effect at once, since, like the Judiciary, the Constitutional Commissions have not part in the passage of such a law.

(5) Disqualifications

Art. IX, A, Sec. 2.

No members of a Constitutional Commission shall during his "tenure" :

a. Hold any other office or employment. - This is similar to the prohibition against executive officers. It applies to both public and private offices and employment.

b. Engage in the practice of any profession.

c. Engage in the active management or control of any business which in any way may be affected by the functions of his office.

d. Be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by, the Government, its subdivisions, agencies or instrumentalities, including GOCCs or their subsidiaries.

(6) Impeachment

Art. XI, Sec. 2.

“xxx [T]he members of the Constitutional Commissions xxx may be removed from office, on impeachment for, and conviction of,

- culpable violation of the Constitution,
- treason,
- bribery,
- graft and corruption,
- other high crimes, or
- betrayal of public trust. xxx”

(7) Functions of the CSC

Art. IX, B, Sec. 3.

“The Civil Service Commission, as the central personnel agency of the Government, shall

- establish a career service
- adopt measures to promote
 - = morale
 - = efficiency
 - = integrity
 - = responsiveness
 - = progressiveness
 - = courtesy
- strengthen the merit and reward system
- integrate all human resources development programs for all levels and ranks
- institutionalize a management climate conducive to public accountability
- submit to the President and Congress an annual report on its personnel program

Art. IX, A, Sec. 7.

“Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.”

Id., Section 8.

“Each Commission shall perform such other functions as may be provided by law.”

(8) Scope of the Civil Service

Art. IX, B, Sec. 2

“(1) The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.”

Art. XII, Sec. 16.

“xxx. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.”

National Service Corp. v. NLRC

In the matter of coverage by the civil service of GOCC, the 1987 Consti starkly differs from the 1973 constitution. It provides that the "civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government owned or controlled corporation with original charter." Therefore by clear implication, the civil service does not include GOCC which are organized as subsidiaries of GOCC under the general corporation law.

Trade Unions of the Philippines and Allied Services (TUPAS) VS. NHA

There is no impediment to the holding of a certification election among the workers of NHC for it is clear that they are covered by the Labor Code, the NHC being a GOCC without an original charter

a. Terms, conditions of employment in the Civil Service

(a) Oath of allegiance to the Constitution**Art. IX, B, Sec. 4.**

"All public officers and employees shall take an oath or affirmation to uphold and defend the Constitution."

Art. XI, Sec. 18.

"Public officers and employees owe the State and this Constitution allegiance at all times, and any public officer or employee who seeks to change his citizenship or acquire the status of an immigrant of another country during his tenure shall be dealt with by law."

(b) Merit System

(a) Appointment of lame ducks

Art. IX, B, Sec. 6.

"No candidate who has lost in any election shall, within one year after such election, be appointed to any office in the Government, or any government-owned or controlled corporations or in any of their subsidiaries."

(b) Ban on holding multiple positions

Art. IX, B, Sec. 7.

"No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.

Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries."

Art. VII, Sec. 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,
 - 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, Under-secretaries, chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries."

Art. VI, Sec. 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."

Art. VIII, Sec. 8.

"(1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice, as ex officio Chairman, the Secretary of Justice and a representative of the Congress as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

xxx

(3) The Clerk of the Supreme Court shall be the Secretary ex officio of the Council and shall keep a record of its proceedings."

Id., Sec. 12.

"The Members of the Supreme Court and of other courts established by law shall not be designated to any agency performing quasi-judicial or administrative functions."

Flores v. Drilon

- The congressional act of mandating the President to appoint the mayor of Olongapo City as chairman of SMBA is unconstitutional on two counts
- it is in conflict with the constitutional prohibition regarding the ineligibility of elective officials for appointment or designation in any capacity to any public office or position (Sec. 7, 1st par of Art IX-B).
- it is an encroachment on the President's prerogative by limiting the choice to only the Mayor of Olongapo

(c) Standardization of pay and ban double compensation**Standardization of pay****Art. IX, B, Sec. 5.**

"The Congress shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations with original charters, taking into account the nature of the responsibilities pertaining to, and the qualifications required for their positions."

Who: Congress

What: Provide for the standardization of compensation of

- government officials and employees
- including those in GOCCs with original charters

How: consider the (1) nature of the responsibilities pertaining to, and the (2) qualifications required for the positions

Ban on double compensation**Art. IX, B, Sec. 8.**

"No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.

Pensions or gratuities shall not be considered as additional, double, or indirect compensation."**Sec. 56.**

Additional or Double Compensation.-- No elective or appointive public officer or employee shall receive additional or double compensation unless specifically authorized by law nor accept without the consent of the President, any present, emolument, office, or title of any kind from any foreign state.

Pensions or gratuities shall not be considered as additional, double or indirect compensation. (Book V, Title I,

Who: Elective or appointive public officer or employee

Prohibited acts under the Constitution:

- (1) receiving additional, double, or *indirect* compensation
- EXCEPT: when specifically authorized by law

(2) accepting any present, emolument, office, or title of any kind from any foreign government

- EXCEPT: with the consent of **Congress**

Prohibited acts under the Admin Code:

(1) receiving additional or double compensation

- EXCEPT: when specifically authorized by law

(2) accepting any present, emolument, office, or title of any kind from any foreign state

- EXCEPT: with the consent of the **President**

Allowed under both: receiving pensions or gratuities

(d) Ban on partisan political activities

Art. IX, B, Sec. 2.

Who: Officer or employee in the civil service

Prohibited act: engaging, directly or indirectly, in any electioneering or partisan political campaign.

Compare with

Art. XVI, Sec. 5.

Gen Rule: The armed forces shall be insulated from partisan politics.

Who: Members of the military

Prohibited: engaging directly or indirectly in any partisan political activity except to vote.

Cailles v. Bonifacio

- The Constitution prohibits members of the AFP from engaging in any partisan political activity or otherwise taking part in any election except to vote, but it does not ex vi termini grant or confer upon them the right of suffrage.

- Section 431 of the Election Law, as amended disqualifies from voting only members in the ACTIVE service of the Philippine Army.

- Rationale for limitation to active members: it would lead to widespread disqualification of the majority of the able bodied men who are part of the reserve corps of the armed forces from voting and from being voted upon.

- Rationale for the disqualification: Members of the AFP are servants of the State and not the agents of any political group.

Santos v. Yatco

- The position of department secretaries is NOT embraced and included within the terms officers and employees in the Civil Service.

- The question of impropriety as distinct from illegality of the secretary's act of campaigning a candidate is not justiciable by the court.

(f) Removal or suspension only for cause

Art. IX, B, 2.

No officer or employee of the civil service shall be removed or suspended except for cause provided by law.

De los Santos v. Mallare

- Sec. 2545 of the Rev. Admin. Code which provides that the Pres. may remove at pleasure any appointive officer was declared unconstitutional for being contrary to Art. IX, B, 2 of the Constitution.

- Meaning of "for cause" in connection with removals of public officers

(1) sufficient warrant for removal, that is, legal cause, and not merely causes which the appointing power in the exercise of discretion may deem sufficient

(2) must relate to and affect the administration of the office

(3) must be restricted to something of a substantial nature directly affecting the rights and interests of the public.

- 3 classes of positions excluded from the merit system; dismissal at pleasure of officers and employees appointed therein is allowed:

(1) Primarily confidential - denotes not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which insures freedom of intercourse without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state.

(2) Policy-determining - appointee must formulate a method of action for the government or any of its subdivisions.

(3) Highly technical - appointee must possess a technical skill or training in the supreme or superior degree.

Corpus v. Cuaderno

- The exemption of the 3 positions adverted to earlier from the rule requiring APPOINTMENTS to be made on the basis of merit and fitness DOES NOT EXEMPT such positions from the operation of the rule that no officer in the Civil Service shall be removed except for cause as provided for by law. This rule is absolute.

- On De los Santos v Mallare: The exemption here is a mere obiter. If detached from the context of the decision of which it forms part, it would be inconsistent with the constitutional command that "no officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law" and it is conceded that one holding in the Government a primarily confidential position is "in the Civil Service."

- While the tenure of officials holding primarily confidential positions ends upon loss of confidence, the tenure of officials holding highly technical posts does not end upon mere loss of confidence. The Constitution clearly distinguished the primarily confidential from the highly technical.

- Meaning of "term merely expires"; Distinguished from "removal" and "dismissal." When an incumbent of a primarily confidential position holds office at the pleasure of the appointing power, and that pleasure turns into displeasure, the incumbent is not "removed" or "dismissed" from office-- his term merely "expires," in much the same way as an officer, whose right thereto ceases upon expiration of the fixed term for which he had been appointed or elected, is not and can not be deemed "removed" or "dismissed" therefrom, upon the expiration of said term.

- The main difference between a primarily confidential officer and a highly technical officer is that the latter's term is fixed or definite, whereas that of the former is not pre-fixed, but indefinite, at the time of his appointment or election, and becomes fixed and determined when the appointing power expresses its decision to put an end to the services of the incumbent.

(g) Right of Self-Organization

Art. III, Sec. 8.

Who has the right to self-organization?

People, including those employed in the public and private sectors

Scope of right: form unions, associations, or societies for purposes not contrary to law

Government Employees

General Statement: The right to self-organization shall not be denied to government employees. (Art. IX, B, Sec. 2. 1987 Consti)

Sec. 38, Book V, Title I, Subtitle A, Chapter 6, Administrative Code of 1987.

Who: All government employees, including those in GOCCs with original charters

Exception: (1) members of the AFP, (2) police officers and policemen, (3) firemen, (4) jail guards.

Scope of right: (1) form, join or assist employees' organizations of their own choosing for the furtherance and protection of their interests

(2) form, in conjunction with appropriate government authorities, labor-management committees, work councils and other forms of workers' participation schemes to achieve the same objectives

Alliance of Government Workers v Minister of Labor

- Gen. Rule: Employees of GOCCs or state colleges and universities may enjoy freedom of association.

Exception: They may not join associations which impose the obligation to engage in concerted activities in order to get salaries, fringe benefits, and other emoluments higher than or different from those provided by law and regulation.

TUPAS v NHA

- The right to unionize is now explicitly recognized and granted to both employees in both governmental and the private sectors. There is no impediment to the holding of a certificate of election among the workers of NHC for it is clear that they are covered by the Labor Code, for NHC is a GOCC without an original charter. Statutory implementation of the Consti (par 5 sec 2 art IX-B) is found in Art 244 of the Labor Code.

(h) Right to strike**SSS Employees Association v CA**

- Gen. Rule: Employees in the Civil Service may not resort to strikes, walkouts and other temporary work stoppages.

- Reason: The terms and conditions of employment in the Govt, including any political subdivision or instrumentality thereof and GOCCs with original charters, are governed by law and employees therein shall not strike for the purpose of securing changes thereof.

- Statutory Basis: Sec. 4, Rule III of the Rules and Regulations to Govern the Exercise of the Right of Govt. EEs to Self-Organization

- EO 180: allows negotiation where the terms and conditions of employment involved are not among those fixed by law. Government employees may, through their unions or associations, either (1) petition the Congress for the betterment of the terms and conditions of employment which are within the ambit of legislation or (2) negotiate with the appropriate government agencies for the improvement of those which are not fixed by law. If there be any unresolved grievances, the dispute may be referred to the Public Sector Labor-Management Council for appropriate action.

- On Injunction: The RTC can enjoin the union from striking. EO 180 vests the Public Sector Labor-Management Council with jurisdiction over unresolved labor disputes involving government employees. Clearly, the NLRC has no jurisdiction over the dispute. The RTC was not precluded, in the exercise of its general jurisdiction under BP 129, as amended, from assuming jurisdiction over the SSS's complaint for damages and issuing the injunctive writ prayed for therein. Unlike the NLRC, the PSLM Council has not been granted by law authority to issue writs of injunction in labor disputes within its jurisdiction. Thus, since it is the Council and the NLRC that has jurisdiction over the instant labor dispute, resort to general courts of law for the issuance of a writ of injunction to enjoin the strike is appropriate.

(9) Review of CSC decisions**Art. IX, A, Sec. 7.**

- CSC decision: (1) decided by a majority vote of all its Members, (2) within 60 days from the date of its submission for decision or resolution, that is upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself

- Review: by the Supreme Court on certiorari brought by the aggrieved party within 30 days from receipt of a copy the decision, order or ruling

- Exception: unless otherwise provided by the Constitution or by law

(10) Fiscal Autonomy**Art. IX, A, Sec. 5.**

The Commissions shall enjoy fiscal autonomy. Their approved annual appropriations shall be automatically and regularly released.

CSC vs. DBM

- The "no report, no release" policy may not be validly enforced against offices vested with fiscal autonomy without violating Sec. 5, Art. IX-A. The "automatic release" of approved annual appropriations to a constitutional commission vested with fiscal autonomy, should be construed to mean that no condition to fund releases to it may be imposed.

Approval of appointments by the CSC**Barrozo v. CSC**

- The CSC has no power of appointment except over its own personnel. Neither does it have the authority to review the appointments made by other officers except only to ascertain if the appointee possesses the required qualifications. The determination of who among aspirants with the minimum statutory qualifications

should be preferred belongs to the appointing authority and not the CSC.

II. COMMISSION ON ELECTIONS**1. Composition and Qualifications of Commissioners**

Composition:

1. 1 Chairman
2. 6 Commissioners

Qualifications – Art. IX-C, §1

1. Natural-born citizens
2. At least 35 years old at the time of appointment
3. Holders of college degrees
4. Not candidates for any elective position in the immediately preceding elections
5. Majority of the Commission, including the Chairman must be:
 - a. Members of the Philippines Bar
 - b. Engaged in the practice of law for at least 10 years

Practice of law - any activity in or out of court, which requires the application of law, legal procedure, knowledge, training and experience (Cayetano v. Monsod)

Cayetano v. Monsod

The practice of law is not limited to the conduct of cases or litigation in court. It embraces:

- (1) preparation of pleadings and other papers incident to actions and special proceedings
- (2) management of such actions and proceedings on behalf of clients
- (3) other works where the work done involves the determination of the trained legal mind of the legal effect of facts and conditions.

2. Appointment and term of office of Commissioners. Rule against reappointment

Term: 7 years without reappointment

1. Appointed by the President with consent of the CA
2. Appointment to any vacancy shall only be for unexpired term of predecessor.
3. In no case shall any member be appointed or designated in a temporary or acting capacity.
4. The choice of temporary chairman falls under the COMELEC's discretion.

Nacionalista Party v. Angelo Bautista

- The designation of the SolGen as acting member of the Comelec was not valid. By the nature of the Comelec's functions, the Comelec must be independent. Members are not allowed to perform other functions, powers and duties to preserve its impartiality.

- When there is a vacancy, appointment is preferred to designation.

Brillantes v. Yorac

- Doctrine: The President may not appoint the Acting Chairman of the Comelec in the absence of the Regular Chairman.

- Reasoning: Art. IX-A, Section 1, of the Constitution expressly describes all the Constitutional Commissions as "independent". Although essentially executive in nature, they are not under the control of the President in the discharge of their respective functions. Each of these Commissions conducts its own proceedings under the applicable laws and its own rules and in the exercise of its own discretion. Its decisions, orders and rulings are subject only to review on certiorari by the SC as provided in Art. IX-A, Sec. 7. The choice of a temporary chairman in the absence of the regular chairman comes under that discretion. That discretion cannot be exercised for it, even with its consent, by the President.

Nacionalista Party v. Vera

- The prohibition in Art. X, Sec. 1 of the 1935 Constitution which provides that the members of the COMELEC shall hold office for 9 years without reappointment, comes as a continuation of the

requirement that the Commission shall hold office for a term of 9 years. Reappointment is not prohibited provided his term will not exceed 9 years in all.

3. Appointment of personnel

ART IX A, Section 4

The Constitutional Commissions shall appoint their officials and employees in accordance with law.

4. Salary

Art. IX, A, Sec. 3.

The salary of the Chairman and the Commissioners shall (1) be fixed by law and shall (2) not be decreased during their tenure.

Art. XVIII, Sec. 17.

- Amount of Salaries:

(1) Chairmen of the Constitutional Commissions = Php 204,000 each
(2) Members thereof = Php 180,000 each.

- Except: when Congress provides otherwise

- The salary can be increased and the increase can take effect at once, since, like the Judiciary, the Constitutional Commissions have no part in the passage of such a law.

5. Disqualifications

No members of a Constitutional Commission shall during his "tenure" : (IX, V, 2)

a. Hold any other office or employment.

- similar to the prohibition against executive officers
- applies to both public and private offices and employment

b. Engage in the practice of any profession.

c. Engage in the active management or control of any business which in any way may be affected by the functions of his office.

d. Be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by, the Govt, its subdivisions, agencies or instrumentalities, including GOCCs or their subsidiaries.

6. Impeachment

Art. XI, Sec. 2.

The members of the Constitutional Commissions may be removed from office

(1) on impeachment for, AND

(2) conviction of,

- a. culpable violation of the Constitution
- b. treason
- c. bribery
- d. graft and corruption
- e. other high crimes, or betrayal of public trust.

7. Powers and Functions of the COMELEC

a. Enforce election laws

Recommend to the Congress effective measures to:

(i) minimize election spending, including limitation of places where propaganda materials shall be posted

(ii) prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidacies.

Sanchez v. Comelec

- The Comelec, as the sole judge of all contests relating to the elections, returns and qualifications of all members of the Batasang Pambansa, elective provincial and city officials, has the following powers:

(1) power to nullify the elections where the will of the voters has been defeated and the purity of elections sullied

(2) power to call special elections - The Comelec has the duty to take necessary steps to complete the elections, that is, to see to it that the real winners are proclaimed. But when the winners cannot be determined from the elections, which was marred by massive

and pervasive terrorism, the Comelec must call for a special election in order to proclaim the real winners.

b. Decide administrative questions pertaining to election except the right to vote

- Power to decide all questions affecting elections

- includes: determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters

- excludes: questions involving the right to vote → these fall within the jurisdiction of the ordinary courts.

c. Petition for inclusion or exclusion of voter

Art. IX, C, Sec. 2. xxx

The Comelec has the power to file in court petitions for inclusion or exclusion of voters

(1) upon a verified complaint, or

(2) on its own initiative.

Inclusion Proceedings (cf Omnibus Election Code; see Election Law Reviewer for details)

If the Board of Registration cancels the name of a voter, the voter can

- file in the MTC a petition for an order to include his name in the list of voters or to reinstate him
- within 20 days from the last day of registration
- appeal can be made to the RTC within 5 days, and the decision shall be final and unappealable and no motion for reconsideration shall be allowed

Exclusion Proceedings (Articles 138, 139, 142)

A petition for exclusion must be filed with the MTC within 20 days from the last day of registration.

d. Prosecute election law violators

1. COMELEC has exclusive jurisdiction to investigate and prosecute cases for violations of election laws.

2. COMELEC can deputize prosecutors for this purpose. The actions of the prosecutors are the actions of the COMELEC. (BP 881 sec. 265; EO 134, Sec. 11, Feb 27, 1987)

3. In the event that the Commission fails to act on any complaint,
a. within 4 months from the filing of the complaint, complainant may file complaint with the office of the fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted. (BP 881 sec. 265)

b. within 2 months from filing, the complainant may file the complaint with the Office of the Fiscal or with the Department of Justice for proper investigations and prosecution, if warranted. (EO 134, Sec. 11, Feb 27, 1987)

De Jesus v. People

- A govt official who violated the election law must be prosecuted by the COMELEC before the RTC, not the Sandiganbayan. The 1978 Election Code is clear that the COMELEC shall have the power to conduct preliminary investigations of all election offenses, and that the RTC has exclusive original jurisdiction to try and decide such cases. It is not the character or personality of the offender (public official) but the crime committed (violation of election law) that determines jurisdiction.

People v. Delgado

- The Comelec has the following functions: (1) enforcement of election laws; (2) decision of election contests; (3) decision of administrative questions; (4) deputizing law enforcement agencies; (5) registration of political parties; and (6) improvement of elections.

- What are reviewable on certiorari by the SC are those orders, decisions, etc., rendered in actions or proceedings before the Comelec in the exercise of its adjudicatory or quasi-judicial powers. Decisions of the Comelec on election contests or on administrative questions are subject to judicial review only by the SC.

- As a public prosecutor, the Comelec has the exclusive authority to conduct preliminary investigation and prosecute offenses punishable under the election code before the competent court. But when the Comelec files the information, the subsequent disposition of the case is subject to the court's approval. The Comelec can't conduct reinvestigation unless so ordered by that court nor refuse its order of reinvestigation.

e. Recommend pardon, amnesty, parole or suspension of sentence of election law violators

Art. IX, C, Sec. 5.

A favorable recommendation from Comelec is required before the President may grant any of the ff:

- (1) pardon
- (2) amnesty
- (3) parole
- (4) suspension of sentence for violation of election laws, rules, and regulations

f. Deputize law enforcement agents and recommend their removal

a. Power to deputize

Requirement: concurrence of the Pres., law enforcement agencies and instrumentalities of the Gov't, including the AFP

Exclusive purpose: ensuring free, orderly, honest, peaceful, and credible elections.

Scope: (1) Not limited to the election period, (2) Applies to both criminal and administrative cases

b. Power to recommend to the President:

(1) the removal of any officer or employee it has deputized (2) the imposition of any other disciplinary action, for violation or disregard of, or disobedience to its directive, order, or decision

People v. Inting

-Gen. Rule: The power to conduct preliminary investigations in cases involving election offenses for the purpose of helping the judge determine probable cause and for filing an information in court is exclusive with the COMELEC.

Exception: The Fiscal may file an information charging an election offense or prosecute a violation of election law, when he has been deputized by the COMELEC.

- It is only after a preliminary examination conducted by the COMELEC through its officials or its deputies that Sec. 2, Art. III of the 1987 Constitution comes in. This is so, because, when the application for a warrant of arrest is made and the information is filed with the court, the judge will then determine whether or not a probable cause exists for the issuance of a warrant of arrest.

g. Registration of political parties, organizations and coalitions and accreditation of citizens' arms

1. The political parties etc. must present their platform or program of government.
2. There should be sufficient publication.
3. Groups which cannot be registered:
 - i. Religious denominations/sects
Political parties with religious affiliation or which derive their principles from religious beliefs are registerable.
 - ii. Groups which seek to achieve their goals through violence or unlawful means
 - iii. Groups which refuse to uphold and adhere to the Constitution
 - iv. Groups which are supported by any foreign government.

Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections

- constitute interference in national affairs
- if accepted, it is an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law.

Registration under the party list system

Art. IX, C, Sec. 7. No votes cast in favor of a political party, organization, or coalition shall be valid, except for those registered under the party-list system as provided in this Constitution.

Art. IX, C, Sec. 8.

Political parties, or organizations or coalitions registered under the party-list systems

- shall not be presented in the voters' registration boards, boards of election inspectors, boards of canvassers, or other similar bodies.
- shall be entitled to appoint poll watchers in accordance with law

Art. VI, Sec. 5. xxx

Party-list representatives

- shall constitute 20% of the total number of representatives including those under the party list.
- For 3 consecutive terms after the ratification of this Constitution, one-half of the seats allocated to the party-list representatives shall be filled, as provided by law, by selection or election from labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, EXCEPT the religious sector.

Art. XVIII, Sec. 7.

WHO: President

WHAT: fill the seats reserved for sectoral representation in Sec 5(2) of Art VI

HOW: by appointment from a list of nominees by the respective sectors

PERIOD: until a law is passed

h. Regulation of public utilities and media of information

Art. IX, C, Sec. 4.

The Commission may, during the election period, supervise or regulate the enjoyment of utilization of all franchises or permits for: (i) the operation or transportation and other public utilities, media of communication or information

(ii) all grants, special privileges, or concessions granted by the Government or any of its subdivision, agency, or instrumentality, including any GOCC or its subsidiary.

Such supervision or regulation shall aim to ensure:

- (i) equal opportunity, time and space
- (ii) the right to reply, including reasonable equal rates

for public information campaigns and forums among candidates, in connection with the object of holding free, orderly, honest, peaceful and credible elections.

Regulation of Franchises:

1. What can COMELEC supervise or regulate

- a. The enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information.
- b. Grants, special privileges or concessions granted by the Government or any subdivision, agency or instrumentality thereof, including any GOCC or its subsidiary

2. When can COMELEC exercise this power

- a. During the election period
 - i. Election period commences 90 days before the day of the election and ends 30 days thereafter.
 - ii. In special cases, COMELEC can fix a period.
- b. Applies not just to elections but also to plebiscites and referenda.
 - § Plebiscite - submission of constitutional amendments or important legislative measures to the people ratification
 - § Referendum - power of the electorate to approve or reject legislation through an election called for that purpose.

National Press Club v. Comelec

- The Comelec has been expressly authorized by the Constitution to supervise or regulate the enjoyment or utilization of the franchises or permits for the operation of media of communication and information.

- Purpose: to ensure "equal opportunity, time, and space, and the right to reply," as well as uniform and reasonable rates of charges for the use of such media facilities, in connection with "public information campaigns and forums among candidates."

- The law limits the right of free speech and of access to mass media of the candidates themselves. The limitation however, bears a clear and reasonable connection with the objective set out in the Constitution. For it is precisely in the unlimited purchase of print space and radio and television time that the resources of the financially affluent candidates are likely to make a crucial difference.

i. Decide election cases

a. Exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective:

- i. Regional
- ii. Provincial
- iii. City officials

b. Appellate jurisdiction over all contests involving:

- i. Elective municipal officials decided by trial courts of general jurisdiction
- ii. 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.

c. Contempt powers

1. COMELEC can exercise this power only in relation to its adjudicatory or quasi-judicial functions. It cannot exercise this in connection with its purely executive or ministerial functions.
2. Its jurisdiction over pre-proclamation controversies is in exercise of its quasi-judicial/administrative powers.
3. Its jurisdiction over 'contests' (after proclamation) is in exercise of its judicial functions.

d. The COMELEC may issue writs of certiorari, prohibition and mandamus in exercise of its appellate jurisdiction. This is not an inherent power.

RA 7166, Sec. 22

Election Contests for Municipal Offices.

- must be decided expeditiously by the RTC.
- decision may be appealed to the Commission within 5 days from promulgation or receipt of a copy thereof by the aggrieved party.
- the Commission shall decide the appeal within 60 days after it is submitted for decision, but not later than 6 months after the filing of the appeal, which decision shall be final, unappealable, and executory.

Municipal - original with the RTC; appeal to the COMELEC

Barangay - original with inferior court; appeal to COMELEC

Javier v. Comelec

Definitions discussed in the case:

Contests.-- It should not be given a restrictive meaning, but should receive the widest possible scope conformably to the rule that the words used in the Constitution should be interpreted liberally. As employed in the 1973 Constitution, the term refers to any matter involving the title or claim of title to an elective office, made before or after proclamation of the winner, whether or not the contestant is claiming the office in dispute.

Elections, returns and qualifications.-- It should be interpreted in its totality as referring to all matters affecting the validity of the contestee's title. But if it is necessary to specify, "election" refers to the conduct of the polls, including the listing of voters, holding of electoral campaign, and casting and counting of votes; "returns" to the canvass of the returns and the proclamation of the winners, including questions concerning the composition of the board of canvassers and the authenticity of the election returns; and "qualifications" to matters that could be raised in a quo warranto

proceeding against the proclaimed winner, such as his disloyalty, or ineligibility, or the inadequacy of his certificate of candidacy.

Garcia v. de Jesus

- **COMELEC's Jurisdiction:** In the absence of any specific conferment upon the COMELEC, either by the Constitution or by law, the COMELEC is bereft of jurisdiction to issue Writs of Certiorari, Prohibition and Mandamus in electoral contests. What the Constitution granted the COMELEC was appellate jurisdiction. The Constitution makes no mention of any power given the COMELEC to exercise original jurisdiction over Petitions for Certiorari, Prohibition and Mandamus unlike in the case of the SC which was specifically conferred such authority. The immutable doctrine is that jurisdiction is fixed by law, the power to issue such Writs can not implied from the mere existence of appellate jurisdiction.

- The COMELEC is bereft of authority to deprive RTCs of the competence to order execution pending appeal. For one, it is essentially a judicial prerogative. For another, it is a pronouncement of the COMELEC alone in its procedural rules, without benefit of statute, unlike in the past. There is no express provision of law disauthorizing executions pending appeal, and the COMELEC, in its procedural rules alone, should not be allowed to divest RTCs of that authority. It deprives the prevailing party of a substantive right to move for such relief contrary to the constitutional mandate that those Rules cannot diminish nor modify substantive rights.

Veloria v. Comelec

- An original special civil action of certiorari, prohibition or mandamus against a RTC in an election contest may be filed in the CA or in the SC being the only courts given such original jurisdiction under the Constitution and the law.

j. Rule Making

Art. IX, A, Sec. 6.

Each Commission en banc may promulgate its own rules concerning pleadings and practice before it or before any of its offices. Such rules however shall not diminish, increase or modify substantive rights.

Art. IX, C, Sec. 3.

The Commission on Elections

(i) may sit en banc or in two divisions

(ii) shall promulgate its rules of procedures in order to expedite disposition of election cases, including pre-proclamation controversies

- All such election cases shall be heard and decided in division
- Motions for reconsideration of decisions shall be decided by the Commission en banc

The COMELEC has the power to promulgate its own rules of procedure in order to expedite disposition of election cases, including pre-election controversies.

k. Other functions

Art. IX, A, Sec. 8.

Each Commission shall perform such other functions as may be provided by law.

I. Act as National Board of Canvassers for senators

EO 144, Sec. 2, March 2, 1987

National Board of Canvassers for the election of Senators

- composed of the Chairman and Members of the COMELEC sitting en banc

- shall canvass all certificates of canvass coming from and prepared by the district, provincial, and city boards of canvassers (of those cities which comprise one or more legislative districts.)

- There shall be a board of canvassers for each province, city, municipality and district of Metropolitan Manila

8. Review of COMELEC decisions, orders and resolutions

Art. IX, C, Sec. 2.

The COMELEC has:

(1) exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials

(2) appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by 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.

Art. IX, A, Sec. 7.

- COMELEC decision: (1) decided by a majority vote of all its Members, (2) within 60 days from the date of its submission for decision or resolution, that is upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself

- Review: by the SC on certiorari brought by the aggrieved party within 30 days from receipt of a copy the decision, order or ruling

- Exception: unless otherwise provided by the Constitution or by law

Flores v. Comelec

- Declared as unconstitutional Sec. 9 of RA 6679 (Local Govt Code) insofar as it provides that the decision of the municipal or metropolitan court in a barangay case should be appealed to the RTC.

- Decisions of the COMELEC on election contests involving municipal and barangay officer shall be final and unappealable with respect to questions of fact and not of law. Art IX-6 Sec 2(2) of the Consti was not intended to divert the SC of its authority to resolve questions of law as inherent in the judicial power conferred upon it by the Consti.

Galido v. Comelec

- The fact that decisions, final orders or rulings of the COMELEC in contests involving executory and not appealable does not preclude a recourse to the SC by way of a special civil action of certiorari.

9. Fiscal Autonomy**Art. IX, A, Sec. 5.**

The Commission shall enjoy fiscal autonomy. Their approved annual appropriations shall be automatically and regularly released.

III. COMMISSION ON AUDIT**1. Composition and Qualifications—****Art. IX-D, §1**

Commission on Audit

- Composition:
 1. 1 Chairman
 2. 2 Commissioners
- Qualifications:
 1. Natural-born citizens
 2. At least 35 years old at the time of their appointment
 3. Either:
 - a. CPA's with at least 10 years auditing experience
 - b. Members of the Philippine Bar with 10 years of practice
 - ☐ Members cannot all belong to the same profession.
 4. Must not have been candidates for any elective position in the elections immediately preceding their appointment.

2. Appointment and Term of Chairman and commissioners**Art. IX, D, sec. 1**

- APPOINTMENT: appointed by the President with the consent of the Commission on Appointments

- TERM: 7 years without reappointment.

- TERM OF THOSE FIRST APPOINTED:

Chairman- 7 years,

1st Commissioner- 5 years

2nd Commissioner- 3 years

- LIMITATIONS:

(1) Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor.

(2) In no case shall any Member be appointed or designated in a temporary or acting capacity.

3. Appointment of COA personnel**Art. IX, A, sec. 4**

Constitutional Commissions shall appoint their officials and employees in accordance with law.

4. Salary**Art. IX, A, sec. 3**

The salary of the Chairman and the Commissioners shall be fixed by law and shall not be decreased during their tenure.

Art. XVIII, sec. 17

ANNUAL SALARIES:

- Chairmen of the Constitutional Commissions= Php 204,000

- Members of the Constitutional Commissions =Php 180,000

LIMITATION: Until the Congress provides otherwise

5. Disqualifications**Art. XI, sec. 2**

- WHO: President, Vice-President, Members of the Supreme Court, Members of the Constitutional Commissions, and Ombudsman

- HOW REMOVED:

(i) on impeachment for, AND

(ii) conviction of,

- culpable violation of the Constitution
- treason
- bribery
- graft and corruption
- other high crimes, or betrayal of public trust.

- All other public officers and employees may be removed from office as provided by law, but not by impeachment.

6. Impeachment**Art. XI, sec. 2**

- WHO: President, Vice-President, Members of the Supreme Court, Members of the Constitutional Commissions, and Ombudsman

- HOW REMOVED:

(i) on impeachment for, AND

(ii) conviction of,

- culpable violation of the Constitution
- treason
- bribery
- graft and corruption
- other high crimes, or betrayal of public trust.

- All other public officers and employees may be removed from office as provided by law, but not by impeachment.

7. Powers and Functions**Art. IX-D, §2**

(1) the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including GOCCS with original charters, and on a post-audit basis:

(a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution;

(b) autonomous state colleges and universities;

(c) other GOCCS and their subsidiaries;

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

- Where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies.

(2) shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

(3) shall have exclusive authority, subject to the limitations in this Article:

- (a) to define the scope of its audit and examination
- (b) establish the techniques and methods required therefor
- (c) promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.

Art. IX-D, sec. 3

No law shall be passed exempting any entity of the Government or its subsidiaries in any guise whatever, or any investment of public funds, from the jurisdiction of the COA.

Art. VI, sec. 20

The records and books of accounts of the Congress shall be:

- (1) preserved
- (2) open to the public in accordance with law
- (3) audited by the Commission on Audit which shall publish annually an itemized list of amounts paid to and expenses incurred for each Member.

Summary of Powers of COA

1. Examine, audit, and settle accounts pertaining to:
 - A. Revenue and receipts of funds or property
 - B. Expenditures and uses of funds or property

Owned or held in trust by, or pertain to:
The Government
Any of its subdivisions, agencies or instrumentalities
Including GOCCs with original charters
2. Conduct post-audit with respect to the following:
 - A. Constitutional bodies, commissions, and offices granted fiscal autonomy
 - B. Autonomous state colleges and universities
 - C. GOCCs and their subsidiaries incorporated under the Corporation Code
 - D. Non-governmental entities receiving subsidies or equity, directly or indirectly, from or through the government, which are required by law of the granting of institution to submit to such audit
3. If COA finds internal control system of audited agencies as inadequate, COA may adopt measures, including temporary or special pre-audit, as may be necessary.
4. Keep the general accounts of the government, preserving vouchers and other supporting papers pertaining thereto.
5. Exclusive authority to define the scope of COA's audit and examination and to establish the techniques and methods required therefor.
6. Promulgate accounting and auditing rules and regulations.
 - ☐ Including those for the prevention or disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.
- **Corollaries:**
 - ☐ COA can settle only liquidated accounts or those accounts which may be adjusted simply by arithmetic process.

☐ Where the following requirements are complied with, it becomes the ministerial duty of the COA to approve and pass in audit vouchers for payment:

1. There is a law appropriating funds for a particular purpose.
2. There is a contract, made by the proper officer, entered into in conformity with the above-mentioned law.
3. The goods or services covered by such contract have been delivered or rendered in pursuance to such contract, as attested by the proper officer.
4. Payment has been authorized by officials of the corresponding department or bureau.

☐ Prosecutors may still review accounts already settled and approved by COA for the purpose of determining possible criminal liability. This is because COA's interest in such accounts is merely administrative.

☐ COA has the power to determine the meaning of 'public bidding' and what constitutes failure when regulations require public bidding for the sale of government property.

☐ No law shall be passed exempting any entity of the Government or its subsidiary in any guise whatever, or any investment of public funds, from the jurisdiction of the Commission on Audit.

8. Rule-making

Art. IX, A, sec. 6

Each Commission en banc may promulgate its own rules concerning pleadings and practice before it or before any of its offices. Such rules, however, shall not diminish, increase, or modify substantive rights.

9. Other Functions

Art. IX, A, sec. 8

Each Commission shall perform such other functions as may be provided by law.

10. Review of Decisions of COA

Art. IX, A, sec. 7

- COA decision: (1) decided by a majority vote of all its Members, (2) within 60 days from the date of its submission for decision or resolution, that is upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself

- Review: by the Supreme Court on certiorari brought by the aggrieved party within 30 days from receipt of a copy the decision, order or ruling

- Exception: unless otherwise provided by the Constitution or by law

11. Fiscal Autonomy

Art. IX, A, sec. 5

The Commission shall enjoy fiscal autonomy. Their approved annual appropriations shall be automatically and regularly released.

12. Prohibition Against Exemption from Jurisdiction

Art. IX-D, §3

No law shall be passed exempting any entity of the Government or its subsidiaries in any guise whatever, or any investment of public funds, from the jurisdiction of the COA.

13. Annual Report

Art. IX-D, §4

The COA shall submit

- TO WHOM: President and Congress

- WHEN: within the time fixed by law

- WHAT: (1) annual report covering the financial condition and operation of the Government, its subdivisions, agencies, and instrumentalities, including GOCCs, and non-governmental entities

subject to its audit, and recommend measures necessary to improve their effectiveness and efficiency, (2) such other reports as may be required by law

IV. SANDIGANBAYAN

Art. XI, Sec. 4.

The present anti-graft court known as the Sandiganbayan shall continue to function and exercise its jurisdiction as now or hereafter may be provided by law.

Nunez v. Sandiganbayan,

- PD 1606 does not deprive petitioner of the equal protection of the law considering that the Decree is based on a valid classification. The Constitution provides for the creation of a special court, known as Sandiganbayan (SB), and the rule is settled that the general guarantees of the Bill of Rights, among which are the due process and equal protection clauses, must give way to specific provisions, such as the provision on the creation of the SB.

- A particular mode of procedure provided in a statute cannot become the vested right of any person.

- The omission of the CA as an intermediate tribunal does not deprive those who are charged in the SB, of a right that is vital to the protection of their liberty. The innocence of guilt of the accused is passed upon by a 3-judge division of the SB. Moreover, a unanimous vote is required, otherwise, the Presiding Justice designates 2 other Justices from among the members of the SB to sit temporarily in a division of 5 until a decision is rendered with the concurrence of 3 Justices. If convicted, the accused can seek a review in the SC on a question of law or the substantiality of the evidence.

- The SC, in determining whether to give due course to a petition for review of a decision of the SB, must be convinced that the constitutional presumption of innocence has been overcome. Thus, it cannot be said that there is no way of scrutinizing whether the quantum of evidence required for conviction in criminal cases have been satisfied.

V. OFFICE OF THE OMBUDSMAN

See also PD 1603, July 18, 1979
RA 6770, Nov. 17, 1989

1. Composition

Art. XI, Sec. 5.

Composition of the Independent Office of the Ombudsman:

- Ombudsman (to be known as Tanodbayan)
- 1 overall Deputy
- At least 1 Deputy each for Luzon, Visayas, and Mindanao
- A separate Deputy for the military establishment (optional)

2. Qualifications of the Ombudsman and his Deputies

Art. XI, Sec. 8.

- (1) natural-born citizens of the Philippines
- (2) at least 40 years old
- (3) of recognized probity and independence
- (4) members of the Philippine Bar
- (5) must not have been candidates for any elective office in the immediately preceding election
- (6) The Ombudsman must have for 10 years or more been a judge or engaged in the practice of law in the Philippines.

3. Appointment and Term

Appointment

Art. XI, Sec. 9.

The Ombudsman and his Deputies

- shall be appointed by the President
- from a list of at least 6 nominees prepared by the Judicial and Bar Council, and from a list of 3 nominees for every vacancy thereafter
- such appointments shall require no confirmation

- All vacancies shall be filled within 3 months after they occur.

Term

Art XI, Sec. 11.

- TERM: 7 years without reappointment
- They shall not be qualified to run for any office in the election immediately succeeding their cessation from office

4. Rank and salary

Art XI, Sec. 10. The Ombudsman and his Deputies shall have the rank of Chairman and Members, respectively, of the Constitutional Commissions, and they shall receive the same salary, which shall not be decreased during their term of office.

5. Disqualifications

Art. XI, Sec. 8.

They shall be subject to the same disqualifications and prohibitions as provided for in Sec 2 of Art IX-A of this Constitution.

Art. IX, A, Sec. 2.

A Member of a Constitutional Commission is prohibited from:

- (1) holding any other office or employment during his tenure
- (2) engaging 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
- (3) being 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 GOCCs or their subsidiaries.

Art. XI, Sec. 16.

No loan, guaranty, or other form of financial accommodation for any business purpose may be granted, directly or indirectly by any government owned or controlled bank or financial institution to (1) the President, (2) Vice President, (3) Members of the Cabinet, (4) Congress, (5) Supreme Court, (6) Constitutional Commissions, (7) Ombudsman, or (8) any firm or entity in which they have controlling interest, during their tenure.

6. Jurisdiction

Art XI, Sec. 12.

The Ombudsman and his Deputies, as protectors of the people, shall:

- (1) act promptly on complaints filed in any form or manner against public officials or employees of the government, or any subdivision, agency or instrumentality thereof, including GOCCs
- (2) in appropriate cases, notify the complainants of the action taken and its result

Quimpo v. Tanodbayan

The meaning thus given to "government-owned or controlled corps." for purposes of the Civil Service [Art. IX, B, Sec. 2 (1)] provision should likewise apply for purposes of the Tanodbayan and the Ombudsman provisions [Art. XI, secs. 4 and 12], otherwise, incongruity would result; and a govt-owned corp. could create as many subsidiary corps. under the Corp. Code as it wishes, which would then be free from strict accountability and could escape the liabilities and responsibilities provided for by law. There can be no gainsaying that as of the date of its acquisition by the Govt, utilizing public funds, PETROPHIL, while retaining its own corporate existence, became a GOCC within the constitutional precept. Its employees, therefore are public servants falling within the investigatory and prosecutory jurisdiction of the TB for purposes of the RA 3019.

7. Powers and functions

Art. XI, Sec. 13.

The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate on its own or on complaint any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient

(2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter; to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.

(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

(4) Direct the officer concerned in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.

(6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.

(7) Determine the causes of inefficiency, red tape, mismanagement, fraud and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.

(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

Barlongay: The functions of the Ombudsman may be divided into four: (1) Investigatory; (2) Prosecutory; (3) Disciplinary; and (4) Assistory.

8. Fiscal Autonomy

Art XI, Sec. 14.

The Office of the Ombudsman shall enjoy fiscal autonomy. Its approved annual appropriations shall be automatically and regularly release.

9. Appointment of personnel

Art XI, Sec. 6.

WHO: officials and employees of the Office of the Ombudsman, other than the Deputies

APPOINTING AUTHORITY: Ombudsman

HOW: according to the Civil Service Law.

VI. OFFICE OF THE SPECIAL PROSECUTOR

Art XI, Sec. 7.

- The existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor.

- It shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman.

Zaldivar v. Sandiganbayan,

- Inasmuch as the duty to "investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient" (Art. XI, Sec. 13(1) of the Consti) is now given to the Ombudsman, the incumbent Tanodbayan (now Special Prosecutor) is clearly without authority to conduct preliminary investigations and to direct the filing of criminal cases, except upon orders of the Ombudsman. This right to do so was lost effective Feb. 2, 1987

Resolution on the Motion for Reconsideration, May 19, 1988

- The power of investigation conferred on the Ombudsman covers both administrative and criminal offenses. Accordingly, the Special Prosecutor cannot claim that he retains the specific power of preliminary investigation while conceding the general power of investigation to the Ombudsman. The greater power embraces the lesser.

PD No. 1630

A. Powers of the Tanodbayan (Sec. 10)

(a) investigate, on complaint by any person or on his own motion or initiative, any administrative act whether amounting to any criminal offense or not of any administrative agency including any government owned or controlled corporations;

(b) prescribe the methods by which complaints are to be made, received, and acted upon; he may determine the scope and manner of investigations to be made; and, subject to the requirements of this Decree, he may determine the form, frequency, and distribution of his conclusions and recommendations;

(c) request and unless as herein provided for he shall be given by each administrative agency the assistance and information he deems necessary to the discharge of his responsibilities; he may examine the records and documents of all administrative agencies; and he may enter and inspect premises within any administrative agency's control, provided, however, that, where the President in writing certifies that such information, examination or inspection might prejudice the national interest or violate existing law, the Tanodbayan shall desist. All information so obtained shall be confidential, unless the President, in the interest of public service, decides otherwise;

(d) issue a subpoena to compel any person to appear, give sworn testimony, or produce documentary or other evidence the Tanodbayan deems relevant to a matter under his inquiry;

(e) file the necessary information or complaint with the Sandiganbayan or any proper court or administrative agency and prosecute the case if after preliminary investigation he finds a prima facie case;

(f) file and prosecute civil and administrative cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office;

(g) undertake, participate in, or cooperate with general studies or inquiries, whether or not related to any particular administrative agency or any particular administrative act, if he believes that they may enhance knowledge about or lead to improvements in the functioning of administrative agencies.

(h) deputize or call upon any official or employee of the government or any agency or office to carry out his functions with the approval of the President. During such deputation, the official or employee concerned shall be under the supervision and control of the Tanodbayan.

B. Matters appropriate for investigation (Sec. 12)

(a) An administrative act that might be--

1. contrary to law or regulation;
2. unreasonable, unfair, oppressive, or inconsistent with the general course of an administrative agency's functioning;
3. mistaken in law or arbitrary in ascertainment of facts;
4. improper in motivation or based on irrelevant considerations;
5. unclear or inadequately explained when reasons should have been revealed;
6. inefficiently performed; or
7. otherwise objectionable

(b) Strengthening procedures and practices which lessen the risk of occurrence of any objectionable administrative acts.

C. Action on Complaints (Sec. 13)

(a) The Tanodbayan may (i) receive a complaint from any source concerning an administrative act. At no expense to the

complainant, he may (ii) conduct a suitable investigation into the things complained of.

(b) After completing his consideration of a complaint, whether or not it has been investigated, the Tanodbayan shall suitably inform the complainant and, when appropriate, the administrative agency or agencies involved.

(c) A letter to the Tanodbayan from a person in a place of detention or in a hospital or other institution under the control of an administrative agency shall be immediately forwarded, unopened to the Tanodbayan.

C. Consultation with Agency (Sec. 14)

- Before announcing a conclusion or recommendation that criticizes an administrative agency or any person, the Tanodbayan shall consult with that agency or person.

D. Recommendations (Sec. 15)

(a) If, having considered a complaint and whatever material he deems pertinent, the Tanodbayan is of the opinion that an administrative agency should

- (1) consider the matter further
- (2) modify or cancel an administrative act
- (3) alter a regulation or ruling
- (4) explain fully the administrative act in question, or
- (5) take any other step

he shall state his recommendations to the administrative agency. If the Tanodbayan so requests, the agency shall, within the time he has specified, inform him about the action taken on his recommendations or the reasons for not complying with them.

(b) If the Tanodbayan believes that an administrative action has been dictated by laws whose results are unfair or otherwise objectionable, he shall bring to the of the President and the National Assembly (Congress) his views concerning desirable statutory change.

E. Investigation and Prosecution of Cases (Sec. 16)

(a) Exclusive authority of the Office of the Tanodbayan

(i) to conduct preliminary investigation of all cases cognizable by the Sandiganbayan

(ii) to file information therefor

(iii) to direct and control the prosecution of said cases.

(b) Power to Deputize: The Tanodbayan may utilize the personnel of his office and/ or with the approval of the President, designate or depute any fiscal, state prosecutor or lawyer in the government service to act as special investigator or prosecutor to assist him in the investigation and prosecution of said cases. Those designated or deputized to assist him shall be under his supervision and control.

(c) The ff. are prohibited: (1) publicity during the pendency of such preliminary investigation and (2) disclosure to the public of the name of complainant and accused shall until an information is filed by the Tanodbayan.

(d) Other Powers: The Tanodbayan, his investigators and prosecutors, whether regular members of his staff or designated by him as herein provided, shall have the authority:

(i) to administer oaths

(ii) to issue subpoena duces tecum

(iii) to summon and compel witnesses to appear and testify under oath before them and/ or to bring books, documents and other things under their control

(iv) to secure the attendance or presence of any absent or recalcitrant witness through application before the Sandiganbayan or before any inferior or superior court having jurisdiction of the place where the witnesses or evidence is found.

(e) Review: The resolutions and actions of the Tanodbayan shall not be subject to review by any administrative agency.

VII. CENTRAL MONETARY AUTHORITY

1. Composition and qualifications

Art. XII Section 20.

- The Congress shall establish an independent central monetary authority, the members of whose governing board must be

1. natural-born Filipino citizens,
 2. of known probity, integrity, and patriotism,
 3. the majority of whom shall come from the private sector.
- They shall also be subject to such other qualifications and disabilities as may be prescribed by law.
- Until the Congress otherwise provides, the Central Bank of the Philippines operating under existing laws, shall function as the central monetary authority.

2. Functions

- a. Provide policy direction in the areas of money, banking, and credit
- b. Have supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions.

VIII. ECONOMIC AND PLANNING AGENCY

Art. XII Section 9.

- The Congress may establish an independent economic and planning agency headed by the President.

- Functions:

- a. recommend to Congress, and
- b. implement continuing integrated and coordinated programs and policies for national development

- Requirement before recommendation/ implementation: Consultations with the appropriate public agencies, various private sectors, and local government units

- Until the Congress provides otherwise, the National Economic and Development Authority shall function as the independent planning agency of the government.

Art XII, Sec 10.

- WHO: Congress

REQUIREMENTS: (a) upon recommendation of the economic and planning agency, and

(b) when the national interest dictates

WHAT: (1) reserve to citizens of the Philippines or to corporations or associations at least 60% of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments, (2) enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

- In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

- The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.

IX. NATIONAL COMMISSIONS

A. Commission on Human Rights

1. Composition and Qualifications

Art. XIII. Sec. 17.

Composition of the independent office called the CHR:

a. Chairman

b. 4 Members

- Qualifications:

- a. natural-born citizens of the Philippines
- b. majority must be members of the Bar
- c. other qualifications and disabilities as provided by law

- Term of office: shall be provided by law

- Until this Commission is constituted, the existing Presidential Committee on Human Rights shall continue to exercise its present functions and powers.

2. Powers and Functions

Art. XIII. Sec. 18.

The Commission on Human Rights shall have the following powers and functions:

- (1) Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;
- (2) Adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court;
- (3) Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the under-privileged whose human rights have been violated or need protection;
- (4) Exercise visitorial powers over jails, prisons, or detention facilities;
- (5) Establish a continuing program of research, education, and information to enhance respect for the primacy of human rights;
- (6) Recommend to Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families;
- (7) Monitor the Philippine Government's compliance with international treaty obligations on human rights;
- (8) Grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority;
- (9) Request the assistance of any department, bureau, office, or agency in the performance of its functions;
- (10) Appoint its officers and employees in accordance with law; and
- (11) Perform such other duties and functions as may be provided by law.

Art XIII, Sec. 19.

The Congress may provide for other cases of violations of human rights that should fall within the authority of the Commission, taking into account its recommendations.

3. Fiscal Autonomy

Art. XIII. Sec. 17(4).

The approved annual appropriations of the Commission shall be automatically and regularly released.

- In **CSC vs. DBM**, the SC said that the "no report, no release" policy may not be validly enforced against offices vested with fiscal autonomy without violating Sec. 5, Art. IX-A. However, the said doctrine does not apply to the CHR because unlike the three Commissions specified in Art. IX, it does not enjoy fiscal autonomy (**CHR Employees Association vs. CHR**).

B. National Language Commission

Art. XIV. Sec. 9.

- The Congress shall establish a national language commission.
- **Composition**: representatives of various regions and disciplines
- **Functions**: undertake, coordinate, and promote researches for the development, propagation, and preservation of Filipino and other languages.

C. National Police Commission

Art. XVI. Sec. 6.

- The State shall establish and maintain ONE police force.
- **Characteristics**: (1) national in scope, (2) civilian in character, (3) administered and controlled by a national police commission.
- **Jurisdiction**: The authority of local executives over the police units in their jurisdiction shall be provided by law.

D. Commission on Indigenous Cultural Communities

Art. XVI. Sec. 12.

- The Congress may create a consultative body to advise the President on policies affecting indigenous cultural communities.
- **Composition**: majority of the members shall come from such communities.

X. NATIONAL ECONOMY AND PATRIMONY

A. Goal (cf Art XII, Sec 1)

The goals of the national economy are:

- (1) A more equitable distribution of opportunities, income, and wealth.
- (2) A sustained increase by the amount of goods and services produced by the nation for the benefit of the people; and
- (3) An expanding productivity as the key to raising the quality of life for all, especially the underprivileged.

II Bernas: Three basic directions may be gleaned from Sec. 1: (1) it sets the goal of dynamic productivity and a more equitable distribution of what is produced; (2) it seeks complementarity bet. industrialization and agricultural devt; (3) it is protective of things Filipino.

B. Natural Resources

1. Citizenship Requirement (cf Art. XII, Sec. 2.)

Rules:

Owned by the State:

1. All lands of the public domain
2. waters
3. minerals
4. coal
5. petroleum and other mineral oils
6. all forces of potential energy
7. fisheries
8. forests or timber
9. wildlife, flora and fauna
10. other natural resources

Sec. 2 is an express declaration of adherence to the **Regalian Doctrine** wherein all agricultural, timber and mineral lands are subject to the dominion of the State. (**SunBeam Convenience Food vs. CA**)

Under the Regalian doctrine, that ownership is vested in the State, not the head (Chief Executive) thereof (**Lee Hong Kok vs. David**).

There is a presumption that all lands not otherwise clearly appearing to be privately owned belong to the State (**Republic vs. Register of Deeds of Quezon**).

What may be alienated:

Only agricultural lands.

- Only Filipino citizens may acquire ≤ 12 hectares by purchase, homestead, or grant; or lease not more than 500 hectares
- Private corporations may lease ≤ 1000 hectares for 25 years, renewable for another 25 years

All other natural resources shall not be alienated.

Exploration, development, and utilization of natural resources

- 1) under the full control and supervision of the State
- 2) The State may directly undertake such activities, or
- 3) it may enter into co-production, joint venture, or production-sharing agreements
- 4) with Filipino citizens, or corporations or associations at least 60% of whose capital is owned by such citizens
- 5) Agreements may be for a period not exceeding 25 years, renewable for not more than 25 years, and under such terms and conditions as may be provided by law

Large-scale Exploration, development and utilization of minerals, petroleum, and other mineral oils

- 1) The President may enter into agreements with foreign-owned

- corporations involving either technical or financial assistance
- 2) according to the general terms and conditions provided by law
- 3) based on real contributions to the economic growth and general welfare of the country
- 4) In such agreements, the State shall promote the development and use of local scientific and technical resources.
- 5) The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

Il Bernas: If natural resources, except agricultural land, cannot be alienated, how can they be explored, developed or utilized? A distinction must be made bet. alienable lands and inalienable lands. Alienable lands may be the subject of lease, and the rules are found in Sec. 3. Inalienable lands, however, can only be developed and utilized directly by the State or in conjunction with qualified individuals or corps. through "co-production, joint venture, or production-sharing"-- and thus "full control and supervision of the State" is preserved.

Howsoever natural resources might be exploited or developed, the right to do so is reserved for "Filipino citizens, or corps., or associations at least 60% of whose capital is owned by such citizens

Art XII, Sec. 7.

- Gen. Rule: No private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

Exception: In cases of hereditary succession

- The Congress shall determine by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefor.

How: Take into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform

Exploration, Development, and Utilization

a. REGALIAN DOCTRINE: All of the ff are owned by the State: (a) lands of the public domain, (b) waters, (c) mineral oils, (d) all forces of potential energy, (e) fisheries, (f) forest or timber, (g) wildlife, (h) flora and fauna, and (i) other natural resources.

b. All natural resources, with the exception of agricultural lands, shall not be alienated.

c. The exploration, development, and utilization or natural resources shall be under the full control and supervision of the State (as the owner thereof.)

d. The State has two options in exploring, developing or utilizing its natural resources:

- 1. undertake such activities directly,
- 2. enter into (a) co-production, (b) joint venture, or (c) production sharing agreement with Filipino citizens, or corporations or associations with at least 60% Filipino capital.

Limitations and qualifications of agreements under option 2:

(A) As to Terms and Conditions

(i) Agreements for the exploration, development or utilization of natural resources excluding water rights other than the development of water power may be for a period not more than 25 years, and under such terms and conditions as may be provided by law.

(ii) In cases of water rights for (a) irrigation, (b) water supply, (c) fisheries, or (d) industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

(B) As to who may grant what privileged to whom

(i) The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and shall reserve its use and enjoyment "exclusively" to Filipino citizens. (Corporations, even though owned by Filipinos are not included.)

Who - State

What - Marine Wealth

Whom - Filipino Citizens only

(ii) The Congress may, by law, allow small scale utilization of natural resources by Filipino citizens. It may also allow cooperative fish farming with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

Who - Congress

What - small scale utilization of the natural resources

Whom - Filipino Citizens only

"Large scale" exploration, development and utilization

The President may enter into agreements with foreign-owned corporations involving either "technical or financial assistance" for "large scale" exploration, development and utilization of (a) minerals, (b) petroleum, (c) other mineral oils, according to the general terms and conditions provided by law.

Basis of agreements: (i) "real" contributions to economic growth and the general welfare of the country, and (ii) promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision within 30 days from its execution.

Who - President

What - minerals, petroleum, other mineral oils;

Whom - foreign owned corporations

This is really "service contracts" over again. "Technically", this provision "falls" under the general rule that the State may enter into co-production, joint venture or production-sharing agreements only which Filipino citizens or 60% Filipino corporations, since what is involved here is only "technical or financial assistance" for the exploration, development and utilization of these specific natural resources, and not the exploration, development, and utilization themselves. In reality, however, it is an exception to the general rule.

Not more than 12 hectares thereof by (i) purchase, (ii) homestead or (iii) grant, (Art. XII, Sec. 3, par I.)

The manner of acquiring alienable lands of the public domain is governed by Com. Act No. 141 (Public Land Act), which prescribes 5 ways of acquiring such lands.

Homestead

To whom available: (1) citizens, (2) at least 18 years of age , or less if a head of the family (3) resident of the Philippines, (4) not the owner of 24 (now 12) hectares in the Philippines.

Public Lands (Art. XII, Sec. 3, par 2)

WHO: Congress

WHAT: determine, by law, the size of lands of the public domain which may be acquired, developed, held or leased, and the conditions therefore

HOW: take into account the requirements or conservation, ecology and development are subject to the requirements of agrarian reform

Marine Wealth

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and executive economic zone. (Art. XII, Sec. 2. par 2.)

2. Classification, Size, and Conditions for Grant of Public Lands

Art. XII, Sec. 3.

Lands of the public domain are classified into

1. agricultural
2. forest or timber
3. mineral lands and
4. national parks.

Il Bernas: The first rule established in Sec. 3 is that only agricultural lands of the public domain may be alienated.

The second rule is that only qualified individuals may acquire alienable lands of the public domain.

The third rule establishes the size of the land which may be acquired by individuals or leased by individuals or corps.

The fourth rule limits the discretion of Congress to open public lands for lease or acquisition.

Purpose of disqualification of private corporations - (1) to equitably diffuse land-ownership or to encourage owner cultivatorship and economic family size farms and thereby prevent the recurrence of huge land holdings by corps. or private persons, (2) aimed against undue exploitation of our public lands and natural resources by large corps.

No citizenship limitation? - The impression might be given that Sec. 3 opens utilization of alienable lands to foreign individuals or foreign corporations because Sec. 3 makes no mention of citizenship requirement. But alienable lands are part of the natural resources and the gen. rule on the utilization of all natural resources can be found in Sec. 2. Thus, the utilization of alienable lands is open only to those qualified under Sec. 2 and in the manner prescribed by Sec. 2.

Public Lands

a. Classification

- Lands of the public domain are classified into (i) agricultural, (ii) forest or timber, (iii) mineral lands, and (iv) national parks.
- Agricultural lands of the public domain may be further classified by law according to which they may be devoted.

b. Alienability

With the exception of agricultural lands, all other natural resources are owned by the State. (Art. XII, Sec. 2)

Alienable lands of the public domain shall be limited to agricultural lands. (Art. XII, Sec. 3.)

If the public land is non-alienable which is the case if it is forest or timber, mineral land, or national parks, then it cannot be held by anyone. The general rule on natural resources applies and that is, that the State can only enter into co-production, joint-ventures or production sharing agreements with Filipino citizens or 60% Filipino owned corporations for the exploitation, development and utilization of these lands.

But if the public land is alienable, that is, agricultural, then it may be held by a private person, natural or juridical, in accordance with the following rules.

c. Who May Hold Alienable Lands of the Public Domain

(1) Corporations: Lease

Private corporation or associations may not hold alienable lands of the public domain except by lease.

Limitations:

- i. Period: Not more than 25 years, renewable for not more than 25 years.
- ii. Size: Not to exceed 1,000 hectares in area.

As worded, it would seem that even foreign corporations may become the lessees of alienable lands of the public domain, because (Art. XII, Sec. 3) does not specify the 60% - Filipino owned requirement. It is unlike the case for the exploration, development and utilization of natural resources other than public agricultural lands, in which the Constitution specifies the ownership requirement. Whether this is a mere oversight in a valid question, considering the nationalists intent of the Constitution, on the one hand, and the presence of anti nationalist farmers, on the other hand.

(2) Filipino Citizens: Acquire or Lease

Citizens of the Philippines may (a) lease no more than 500 hectares, (subject to the same conditions as in Filipino corporations) or (b) not more than 12 hectares thereof by purchase, homestead or grant.

Meralco v. Castro-Bartolome

Doctrine: Corporations May Lease But Not Acquire Public Lands

- A piece of land would cease to be public land only upon the issuance of the certificate of title under Sec. 48 (b) of the Public Land Law. A juridical person is disqualified to apply for its registration.

- The ruling in *Susi v. Razon*, to the effect that an open, continuous and adverse possession of the land from time immemorial confers on the individual and his predecessor in interest effective title does not apply here since Meralco and its predecessors in interest have not been in possession of the land since time immemorial. The argument that if Meralco's predecessor-in-interest can apply under Sec. 48 (b), so can the corp do the same in representation, is untenable because Meralco's predecessors-in-interest did not acquire a vested right as they did not file an application, which is a condition precedent.

Republic v. Villanueva

Doctrine: Religious Corporations Are Disqualified from Acquiring Public Lands

- The *Iglesia Ni Kristo*, as a corp. sole or a juridical person, is disqualified to acquire or hold alienable lands of the public domain because of the constitutional prohibition mentioned and because the said church is not entitled to avail itself of the benefits of Sec. 48 (b) which applies only to Filipino citizens of natural persons. A corp. sole has no nationality.

Director of Lands v. IAC

Doctrine: Public Lands Possessed Exclusively Becomes Private By Mere Lapse of at Least 30 Years.

- The Meralco ruling was reconsidered and was no longer deemed to be binding precedent. The correct rule is that alienable land held by a possessor, personally or through his predecessor-in-interest openly, continuously and exclusively for the prescribed statutory period (30 yrs. under the Public Land Act, as amended) is converted to private property by the mere lapse or completion of said period, ipso jure.

Republic v. CA

- Under both the 1973 and 1987 Consti, a private corporation (even if a domestic one) cannot acquire (and therefore cannot register) lands of the public domain, but in this case, the land involved, at the time it was acquired by the corporation in 1974, was no longer part of the public domain; long years of exclusive, continuous, and adverse possession of the same by its predecessors-in-interest had

given ownership thereof ipso jure to said predecessors, enabling the latter to convey title to said corporation

3. Conservation of forest lands and national parks

Art. XII, Sec. 4.

WHO: Congress

WHEN: as soon as possible

WHAT: (1) determine by law the specific limits of forest lands and national parks, marking clearly their boundaries on the ground

→ such forest lands and national parks shall be conserved and may not be increased nor decrease except by law

(2) provide for such period as it may determine, measures to prohibit logging in endangered forests and watershed areas.

4. Protection of ancestral lands of indigenous cultural communities

Art. XII, Sec. 5.

WHO: State

WHAT: protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being

LIMITATION: subject to the provisions of this Constitution and national development policies and programs

HOW: Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain

Il Bernas: The ancestral lands referred to in Sec. 5 include both those outside and those inside autonomous regions.

C. Private Lands

1. Citizenship requirement

Who may acquire private lands by transfer or conveyance?

Art. XII, Sec. 7.

WHO MAY ACQUIRE: (1) individuals, (2) corporations, or (3) associations qualified to acquire or hold lands of the public domain.

EXCEPTION: In cases of hereditary succession

Il Bernas: May a Filipino private corp. acquire private land? YES since Sec. 7 makes capacity to acquire private land dependent on capacity to "acquire or hold lands of the public domain." The provision uses the disjunctive "or." Either capacity to acquire lands of the public domain or capacity otherwise to hold such land confers capacity to acquire private land.

Mirasol Notes:

Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease...Citizens of the Philippines may lease...or acquire... (Art. XII, Sec. 3, par 1.)

Notwithstanding the provisions of section 7, a natural-born citizen of the Philippines who has lost his Philippines citizenship, may be a transferee of private lands, subject to limitations provided by law. (Art. XII, Sec. 8.)

General rule: the acquisition of private lands is limited to individuals or corporations (and associations who are qualified to acquire or hold land of the public domain). These are:

a. Citizens of the Philippines - because they are qualified to both acquire and lease (hold) alienable lands under sec. 3.

b. "Private Corporations" - because they are qualified to hold alienable public lands under sec. 3 by way of lease. The issue is whether the term "private corporation" is limited to 60% Filipino owned corporation, which should be the intent of the Constitution, as in the case of other natural resources. If not, then even foreign corporations can purchase private lands, not only lease alienable public lands.

All others, including aliens, cannot be the transferee or conveyee or private lands except:

a. Aliens in cases of hereditary succession (Art. XII, Sec. 7.) - limited to compulsory and legal succession and does not include testamentary succession (Ramirez v. Ramirez)

b. A natural born citizen who lost his Philippine citizenship. (Art. XII, Sec. 8.) The law provides that they may own not more than 2 lots of 1000 sq. m. if urban or 2000 sq. m. if rural.

- Status of contract of sale of private land to those who are not qualified to hold them: Although the sale of private lands to aliens not allowed to acquire them is void, the vendor or his successors-in-interest can no longer seek recovery if in the meantime the land has fallen into the hands of one who is not disqualified to acquire them.

Godines v. Pak Luen

- Land sold to an alien cannot be recovered if he had sold it to a Filipino or he has become a citizen.

Yap v. Grajeda

- A subsequently naturalized citizen is constitutionally qualified to own land. There would no longer be any public policy to be served in allowing recovery of property. If the ban on aliens from acquiring not only agricultural but also urban lands is to preserve the nation's land for future generations of Filipinos, that aim or purpose would not be wasted but achieved by making lawful the acquisition of real estate by aliens who became Filipino citizens by naturalization.

2. Exceptions

(a) Acquisition by LEGAL Succession

- PD 471 The maximum period allowable for the duration of leases or private lands to aliens or alien-owned corporations, associations, or entities not qualified to acquire private lands in the Philippines shall be 25 years, renewable for another period of 25 years upon mutual agreement of both lessor and lessee.

(b) Acquisition by former NATURAL-BORN citizens

Art. XII, Sec. 8.

WHO: a natural-born citizen of the Philippines who has lost his Philippine citizenship

WHAT: may be a transferee of private lands

LIMITATION: as provided by law.

BP 185:

WHO: a natural-born citizen of the Philippines who has lost his Philippine citizenship

WHAT: may be a transferee of private land

USE: residence

AREA: maximum of 1,000 square meters, in the case of urban land, or 1 hectare in the case of rural land

Operation of public utilities

Art. XII, Sec. 11.

- No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to

1. citizens of the Philippines or

2. corporations or associations

a. organized under the laws of the Philippines

b. at least 60% of whose capital is owned by such citizens

- Franchise, certificate, or authorization

1. not exclusive in character

2. not granted for longer period than 50 years.

- Participation of foreign investors in the governing body of any public utility enterprise

1. limited to their proportionate share in its capital

2. all the executive and managing officers of such corporations or association must be citizens of the Philippines

II Bernas: For the purpose of this provision, a corporation or association is considered a Filipino if: (1) it is organized under Phil. laws and (2) at least 60 % of its capital is owned by Filipino citizens.

- The Constitution does not prohibit the mere formation of a public utility corporation without the required proportion of Filipino capital. What it does prohibit is the granting of a franchise or other form of authorization for the operation of a public utility already in existence but without the requisite proportion of Filipino capital.

Mass Media and Advertising Industry

Art XII, Sec. 11. (1)

WHAT: ownership and management of mass media
WHO: (i) citizens of the Philippines, (ii) corporations, cooperatives or associations, wholly-owned and managed by such citizens

II Bernas: "Mass media" in Sec. 11 (1) includes radio, television and the printed media. It does not include commercial telecommunications which are governed as public utilities under Art. XII, Sec. 11.

Art XII, Sec 11. (2)

WHAT: engaging in the advertising industry
WHO: (i) Filipino citizens or (ii) corporations at least 70% of the capital of which is owned by such citizens

WHAT: participation of foreign investors in the governing body of entities in the advertising industry
LIMITATIONS: (i) Limited to their proportionate share in the capital thereof, (ii) all the executive and managing officers of such entities must be citizens of the Philippines.

Practice of professions

Art. XII, Sec. 14.

WHAT: Practice of all professions in the Philippines
WHO: Filipino citizens
EXCEPTION: in cases prescribed by law

XI. AMENDMENT AND REVISION

Cruz, Philippine Political Law, 1991 ed. (hereinafter Cruz):

Amendment and Revision.-- Art. XVII provides that the Constitution may be changed either by (1) amendment or (2) revision.

Amendment - isolated or piece-meal change only
 Revision - a revamp or rewriting of the whole instrument.

Procedure.-- Two steps involved in the amendment or revision of the Constitution: (1) the proposal and (2) the ratification.

I. PROPOSAL

Art. XVII, Section 1.

Any amendment to, or revision of, this Constitution may be proposed by:
 (1) The Congress, upon a vote of three-fourths of all its Members; or
 (2) A constitutional convention.

Cruz: The choice of the method of proposal lies in the exclusive discretion of the legislature.

Art XVII, Sec. 2.

WHAT: Amendments to the Constitution
HOW: directly proposed by the people through initiative
REQUIREMENTS: (1) a petition of at least 12% of the total number of registered voters, (2) every legislative district must be represented by at least 3% of the registered voters therein

LIMITATIONS: No amendment under this section shall be authorized (1) within 5 years following the ratification of this Constitution nor (2) oftener than once every 5 years thereafter. (3) The Congress shall provide for the implementation of the exercise of this right.

1. By Congress

Art. XVII, Section 1.

Any amendment to, or revision of, this Constitution may be proposed by:
 (1) The Congress, upon a vote of three-fourths of all its Members; or
 (2) A constitutional convention.

1935 Constitution, Art. XV

Art. XV, Sec. 1.

WHO: Congress
WHAT: may propose amendments to this Constitution or call a convention for the purpose
HOW: (1) in joint session assembled, (2) by a vote of three-fourths of all the Members of the Senate and of the House of Representatives (3) Senate and House of Reps vote separately.
WHEN AMENDMENTS BECOME VALID: when approved by a majority of the votes cast at an election at which the amendments are submitted to the people for their ratification

2. By Constitutional Convention

Art XVII, Sec. 3.

WHO: Congress
WHAT: (1) call a constitutional convention
HOW: by a vote of two-thirds of all its Members
 (2) submit to the electorate the question of calling such a convention
HOW: by a majority vote of all its Members

3. By The People through Initiative

RA 6735

Initiative and Referendum

- Who may exercise (Sec. 4)
 - all registered voters of the country, autonomous regions, provinces, cities, municipalities and barangays
- Procedurals and Other Requirements
 - A. Petition (Sec. 5)
 - 1. Signature requirement
 - Initiative on the Constitution (Sec. 5(b))
 - (1) at least 12% of total number of registered voters
 - (2) at least 3% of registered voters in every legislative district
 - * may be exercised only once every 5 years after 1992
 - Other initiatives; referendum (Sec. 5(d))
 - (1) at least 10% of total number of registered voters
 - (2) at least 3% of registered voters in every legislative district
 - 1. Registration with COMELEC
 - 2. Contents (Sec. 5(c))
 - (1) contents or text of the proposed law sought to be enacted, approved or rejected, amended or repealed
 - (2) proposition
 - (3) reason/s
 - (4) that it is not one of the exceptions provided by law
 - (5) signatures of the petitioners or registered voters
 - (6) abstract / summary in not more than 100 words, legibly written or printed at the top of every page

B. Special Registration (Sec 6)

1. Who shall set: COMELEC

- a. When: at least 3 weeks before a scheduled initiative or referendum

C. Verification of Signature (Sec 7)

1. Who shall verify: Election Registrar

- a. Basis: the ff. materials used in the immediately preceding election:

- i. registry list of voters
- ii. voters' affidavits
- iii. voters identification cards

Referendum

1. Conduct and Date (Sec. 8)

- a. COMELEC shall call and supervise the conduct of initiative and referendum
- b. 30 days from receipt of petition and upon COMELEC's determination of the sufficiency of the petition – COMELEC shall:
 - (1) publish the petition
 - i. in Filipino and English
 - ii. at least twice in newspapers of general and local circulation
 - (2) set the date of the initiative or referendum
 - i. not earlier than 45 days but not later than 90 days from the determination by the Commission of the sufficiency of the petition.

2. Effectivity (Sec 9(b))

- a. When: as to the day of the plebiscite

Prohibited Measures (Sec. 10)

- 1. No petition embracing more than 1 subject shall be submitted to the electorate

Appeal (Sec. 12)

- 1. Subject: decision of the COMELEC on the findings of the sufficiency or insufficiency of the petition
- 2. To whom: Supreme Court
- 3. When: within 30 days from notice

Lambino v. Comelec

- Sec. 2, Art. XVII of the Constitution is the governing constitutional provision that allows a people's initiative to propose amendments to the Constitution.
- Amendments "directly proposed by the people through initiative upon a petition"
 - a. Essence: the entire proposal on its face is a petition by the people.
 - b. Elements:
 - 1. The people must author and thus sign the entire proposal. No agent or representative can sign on their behalf.
 - 2. The proposal must be embodied in a petition
- An amendment is "directly proposed by the people through initiative upon a petition" only if the people sign on a petition that contains the full text of the proposed amendments.
 - Rationale: A signature requirement would be meaningless if the person supplying the signature has not first seen what it is that he or she is signing. Loose interpretation of the subscription requirement can pose a significant potential for fraud.
 - Purpose: to provide sufficient information so that registered voters can intelligently evaluate whether to sign the initiative petition
 - Effect of failure to comply: renders the initiative void.
- Logrolling- when the initiative petition incorporates an

unrelated subject matter in the same petition.

- Effect: nullify the entire proposition and not only the unrelated subject matter.

- 3 modes of amending the Constitution: (1) Congress upon three-fourths vote of all its Members, (2) constitutional convention. (3) people's initiative.

- A people's initiative to change the Constitution applies only to an amendment of the Constitution and not to its revision. In contrast, Congress or a constitutional convention can propose both amendments and revisions to the Constitution.

- Rationale: A revision requires harmonizing not only several provisions, but also the altered principles with those that remain unaltered.

- Revision- alters a basic principle in the constitution or the substantial entirety of the constitution, as when the change affects substantial provisions of the constitution; generally affects several provisions of the constitution.

- Amendment - a change that adds, reduces, or deletes *without* altering the basic principle involved; generally affects only the specific provision being amended.

- Two-part test to determine whether revision or amendment:

(1) Quantitative test - asks whether the proposed change is "so extensive in its provisions as to change directly the 'substantial entirety' of the constitution by the deletion or alteration of numerous existing provisions." The court examines only the number of provisions affected and not the degree of the change.

(2) Qualitative test - inquires into the qualitative effects of the proposed change. 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."

- To be a valid initiative, the present initiative must first comply with Section 2, Article XVII of the Constitution even before complying with RA 6735.

II. RATIFICATION

1. In Case of Amendment Proposed by Congress or Convention

Art. XVII, Sec. 4.

WHAT: Validity of any amendment to, or revision of, the Constitution under Art. XVII, Section 1

WHEN: upon (i) ratification (ii) by a majority of the votes cast in a (iii) plebiscite which shall be held not earlier than 60 days nor later than 90 days after the approval of such amendment or revision.

2. In Case of Amendment Proposed through Initiative

Art XVII, Sec. 4.

WHAT: Validity of any amendment to, or revision of, the Constitution under Art. XVII, Section 2

WHEN: upon (i) ratification (ii) by a majority of the votes cast in a (iii) plebiscite which shall be held not earlier than 60 days nor later than 90 days after the certification by the Comelec of the sufficiency of the petition.

3. Plebiscite to Be Called by Congress And Supervised by COMELEC But The Initiative on Constitution Will Be Called By COMELEC.

III. THEORIES REGARDING THE POSITION OF THE CONSTITUTIONAL CONVENTION IN OUR SYSTEM OF GOVERNMENT

Cruz: Position of the Constitutional Convention

3 theories on the relative position of the constitutional convention vis-à-vis the regular departments of the government:

1. Theory of Conventional Sovereignty - holds that the constitutional convention is supreme over the other departments of the govt because the powers it exercises are in the nature of sovereign powers.

2. Legislative Control Theory - the constitutional convention is inferior to the other departments of the government since it is merely a creation of the legislature.

3. Co-equality Theory - as long as it exists and confines itself within the sphere of its jurisdiction, the constitutional convention must be considered independent of and co-equal with the other departments of the govt.

Tolentino v. COMELEC

- Is there any limitation or condition in Sec. 1, Art. XV of the Consti. which is violated by the act of the convention of calling for a plebiscite on the sole amendment contained in Organic Resolution No. 1?

YES, and it is the condition and limitation that all the amendments to be proposed by the same Convention must be submitted to the people in a single "election" or plebiscite.

- Requisites of a valid plebiscite:

1. must provide the voter not only sufficient time but ample basis for an intelligent appraisal of the nature of the amendment per se as well as its relation to the other parts of the Constitution with which it has to form a harmonious whole.

2. a proposal to amend the Constitution, should be submitted to the people not separately from but together with all the other amendments to be proposed by this present Convention.

- Limits to the power of a constitutional convention:

1. As to matters not related to its internal operation and the performance of its assigned missions to propose amendments to the Constitution, the convention and its officers and members are all subject to all the provisions of the existing Constitution.

2. As to its task of proposing amendments to the Constitution, it is subject to the provisions of Sec. 1 of Art. XV.

→ Why? The framers of the Constitution took care that the process of amending the same should not be undertaken with the same ease and facility in changing an ordinary legislation.

IV. JUDICIAL REVIEW OF THE AMENDING PROCESS

Gonzales v. COMELEC

- The issue of whether or not a Resolution of Congress, acting as a constituent assembly, violates the Constitution is essentially a justiciable, not political (question), and hence, subject to judicial review.

- Nature of Power to Amend the Constitution: 1. not included in the general grant of legislative powers to Congress.

2. part of the inherent powers of the people-- as the repository of sovereignty in a republican state-- to make, and hence, to amend their own fundamental law.

- Congress may propose amendments to the Constitution because the same explicitly grants such power. Hence, when exercising the same, it is said that Senators and Members of the House of Reps. act, not as members of Congress but as competent elements of a constituent assembly. When acting as such, members of Congress derive their authority from the Constitution, unlike the people, when performing the same function, for their authority does not emanate from the Consti.-- they are the very source of all powers of govt, including the Constitution itself.

- Members of Congress do not have the final say on whether or not their acts are within or beyond constitutional limits. Otherwise, they could brush aside and set the same at naught, contrary to the basic tenet that ours is a govt of laws and not of men, and to the rigid nature of our Consti.

- Judicial power to nullify executive or legislative acts is not violative of principle of separation of powers. The system of checks and balances underlying the judicial power to strike down acts of the Executive or of the Congress transcending the confines set forth in the fundamental law is not in derogation of powers, pursuant to which each dept. is supreme within its own sphere.

Tolentino v. COMELEC, supra.

- Doctrine: Courts may review the validity of an act of a Constitutional Convention proposing a particular amendment to the Constitution

- Power to review acts of the ConCon.- A constitutional convention is supreme within the domain of its legitimate authority. A revolutionary convention which drafts the first Constitution of an entirely new government is completely without restraint and omnipotent.

- Once convened, the convention became endowed with extraordinary powers generally beyond the control of any dept of the existing govt, but the compass of such powers can be co-extensive only with the purpose for which it was called and as the amendments it may propose cannot have any effect as part of the Consti. until the same are ratified by the people, it necessarily follows that the acts of the Convention, its officers and members, are not immune from attack on constitutional grounds. The present Consti is in full force and effect in its entirety and in everyone and its parts, the existence of the Convention notwithstanding, and operates even within the walls of that assembly.

- Rationale for the power of judicial review - It is not because the Court is superior to the Con Con or that the Convention is subject to the control of the Court, but simply because both the Con Con and the Court are subject to the Constitution and the rule of law, and "upon principle, reason and authority," per J. Laurel, it is within the power, as it is the solemn duty of the Court under the existing Consti., to resolve the issues in this case.

Javellana v. Executive Secretary

- By virtue of the majority of 6 votes with 4 dissenting votes, all cases (against validity of the new Constitution) were dismissed. Being the vote of the majority, there is no further judicial obstacle to the New Constitution being considered in force and effect.

Art. VIII, Sec. 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

V. WHEN WILL PROPOSED AMENDMENTS TAKE EFFECT?

Compare Art XVII, Sec 4 with Art XVIII, Sec 27

Art. XVII, Sec. 4.

(1) What: Any amendment to, or revision of, this Constitution under Sec. 1 hereof

When valid: upon ratification by a majority of the votes cast in a plebiscite which shall be held not earlier than 60 days nor later than 90 days after the approval of such amendment or revision

(2) What: Any amendment under Sec 2 hereof

When valid: upon ratification by a majority of the votes cast in a plebiscite which shall be held not earlier than 60 days nor later than 90 days after the certification by the COMELEC of the sufficiency of the petition

Art. XVIII, Sec. 27.

When the Consti shall take effect: immediately upon ratification by a majority of the votes case in a plebiscite held for the purpose and shall supersede all previous Constitutions.

De Leon v Esguerra

- The 1987 Constitution took effect on February 2, 1987, the date of the plebiscite not on February 11, 1987, the date of Proclamation No. 58, which proclaimed that the Constitution was ratified by the people.

CONSTITUTIONAL LAW 2

I. Fundamental Powers of the State

- a. Police Power
- b. Power of Eminent Domain / Expropriation
- c. Power of Taxation

Similarities

- Inherent in the state; no need for express constitutional grant
- Necessary for State to be effective
- All involve State interference with private property
- Presuppose equivalent compensation
- Exercised primarily by the Legislature

Limitations

- May not be exercised arbitrarily, to the prejudice of the Bill of Rights
- Subject at all times to the limitations and requirements of the Constitution and may in proper cases be annulled by the courts of justice

A. POLICE POWER

1. Nature and basis

- Power of promoting the public welfare by restraining and regulating the use of liberty and property (Freund)
- Inherent and plenary power of the state which enables it to prohibit all that is hurtful to the comfort, safety and welfare of society (Ermita-Malate Hotel and Motel Operators Association, Inc. v Mayor of Manila, 1967)
- **Basis**
 - *Salus populi suprema est lex* (the welfare of the people is the supreme law)
 - *Sic utere tuo ut alienum non laedeas* (so use your own property as not to injure another's property)

2. Distinguished from other powers

	Police Power	Eminent Domain	Taxation
Compensation	None (the altruistic feeling that one has contributed to the public good - Nachura)	Just compensation (full and fair equivalent of the property taken) required.	None (the protection given and public improvements instituted by the State because of these taxes - Nachura)
Use of Property	Not appropriated for public use	Appropriated for public use	Use taxing power as an implement for the attainment of a legitimate police objective—to regulate a business or trade
Objective	To destroy noxious property or to restrain the noxious use of property	Property taken for public use; it is not necessarily noxious	Earn revenue for the government
What it Regulates	Liberty and Property	Property rights only	Property rights only
Who may Exercise	State	State and Private Entities	State

3. Scope

a. Generally

- By reason of its function:

- extends to all the great public needs
- most pervasive, the least limitable and the most demanding of the three powers
- The powers of taxation and eminent domain may be used to implement a police objective

b. Particular aspects

- i. public health
- ii. public morals
- iii. public safety
- iv. public welfare

4. Limitations

a. General

- The legislative determination of what is a proper exercise of its police power is not final or conclusive, but is subject to the supervision of the courts (US v Toribio, 1910)
- No conflict with due process and equal protection of the laws
- Police power prevails over future contracts as well as past ones. The non-impairment of contracts clause, and other vested rights, have to yield to the legitimate exercise of State police power (Ortigas & Co. v. CA)
- **Balancing** is the essence or the indispensable means for the attainment of legitimate aspirations of any democratic society

b. Due process and Equal Protection of Laws

- No conflict with due process and equal protection

Art. III, Sec. 1. *No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws.*

Art. XIII, Sec. 1. *The Congress shall give highest priority to the enactment of measure that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities and remove cultural inequities by equitably diffusing wealth and political power for the common good.
To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.*

5. Tests for validity of exercise of police power

- a. **LAWFUL OBJECT-** Interest of the public generally as distinguished from a particular class required exercise
- b. **LAWFUL METHOD-** Means employed are reasonably necessary for the accomplishment of purpose, and not unduly oppressive
- c. When exercised **by a delegate:**
 - It has to be expressly granted by law
 - It has to be within territorial limits of LGUs
 - It must not be contrary to law.

6. Who may exercise

a. Legislature

- Police power is lodged primarily in the national legislature

b. Executive

- By virtue of a valid **delegation** of legislative power, it may also be exercised by the president, administrative bodies, and lawmaking bodies of LGUs (R.A. 7160, sec. 16).
- The MMDA is not delegated with police power (MMDA v. Bel-Air Village Association) but it is mandated by R.A. 7924 to enforce traffic rules and regulations (MMDA v. Garin).

EMINENT DOMAIN

Article III, Sec. 9. *Private property shall not be take for public use without just compensation.*

Article XII, Sec. 18. *The State may, in the interest of national welfare or defense, establish and operate vital industries and, upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the government.*

Art. XIII, Sec. 4 The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

Art. XIII, Sec. 9 The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost, decent housing and basic services to under-privileged and homeless citizens in urban centers and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program the State shall respect the rights of small property owners.

Art XIV, Sec. 13. The National assembly may authorize, upon payment of just compensation, the expropriation of private lands to be subdivided into small lots and conveyed at cost to deserving citizens.

1. Concept

- Ultimate right of the sovereign **power to appropriate** not only public but private property of citizens within the territorial sovereignty to public purpose. (Charles River Bridge vs. Warren Bridge)
 - An ejectment suit ordinarily should not prevail over the State’s power of eminent domain
- Being **inherent**, it need not be lodged or specifically conferred on government by the Constitution
 - Art III sec. 9 of the Constitution merely imposes a **limit** on the government’s exercise of power
- Note that eminent domain is different from police power.
 - Police power implies a **“temporary taking”** of a private company’s operations and business; **ownership is not transferred.**

2. Who may exercise

- Congress, primarily.
- Other governmental and private entities, by delegation:
 1. President
 2. Various local legislative bodies
 3. Certain public corporation like MWSS
 4. Quasi-public corporations like National Railways, PLDT, Meralco
- Power is dormant until the legislature sets it in motion (Executive Department needs to act on statute)
- Once authority is given to be exercised, the matter ceases to be wholly legislative

	As exercised by Congress	As exercised by delegates
Extent of Power	Pervasive and all-encompassing	Can only be as broad as the enabling law and the conferring authorities want it to be
Question of Necessity	Political question	Justiciable question. RTC has to determine whether there is a genuine necessity for its exercise, as well as what the property’s value is
Re: private property		Delegate cannot expropriate private property already devoted to public use

3. Conditions for exercise

- a. General Requisites:**
- (1) Taking of
 - (2) private property,

- (3) for public use,
- (4) with just compensation, and
- (5) upon observance of due process.

b. Requisites for LGUs to Validly Exercise ED:

- (1) Ordinance by a local legislature council is enacted authorizing local chief executive to exercise eminent domain,
- (2) For public use, purpose or welfare or for the benefit of the poor and of the landless,
- (3) Payment of just compensation,
- (4) Valid and definite offer has been previously made to owner of the property sought to be expropriated but such offer was not accepted (Municipality of Parañaque v VM Realty, 1998)

c. Subject to Judicial Review:

- (1) Adequacy of compensation,
- (2) Necessity of taking,
- (3) “Public use” character of the purpose of taking

4. Taking

- A physical dispossession of the owner of his actual property, or its use
- May include trespass without actual eviction of owner, such as the material impairment of value of property, or preventions of ordinary uses for which the property was intended.
- **What may be taken:** All private property capable of ownership, including services.
- **What cannot be taken:** money and *choses in action*
- **Requisites for taking (Republic v. Castelvi)**
 - a. The expropriator must enter a **private property**
 - b. Entry must be for **more than a momentary period**
 - c. Entry must be under warrant or **color of legal authority**
 - d. Property must be devoted to **public use** or otherwise informally appropriated or injuriously affected
 - e. Utilization of the property must be in such a way as to **oust the owner and deprive him of beneficial enjoyment of the property**

5. Public Use

- Public use = public purpose / public interest / public welfare / public benefit.
- It is enough that it serves a public purpose, even if it benefits a large group of people short of the public in general (e.g. expropriating property for the relocation of squatters).
- The idea that "public use" means "use by the public" has been discarded. At present, whatever may be beneficially employed for the general welfare satisfies the requirement of public use. (Heirs of Juancho Ardon v. Reyes, 123 SCRA 220)
- That only a few benefit from the expropriation does not diminish its public-use character, inasmuch as public use now includes the broader notion of **indirect public benefit or advantage** (Filstream International v. CA, 284 SCRA 716)

6. Just Compensation

- Fair and full equivalent of the loss which the owner has to suffer by reason of the expropriation; usually the fair market value of the property
- **Fair Market Value:**
 - Price fixed by a buyer (desirous but not compelled to buy) and a seller (willing but not compelled to sell).
 - However, the determination of what counts as “just compensation” is a **judicial (RTC) prerogative**; thus, executive determinations of just compensation in eminent domain cases are unconstitutional

- Must include **consequential damages** (damages to other interest of the owner attribute to the expropriation) and **deduct consequential benefits** (increase of value of other interests attribute to new use of the former property)
- Compensation has to be **paid in money**, and has to be paid within a **reasonable time from its taking**
- **General Rule:** the value of the property will be determined *at the date of the filing of the complaint* for eminent domain, which normally coincides with the taking
- **Exception:** when the taking precedes the filing of the complaint, and the owner would be given undue incremental advantage arising from the government's use of the property, the value will be determined *at the time of the taking*
- **So in effect:** the value of the property must be determined either at the time of taking or filing of the complaint, whichever comes first (Eslaban v. De Onorio, G.R. 146062)
- **Non-payment of just compensation**
 - **General rule:** non-payment by government does not entitle private owners to recover possession of the expropriated property (because expropriation is an *in rem* proceeding, not an ordinary sale), but only to **demand payment of the fair market value of the property** (Republic v. CA, G.R. 146587; Reyes v. National Housing Authority, G.R. 147511)
 - **Exception:** deliberate refusal to pay just compensation entitles the owners to recover the property
 - **5-year rule:** the non-payment of the compensation does not entitle the private landowner to recover possession of the expropriated lots; however, in cases where the government failed to pay the compensation within 5 years from the finality of the judgment in the expropriation proceedings, the owner concerned shall have the right to recover possession of their property. This is in connection with the principle that the government cannot keep the property and dishonor the judgment. To be sure, the 5-year period limitation will encourage the government to pay just compensation punctually. (Republic vs. Lim, 2005)

7. Agrarian Reform (Art. XIII, Sec. 4)

- Is an exercise of the police power of the State through eminent domain (Association of Small Landowners v. Secretary of Agrarian Reform) as it is a means to regulate private property

8. Urban Development and Housing Act (R.A. 7279, mandated by Art. XIII, Sec. 9)

- The power of eminent domain may be exercised by LGUs for urban land reform purposes, but expropriation of privately-owned lands must be resorted to only after all other lands have been exhausted.
- Under R.A. 7279, lands for socialized housing are to be acquired in the ff. order:
 - a. Gov't lands
 - b. Alienable lands of the public domain
 - c. Unregistered, abandoned, or idle lands
 - d. Lands within declared Areas for Priority Development, Zonal Improvement Program sites, Slum Improvement and Resettlement sites that have not yet been acquired
 - e. BLISS sites that have not yet been acquired
 - f. Privately-owned lands

- Among privately-owned lands, small landowners (defined as those owning not more than 300 sq. m. of land in highly urbanized cities, or 800 sq. m. in other urban areas, and no other residential property) are exempted from such acquisition.

TAXATION

1. Nature and Extent

- Enforced proportional contributions from persons and property, levied by the state by virtue of its sovereignty, for the support of the government and for all public needs
- **Purpose:**
 - a. To raise revenue
 - b. Tool for regulation
 - c. Protection/power to keep alive
- **Extent:** as broad as the purpose for which it is given
- Primarily vested in the national legislature. Also: local legislative bodies (Article 10, Section 5, 1987 Constitution).
- To a limited extent, the President may exercise this power when granted delegated tariff powers under Art. VI, sec. 28 (2)

2. Distinguished from special assessments; license fees

Taxes	License Fees	Special Assessments
<ul style="list-style-type: none"> ▪ Raise revenues for the government ▪ Levied against revenues ▪ Basis of amount is higher 	<ul style="list-style-type: none"> ▪ Imposed for regulatory purposes only ▪ Justification is police power ▪ Amount is limited to cost of regulation 	<ul style="list-style-type: none"> ▪ Specific benefits for specific persons ▪ Basis is cost of construction

3. Limitations

- Power to tax exists *for the general welfare*; should be exercised only *for a public purpose*
- might be justified as for public purpose even if the immediate beneficiaries are private individuals
- Tax should not be confiscatory.
 - If a tax measure is so unconscionable as to amount to confiscation of property, the Court will invalidate it. But invalidating a tax measure must be exercised with utmost caution, otherwise, the State's power to legislate for the public welfare might be seriously curtailed
- **Specific Limitations:**
 - a. **Uniformity** of taxation → simply geographical uniformity, meaning it operates with the same force and effect in every place where the subject of it is found
 - But does not prohibit classification for purposes of taxation
 - **Requisites:**
 - i. standards used are substantial and not arbitrary
 - ii. categorization is germane to achieve the legislative purpose
 - iii. the law applies, all things being equal to both present and future conditions
 - iv. applies equally to members of the same class
 - b. **Equal protection** clause – taxes should be uniform (persons or things belonging to the same class shall be taxed at the same rate) and equitable (taxes should be apportioned among the people according to their capacity to pay)
 - c. **Progressive** system of taxation
 - The rate increases as the tax base increases
 - Basis is social justice
 - Taxation as an instrument for a more equitable distribution of wealth
 - d. **Delegated tax legislation**

- Congress may delegate law-making authority when the constitution itself specifically authorizes it.

4. **Double Taxation**

- Occurs when additional taxes are laid on the same subject by the same taxing jurisdiction during the same taxing period for the same purpose
- No provision in the Constitution specifically prohibiting double taxation, but will not be allowed if it violates equal protection

5. **Impairment of obligations of contracts**

- Power of taxation may not be used to violate the constitutional right of every person to be secured against any statute that impairs the obligation of contracts
- But if the statute exempts a party from any one class of taxes, the imposition of a different tax is not an impairment of the obligation of contracts

6. **Tax exemptions**

- A corollary power but must be for a public purpose, uniform and equitable and in conformity with the equal protection clause
- Tax exemptions are granted gratuitously and may be revoked at will, except when it was granted for valuable consideration
- May either be constitutional or statutory
 - If **statutory**, it has to have been passed by majority of all the members of Congress (Art. VI, sec. 28 (4))
 - **Constitutional** exemptions (1987 CONST., art. VI, sec. 28(3))
 - a. Educational institutions (both profit and non-profit)
 - Benefits redound to students
 - Only applied to property taxes not excise taxes
 - b. Charitable institutions
 - Religious and charitable institutions give considerable assistance to the State in the improvement of the morality of the people and the care of the indigent and the handicapped.
 - c. Religious property

- c. To promote the happiness of an individual

Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc 51 SCRA 189 (1973)

- primacy of human rights over property rights is recognized.
- the rights of free expression and of assembly occupy a preferred position.
 - a mere **reasonable or rational relation between the means employed by the law and its object or purpose**—that the law is neither arbitrary nor discriminatory nor oppressive—would suffice to validate a law which restricts or impairs property rights.
 - But a constitutional or valid infringement of **human rights** require a **more stringent criterion**, namely existence of a grave and immediate danger of a substantive evil which the State has the right to prevent.

B. DUE PROCESS

1. **Meaning and scope**

- **Due process of law:**
 - “the embodiment of the sporting idea of fair play” (Frankfurter, in Mr. Justice Holmes and the SC);
 - It is also “a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial” (Dartmouth College v. Woodward, 4 Wheaton 518)
- **Scope:**
 - The due process guarantee applies only if a governmental action will constitute a **deprivation of some person's life, liberty, or property**.
 - It is, however, directed particularly against the executive and legislative departments of the government.
- **Requirements: (U.S. v. Ling Su Fan, 1908)**
 - (a) That there shall be a law prescribed in harmony with the general powers of the legislative department,
 - (b) That this law shall be reasonable in its operation,
 - (c) That it shall be enforced according to the regular methods of procedure prescribed,
 - (d) That it shall be applicable alike to all the citizens of the state or all of a class.

II. BILL OF RIGHTS

A. **IN GENERAL**

- A bill of rights is a declaration and enumeration of a person's **fundamental civil and political rights**. It also imposes **safeguards** against violations by the government, by individuals, or by groups of individuals.
 1. **Civil rights** – rights that belong to an individual by virtue of his citizenship in a state or community (eg., rights to property, marriage, freedom to contract, equal protection, etc.)
 2. **Political rights** – rights that pertain to an individual's citizenship vis-à-vis the management of the government (eg., right of suffrage, right to petition government for redress, right to hold public office, etc.)
 3. **Social and economic rights** – rights which are intended to insure the well-being and economic security of the individual **Rights of the accused** – civil rights intended for the protection a person accused of any crime
- **Is generally self-executing**
 - Article III contains the chief protection for human rights but the body of the Constitution guarantees other rights as well.
- 1. **Bases:**
 - a. Importance accorded to the dignity and worth of the individual.
 - b. Protection against arbitrary actions of government and other members of society
- 2. **Purpose:**
 - a. To preserve democratic ideals
 - b. To safeguard fundamental rights

2. **Substantive due process**

- requires that the **law itself**, not merely the procedures by which the law would be enforced, is fair, reasonable, and just.
- **Requisites:**
 - Valid governmental objective: interests of the public in general, as distinguished from those of a particular class, require the intervention of the State
 - Pursued in a lawful manner: means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive on individuals.

3. **Procedural due process**

- refers to the method or manner by which the law is enforced.
- **Basic elements:**
 - notice,
 - opportunity to be heard,
 - and jurisdiction.
- Its essence is simply the opportunity to be heard
- In administrative proceedings: an opportunity to explain one's side or to seek are consideration of the action / ruling complained of.
- a. **Judicial**
 - Procedural due process has its application in judicial proceedings, civil or criminal.
 - **Requirements:**
 - (1) an **impartial and disinterested court clothed by law with authority** to hear and determine the matter before it (this does not preclude a judge from asking questions during the trial itself. **Test of impartiality:** whether the judge's

intervention tends to prevent the proper presentation of the case or the ascertainment of the truth [People v. Larranaga];

- (2) **jurisdiction** lawfully acquired over the person of the defendant or the property which is the subject matter of the proceeding;
- (3) **notice and opportunity to be heard** given the defendant (but note that not all cases require a trial-type hearing. In labor cases, for example, due process is satisfied so long as the parties are given the opportunity to submit their position papers, and the parties cannot demand an adversarial trial as a matter of right [Mariveles Shipyard v. CA, G.R. 144134]);
- (4) **judgment to be rendered after lawful hearing**, and judge must clearly explain its factual and legal bases. (Art. VIII, Sec. 14, 1987 CONST.; Banco Español-Filipino v. Palanca)

- **Appeal** is not a natural right or a part of due process, except in cases where the right to appeal is guaranteed by the Constitution (Art. VIII, Sec. 5(2)) or by a statute.

Reyes v. CA 80 SCRA 144 (1977)

The allowance or denial of motions for extension rests principally on the sound discretion of the court to which it is addressed, but such discretion must be exercised wisely and prudently, with a view to substantial justice. The main cause of the delay was petitioner's inability to obtain the amount necessary for printing. Poverty is recognized as a sufficient ground for extending existing period for filing. The right to appeal is part of due process of law.

b. Administrative

- **Essential Requirements of Procedural Due Process before Administrative Agencies** (Ang Tibay v CIR [1940])
- (1) The right to actual or constructive **notice** of the institution of proceedings which may affect a respondent's legal rights.
- (2) A real opportunity to be **heard** personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights
- (3) A **tribunal vested with competent jurisdiction** and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as **impartiality**.
- (4) A **finding** by said tribunal which is supported by **substantial evidence** submitted for consideration during the hearing or contained the records or made known to the parties affected.

(b1) Strict observance not indispensable

- While a day in court is a matter of right in judicial proceedings it is otherwise in administrative proceedings, since the latter rests upon different principles.
- In certain proceedings of an administrative character, due process, in the strict legal sense, is not indispensable. The rigid requirements of procedural laws are not strictly enforceable.

(b2) Necessity of notice and hearing

- Only if administrative body is practicing a **quasi-judicial function**; but in the performance of its executive or legislative functions, such as issuing rules and regulations, an administrative body need not comply with said requirements. (PhilComSat v Alcuaz)
- As applied to administrative proceedings, the requirements of due process are satisfied when a party is afforded an opportunity to explain his side or to seek a reconsideration of the ruling or the action taken.
- In administrative proceedings, notice and hearing may be dispensed with, where, because of **public need or for practical reasons**, the same is not feasible.
- It is sufficient if opportunity is later given to the individual adversely affected to test the validity or propriety of the administrative action on appeal to

superior administrative authorities or to the court, or both.

- Decisions of administrative bodies are not rendered invalid merely because they are subject to court review.

(b3) Requirement for discipline of civil service officers and employees

- The charge against the respondent in an administrative case need not be drafted with the precision of an information in a criminal prosecution. It is sufficient that the party is apprised of the substance of the charge against him; what is controlling is the allegation of the facts complained of, not the designation of the offense.

4. Notice

- Notice is an essential element of due process, otherwise the court will not acquire jurisdiction and its judgment will not bind the defendant.
- Notice to be meaningful must be both as to **time and place**.
- But notice is of little value unless the person receiving it has a reasonable opportunity to be heard

5. Impartiality

- Due process cannot be satisfied in the absence of that degree of objectivity on the part of the judge sufficient to assure litigants of his being fair and just. Before him, parties must stand on **equal footing** ... every litigant is entitled to nothing less than the **cold neutrality of an impartial judge**. (Mateo, Jr. v. Villaluz, 1973)
- In order that the review of a decision of a subordinate officer might not turn out to be a farce, the **reviewing officer must be other than the officer whose decision is under review**; otherwise, there can be no different view. (Zambales Chromite Mining Co. v. CA, 1979)
- The right of the accused to a fair trial is not incompatible to a free press. **Responsible reporting in fact enhances the accused rights to a fair trial**. (People v. Sanchez, 1999)
- Mere imputation of partiality or bias is not a ground for inhibition. A **ground for disqualification** as set by Sec 1, Rule 137 of the Rules of Court must exist. (People v. Sebreño)

6. Certainty

- A statute is not rendered uncertain and void merely because general terms are used therein, or because of the employment of terms without defining them.
- **There is no positive constitutional or statutory command requiring the legislature to define each and every word in an enactment.**
- It is a well-settled principle of legal hermeneutics that words of a statute will be interpreted in their natural, plain, and ordinary acceptation and signification, unless it is evident that the legislature intended a technical or special legal meaning to those words.

(6a) Void for vagueness

- An act is vague when it lacks comprehensible standards that men of common intelligence must necessarily guess at its common meaning and differ as to its application
- In such instance, the statute is repugnant to the constitution in 2 respects:
 1. It violates due process for failure to accord persons, especially the parties targeted by it, fair notice of what conduct to avoid,
 2. It leaves law enforcers an unbridled discretion in carrying out its provisions.

(6b) Overbreadth

- A governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.

7. Excessive Penalties

- **Rule of Proportionality:** (*In re Lynch*, 1972)
 - Life sentence for indecent exposure is a cruel or unusual punishment because it is grossly disproportionate to the offense.
 - The constitutional limit is generally described as so disproportionate to the offense "as to shock the moral sense of all reasonable men as to what is right and proper" or "as to be completely arbitrary and shocking to the sense of justice."

8. Ex Post Facto Law and Bill of Attainder

(To be discussed under rights in the criminal administration of justice)

C. EQUAL PROTECTION

1. Concept

- Equal protection of the laws means that "all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed."
- Natural and juridical persons are entitled to this guarantee, but artificial persons are protected only insofar as their property is concerned.
 - Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons **according to the circumstances surrounding them.**
 - It guarantees **equality, not identity of rights.**
 - It does not forbid discrimination as to persons and things that are different. What it forbids are distinctions based on impermissible criteria unrelated to a proper legislative purpose.
 - **What the guarantee prohibits is class or discriminatory legislation, which discriminates against some and favors others when both are similarly situated.**

2. Purpose

- It prohibits undue favor to anyone, special privilege for any individual or class, or hostile discrimination against any party. It guarantees the equality of all persons before the law

3. Conditions for valid classification:

- (1) it must rest on substantial distinctions
- (2) it must be germane to the purpose of the law
- (3) it must not be limited to existing conditions only
- (4) it must apply equally to all members of the same class.

4. Discrimination against aliens

- Although the guarantee of equal protection applies to all persons, **both citizens and aliens**, statutes may validly limit to citizens exclusively the enjoyment of rights or privileges connected with **the public domain, the public works, or the natural resources of the state.** The rights and interests of the state in these things are not simply political but also proprietary in nature; and so the citizens may lawfully be given preference over 'aliens in their use or enjoyment.
 - But statutes discriminating against aliens in ordinary private occupations are generally held void.
 - The Constitution, as a general rule, places the civil rights of aliens on an equal footing with those of citizens. Their political rights, however, do not enjoy the same protection.

5. Classification of citizens

- The general rule is that a legislative act may not validly classify the citizens of the state on the basis of their **origin, race or parentage.**
- But in times of **great and imminent danger**, such as a threatened invasion or war, such a classification is permitted by the Constitution when the facts so warrant (e.g. discriminatory legislation against Japanese citizens during WWII).
- All classifications made by law are generally **presumed to be valid** unless shown otherwise by petitioner

6. Three Standards of Judicial Review:

a. Rational Basis Test

- Classification bears a reasonable relation to government's purpose.
- Important when there is no plausible difference between the disadvantaged class and those not disadvantaged.
- Also important when the government attaches a morally irrelevant and negative significance to a difference between the advantaged and the disadvantaged.
- Generally not useful since nothing suggests that legislators make irrational judgments.

b. Strict Scrutiny Test

- Requires the government to show an **overriding or compelling government interest** so great that it justifies the limitation of fundamental constitutional rights (the courts make the decision of WON the purpose of the law makes the classification necessary).
- It is applied when the law classifies people of their ability to exercise a fundamental right.
- Applied also when the classification has a **"suspect" basis** "Strict in theory, fatal in fact" when this standard is applied almost invariably the statutory classification is struck down for being violative of the EP clause.

c. Intensified Means Test

- New EP goes beyond two-tiered (first two other tests) level of review; said to apply the middle-level test, the **balancing test or the equality test.**
- The court accepts the articulated purpose of the legislation but it should closely scrutinize the relationship between the classification and the purpose. based on a spectrum of standards, by gauging the extent to which constitutionally guaranteed rights depend upon the affected individual interest.
- Applicable for certain **sensitive but not suspect classes**; certain **important but not fundamental interest.**
- **Suspect Classes** - saddled with such disabilities, or subject to such a history of purposeful unequal treatment or relegated to such a position of political powerlessness, as to command extraordinary protection from the majoritarian political process.

D. FREEDOM OF EXPRESSION

Art. III, Sec. 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievance.

Art. III, Sec. 18. (1) No person shall be detained solely by reason of his political beliefs and aspirations.

6. General Considerations

Components

- Words (oral, written, symbolic)
- Medium

Scope of Protected Freedom

- i. Freedom of speech
- ii. Freedom of the press
- iii. Right of assembly and petition
- iv. Right to form associations or societies not contrary to law
- v. freedom of religion
- vi. right to access to information on matters of public concern

- The abovementioned specific guarantees all fall within the ambit of freedom of expression. All are indispensable to the "uninhibited, robust and wide-open debate in the free marketplace of ideas." [*Abrams vs US*]

- "Law" in Art III Sec 4 isn't limited to statutes and local ordinances; executive and judicial actions cannot abridge freedom of expression also.

Limitations

- Freedom of expression is not absolute.
- It should be exercised within the bounds of laws enacted for the promotion of social interests and the protection of other equally important individual rights.
- **Limitations**
 - Laws against obscenity, libel and slander (contrary to public policy)
 - Right to privacy of an individual
 - Right of state/government to be protected from seditious attacks
 - Legislative immunities
 - Fraudulent matters
 - Advocacy of imminent lawless conduct
 - Fighting words
 - Guarantee implies ONLY the right to reach a willing audience but not the right to compel others to listen, see or read.

7. Freedom of speech and press

a. Meaning and scope

- Two aspects: (1) freedom from censorship or prior restraint, and (2) freedom from subsequent punishment.
- Free speech and free press are the most potent instruments of public opinion and are, therefore, indispensable to the preservation of liberty and democracy.
- These 2 rights best encourage tolerance for the experimental nature of human beliefs.
- Legislation restricting these rights can only be upheld if the exercise of free speech and free press pose patently clear and pressing present dangers to public interest and social security.

b. Gradations of speech (from most protected to least protected, accdg to Dean Pangalangan)

- religious
- political
- academic
- artistic
- commercial

c. Forms of abridgment

1. Prior restraint

- Censorship conditions the exercise of freedom of expression upon the prior approval of the government.
- Only ideas acceptable to the government are allowed to be disseminated while all others are restricted or suppressed.
- The censor serves therefore as the political, moral, social and artistic arbiter for the people, usually applying only his own subjective standards in determining what is good and what's not.
- Censorship can be total suppression or even restriction of circulation
- Any system of prior restraints of expression comes to the Court bearing a heavy presumption against its constitutionality, giving the government a heavy burden to show justification for the imposition of such restraint. (New York v. United States (1971))
- It has never been held that liberty of speech is absolute. Nor has it been suggested that all previous restraints on speech are invalid. The protection... to previous restraint is not absolutely unlimited... The phrase 'prior restraint' is not a self-wielding sword. [Times Film Corp. v. Chicago, 365 US 43 (1961)]
- When prior restraint is allowed: [Near v. Minnesota, 283 US 697 (1931)]

- (1) When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no court could regard them as protected by any constitutional right
- (2) Actual obstruction to the government's recruiting service or the publication of the sailing dates of transports or the number and location of troops
- (3) Obscene publications
- (4) Incitements to acts of violence and the overthrow by force of orderly government

2. Subsequent punishment

- Freedom of speech includes freedom after speech.
- Without this assurance, the citizen would hesitate to speak for fear he might be provoking the vengeance of the officials he has criticized (chilling effect).
- If criticism is not to be conditioned on the government's consent, then neither should it be subject to the government's subsequent chastisement.

d. Tests

1. Dangerous tendency

- The emphasis of the test is the nature of the circumstances under which speech is uttered, though the speech per se may not be dangerous.
- Under this test, if the speech restrained has a rational tendency to create the danger apprehended, be it far or remote, government restriction would be allowed. It's not necessary to actually create the evil, a mere tendency towards the evil was enough.

2. Clear and present danger

- The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. [Schenck v. United States, 249 US 47 (1919)]
- This rule requires that "the danger created must not only be clear and present but also traceable to the ideas expressed" (Gonzales v. COMELEC, 27 SCRA 835).
- This test has been adopted by the Philippine SC lock, stock and barrel and is the test most applied to cases re: freedom of expression.

3. Grave-but-improbable danger

- It asks "whether the gravity of the evil, discounted by its improbability, justifies such an invasion of free speech as is necessary to avoid the danger. [Dennis v. United States, 341 US 494 (1951)]
- This test was meant to supplant the clear and present danger. They both emphasize the circumstances of the speech, but this one considers the weighing of values.

4. Direct Incitement Test

- The test emphasizes the very words uttered, and their ability to directly incite or produce imminent lawless action.
- It asks:
 - (a) What words did he utter?
 - (b) What is the likely result of such utterance?
- It criticizes the clear and present danger test for being too dependent on the specific circumstances of each case.

5. Balancing of interest

- The test applied when two legitimate values not involving national security crimes compete. (Gonzales v. Comelec)
- When a particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional and partial abridgement of speech, the duty of the courts is to determine which of the two conflicting interests demands greater protection.
- The court must undertake the delicate and difficult task of weighing the circumstances and appraising the substantiality of the reasons advanced in support of the regulation of the free enjoyment of rights. [American Communication Ass'n v. Douds cited in Gonzales v. COMELEC]

6. O'Brien Test

- When "speech" and "non-speech" elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the non-speech element can justify incidental limitations on free speech.
- A governmental **regulation is sufficiently justified** if:
 - (a) it is within the constitutional power of the government
 - (b) it furthers an important or substantial governmental interest unrelated to the suppression of free expression
 - (c) the incidental restriction on alleged freedom is no greater than is essential to the furtherance of that interest [US v. O'Brien recently applied by the Phil. SC in SWS v. Comelec, 2001]

e. Freedom of expression and libel

Revised Penal Code

Art. 353. Definition of libel.-- A libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.

Art. 354. Requirement of publicity.-- Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:

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

Art. 361. Proof of the truth.-- In every criminal prosecution for libel, the truth may be given in evidence to the court and if appears that the matter charged as libelous is true, and, moreover, that it was published with good motives and for justifiable ends, the defendants may be acquitted.

Proof of the truth of an imputation of an act or omission not constituting a crime shall not be admitted, unless the imputation shall have been made against Government employees with respect to facts related to the discharge of their official duties.

In such cases if the defendant proves the truth of the imputation made by him, he shall be acquitted.

Art. 362. Libelous remarks.-- Libelous remarks or comments connected with the matter privileged under the provisions of article 354, if made with malice, shall not exempt the author thereof nor the editor or managing editor of a newspaper from criminal liability.

- Libel is the most common form of subsequent punishment.
- Although one cannot be prevented from saying something before he actually says it, one can be held liable for what one has said if it causes damage to the rights of others.
- Libel can only be committed against individual reputation. In cases where libel is claimed to have been directed at a group, there is actionable defamation only if the libel can be said to reach beyond the mere collectivity to do damage to a specific, individual group member's reputation. [Newsweek, Inc. v. IAC]
- An individual is given the widest latitude in criticism of official conduct.
- After all, the interest of society and good government demands a full discussion of public affairs. Whether the law is wisely or badly enforced is a fit subject for proper comment. Public policy, welfare of society, and the orderly administration of government have demanded protection for public opinion.
- Limitation: the criticism's intention and effect must not be seditious
- The freedom of speech secured by the Constitution does not confer an absolute right to speak or publish without responsibility whatever one may choose. It is not unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom [Espuelas v. People]
- While, under the RPC, any defamatory statement is presumed to be malicious (malice-in-law), when the defense proves that the communication is privileged, such a presumption of malice does not arise because of the greater public interest involved.
 - **Absolutely privileged:** If the communication is absolutely privileged (as in parliamentary freedom of speech), the prosecution cannot even prove malice-in-fact.
 - **Qualifiedly privileged** (Art. 354 enumerates the 2 instances: *fair and true reporting of an official proceeding; legal moral or social duty*): the burden is shifted on the prosecution to prove malice-in-fact, which the defense can overcome by proving the truth of the defamatory statement and good motive.
 - If involving public officials, the statement, to be privileged must be related to his public functions. If it's regarding his private life, the statement, even if true, cannot be privileged.
 - To enjoy immunity, a (derogatory) publication... must not only be true, but also fair and must have been made in good faith without any comments or remarks. [Policarpio v. Manila Times Pub. Co., Inc]
 - A communication made bonafide upon any subject matter in which the party communicating has an interest, or in reference to which he has a duty, is privileged, if made to a person having a corresponding interest, (even if) containing incriminatory matter. [Mercado v. CFI of Rizal]

f. Freedom of expression and right to privacy

- Being a public figure does not automatically destroy *in toto* a person's right to privacy. The right to invade a person's privacy to disseminate public

information does not extend to fictional or novelized representation of a person, no matter how a public figure he or she may be. Freedom of expression, indeed, occupies a preferred position in the hierarchy of civil liberties. It is not, however, w/o limitations... the limits of freedom of expression are reached when... (it) touches upon matters of private concern [Lagunzad v. Gonzales]

g. Freedom of expression and administration of justice (contempt of court)

- The power to punish for contempt is inherent in all courts of superior jurisdiction independently of any special expression of a statute.
- Severe criticisms based on the court's decisions are allowed, but they must be based on facts & made in good faith.
- A person can be held liable for making comments whether on a pending case (*sub judice*) or on one that has been concluded already, as long as the utterance impairs or obstructs the administration of justice.
- In case of a post-litigation newspaper publication, fair criticism of the court, its proceedings and its members are allowed.
- There may be **contempt of court**, if the publication:
 - (1) tends to bring the court into disrespect
 - (2) scandalizes the court
 - (3) poses a clear and present danger that the administration of justice would be impeded
 - (4) tends to create distrust & destroy the people's confidence in the court

h. Freedom of expression and obscenity

- Since freedom of expression is the general rule, and restriction/regulation is the exception, censorship is allowable only under the clearest proof of a clear and present danger of a substantive evil to public safety, public morals, public health or any other legitimate public interest.
- **Test of obscenity:** [Miller v. California]
 - (1) Whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest.
 - (2) Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable law.
 - (3) Whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

i. Freedom of expression and radio broadcasts

- Radio deserves greater regulation than newspapers because it could invade the privacy of everyone for no fee, and... one is (more) likely to listen to what is being said.
- It is uniquely pervasive and uniquely accessible.
- The following **guidelines** must be observed: [Eastern Broadcasting Corp. (DYRE) V. Dans]
 - 1) The cardinal primary requirements in administrative proceedings as laid down in Ang Tibay v. CIR should be followed before a broadcast station may be closed;
 - 2) Though all forms of communication are entitled to the broad protection of the freedom of expression, the freedom of television and radio broadcasting is somewhat lesser in scope than the freedom accorded to newspapers and print media.
 - 3) The government has a right to be protected against broadcasts which incite listeners to violently overthrow it; and

8. Freedom of assembly and petition

- The right to assemble is *not* subject to prior restraint.
- The right to assembly and petition prevails over economic rights (PBM Employees Assoc. v. PBM Steel Mills)

Public Assembly Act of 1985 (Batas Blg. 880)

- A permit to hold a rally must be filed with the Office of the Mayor at least, 5 working days before the day of the rally.
- No permit from the mayor is required in case the rally is going to be held in
 - (i) freedom parks
 - (ii) inside a private property (provide with consent of the owner), and
 - (iii) campuses of state universities (which are left to university authorities)
- The application must be in writing and must include:
 - (1) names of the organizers and leaders
 - (2) date and time, place and street
 - (3) size
 - (4) manner of the use of the street
 - (5) sound system to be used
 - (6) purpose
- It must also have a statement of the duties of the rallyists.
- Acknowledgment is given of its receipt. If the Mayor refuses to accept the application, then it is enough for filing purposes if a copy is posted in the premises.
- **The Mayor has 2 working days to act on the application. If he does not act, it is deemed granted.** But if he thinks that the rally creates a "clear and present danger" to public peace, order, health, etc., and he has proof of this, he should not deny the application right away. He should hold a hearing during which the applicant can be heard. If after hearing he is still not satisfied that no danger exists, then he can deny the application.
- The applicant can then go to any court other than the Supreme Court for the review of the decision of denial of the mayor. The courts have 24 hours to act on the petition. If the judgment is a reversal of the denial, or in any case if the applicant is satisfied with the decision, the judgment becomes final and executory immediately, and no appeal can be taken by the local authorities anymore.
- If the decision is not satisfactory to the applicant, then he has 48 hours from receipt to appeal to the SC.
- During the rally, the **police must be limited to maintaining peace and order and so must stay away by 100 meters from the rallyists.** They must be in full uniform, with their names visibly written. They can carry **no firearm except a nightstick**, but they are allowed protective devices. If they anticipate trouble, the police must call the attention of the leader of the rallyists. When trouble actually erupts, the police must not disperse the crowd right away but first give a warning. If violence persists, they must give a second warning. If still violence continues, only then can they fight back.
- If a **rally does not have a permit, the police can disperse the crowd, but they cannot use violence.** Penalty is imposed only on the leaders and organizers.
- Among the duties of the rallyists are:
 - (a) to inform the members of their duty under the law,
 - (b) to police their own rank, and
 - (c) to cooperate with local authorities in maintaining peace and order.
- Although under a "permit system", before one can use a public place, one must first obtain prior permit from the proper authorities, the principle has always been that one has the right to a permit, subject only to reasonable regulation.
- The validity of the permit system has been upheld by the Court, provided,
 - (a) it is concerned only with the time, place and manner of assembly (content-neutral) and
 - (b) it does not vest on the licensing authority unfettered discretion in choosing the groups which could use the public place and discriminate others.
- The mayor possesses reasonable discretion to determine or specify the streets or public places to be used for the assembly in order to secure convenient use thereof by others and provide adequate and proper policing to minimize the risks of disorder and maintain public safety and order. [Navarro v. Villegas]

- **Guidelines for the issuance of permits** (now in BP 880) [J.B.L. Reyes v. Bagatsing (1983)]
 - (i) any group which applies must do so within a sufficient time so the authority can have time to act:

- (ii) if a disagreement arises over a denial of a permit, the applicant can question the denial in the lower court, which can try questions of fact and law, and
- (iii) appeal can be made to the SC on an expedited procedure.

▪ **Permissible Limitation On Student Demonstrations Within School Premises:** (Malabanan v. Ramento, 1984)

- Students enjoy the rights of free speech and peaceable assembly within the school.
- School authorities may require that a permit be secured before any assembly may be held within the school.
- School officials cannot deny a permit except when there is “a showing of a clear and present danger of a substantive evil that (it) has a right to prevent.”
- The permit granted may impose conditions as to the time and place of the assembly in order to avoid the disruption of normal school activities.
- The students responsible may be punished for violating the terms of the permit if such violation results in the commission of acts that would constitute a substantive evil, i.e., material and substantial disruption of academic and non-academic activities.
- The penalty imposed must be proportionate to the offense committed.

▪ **Tests**

1. **Purpose Test** – ideally, the test should be the purpose of the assembly regardless of its backers (De Jonge v. Oregon)
2. **Auspices Test** – but the ruling in Evangelista v. Earnshaw has not yet been abrogated. Here, the Manila mayor revoked the permits he already granted because the group was found by the fiscal to be an illegal association.

9. Right to information, access to public records

Art. III, Sec. 7. *The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to, official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.*

- Access of official records (the docket book) for any lawful purpose (to look into the criminal cases for a report on the peace and order situation of the municipality) is guaranteed. But it is subject to reasonable conditions by the custodian of the records. (Baldoza v. Dimaano)
- **Exceptions:** the right does not extend to
 - matters recognized as privileged information rooted in the separation of powers,
 - information on military and diplomatic secrets,
 - information affecting national security,
 - information on investigations of crimes by law enforcement agencies before the prosecution of the accused. (Chavez v. PEA and Amari, G.R. 133250, July 9, 2002)
 - trade and industrial secrets (Garcia v. Board of Investments, 177 SCRA 374)

10. Freedom of political belief

Art. 13, Sec. 18(1). *No person shall be denied solely by reason of his political beliefs and aspirations.*

D. Freedom of Association

Art. III, Sec. 8. *The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.*

Art. IX, B, Sec. 2. xxx
 (5) *The right to self-organization shall not be denied to government employees.*

Art. XIII, Sec. 3. xxx

It shall guarantee the right of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

- The inclusion of the right to unionize in Art. III, sec. 8 is ill-advised because while the right to unionize is an economic and labor right, the right to association in general is a civil- political right.
- Freedom of association includes the freedom **not** to associate, or, if one is already a member, **to disaffiliate** from the association. (Victoriano v Elizalde Rope Workers Union, 1974; Sta. Clara Homeowners Assoc. v Gaston, 2002)
- Degree of protection an association enjoys depends on the position which the association’s objective or activity occupies in the hierarchy of values. [NAACP v. Alabama, 357 US 449 (1958); NAACP v. Button, 371 US 415 (1963)]
- **Right to strike is not** included in the right to form unions (Manila Public School Teachers Assoc. v Sec. Of Educ., 1991).
- Employees in the Civil Service may **not** resort to strikes, walkouts and other temporary work stoppages, like workers in the private sector, in order to pressure the govt to accede to their demands. As now provided under Sec. 4, Rule III of the Rules and Regulations to Govern the Exercise of the Right of Govt. EEs to Self-Organization which took effect after the initial dispute arose, the terms and conditions of employment in the Govt, including any political subdivision or instrumentality thereof and govt. owned and controlled corporations with original charters, are governed by law and employees therein shall not strike for the purpose of securing changes thereof. [SSS Employees Assn v CA, 175 SCRA 686 (1989)]
- The right to associate is not absolute (People v. Ferrer, 48 SCRA 382; United Pepsi Cola Supervisory Union v. Laguesma, G.R. 122226).

E. FREEDOM OF RELIGION

Art. III, Sec. 5. *No law shall be made respecting an establishment of religion; or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.*

1. Non-Establishment Clause

- Rooted in the separation of Church and State (as reflected in the CONST.: Art. IX-C, sec. 2(5); Art. VI, sec. 5(2); Art. VI, sec. 29(2))
- The clause prohibits excessive government entanglement with, endorsement or disapproval of religion (Victoriano v. Elizalde Rope Workers Union, 59 SCRA 54 (1974); Lynch v. Donnelly, 465 US 668 (1984) (O’Connor, J., concurring); Allegheny County v. Greater Pittsburg ACLU, 492 US 574 (1989).]
- The Non-Establishment clause is violated when the State gives any manifest support to any one religion, even if nothing is done against the individual.
- In Everson v. Board of Education (30 US 1), it was held that non-establishment means that the State cannot set up a church or pass laws aiding one religion, all religion, or preferring one religion over another, or force a person to believe / disbelieve in any religion.

a. What are NOT permitted by the Establishment Clause:

1. Prayer and Bible-reading in public schools

- In Engel v. Vitale, 370 U.S. 421 (1967), the SC disallowed the conducting of an interdenominational prayer before the start of classes in public schools as violative of the Non- Establishment clause.
- In Abington School District v. Schemp, 374 U.S. 203 (1963), it likewise disallowed the reading of a passage from the bible

without comment in public schools as contrary to the Non- Establishment clause.

2. Financial subsidy for parochial schools

- Lemon vs. Kurtzman, 403 U.S. 602 – WON financial aid subsidizing parochial schools is constitutional. HELD: No, it creates excessive entanglement because program will require continuous monitoring of schools to ensure they meet the requirement that only secular programs are subsidized. Enunciates the Lemon Test (see above).

3. Religious displays in public spaces

- County of Allegheny vs. ACLU, 57 L.W. 5045 – WON display of crèche and menorah in public building is constitutional. HELD: No for crèche: prominent setting sends unmistakable message that gov't supports Christianity. Yes for menorah: its setting (combined with a Christmas tree) has a secular dimension, a recognized tradition.
- Glassroth vs. Moore, 335 F.3d 1282 (11th Cir. 2003) – WON Granite monument of **10 commandments** in front of courthouse is constitutional. HELD: No, display is unmistakably non-secular. Nothing in its setting de-emphasizes its religious nature, engenders in viewers a sense that Christianity is endorsed by the government.

4. Mandatory religious subjects or prohibition on secular subjects

- Epperson vs. Arkansas, 393 U.S. 97 (1968) – WON law prohibiting the teaching of evolution in schools is constitutional. HELD: No, state may not require schools to tailor their teaching in accordance with the principles or prohibitions of any religious sects.

5. Mandatory bible reading in school

- School District vs. Schempp, 374 U.S. 203 – WON bible reading at the opening of school day is constitutional. HELD: No, the exercise is religious in character. May not prefer belief over non-belief.

6. The word "God" in the Pledge of Allegiance

- Newdow vs. US, No.00-16423, 9th Cir. (opinion amended Feb. 28, 2003) – WON Pledge of Allegiance containing the word "God" is constitutional. HELD: No, mandatory recitation in school would tend to discriminate against students who are atheists.

b. What are permitted (i.e. EXCEPTIONS to the Establishment Clause):

1. Tax exemption

Art. VI, Sec. 28 (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.

- The ruling in Bishop of Nueva Segovia v. Provincial Board, 51 Phil. 352 (1927) is modified to the extent now that the property must be "actually, directly and exclusively" used for religious purposes to be exempt.

2. Operation of sectarian schools

Art. XIV, Sec. 4(2). Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty per centum of the capital of which is owned by such citizens...

- Foreign ownership of educational institutions established by religious groups and mission boards (otherwise citizen or corporation whose capital is at least 60% citizen owned).
 - Administration must be in the hands of Filipinos who may or may not be sectarian.

3. Religious instruction in public schools

Art. XIV, Sec. 3(3). At the option expressed in writing by the parents or guardians, religion shall be allowed to be taught to their children or wards in public elementary and high schools within the regular class hours by instructors designated or approved by the religious authorities of the religion to which the children or wards belong, without additional cost to the Government.

Civil Code, Art. 359. The government promotes the full growth of the faculties of every child. For this purpose, the government will establish, whenever possible: (1) Schools in every barrio, municipality and city where optional religious instruction shall be taught as part of the curriculum at the option of the parent or guardian.xxx

- Religious instruction permitted during class hours in elementary and high school if:
 - With written parental/guardian request;
 - By instructors approved by religious authority and;
 - Without additional cost to government.

4. Public aid to religion

Art. VI, Sec. 29 (2). No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.

- Financial support permissible for priest, preacher, minister, or dignitary assigned to:
 - Armed forces.
 - Penal institution.
 - Government orphanage or leprosarium.

5. Postage stamps depicting Philippines as the site of a significant religious event.

- Alipay vs. Ruiz, 64 Phil. 201 – WON Postage stamps which promote a Catholic event is constitutional. HELD: Yes, benefit to religious sect incidental to promotion of Philippines as a tourist destination.

6. Government sponsorship of town fiestas

- Garces vs. Estenzo, 104 SCRA 510 – WON Barangay resolutions regarding barrio fiesta honoring a patron saint is constitutional. Held: Yes, traditions which used to be purely religious but have now acquired secular character are permissible.

7. Book lending program for students in parochial schools

- Board of Education vs. Allen, 392 U.S. 236 – WON lending program of books to students in parochial schools is constitutional. HELD: Yes, benefit redounds to students and parents not to any particular sect.

8. Display of crèche in a secular setting

- Lynch vs. Donnelly, 465 U.S. 668 (1984) – WON crèche is constitutional. HELD: Yes, it is displayed in a secular manner, merely depicts the origins of the holiday. The Constitution mandates accommodation and not merely tolerance. Instead of an absolutist approach, court inquires if the law or conduct has a secular purpose.

9. Financial support for secular academic facilities

- Tilton vs. Richardson, 403 U.S. 672 – WON law granting financial support for expansion of educational facilities in parochial schools is constitutional. HELD: Yes, secular purpose – facilities to be used for secular activities. Since no constant monitoring there is also no excessive entanglement (unlike Lemon).

10. Exemption from zoning requirements to accommodate unique architectural features of religious buildings

- Martin vs. Corporation of the Presiding Bishop, 434 Mass. 141 – WON zoning law giving exemption to religious sect (Mormons building a tall pointed steeple) is constitutional. HELD: Yes, court may not determine whether architectural features are necessary for a particular religion, e.g. steeple pointing upwards into heaven for Mormons.

c. Tests:

- **Lemon Test** – to determine if government program violates Establishment Clause. (Lemon vs. Kurtzman, 403 U.S. 602)
 - Statute must have a secular legislative purpose.
 - Primary effect must be one that neither advances nor inhibits religion.
 - Must not foster excessive entanglement between government and religion.

F. FREE EXERCISE OF RELIGION

Two aspects: (a) Right to believe, which is absolute; and (b) right to act according to one's beliefs, which may be regulated.

1. Right to believe

- Freedom of religious belief is absolute, it may not be curtailed.
- "Men may believe what they cannot prove". (US vs. Ballard, 322 US 78). Courts may not inquire into the veracity of the subject of belief but only in the sincerity of the belief.

2. Right to act according to one's belief

- May be regulated by police power measures (subject to Clear and Present Danger Test). German vs. Barangan, 135 SCRA 514 – the security of presidential family and their guests supersedes that of people's religious freedom to attend a mass at St. Jude in Malacanang.

3. The following government laws and policies were justified under free exercise clause:

a. Exemption from flag salute

- **Conscientious Objectors cannot be compelled to salute the flag.** The idea

that one may be compelled to salute the flag, sing the national anthem, and recite the patriotic pledge, during a flag ceremony on pain of being dismissed from one's job or of being expelled from school, is alien to the conscience of the present generation of Filipinos who cut their teeth on the Bill of Rights w/c guarantees their rights to free speech and the free exercise of religious profession and worship. [Ebralinag v. Division Superintendent of Schools of Cebu, 219 SCRA 256 (1993)]

b. Freedom to propagate religious doctrines

- The power to tax the exercise of the privilege is the power to control or suppress its enjoyment. Those who can tax the exercise of religious practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance. [American Bible Society v. City of Manila, 101 P 386 (1957)]

c. Exemption from union shop

- Neither does the law constitute an establishment of religion. It has been held that in order to withstand objections based on this ground, the statute must have a secular purpose and that purpose must not directly advance or diminish the interest of any religion. Congress acted merely to relieve persons of the burden imposed by union security agreements. [Victoriano v. Elizalde Rope Workers Union, 59 SCRA 54 (1974)]
- The free exercise of religious profession or belief is superior to contract rights. In case of conflict, the latter must yield to the former. (Gonzalez v. Central Azucarera de Tarlac Labor Union, 1985; Basa v. Federacion Obrera, 1974; Victoriano v. Elizalde Rope Workers Union, 1974)

d. Non-disqualification from local government office

- For lack of votes, law disqualifying religious leaders from public office is held valid. As per free exercise clause it is invalid for it requires a religious test for qualification. Dean Pangalangan: There should be no distinction between ordinary believer and the Pope; if the former can hold office, why not the latter. [Pamil v. Teleron 86 SCRA 413 (1978).
- In the same year (1978), in McDaniel v. Patti, 435 US 618, the US Supreme Court declared a similar law to be violative of the free exercise clause.

4. Tests

a. Clear and Present Danger Test

- The existence of a grave and present danger of a character both grave and imminent, of a serious evil to public safety, public morals, public health or any other legitimate interest, that the state has a right to prevent. (Ebralinag vs. Div. Superintendent, 219 SCRA 256).

b. Compelling State Interest Test (from a benevolent neutrality stance)

- Although the morality contemplated by laws is secular, benevolent neutrality could allow for accommodation of morality based on religion, provided it

does not offend compelling state interests. [*Estrada v Escritor* 408 SCRA 1 (2003)]

- **To apply the test:**
 - i. Determine sincerity and centrality of claimed religious belief and practice.
 - ii. Compelling state interest to override religious belief and practice.
 - iii. The means adopted in pursuing its interest is the least restrictive to religious freedom.

c. Conscientious Objector Test

- Deployed in granting exemption from mandatory exercises, e.g. military service in *Cassius Clay vs. US*, 403 US 698 (1971) and flag salute in *Ebralinag vs. Division Superintendent*, 219 SCRA 256.
- Establish the following:
 - i. Conscientiously opposed to war in any form.
 - ii. Opposition is based upon religious training and belief.
 - iii. Objection is sincere.
- Note: Meaning of religious training and belief: WON it is sincere and meaningful and occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God. (*US vs. Seeger*, 380 US 163). Expands the meaning of religion to cover not just recognized sects but also personal beliefs akin to traditional religion.

extent of impairing some of the rights of parties arising from contracts. However, such emergency laws are to remain in effect only during the continuance of the emergency.

▪ **Currency legislation and contracts**

- The legislative department has complete authority to determine the currency of the state and to prescribe what articles shall be used and accepted as legal tender in the payment of lawful obligations.
- Private parties are bound to observe this governmental authority over the nation's currency in the execution of their contracts.

▪ **Impairment**

- In order to come within the meaning of the constitutional provision, the obligation of contract must be impaired by some legislative act (statute, ordinance, etc.). The act need not be by a legislative office; but it should be legislative in nature. Furthermore, the impairment must be substantial (*Philippine Rural Electric Cooperatives Assoc. v. DILG Secretary*, G.R. 143076, June 10, 2003).
- A mere administrative order, not legislative in nature, may not be considered a cause of impairment within the scope of the constitutional guarantee. The guarantee is also not violated by court decisions.
- The act of impairment is anything which diminishes the value of the contract. The legislature may, however, change the remedy or may prescribe new modes of procedure. The change does not impair the obligation of contracts so long as another remedy, just as efficacious, is provided for the adequate enforcement of the rights under the contract. (*Manila Trading Co v. Reyes*, 1935)

G. NON-IMPAIRMENT OF OBLIGATIONS OF CONTRACTS

Art. III, Sec. 10. *No law impairing the obligation of contracts shall be passed.*

Civil Code, Art. 1306. *The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.*

- **Nature of protection**
 - **Purpose:** Safeguard the integrity of valid contractual agreements against unwarranted interference by the State.
 - **General Rule:** Contracts should be respected by the legislature and not tampered with by subsequent laws that will change the intention of the parties or modify their rights and obligations. The will of the parties to the contract must prevail.
- **Contracts affected**
 - Affects legal, executed and executory contracts, which must be valid.
- **Limitations**
 - A contract valid at the time of its execution may be legally modified or even completely invalidated by a subsequent law.
 - Strict construction. Charters, franchises and licenses granted by the Government are strictly construed against the grantees.
 - If a law is a proper exercise of the police power, it will prevail over the contract. This is because public welfare is superior to private rights (*PNB v. Remigio*, G.R. 78508, March 21, 1995). Into each contract are read the provisions of existing law and, always, a reservation of the police power as long as the agreement deals with a matter affecting the public welfare.
 - Eminent domain and taxation may also validly limit the impairment clause.
- **Effect of emergency legislation on contracts**
 - In a national emergency, such as a protracted economic depression, the police power may be exercised to the

H. FREEDOM OF MOVEMENT (LIBERTY OF ABODE AND RIGHTS TO TRAVEL)

Art. III, Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

▪ **Freedom of Movement: liberty of Abode and of travel**

- The liberty guaranteed by this provision includes (1) freedom to choose and change one's place of abode and (2) freedom to travel both within the country and outside.
- Freedom of movement is not absolute.
- Limitation on liberty of abode: lawful order of the court
- Limitations on right to travel: interest of national security, public safety, public health, the law. This may be curtailed by administrative authorities, such as passport-officers, but only the grounds given above.
- Universal Declaration of Human Rights, Art. 13(2): everyone has the right to leave any country, including one's own, and to return to that country.
- Covenant on Civil and Political Rights, Art. 12(4): no one shall be deprived of the right to enter his own country.
- The right to return to one's country is not among the rights specifically guaranteed in the Bill of Rights, which treats only of the liberty of abode and the right to travel, but it is the Court's well considered view that the right to return may be considered as a generally accepted principle of international law, and under our Constitution, is part of the law of the land. However, it is distinct and separate from the right to travel and enjoys a different protection under the Intl. Covenant of Civil and Political Rights, i.e. against being arbitrarily deprived thereof. [*Marcos v. Manglapus*, 177 SCRA 668 & 178 SCRA 760 (1989)]
- Dissenting opinion of Justice Gutierrez in the Marcos case: Sec. 6 of the Bill of Rights states categorically that the liberty of abode and of changing the same within limits prescribed by law may be impaired only upon lawful order of the court. Not by an executive officer. Not even by the President. Sec. 6 further provides that the

right to travel, and this obviously includes the right to travel out of or back into the Philippines, cannot be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

- The right to change abode and travel within the Philippines are not absolute rights. It can be regulated by "lawful order." The order of the CA releasing petitioner on bail constitutes such lawful order as contemplated by Section 6. The condition imposed by the CA is simply consistent with the nature and function of a bail bond, which is to ensure that petitioner will make himself available at all times whenever the Court requires his presence. (Yap, Jr. v. CA, 2001)

▪ **Aliens and right to entry**

- While the right to travel of citizens covers both exit from and entry into the country, aliens cannot claim the same right.

I. PRIVILEGE OF WRIT OF HABEAS CORPUS

Art. III, Sec. 15. The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion, when the public safety requires it.

- A "writ of habeas corpus" is a writ directed to the person detaining another, commanding him to produce the body of the detainee at a designated time and place, and to show cause why he should continue to be detained.
- The "privilege of the writ" is the right to have the immediate determination of the legality of the deprivation of physical liberty.
- Habeas Corpus may also be availed where: [a] there was a deprivation of constitutional restraint of the person, [b] the court has no jurisdiction to impose the sentence, [c] an excessive penalty has been imposed (Feria v. CA, G.R. 122954, February 15, 2000; In Re: Reynaldo de Villa, G.R. 158802, November 17, 2004) or [d] the rightful custody of any person is withheld from the person entitled thereto (Tijing v. CA, G.R. 125901, March 8, 2001).

Art. VII, Sec. 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines, and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

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

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

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

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

- In case of invasion or rebellion, when the public safety requires it, the President may, for a period not exceeding 60 days, suspend the privilege of the writ of habeas corpus.
- The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.
- During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within 3 days, otherwise he shall be released. (Art. VII, Sec. 18.)
- What is suspended is the privilege of the writ, and not the writ itself. The writ will always issue as a matter of course. But when the privilege of the writ is suspended, all the detaining office needs to do when he receives the writ of habeas corpus is to show to the court that the detainee is being detained for an offense covered by the suspension, and the court cannot inquire any further to find out if the detention is legal. Under the Constitution, this is so only for 3 days. After 3 days, the Court can now require the detaining officer to produce the body of the detainees and show cause why he should not be released.
- The suspension of the privilege of the writ applied only to crimes related to invasion or rebellion. An extensive discussion was made under the Commander-in-Chief clause of the President, supra. This rest of the section will be confined to habeas corpus as a remedy in all other offenses.
- In general as already noted above, the privilege of the writ is an extraordinary remedy to question the illegality of the arrest or detention, or any other restraint to liberty. When all else is lost, it is the last recourse to get someone out of his illegal detention.

III. RIGHTS IN THE CRIMINAL ADMINISTRATION OF JUSTICE

A. RIGHTS BEFORE TRIAL

1. Arrests, searches and seizures

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

Sec. 3. The privacy of communication and correspondence shall be inviolable, except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law. Any evidence obtained in violation of this or the preceding section, shall be inadmissible for any purpose in any proceeding.

- Protection from unreasonable searches & seizures
 - a personal right
 - may be invoked or waived by the person directly affected (Stonehill v. Diokno; People v. Damaso, 212 SCRA 457)
 - directed against the government & its agencies → cannot extend over acts committed by private individuals (People v. Marti, 193 SCRA 57)
 - available to all persons
 - includes: aliens & artificial persons (save for the opening of their account books, which the state can do through its police and taxing powers)
- a. **pre-arrest rights**
 - Warrantless arrests (Rule 113, Sec. 5, 2000 Rules of Criminal Procedure) strictly construed as exception to general rule requiring judicial warrant**

Rules of Court, Rule 113, Sec. 5. Arrest without warrant; when lawful.-- A peace officer or a private person may, without a warrant, arrest a person:
(a) When, in his presence, the person to be arrested has

committed, is actually committing, or is attempting to commit an offense;

(b) When an offense, has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it;

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

In cases falling under paragraphs (a) and (b) hereof, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail, and he shall be proceeded against in accordance with Rule 112, Section 7.

- "Citizen Arrest" → lawful arrest without a warrant by a peace officer or private individual under limited circumstances
- Key elements:
 - 5a: offense was committed "in his presence"
 - 5b: he has "personal knowledge"
 - 2 requisites must concur: (1) the person to be arrested must execute an overt act indicating that he had just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer (People v. Molina, G.R. 133917. February 19, 2001)
- General rule: strict enforcement → People v. Burgos, 144 SCRA 1 (1986)
- a constabulary officer arrested a farmer without a warrant based on information that he was a subversive
- unconstitutional: the officer had no personal knowledge of the offense itself
- Exceptions:
 - "Continuous" crime of subversion → Umil v. Ramos, 187 SCRA 311 (1990)
 - Illegal possession of guns and drugs → People v. Linsangan, 195 SCRA 784

ii. Arrest under warrant

- Proper issuance of a warrant of arrest
 - the judge has the legal duty of first satisfying himself that there is probable cause [Amargas v. Abbas, 98 Phil 739 (1956)]
 - independently of and notwithstanding the preliminary investigation made by a provincial fiscal
 - the judge may require the fiscal to submit such evidence as may be sufficient to show (at least) a prima facie case
 - the judge is not required to personally examine the complainant and his witnesses [Soliven v. Makasiar, 167 SCRA 393 (1998)]

iii. Requisites of a valid arrest warrant

- Existence of probable cause determined personally by a judge
 - After examination of the complainant and the witnesses he may produce
 - With particularity of description

iv. Determination of probable cause

- Probable cause
 - Basis
 - **ARREST warrants:** Such facts and circumstances antecedent to the issuance of the warrant sufficient to induce a

cautious man to rely on them and act in pursuance thereof. (People v. Syjuco, 64 Phil 667; Alvarez v. CFI, 64 Phil 33).

- **SEARCH warrants:** Such facts and circumstances as would reasonably make a prudent man believe that a crime has been committed and that the documents or things sought to be searched and seized are in the possession of the person against whom the warrant is sought. (Burgos v Chief of Staff, 1984)

▪ The judge shall:

- Personally evaluate the report and supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue the arrest warrant; OR
- If, on the basis thereof, he finds no probable cause, he may disregard the prosecutor's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause (Cruz v. Judge Areola, A.M. No. RTJ-01-1642, March 6, 2002).

▪ **No probable cause → No arrest warrant**

- Arrest without a warrant → ILLEGAL DETENTION (unless said arrest falls under Rule 113, Sec. 5) → cannot be cured by filing information, since no warrant of arrest or order of commitment has been issued by the municipal court up to the hearing of the case before the Court [Lino v. Fugoso, 77 Phil 933 (1947)]
- Take note: Francisco Juan Larranaga v. CA (G.R. 130644, March 13, 1998) → it was held that the filing of charges and the issuance of the warrant of arrest against a person invalidly detained will cure the defect of that detention, or at least deny him the right to be released

▪ **Malicious prosecution**

- Unfounded criminal actions
 - Includes civil suits to vex and humiliate the defendant despite the absence of a cause of action or probable cause
- Plaintiff must prove: (1) fact of prosecution and termination by acquittance; (2) prosecution cited without probable cause; (3) prosecutor was actuated or impelled by malice/improper motive. (Ponce v. Legaspi)

v. Issuance of arrest

- **WON an arrest warrant should be issued (Samulde v. Salvani, Jr.)**
 - Investigating judge must first examine the complainant and his witnesses "in writing and under oath... in the form of **searching questions and answers.**"
 - If he is satisfied (probable cause exists) + necessity of placing the accused under

immediate custody, judge may issue the warrant.

- **Searching questions and answers**
 - “whether there is a reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof so that a warrant of arrest may be issued and the accused held for trial” (Luna v. Plaze)
 - no need for a *de novo* hearing (judge merely determines the probability, not the certainty of guilt of the accused)
- vi. **Power of municipal trial judge to issue arrest warrant on fiscal’s determination of probable cause**
 - **Fiscal (Placer v. Villanueva)**
 - authorized to determine probable cause by the Bill of Rights and the law empowering him to conduct preliminary investigations
 - his determination of probable cause is sufficient to issue a warrant
 - trial judge should not hold ANOTHER preliminary examination
 - **Difference in issuing a search warrant FROM an arrest warrant**
 - judge may simply rely on fiscal’s certification as to probable cause
- vii. **Objection to Arrest Warrant**
 - must be raised before the accused enters his plea (People v. Robles, G.R. 101335, June 8, 2000); failure to do so constitutes waiver of his right against unlawful restraint of liberty (Filoteo v. Sandiganbayan, 263 SCRA 222)

2. Administrative Warrants

- Deportation Proceedings → probable cause not required (Harvey v. Defensor Santiago)
- Essentials:
 - a specific charge against the alien intended to be arrested and deported
 - a fair hearing to be conducted
 - a charge substantiated by competent evidence

3. Conditions for issuance of search warrant

- **Requisites [Pasion vda. de Garcia v. Locsin, 65 Phil. 689, (1938)]**
 - must be issued by a judge upon probable cause;
 - probable cause must be determined by the judge himself;
 - in the determination of probable cause, the judge must examine, under oath or affirmation, the complainant and his witnesses; and
 - the warrant issued must particularly describe the place to be searched and persons or things to be seized

a. Procedure to determine probable cause to search

- **Primary jurisdiction in issuing search warrants belongs to:**
 - RTC: where criminal case is pending
 - RTC: in the area/s contemplated → if no case has been filed yet (Malalao v. CA, 232 SCRA 249)
 - But an RTC not having territorial jurisdiction over the place to be searched may issue a search warrant where the filing of such is necessitated and justified by compelling considerations of urgency, subject, time, and place (People v. Chui, G.R. 142915-16, February 27, 2004).
- **Warrant of arrest vs. Search warrant**
 - Compare Rule 112, Sec. 6 with Rule 126, Sec. 4
- **Search warrant proceeding**
 - Neither a criminal action nor a commencement of a prosecution

- Solely for the possession of personal property (Unilab, Inc. v. Isip, G.R. 163958, June 28, 2005)

Rule 112, Sec. 6. When warrant of arrest may issue.-- (a) By the Regional Trial Court.-- Upon the filing of an information, the Regional Trial Court may issue a warrant for the arrest of the accused.

(b) By the Municipal Trial Court.-- If the municipal trial judge conducting the preliminary investigation is satisfied after an examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice, he shall issue a warrant of arrest. (Rules of Court.)

Rule 126, Sec. 4. Examination of complainant; record.-- The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath the complainant and any witnesses he may produce on facts personally known to them and attach to the records their sworn statements together with any affidavits submitted.

b. Particular description of things to be seized

- **General warrant**
 - Void → (1) does not describe with particularity the things subject of the search and seizure, and (2) probable cause has not been properly established (Nolasco v. Pano)
 - Description is required to be specific only in so far as circumstances will allow (People v. Tee, G.R. 140546-47, January 20, 2003)
 - General descriptions will not invalidate the entire warrant if other items have been particularly described (Uy v. BIR, G.R. 129651, October 20, 2000).
- **Personal property which may be seized under Sec 2, rule 126 of the Rules on Criminal Procedure:**
 - Property subject of an offense
 - Stolen or embezzled property and other proceeds or fruits of an offense;
 - Used or intended to be used as a means of committing an offense

4. Warrantless search

- **Areas within the reach and control of the accused** are the permissible areas of search for both **stop-and-frisk** and **search-incident-to-a-valid-arrest** (Espano vs. CA, 288 SCRA 558; People vs. Cubcubin, G.R. 136267, July 10, 2001).

a. When search is made of moving vehicles

- **Dwelling house vs. moving vehicles**
 - Dwelling house: search warrant may readily be obtained
 - Moving vehicles: securing such is not practicable since the vehicle can be quickly moved out of the locality or jurisdiction in w/c the warrant must be sought." [Papa v. Mago, 22 SCRA 857 (1968)]

b. When search is an incident to a valid arrest.

Rules of Court, Rule 126, Sec. 12. Search incident to lawful arrest.- A person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant.

- **Person arrested may be searched**
 - for dangerous weapons or anything that proves the commission of the offense
 - only WITHIN the area of control of the arrested person and the time of arrest
- **For search to be valid [Nolasco v. Cruz Pano, 139 SCRA 152 (1985)]**
 - must be “incidental” to the arrest → not separated by time or place from the arrest
- **Tests for validity**

- item to be searched was within the arrestee's custody or area of immediate lag
 - search was contemporaneous with the arrest
- c. **When things seized are within plain view of a searching party**
- **PLAIN VIEW DOCTRINE**
 - Elements: (People v. Musa; People v. Sarap, G.R. 132165, March 26, 2003)
 - Prior valid intrusion into a place
 - Evidence inadvertently discovered by police who had the right to be where they were
 - Evidence must be immediately apparent
 - Noticed without further search
- d. **Stop and Frisk—precedes an arrest**
- 'Stop and search' at military/police checkpoints → constitutional (Valmonte v. de Villa)
 - akin to a 'stop and frisk' situation whose object is either to determine the identity of suspicious individuals or to maintain the status quo momentarily while the police officers seeks to obtain more information [Posadas v. CA, 188 SCRA 288 (1990)]
- e. **When there is a valid express waiver made voluntarily and intelligently.**
- **Requisites**
 - Must appear that right exists
 - Person involved had actual/constructive knowledge of the existence of such right
 - Said person had an actual to interest to relinquish the right
 - **Waiver is limited only to the arrest**
 - does not extend to search made as an incident thereto, or to any subsequent seizure of evidence found in the search (People v. Peralta, G.R. 145176, March 30, 2004)
- f. **Customs search**
- Seizure of goods concealed to avoid duties
- g. **Exigent and Emergency Circumstances**
- Example: 1989 coup d'etat

5. **What may be seized**

Rules of Court, Rule 126, sec. 2. Personal property to be seized.-- A search warrant may be issued for the search and seizure of the following personal property:

- (a) Subject matter of the offense;
- (b) Stolen or embezzled and other proceeds or fruits of the offense; and
- (c) Used or intended to be used as a means of committing an offense.

1987 Constitution, Art. III, Sec. 3(2). Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

- **General Warrants as unconstitutional**
 - sanctity of the domicile and privacy of communication and correspondence are at the mercy, caprice or passion of peace officers. [Stonehill v. Diokno]
 - **Art 3, Sec 3(2) enunciates the Exclusionary rule.**
6. **Civil action for damages**
- Can also be filed pursuant to Article 32 of the Civil Code
 - If the privilege of the writ is suspended, the court can still entertain an action against the task force and the top ranking officials who ordered the seizure. (Aberca v. Ver)
 - To recover damages for the illegal searches and seizures made in a despotic manner.
 - Can indirectly question the validity of the suspension of the privilege

7. **Right to privacy of communication**

- Between the inherent right of the state to protect its existence and promote public welfare and an individual's right against a warrantless search which is however reasonably conducted, the former should prevail [Valmonte v. de Villa]

8. **Search and Seizure by Private Persons**

- The constitutional proscription against unlawful searches and seizures therefore applies as a restraint directed only against the government and its agencies tasked with the enforcement of the law. Thus, it could only be invoked against the State to whom the restraint against arbitrary and unreasonable exercise of power is imposed. If the search is made at the behest or initiation of the proprietor of a private establishment for its own and private purposes, and without the intervention of police authorities, the right against unreasonable searches and seizures cannot be invoked for only the act of private individuals, not law enforcers, is involved. The protection against unreasonable searches and seizures cannot be extended to acts committed by private individuals so as to bring it within the ambit of alleged unlawful intrusion by the government. [People v. Marti, 193 SCRA 57 (1991)]

b. **Post-arrest rights of accused**

- i. **Right of persons under custodial investigation: Right to silence, to counsel, and to warnings**

Art. III, Sec. 12(1). Any person under custodial investigation for the commission of an offense, shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(1) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(2) Any confession or admission obtained in violation of this or sec. 17 hereof, shall be inadmissible in evidence against him.

(3) The law shall provide for penal and civil sanctions for violations of this section, as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

Rep. Act No. 7438

AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING, AND INVESTIGATING OFFICERS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. Statement of Policy. --- It is the policy of the State to value the dignity of every human being and guarantee full respect for human rights.

Sec. 2. Rights of Persons Arrested, Detained, or under Custodial Investigation; Duties of Public Officers. ---

(a) Any person arrested, detained or under custodial investigation shall at all times be assisted by counsel.

(b) Any public officer or employee, or anyone acting under his order or in his place, who arrests,

detains or investigates any person for the commission of an offense shall inform the latter, in a language known to and understood by him, of his rights to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer privately with the person arrested, detained or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer.

(c) The custodial investigation report shall be reduced to writing by the investigating officer, provided that before such report is signed, or thumbmarked if the person arrested or detained does not know how to read and write, it shall be read and adequately explained to him by his counsel or by the assisting counsel provided by the investigating officer in the language or dialect known to such arrested or detained person, otherwise, such investigation report shall be null and void and of no effect whatsoever.

(d) Any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in writing and signed by such persons in the presence of his counsel or in the latter's absence, upon a valid waiver, and in the presence of any of the parents, elder brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extrajudicial confession shall be inadmissible in evidence in any proceeding.

(e) Any waiver by a person arrested or detained under the provisions of Art. 125 of the RPC, or under custodial investigation, shall be in writing and signed by such person in the presence of his counsel; otherwise such waiver shall be null and void and of no effect.

(f) Any person arrested or detained or under custodial investigation shall be allowed visits by or conferences with any member of his immediate family, or any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, or by any national NGO duly accredited by the CHR or by any international NGO duly accredited by the Office of the President. The person's "immediate family" shall include his or her spouse, fiancé or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, and guardian or ward.

As used in this Act, "custodial investigation" shall include the practice of issuing an "invitation" to a person who is under investigation in connection with an offense he is suspected to have committed, without prejudice to the liability of the "inviting" officer for any violation of law.

Sec. 3. Assisting Counsel. --- Assisting counsel is any lawyer, except those directly affected by the case, those charged with conducting preliminary investigation or those charged with the prosecution of crimes.

The assisting counsel other than the government lawyers shall be entitled to the following fees:

- (a) The amount of P150.00 if the suspected person is chargeable with light felonies;
- (b) The amount of P250.00 if the suspected person is chargeable with less grave or grave felonies;

(c) The amount of P350.00 if the suspect is chargeable with a capital offense.

The fee for the assisting counsel shall be paid by the city or municipality where the custodial investigation is conducted, provided that if the municipality or city cannot pay such fee, the province comprising such municipality or city shall pay the fee: *Provided*, That the Municipal or City Treasurer must certify that no funds are available to pay the fees of assisting counsel before the province pays said fees. In the absence of any lawyer, no custodial investigation shall be conducted and the suspected person can only be detained by the investigating officer in accordance with the provision of Art. 125 of the RPC.

Sec. 4. Penalty Clause. ---

(a) Any arresting public officer or employee, or any investigating officer who fails to inform any person arrested, detained or under custodial investigation of his right to remain silent and to have competent and independent counsel preferably of his own choice, shall suffer a fine of P6,000.00 or a penalty of imprisonment of not less than 8 years but not more than 10 years, or both. The penalty of perpetual absolute disqualification shall also be imposed upon the investigating officer who has been previously convicted of a similar offense.

The same penalties shall be imposed upon a public officer or employee, or anyone acting upon orders of such investigating officer or in his place, who fails to provide a competent and independent counsel to a person arrested, detained or under custodial investigation for the commission of an offense if the latter cannot afford the services of his own counsel.

(b) Any person who obstructs, prevents or prohibits any lawyer, any member of the immediate family of a person arrested, detained or under custodial investigation, or any medical doctor or priest or religious minister or by his counsel, from visiting and conferring privately chosen by him or by any member of his immediate family with him, or from examining and treating him, or from ministering to his spiritual needs, at any hour of the day or, in urgent cases, of the night shall suffer the penalty of imprisonment of not less than 4 years nor more than 6 years, and a fine of P4,000.00.

The provisions of the above Section notwithstanding, any security officer with custodial responsibility over any detainee or prisoner may undertake such reasonable measures as may be necessary to secure his safety and prevent his escape.

Sec. 5. Repealing Clause. --- RA 857, as amended, is hereby repealed. Other laws, PDs, EOs or rules and regulations, or parts thereof inconsistent with the provisions of this Act are repealed or modified accordingly.

Sec. 6. Effectivity. --- This Act shall take effect 15 days following its publication in the OG or in any daily newspaper of general circulation in the Philippines.

Approved, April 27, 1992.

- When do the rights begin to be available?
 - (1) when the person is already in custody
 - (2) custodial investigation involves any questioning initiated by law enforcement
 - (3) during "critical pre-trial stages" in the criminal process

- Rights end at the time of the filing of criminal cases in court
- **MIRANDA RIGHTS** [*Miranda v. Arizona*, 384 U.S. 436 (1966)]

Any person under custodial or police investigation has the right to be informed of the following rights:

1. Right to remain silent
 2. Right to be reminded that if he waives his right to remain silent, anything he says can and will be used against him.
 3. Right to counsel before and during interrogation
 4. Right to be reminded that if he cannot afford counsel, then one will be provided for him by the state.
 5. Even if the person consent to answer questions without the assistance of counsel, the moment he asks for a lawyer at any point in the investigation, the interrogation must cease until an attorney is present.
 6. if the foregoing protections and warnings are not demonstrated during the trial to have been observed by the prosecution, no evidence obtained as a result of the interrogation can be used against him.
- The reading of these rights is no less indispensable even if the person arrested is a prominent Constitutional lawyer, as to assure him that his interrogators are willing to respect his rights amidst the pressure of custodial investigation.
 - The "Miranda rights" are available to avoid involuntary extrajudicial confession
 - **For an extrajudicial confession to be admissible, it must satisfy the following requirements:**
 - (1) it must be voluntary
 - (2) it must be made with the assistance of competent and independent counsel
 - (3) it must be express
 - (4) it must be in writing

- **Prosecution has burden to prove warnings**

- The prosecution may not use statements whether exculpatory or inculpatory [*People v. Nicandro*]

- **Custodial phase of investigation police line-up**

- No custodial investigation shall be conducted unless it be in the presence of counsel. While the right may be waived, the waiver shall not be valid unless made in writing and in the presence of counsel. [*Gamboa v. Cruz*]

ii. Test of waiver of Miranda rights

What may be waived: the right to remain silent and to counsel but not the right to be given "Miranda warnings" or the right to be informed of these rights.

- As the warnings are the means of insuring that the suspect is apprised of his rights so that any subsequent waiver of his rights can be "voluntary, knowing and intelligent,"
- Waiver must be in writing, and made in the presence of counsel (ruling effective only on April 26, 1983. Cannot apply retrospectively to waivers before that date.)

iii. Exclusionary rule a.k.a. FRUIT OF THE POISONOUS TREE DOCTRINE

Art. III, Sec. 12(3). Any confession or admission obtained in violation of this or section 17 hereof shall be inadmissible in evidence against him.

- Justice Frankfurter, in *Nardone v. US*: Once the primary source is shown to have been unlawfully obtained, any secondary or derivative evidence is also inadmissible.
- In *Peo. v. Urro*, went back to the former rule that involuntary or coerced confessions, regardless of their truth, are null and void
- This is not bec. such confessions are unlikely to be true but bec. the methods used to extract them offend an underlying principle in the enforcement of our criminal law: that ours is an accusatorial and not an inquisitorial system
- **Exceptions to the Exclusionary rule:**
 1. In *Harris v. US*, it was held that a confession obtained w/o complying w/ the Miranda may nevertheless be

presented in evidence to impeach his credit. Miranda shield cannot be perverted into a license to use perjury by way of a defense.

2. In *New York v. Quarles*, the SC created a "public safety" exception to the Miranda rule. In such exigent circumstances, police officers must not be made to choose bet. giving the warnings at the risk that public safety will be endangered.
3. Miranda rule not applicable to confessions executed before January 17, 1973. [*Magtoto v. Manguera*, 63 SCRA 4 (1975)], the date of effectivity of the 1973 Constitution
4. Not applicable to *res gestae* statements [*People v. Dy*, 158 SCRA 111 (1988)]
5. Not applicable to statements given in administrative investigations [*People v. Ayson*, 175 SCRA 216 (1989)]

iv. Privilege against self-incrimination

- The right is NOT to "be compelled to be a witness against himself."
- It prescribes an "option of refusal to answer incriminating questions and not a prohibition of inquiry."
- However, the right can be claimed only when the specific question, incriminatory in character, is actually put to the witness. It cannot be claimed at any other time.
- It does not give a witness the right to disregard a subpoena, to decline to appear before the court at the time appointed.
- The right against self-incrimination is not self-executing or automatically operational. It must be claimed.
- **Rights of Defendant in Criminal Case As Regards Giving of Testimony**

A suspect has the following rights in the matter of his testifying or producing evidence, to wit:

1. BEFORE THE CASE IS FILED IN COURT but after having been taken into custody the continuing right to remain silent and to counsel, and to be informed thereof, not to be subjected to force, violence, threat, intimidation or any other means which vitiates the free will; and to have evidence obtained in violation of these rights rejected; and
2. AFTER THE CASE IS FILED IN COURT
 - a) to refuse to be a witness;
 - b) not to have any prejudice whatsoever result to him by such refusal;
 - c) to testify in his own behalf, subject to cross-examination by the prosecution;
 - d) WHILE TESTIFYING, to refuse to answer a specific question which tends to incriminate him for some crime other than that for which he is then prosecuted.

- **Signing receipts not self-incriminatory**

- The receipts for seized items are mandatory on the part of apprehending and seizing police officers. They are merely intended to show that the items were taken from the accused. [*People v. Boholst* 152 SCRA 263 (1987)]

v. Rights against double jeopardy

- No person can be prosecuted twice for the same offense.
- Requisites:
 - (1) Valid complaint or information
 - (2) Filed before a competent court
 - (3) To which the defendant had pleaded
 - (4) Defendant was previously acquitted or convicted, or the case was otherwise terminated without his express consent (*People v. Judge Pineda*, G.R. 44205)
- When is 2nd prosecution allowed?
 - supervening death
 - unjustified dismissal
 - dismissal on motion to quash
 - absence of jurisdiction
 - When is 2nd prosecution prohibited:
 - (1) dismissal on demurrer
 - (2) prosecution for the same act

1. **Prosecution for supervening death even after earlier conviction for physical injuries**
 - When after the 1st prosecution a new fact supervenes for which the defendant is responsible, which changes the character of the offense, and, together with the facts existing at the time, constitute a new and distinct offense, the accused could not be said to be in 2nd jeopardy in indicted for the new offense [Melo v. People, 85 Phil 766 (1950)]
2. **Retrial after unjustified dismissal allowed**
 - If dismissal was void for having been issued without legal basis, the acquittal bought about by the dismissal is also void. Hence, no jeopardy can attach from such acquittal [People v. Jardin]
3. **Double jeopardy for same act**
 - The constitutional protection against double jeopardy is available although the prior offense charged under an ordinance be different from the offense charged subsequently under a national statute, provided that both offenses spring from the same set of acts. [People v. Relova]
4. **Dismissal on motion to quash prevents jeopardy**
 - The dismissal on motion to quash does not amount to an acquittal on the merits, from a legal standpoint, the defendant is deemed as not having been charged with the commission of any offense whatsoever under the defective information.
5. **Double jeopardy after dismissal on demurrer**
6. **Absence of jurisdiction prevents jeopardy**

vi. Right to bail

Art. III, Sec. 13. All persons, except those charged with offenses punishable by reclusion perpetua when the evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. the right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.

- **Application for bail moots habeas corpus**
 - Bail v. Habeas Corpus

Bail	Habeas corpus
In the case of bail, there is an implicit recognition that the arrest and detention, are valid, or that even if they were initially illegal, such illegality was cured by the subsequent filing of a case in court.	In habeas corpus, the assumption is precisely that the arrest and detention are illegal, so that
The prayer in bail is that one be released temporarily from such valid detention, and this can be made anytime after arrest.	the prayer is to be released permanently from such illegal detention.
The Constitution now provides, overruling <u>Morales v. Enrile</u> that the suspension of the privilege of the writ does not carry with it the suspension of the right to bail.	When the privilege of the writ is suspended, the arrest and detention remain illegal, but the remedy afforded by law to the victim is not available. Under the 1987 Constitution, though the effect of the suspension has been considerably lessened to the need to file a case within 72 hours from the illegal arrest, otherwise the detainee is to be released.

- The conduct of petitioner in applying for bail indicated that he had waived his objection whatever defect, if any, in the preliminary examination conducted by respondent judge [Luna v. Plaza]
- **Meaning of capital offense**
 - An offense which, under the law existing at the time of its commission, and at the time of the application to be admitted to bail, may be punished by death (Sec. 5 Rule 114 of the ROC)
 - The capital nature of an offense is determined by the penalty prescribed by law.
 - Generally, bail is a matter of right before conviction, unless the accused is charged with a capital offense and the evidence of guilt is strong. [Bravo, Jr. v. Bravo]
- **Restriction of provisional liberty as bail**

Art. III, Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

- **When Right may be invoked**
 - The right to bail is available from the very moment of arrest (which may be before or after the filing of formal charges in court) up to the time of conviction by final judgment (which means after appeal).
 - No charge need be filed formally before one can file for bail, so long as one is under arrest. [Heras Teehankee v. Rovica, 75 Phil.634 (1945)]
 - When bail is a matter of right, when it is a matter of discretion:

Matter of right	Matter of discretion
Bail is a matter of right in all cases not punishable by reclusion perpetua.	in case the evidence of guilt is strong. In such a case, according to <u>People v. San Diego</u> , 26 SCRA 522 (1966), the court's discretion to grant bail must be exercised in the light of a summary of the evidence presented by the prosecution. Thus, the order granting or refusing bail must contain a summary of the evidence for the prosecution followed by the conclusion on whether or not the evidence of guilt is strong. Also discretionary in extradition proceedings, because extradition courts do not render judgments of conviction or acquittal so it does not matter WON the crimes the accused is being extradited for is punishable by reclusion perpetua (<u>US Government v. Judge Puruganan and Mark Jimenez</u> , G.R. 138571, December 17, 2002)

- **When right may not be invoked**
 - The only time bail may be denied is when
 - (a) the offense is punishable by reclusion perpetua
 - (b) the evidence of guilt is strong.
 - With the abolition of the death penalty (III, 20), and the automatic commutation of a death sentence to reclusion perpetua, it is contended that when the 1987 Constitution denies the right to bail in offenses punishable by reclusion perpetua
- **Standards for fixing bail**

Rule 114, Sec. 6. Amount of bail; guidelines.-- The judge

who issued the warrant or granted the application shall fix a reasonable amount of bail considering primarily, but not limited to the following guidelines:

- (a) Financial ability of the accused to give bail;
- (b) Nature and circumstances of the offense;
- (c) Penalty of the offense charged;
- (d) Character and reputation of the accused;
- (e) Age and health of the accused;
- (f) The weight of the evidence against the accused;
- (g) Probability of the accused appearing in trial;
- (h) Forfeiture of other bonds;
- (i) The fact that accused was a fugitive from justice when arrested; and
- (j) The pendency of other cases in which the accused is under bond.

Excessive bail shall not be required.

B. RIGHTS DURING TRIAL

Art. III, Sec. 14.

1. No person shall be held to answer for a criminal offense without due process of law.
2. In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

- Rights of the accused (**1987 Constitution, Art. III, Sec. 14**):
 - To be given due process of law;
 - To be presumed innocent;
 - To be heard by himself and counsel;
 - To be informed of the nature and cause of the accusation against him;
 - To have a speedy, impartial and public trial;
 - To meet the witnesses face to face;
 - To have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf.
- NOTE: After arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

1. Right to due process

a. Impartial Tribunal

- See due process
- The trial contemplated by the due process clause is a trial by judicial process, not by executive or military process. (Olaguer v. Military Commission No. 34)

2. Presumption of innocence

- The requirement of proof beyond reasonable doubt is a necessary corollary of the constitutional right to be presumed innocent. (People v. Dramavo, 42 SCRA 69, 1971)
- A law disqualifying candidates charged with national security offenses was struck down as unconstitutional, for violating the presumption against innocence. (Igot v. Comelec, 95 SCRA 392, 1980)
- The accused cannot present evidence before the prosecution does so, even if the accused pleads guilty. It violates the presumption of innocence. (Alejandro v. Pepito, 96 SCRA 322, 1980)
 - HOWEVER, Rule 119, sec. 3 (e) of the 1985 Rules of Criminal Procedure reverses the order of trial when the defendant admits the act but invokes a justifying or exempting circumstance.
- The presumption of regularity (in official duties) cannot by itself prevail over the presumption of innocence of the accused. But where it is not the sole basis for conviction, the presumption of regularity of performance of official

functions may prevail over the constitutional presumption of innocence (People v. Acuram, 209 SCRA 281).

- **EQUIPOISE RULE:** Where the evidence adduced by the parties are evenly balanced, the constitutional presumption of innocence should tilt the balance in favor of the accused (Corpus v. People, 194 SCRA 73).

3. Right to be heard personally or by counsel

- Adequate legal assistance shall not be denied to any person by reason of poverty (Art. III, Sec. 11, 1987 Constitution)
- Despite one's education in life, he may not be aware of the rules of evidence. [People v. Holgado, 85 Phil 752, 1952)
- **Elements of the right to Counsel:**
 - (1) Court's duty to inform the accused of right to counsel before being arraigned;
 - (2) It must ask him if he desires the services of counsel;
 - (3) If he does, and is unable to get one, the Court must give him one; If the accused wishes to procure private counsel, the Court must give him time to obtain one.
 - (4) Where no lawyer is available, the Court may appoint any person resident of the province and of good repute for probity and ability.
- If the counsel acted "in a double capacity" (if his actual interest were divided between the prosecution and the defense), his appointment constitutes reversible error.

4. Filing of demurrer to evidence is a waiver of right to be heard

- Dismissal of the motion of demurrer cannot defeat the right to the accused to present his evidence. (Abriol v. Homeres, 84 Phil 525, 1949)
 - However, Rule 119, sec. 5 of the 1985 Rules of Criminal Procedure modified this ruling. It now provides that when at the end of the presentation of evidence by the prosecution the defense moves to quash the information, the filing of such motion to quash is equivalent to a "waiver" of the right to present evidence.
- If motion is denied, the court will no longer receive the evidence of the defense. It will proceed with the judgment on the basis solely of the evidence of the prosecution.
 - This is not unconstitutional so long as the accused is properly informed of the consequences of filing the motion.
 - Also, denial of demurrer does not translate to a conviction.
- If the motion is granted, it is tantamount to an acquittal. (People v. Donesa, 49 SCRA 281, 1973)

Rules of Court, Rule 119, sec. 15. Demurrer to evidence. – After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence:

on its own initiative after giving the prosecution an opportunity to be heard; or on motion of the accused filed with proper leave of court.

If the court denies the motion for dismissal, the accused may adduce evidence in his defense. When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

a. Right to be informed of nature and cause of accusation

- The arraignment is to comply with the right of the accused to be informed of the nature and cause of the accusation against him.
- Procedural due process requires that the accused must be informed why he is being prosecuted and what charge he must meet. (Vera v. People)

5. Right to speedy, impartial and public trial

a. Speedy

- Speedy trial is one that is free from vexatious and oppressive delays.
- An unreasonable delay on the part of the prosecution violates the right to a speedy trial.
- *Habeas corpus* is the remedy if he has been restrained of his liberty, or *certiorari*, prohibition or mandamus for the final dismissal of the case; and dismissal based on the denial of the right to speedy trial amounts to an acquittal. (Acevedo v. Sarmiento, 36 SCRA 247, 1970)
- **RA 8493** provides: a 30-day arraignment within the filing of the information or from the date the accused appeared before the court; trial shall commence 30 days from the arraignment, as fixed by the court. The entire trial period shall not exceed 180 days, except as otherwise authorized by the SC Chief Justice.

b. Public

- A public trial is not one where the entire public can witness. It is enough if it is conducted at a place where one's relatives and friends can be accommodated and the public may know what is going on.
- The right is not absolute. The court can order the public out of the trial room in the interest of morality and order.

c. Impartial trial

- A town mayor who was paid on the basis of the fine he imposes for every conviction for violation of the drinking laws is not an impartial judge. In such a case, he would be interested in convicting those he tries so he would earn more. (Tumey v. Ohio, 273 U.S. 510, 1927)
- A civilian cannot be tried by a military court so long as the civil courts are open and operating, even during Martial Law. (Olaguer v. Military Commission, 150 SCRA 144, 1987)

6. Right to personal confrontation

- Purpose: To enable the accused to test the credibility of the witness.
- The process of cross-examination is the best means of confrontation.

7. Right to secure attendance of witnesses

- Various means available to the parties to compel the attendance of witnesses and the production of documents and things needed in the prosecution or defense of a case in an adversarial manner:
 1. subpoena *ad testificandum* (used to compel a person to testify)
 2. subpoena *duces tecum* (used to compel the production of books, records, documents specified);
 3. depositions and other modes of discovery;
 4. perpetuation of testimonies.
- Before a subpoena *duces tecum* may issue, two tests must be satisfied (Roco v. Contreras, G.R. 158275, June 28, 2005):
 - (1) Test of Relevancy - The books, documents, or other things requested must appear *prima facie* relevant to the issue
 - (2) Test of Definiteness - such books must be reasonably described by the parties to be readily identified

8. Trial in absentia

- The right to be present may be waived by the accused. Under Rule 115, sec. 1(c), there are 3 ways that the waiver may take place:
 1. Express waiver - pursuant to the stipulations set forth in his bail bond, unless his presence is

specifically ordered by the court for purposes of identification;

2. Implied waiver - when the accused, without any justifiable cause, is absent at the trial on a particular date of which he had notice;

3. Implied waiver - when the accused, who is under custody, had been notified of the date of trial escapes.

- The requisites of a valid trial *in absentia* are: (People v. Salas, 143 SCRA 163, 1986)
 1. Arraigned - the accused has been arraigned;
 2. Notified - he was duly notified of the hearing;
 3. Unjustified Absence - his failure to attend the trial is unjustified.
- Trial *in absentia* applies even to capital cases. (People v. Salas, *supra*)
- However, it does not justify the accused to jump bail. If he does, he runs the risk of having his bail bond forfeited. (People v. Prieto, 84 SCRA 198, 1978)
- In trial *in absentia*, the accused waives the right to present evidence and confront witnesses (Gimenez v. Nazareno, 160 SCRA 1, 1988)

9. When presence of accused a duty

- The rules:
 1. Generally, the accused has the right to be present at all stages the trial (from arraignment to rendition of judgment).
 2. If the accused is in the custody of the law, his presence during the trial is a duty only if the court orders his presence to enable the prosecution witnesses to identify him. (People v. Salas, *supra*)
 3. Although the accused is not in the custody of the law (and more so if he is in the custody of the law), his presence is required in the following cases:
 - a. Arraignment, regardless of the offense;
 - b. Entering a plea, regardless of whether the plea is guilty or not guilty.
 - c. Promulgation of judgment, except that when the judgment is for a light offense, he may be represented by his counsel or a personal emissary.

a. Arraignment

Rules of Court, Rule 116, Sec. 1. – Arraignment and plea; how made.

(b) The accused must be present at the arraignment and must personally enter his plea. Both arraignment and plea shall be made of record, but a failure to enter of record shall not affect the validity of the proceedings.

b. During trial for identification

- Accused may waive his right to be present during all the stages of the proceedings, except when he is to be identified. (Aguino v. Military Commission No. 2, 63 SCRA 546, 1975)

c. Promulgation of sentence, unless it is for a light offense, in which case accused may appear by counsel, or a representative (Rule 120, Sec. 6.)

10. Privilege against self-incrimination

1987 Constitution, Art. III, Sec. 17. No person shall be compelled to be a witness against himself.

- Any confession or admission obtained in violation of section 17 hereof shall be inadmissible in evidence against him. [Art. III, Sec. 12 (3)]

a. Scope: compulsory testimonial self-incrimination

- The privilege covers only testimonial incrimination obtained compulsorily.
 - It refers therefore to the use of the mental process and the communicative faculties, and not to a merely physical activity. If the act is physical or mechanical, the accused can be

compelled to allow or perform the act, and the result can be used in evidence against him.

- The privilege covers handwriting in connection with a prosecution for falsification, for this involves the use of the mental process (Beltran v. Samson, 53 Phil 570; Bermudez v. Castillo, 64 Phil. 485 (1937)). Reenact of the crime by the accused is not allowed, for this also involves the mental process.
- The accused can be: required to allow a sample of a substance taken from his body (U.S. v. Tan, Teh, 23, Phil. 145, 1912), ordered to expel the morphine from his mouth (U.S. v. Ong Sio Hong, 36 Phil 735, 1917); made to take off her garments and shoes and be photographed (People v. Otadura, 96 Phil 244, 1950); compelled to show her body for physical investigation to see if she is pregnant by an adulterous relation (Villaflor v. Summers, 41 Phil. 62, 1920); ordered to give a footprint sample to see if it matches the ones found in the scene of the crime is allowed (People v. Salas and People v. Sara).

b. Proceeding where available

- The privilege is available in any proceedings, even outside the court, for they may eventually lead to a criminal prosecution.
- The privilege against self-incrimination extends to administrative proceedings which possess a criminal or penal aspect. A doctor who was being investigated by a medical board for alleged malpractice who would lose his license if found guilty, could not be compelled to take the witness stand without his consent. (Pascual v. Board of Medical Examiners, 28 SCRA 344, 1969)
- The privilege extended to a fact-finding investigation by an *ad hoc* body. A person can be compelled to testify provided he is given immunity co-extensive with the privilege against self-incrimination (Galman v. Pamaran, 138 SCRA 274, 1985)

c. Use and fruit immunity v. transactional immunity

- Immunity statutes may be generally classified into two:
 - **Use and Fruit Immunity:** a person is exempted from the use of his testimony as well as the leads (fruits) that the testimony opened up in a criminal prosecution. The immunity in this case is from the testimony given. Thus, if the state can procure evidence, independent of the testimony and its fruits, it can prosecute the person testifying nevertheless.
 - **Transactional Immunity:** a person is given immunity from prosecution of the crime in connection with which he gave his testimony. The immunity is from the prosecution, not merely from the use of the testimony. Thus, even if the guilt of the person testifying can be proven by independent means, he can not be prosecuted anymore.
- PD 1886, sec. 5 grants merely immunity from use of any statement given before the Board, but not immunity from prosecution by reason or on the basis thereof. (Galman v. Pamaran, supra)

1987 Constitution, Art. XIII, Sec. 18(8). *The Commission on Human Rights shall have the following powers and functions.*
 (8) Grant immunity from prosecution to any person whose testimony or possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority.

PD No. 1886, Sec. 5. *No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to a subpoena issued by the Board on the ground that his testimony or the evidence required of him may tend to incriminate him or subject him to penalty or forfeiture; but his testimony or any evidence produced by him shall not be used against him in connection with any transaction, matter*

or thing concerning which he is compelled, after having invoked his privilege against self-incrimination, to testify or produce evidence, except from prosecution and punishment for perjury committed in so testifying, nor shall he be exempt from demotion or removal from office.

RA no. 1379, Sec. 8. Protection against self-incrimination. -- *Neither the respondent nor any other person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and other records on the ground that the testimony or evidence, documentary or otherwise, required of his may tend to incriminate him or subject him to prosecution; but no individual shall be prosecuted criminally for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and conviction for perjury or false testimony in so testifying or from administrative proceedings.*

R.A. 6832, Sec. 8 (Davide Commission). Immunity from Criminal Prosecution. *The Commission is authorized to grant immunity from criminal prosecution to any person who provides information or testifies in any investigation conducted by it where, upon its evaluation, such information or testimony is necessary and vital to the investigation. The immunity thereby granted shall continue to protect the witness who repeats such testimony before the appropriate court when required to do so by the latter. Should he refuse to repeat such testimony, the immunity granted him shall cease.*

d. Exclusionary rule

1987 Constitution, Art. III, Sec. 12 (3). *Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.*

- The paradigmatic application of the exclusionary rule is a traditionally coerced confession, and not so much on uncounselled statement.

e. Effect of denial of privilege by court

- When the privilege against self-incrimination is violated outside of court (e.g. police), then the testimony, as already noted, is not admissible.
- When the privilege is violated by the court itself, that is, by the judge, the court is ousted of its jurisdiction, all its proceedings and even judgment are null and void. (Chavez v. Court of Appeals, 34 SCRA 663, 1968)

11. Right to speedy disposition of cases

1987 Constitution, Art. III, Sec. 16. *The right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.*

Art. VIII, Sec. 15

- (1) *All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from the date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all lower courts.*
- (2) *A case or matter shall be deemed submitted for decision or resolution upon the submission of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself.*
- (3) *Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice or the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, and served upon the parties. It shall state why a decision or resolution has not been rendered or issued within said period.*
- (4) *Despite the expiration of the applicable mandatory period, the court, without prejudice to such responsibility as may have been incurred in consequence thereof, shall decide or resolve the case or matter submitted thereto for determination, without further delay.*

Art. VII, Sec. 18. *...The Supreme Court may review, in an appropriate*

proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision within 30 days from its filing.

Art. IX, A, Sec. 7. Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within 60 days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within 30 days from receipt of a copy thereof.

- The right to a speedy disposition of cases complements the right to a speedy trial. After the case has been submitted for decision, so that technically the trial stage is terminated, the Constitution mandates that the judicial, quasi-judicial or administrative body or tribunal must decide the case consistent with the right of the accused to a speedy disposition of his case.

12. Unreasonable punishments

- Punishments are cruel when they involve torture or a lingering death; but the punishment of death is not cruel, as used in the constitution. Cruel implies something inhuman and barbarous, something more than the mere extinguishment of life. (Echegaray v. Secretary of Justice)

a. Excessive fines and cruel punishments

Art. III, Sec. 19. (1) Excessive fines shall not be imposed. Nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.

- It is the form of punishment as fixed in antiquity (pillory, disembowelment, etc.) and not its severity that constitutes "cruel and unusual" penalty. Thus, a disproportionate penalty (10 years imprisonment for theft) is not cruel or unusual because it is only a matter of severity of an acceptable form of punishment (imprisonment). (People v. dela Cruz, 92 Phil. 900, 1953)
- The SC spoke in a different way in People v. Borja, the respondent was sentenced and he served at the national penitentiary for 20 years before the case came to the SC. The Court said that Borja had been living in the shadow of death. Although the sentence was initially valid, it had become cruel by the lapse of time. And yet, this was a form of penalty that was neither cruel nor unusual. (91 SCRA 340, 1979)

b. Involuntary servitude

Art. III, Sec. 18(2). No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.

- Denotes a condition of enforced, compulsory service of one to another, regardless of its form.
- Exceptions to the rule on involuntary servitude:
 - (1) as punishment for crime
 - (2) personal military service or civil service in the interest of national defense
 - (3) return to work order issued by the Department of Labor

c. Imprisonment for debt

Art. III, Sec. 20. No person shall be imprisoned for debt or non-payment of a poll tax.

- However, a person may be imprisoned as a penalty for a crime arising from a contractual debt and imposed in a proper criminal proceedings

d. Secret detention places, solitary, incommunicado and other forms of detention and the use of substandard or inadequate penal facilities

Art. III, Sec. 12(2). No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

Art. III, Sec. 19(2). The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

e. Indefinite imprisonment

13. Ex Post facto laws and bills of attainder

Art. III, Sec 22. No ex post facto law or bill of attainder shall be enacted.

Characteristics of both:

- Both refer to criminal matters
- Both are retroactive in application
- Both work to the prejudice of the accused
- **Ex-post facto law (In Re Kay Villegas Kami, 1970)**
 - Makes an action done before the passing of the law and which was innocent when done criminal, and punishes such action; or
 - Aggravates a crime or makes it greater than when it was committed;
 - Changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed
 - Alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense in order to convict the defendant
 - Assuming to regulate civil rights and remedies only. In effect, imposes penalty or deprivation of a right for something which when done was lawful
 - Deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty.

Bill of Attainder

- A "bill of attainder" is a law which substitutes the legislative determination of guilt for a judicial determination. Through a statute, the legislature finds individuals or groups guilty, without the benefit of being proven so in court.
- **Requisites (Cummings v Missouri, 71 US 277, 1867):**
 1. Legislative act
 2. Inflicts punishment
 3. Without judicial trial
- **Kinds**
 1. **Bill of attainder proper:** legislative imposition of the death penalty
 2. **Bill of pains and penalties:** imposition of a lesser penalty).
- **RA 1700** which declared the Communist Party of the Philippines a clear and present danger to Philippine security, and thus prohibited membership in such organization, was contended to be a bill of attainder. Although the law mentions the CPP in particular, its purpose is not to define a crime but only to lay a basis or to justify the legislative determination that membership in such organization is a crime because of the clear and present danger to national security. (People v. Ferrer, 48 SCRA 382, 1972)

14. *Double jeopardy*

Art. III, Sec. 21. *No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.*

- *See post-arrest rights of accused*
- **Elements of double jeopardy** (Rule 117, Sec 7; People v. Obsania, 23 SCRA 249, 1968)
 - (1) Court of competent jurisdiction;
 - (2) A Complaint/Information sufficient in form and substance to sustain a conviction;
 - (3) Arraignment and plea by the accused;
 - (4) Conviction, acquittal, or dismissal of the case without the express consent, of the accused.
- **When subsequent prosecution is barred**
 - (1) Same offense
 - (2) Attempt of the same offense
 - (3) Frustration of the same offense
 - (4) Offense necessarily included in the 1st offense (All the elements of the 2nd constitute some of the elements of the 1st offense)
 - (5) Offense that necessarily includes the 1st offense (All the elements of the 1st constitute some of the elements of the 2nd offense)
 - **Exceptions**
 - (1) The graver offense developed due to "supervening facts" arising from the same act or omission constituting the former charged.
 - (2) The facts constituting the graver charge became known or were discovered only after the filing of the former complaint or information.
 - (3) The plea of guilty to the lesser offense was made without the consent of the fiscal and the offended party.
- **Attachment of Jeopardy**
 - (1) Upon a good indictment
 - (2) Before a competent court
 - (3) After arraignment
 - (4) After plea
- **Termination of Jeopardy**
 - (1) By acquittal
 - (2) By final conviction
 - (3) By dismissal without express consent of accused
 - (4) By "dismissal" on the merits
- **When defense of double jeopardy is available**
 - (1) Dismissal based on insufficiency of evidence;
 - (2) Dismissal bec. of denial of accused's right to speedy trial;
 - (3) Accused is discharged to be a state witness.
- **When defense of double jeopardy is NOT available**
 - When the case is dismissed other than on the merits upon motion of the accused personally, or through counsel, such dismissal is regarded as w/ express consent of the accused, who is therefore deemed to have waived the right to plea double jeopardy.

15. *Privilege of the writ of habeas corpus*

ADMINISTRATIVE LAW

I. Historical and Constitutional Considerations

A. Development of Administrative Law as a distinct field of public law

1. *Factors Responsible for the Emergence of Administrative Agencies*
 - a. Growing complexities of modern life;
 - b. Multiplication of number of subjects needing government regulation; and
 - c. Increased difficulty of administering laws. [Pangasinan Transportation v Public Service Commission (1940)]

2. Doctrine of "Separation of Powers" and the constitutional position of Administrative Agencies
 Inferred from Constitution's provisions
 Basic powers of the government must be kept separate from each other, each power being under the principal control of a branch of government.
 President: executive power
 Congress: legislative
 Judiciary: judiciary power
 - President: **control** over agencies and offices
 - which perform **rule-making or adjudicatory functions**.
 - But the President only **supervises** when: the *agency is created by Congress* (in which case, we also need to look at the creating law).
 - **Supervision**: *seeing that the laws are faithfully executed*
 - *Why there is a Need for Admin. Agencies/ Bodies*:
 Branches of government lack
 (1) time,
 (2) expertise, and
 (3) organizational aptitude for effective and continuing regulation of new developments in society (Stone)
 - Admin. Agencies: support trichotomy of powers.

Definition of Terms

1. *Administrative Law*
 - Branch of public law dealing
 - with doctrines and principles governing the powers and procedures of administrative agencies,
 - especially including judicial review of administrative action. [Prof. Kenneth Culp Davis]
 - Branch of public law
 - **fixing the organization** and
 - **determines the competence** of administrative authorities, and
 - **indicates** to the individual **remedies** for the violation of his rights. [Nachura]
 - *Kinds of Administrative Law*:
 - a. Statutes setting up administrative authorities.
 - b. Rules, regulations, or orders of such authorities promulgated pursuant to purposes for which they were created.
 - c. Determinations, decisions, and orders of such authorities to settle disputes arising in their fields.
 - d. Body of doctrines and decisions dealing with the creation, operation, and effect of determinations and regulations of such authorities.
 - *Administration*:
 - a. *2 different senses*:
 function and organization

→ *A function*: execution, in non-judicial matters, of the law or will of the State as expressed by competent authority.

→ *An organization*: That group of persons in holding the reins of government for the time being.

- b. *Distinguished from government*.
- c. *Kinds*: Internal and External
 - *Internal*: **Legal** (e.g. personnel)
 - *External*: **Problems** of government regulations (e.g. regulation of professions, industries or businesses).
- *Administrative Agency*
 Any governmental organ or authority,
 - other than a court or legislative body,
 - which affects the rights of private parties,
 - through rule-making and adjudication. [Davis; Nachura]
- *Administrative function is primarily regulatory* even if hearings are conducted/ controversies are determined (on rule making authority) *no discretion to determined what the law shall be*
 - merely prescribes details for enforcement
- As stated by Admin. Code: (Sec. 2 Book VII, Admin Code 1987) :

 Any department, bureau, office, commission, authority or officer of the Government
 - authorized by law or executive order to
 - a. make rules
 - b. issue licenses
 - c. grant rights or privileges
 - d. and adjudicate cases;
 - research institutions as to licensing functions
 - government corporations as to functions regulating private right, privilege, occupation or business
 - officials in the exercise of disciplinary powers as provided by law.

3. Powers of an Administrative Agency

- a. Rule-making/ Quasi-legislative power.
- b. Adjudicatory/ Quasi-judicial power.
- c. Determinative powers [Nachura]
 - Licensing.
 - Price/rate-fixing.
 - Implementing or executing.

4. Types of Administrative Agencies

- a. *As to purpose*:
 - Government grant or gratuity, special privilege.
 - Bureau of Lands, Phil. Veterans Admin., GSIS, SSS, PAO, etc.
 - Carrying out the actual business of government.
 - BIR, Customs, Immigration, Land Registration Authority, etc.
 - Service for public benefit.
 - Philpost, PNR, MWSS, NFA, NHA, etc.
 - Regulation of businesses affected with public interest.
 - Insurance Commission, LTRFB, NTC, HLURB, etc.
 - Regulation of private businesses and individuals.
 - SEC, etc.
 - Adjustment of individual controversies because of a strong social policy involved.
 - ECC, NLRC, SEC, DAR, COA, etc.
 - Government as private party.
 - GSIS, etc.
- b. *As to the organic law of creation*:
 1. 1987 Constitutional provision.
 - Civil Service Commission. [Art. IX-B]
 - Commission on Elections. [Art. IX-C]
 - Commission on Audit. [Art. IX-B]
 - Commission on Human Rights. [Art. XIII, Sec. 17]
 - Commission on Appointments. [Art. VI, Sec. 18]
 - Senate Electoral Tribunal. [Art. VI, Sec. 17]

- House of Representatives Electoral Tribunal. [Art. VI, Sec. 17]
- Judicial and Bar Council. [Art. VIII, Sec. 8]
- Office of the Ombudsman. [Art. IX, Sec. 5]
- National Economic and Development Authority. [Art. XII, Sec. 20]
- An agency on Cooperatives. [Art. XII, Sec. 15]
- An independent Central Monetary Authority. [Art XII, Sec. 20]
- National Language Commission. [Art. XIV, Sec. 9]
- National Police Commission. [Art. XVI, Sec. 6]
- Consultative Body on Indigenous Cultural Communities. [Art. XVI, Sec. 12]

2. Legislative enactment / Congressional Statute (regulatory agency).

- National Labor Relations Commission.
- Social Security Commission.
- Commission on Immigration and Deportation.
- Securities and Exchange Commission.
- Philippine Patent Office.
- Professional Regulation Commission.
- Games and Amusement Board.
- Board of Energy.
- Insurance Commission.
- Dangerous Drugs Board.

3. Executive Order (fact-finding agency) / Authority of law.

c. As to hierarchy:

1. Office of the President and Cabinet.
2. Independent Constitutional Commissions.
 - CSC, COMELEC, COA.
3. Other Constitutional Bodies.
 - Sandiganbayan, Ombudsman, Office of the Special Prosecutor
 - Central Monetary Authority, Economic and Planning Agency
 - Commission on Human Rights,
 - National Language Commission,
 - National Police Commission,
 - Commission on Indigenous Cultural Communities.
4. Regulatory Commission.
 - SEC, NLRC, Office of the Insurance Commissioner, Land Transportation Commission, Bureau of Customs, CID, BIR.
5. Public Corporation.
 - UP, NPC, MWSS, NDC, DBP.

5. Kinds of Administrative Rules or Regulations

a) Supplementary / detailed legislation:

- To “fix details” in execution and enforcement of a legislative policy (e.g. IRRs)

b) Interpretative legislation:

- To construe or interpret the provisions of a statute to be enforced; binding on all concerned until changed.
- * They have the effect of law and are entitled to great respect, having in their favor the presumption of legality [**Gonzalez v Land Bank**].
- * The erroneous application of the law by public officers does not bar a subsequent correct application [**Manila Jockey Club v CA (1998)**] (e.g. BIR Circulars, CB Circulars).

c) Contingent legislation:

- Made by an administrative authority on the existence of certain facts or things upon which the enforcement of the law depends. [**Cruz v Youngberg**]

5. Advantages of Administrative Regulation

- a. Allows action for public interest, to prevent future harm; if left to individuals, there is no assurance that action would be taken.

- b. Action would be based on technical knowledge
- c. Action taken has regard for public interest
- d. Rules for preventing socially hurtful conduct would be more rigid and permanent. [**Dickinson**]

Cases

• **Manila Electric Co. v Pasay Transport (1932)**

The SC should strictly confine its own sphere of influence to the powers expressly or by implication conferred on it by the Organic Act. The SC and its members should not nor cannot be required to exercise any power or to perform any task, or to assume any duty not pertaining to or connected with administering judicial functions. A board of arbitrators is not a court in any proper sense of the term, and possesses none of the jurisdiction granted by the Organic Act to the SC.

• **Noblejas vs. Teehankee (1968)**

The legislature could not have intended for the Land Registration Commissioner and other similarly ranked officials to hold same rank as a judge of the CFI, because it would place upon the SC the duty of investigating and disciplining these officials, who are performing executive functions and thus under the supervision and control of the President. It would be unconstitutional, being violative of the separation of powers, and would diminish the control of the Chief Executive over executive officials.

• **Garcia v. Macaraig (1971)**

The line between what a judge may and may not do in working with other offices under the other departments must always be jealously observed, lest the principle of separation of powers be eroded. No judge of even the lowest court should place himself in a position where his actuations would be subject to review and prior approval and, worse still, review, before they can have any legal effect, by any authority other than the CA or the SC.

• **In re: Manzano (1988)**

Members of SC and inferior courts of justice shall not be designated to any agency performing quasi-judicial or administrative functions. Administrative functions “involve the regulation and control over the conduct and affairs of individuals for their own welfare, and the promulgation of rules and regulations to better carry out legislative policy or such as are designated to any agency by the organic law of its existence.” RTC judges should render assistance to said agencies only when such assistance may be reasonably incidental to the fulfillment of their judicial duties.

• **Puyat v De Guzman**

An indirect appearance as counsel by an Assemblyman before an administrative body circumvents the Constitutional prohibition. A contrary rule would permit an Assemblyman to influence an administrative body just by acquiring minimal participation in the “interest” of the client and then “intervening” in the proceedings.

• **Phil. Ass’n of Service Exporters v Torres**

Both LOIs and EOs are presidential issuances; one may repeal or otherwise alter, modify or amend the other, depending on which comes later.

• **Eastern Shipping Lines v CA (1998)**

An administrative agency has no discretion WON to implement a law. Its duty is to enforce the law. Thus if there is a conflict between the circular issued by the agency and an EO issued by the president, the latter prevails.

II. Control of Administrative Action

A. Administrative agencies and the executive power of the President

Legislative control

- a. Powers of the Legislative

1. Creation and abolition.
 - Can *create, divide, merge, modify, or even abolish* agencies.
 - Power to abolish: not effective. Administrative agencies are needed.

Appropriation/ Budgetary Power

- In actual life, no appreciable effect because annual appropriation usually gets Congressional approval, otherwise, public suffers.

Investigatory.

- An aid in legislation and cannot serve the need for constant regulation.

Prescription of legislative standards.

- Ineffective; standards should be flexible and makers of standards lack expertise.
- Standards must be effective and sufficient.

Prescription of minimum procedural requirements.

- There must be a shift towards having administrative standards to allow flexibility.

b. Congressional Oversight Committee
[Macalintal v COMELEC]

1. Scrutiny.
 - Based on the power of appropriation.
 - Department heads may be ordered to appear on any matter pertaining to their departments.
(Sec. 22, Art. VI, 1987 Constitution)
 - E.g. budgetary hearings – Allows economy and efficiency of government operations.
2. Congressional investigation.
 - 3 limitations (1987 Constitution):
 - a) In aid of legislation;
 - b) Conducted in accordance with duly published rules of procedure; and
 - c) Persons appearing therein afforded their rights.
3. Legislative supervision.
 - *Legislative veto*: Congress' "right" to approve/disapprove any regulation before it takes effect.

2. Executive control

Art. VII, Sec.1, 1987 Consti. The executive power shall be vested in the President of the Philippines.

Art. VII, Sec. 17, 1987 Consti. The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

- Power of **appointment**
- Power of **control** over all offices in the Executive branch
- Power of **supervision**
 - When the agencies are created by the legislature.
 - Enabling laws are silent as to legislative intent.
- Sworn duty to **preserve and defend the Constitution** and **execute** the laws
 - Thus the President can influence admin. bodies if they seem to be violating the Constitution.

3. Judicial Control

- Power of judicial review over decisions of administrative agencies.
TWO VIEWS:
- *Radical view*: Judicial review over agency's conclusions of law *and* determinations of fact and policy.
- *Traditional/Accepted view*: Judicial review allowed on questions of law and jurisdiction, *but not on questions of fact and policy*.

- Courts defer to expertise and experience of agencies in their areas of specialization, and are confined to:
 - ensuring that agencies stay within the limits of their power, or
 - to checking arbitrariness in the administrative process.

4. Ombudsman

a. Powers:

1. Investigatory.
 - Own initiative.
 - From a complaint.
2. Prosecutorial.
3. Public assistance functions.
4. Authority to inquire and obtain information.

b. Necessary characteristics:

1. Political independence.
2. Accessibility and expedition
3. Grant of investigatory power.
4. Absence of revisory jurisdiction.

c. Jurisdiction and Limitations:

- **Jurisdiction**: All elective and appointive officials, including cabinet members, GOCC's and local government.
 - **except** those who may be removed only by impeachment.
- **Limitation**: may not veto/revise an exercise of judgment or discretion by an agency or officer upon whom that judgment or discretion is lawfully vested
 - especially when basically technical matters coming under the agency/ officer's special technical knowledge and training are involved. [Concerned Officials of the MWSS v Vasquez (1995)]
- **Jurisdiction**: any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient.
 - regardless of whether the acts or omissions complained of are related to, or connected with, or arise from, the performance of official duty. It is *enough that the act or omission was committed by a public official*.
- **Jurisdiction**: The Ombudsman may review, revise, direct, reverse or modify a decision of a prosecutor deputized or designated to be under the Ombudsman's control and supervision. [Lastimosa v Vasquez (1995)]
 - Note: The Ombudsman has *absolutely no revisory powers*. The delegated prosecutor acts as the Ombudsman's agent; all actions/decisions made by the prosecutor are deemed action/decisions of the Ombudsman. Seen in this light, the Ombudsman has the right to change the action/decision.
- **Limitation**: The Ombudsman may not initiate a criminal or administrative complaint against a judge. The Ombudsman must indorse the case to the SC. No other entity or official of the Government has the competence to review a judicial order or decision and pronounce it erroneous so as to lay the basis for a criminal or administrative complaint. [Fuentes v Office of the Ombudsman (2001)]
- Under Sec. 13(3), Art. XI, 1987 Constitution, the "recommendation" of Ombudsman after investigation is not merely advisory but binding and mandatory. The Ombudsman can determine the administrative liability of a public official or employee, and direct and compel the head of the office or agency concerned to implement the penalty imposed. [Ledesma v CA (2005)]

- The pendency of an action is not a prerequisite for the Ombudsman to start its own investigation. It can do so even on a verbal, unsigned, or unverified complaint. [**BIR v Ombudsman (2002)**]

III. Powers and Functions of Administrative Agencies

A. Legislative function

1. Non-delegation doctrine

Potestas delegata non delegare potest. – What has been delegated cannot be delegated.

a. Requisites for a valid delegation: [**Pelaez v Auditor General (1965)**]

- 1) The law must be **complete in itself** and must set forth the **policy** to be executed.
- The law must fix a **standard**, the limits of which are **sufficiently** determinate or determinable, to which the delegate must conform.

a. Sufficient standard:

- (a) **Defines legislative policy**, marks its limits, maps out its boundaries and specifies the public agency to apply it; and
- (b) **Indicates the circumstances** under which the legislative command is to be effected. [**Santiago v COMELEC (1997)**; **ABAKADA Guro List v Ermita (2005)**]

2. The **standard** may be:

- (a) Express;
 - (b) Implied; [**Edu v Ericta (1970)**] or
 - (c) Embodied in other statutes on the same matter and not necessarily in the same law being challenged. [**Chiongbian v Orbos (1995)**]
- The Constitution has never been regarded as denying Congress the necessary flexibility and practicality which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislative to apply. There is a distinction between (a) delegation of power to make the law and (b) conferring authority/discretion as to its execution. [**Panama Refining v Ryan (1935)**]
→ *Cardozo, J. dissent*: There has been **no grant to the Executive** of any **roving commission** to inquire into evils and then, upon discovering them, do anything he pleases. **Discretion is not unconfined and vagrant. It is canalized within banks that keep it from overflowing.**

b. Valid delegation:

[**People v Vera (1937)**]

1. Fix tariffs, import and export quotas, tonnage and wharfage fees.
2. Emergency powers.
3. Delegation to the people-at-large.
4. Delegation to local authorities.
5. Delegation to administrative agencies.

c. Cannot be delegated

1. Creation of municipalities. [**Pelaez v Auditor General (1965)**]
 - Note: Creation of municipalities :a legislative matter, *while*
 - merging of administrative regions is an administrative matter. (**Chiongbian v Orbos**)
2. Defining a crime.

[**US v Ang Tang Ho (1922)**; **People v Maceren**]

2. Permissible delegation

a. Ascertainment of fact.

- A statute may give to non-judicial officers
 - *power to declare the existence of facts* which call into operation the statute's provisions and
 - may grant them and their subordinate officers *power to ascertain and determine appropriate facts* as a basis of procedure in the enforcement of laws.
- Such functions:

- *are merely incidental to the exercise of power granted by law* to clear navigable streams of unauthorized obstructions. They can be conferred upon executive officials provided the party affected is given the opportunity to be heard. [**Lovina v Moreno (1963)**]

b. Filling in of details.

- For necessity and as a means of enforcement and execution [**Alegre v Collector of Customs (1920)**]

c. Administrative rule-making.

1. Limits on rule-making:

- a) Must be authorized by law. [**Olsen v Aldanese (1922)**]
- b) Must not amend the law or must not be inconsistent with the law. [**Syman v Jacinto (1953)**]
- c) Must not define a criminal act. [**People v Maceren (1977)**]
- d) Must be germane to the purpose of the law which it was meant to implement; power to promulgate rules may be legitimately exercised only for carrying the provisions of the law into effect. [**Toledo v CSC (1991)**]
- e) Must not restrict, expand, diminish, supplant or modify the law. [**GMCR v Bell Telecom (1997)**]
- f) Action will be set aside there is an error of law, grave abuse or lack of jurisdiction clearly conflicting with either the letter or the spirit of the law. [**Land Bank v CA (1995)**]
- g) The basic law should prevail as embodiment of the legislative purpose; rules and regulations cannot go beyond the law's terms and provisions. [**China Banking v Member of the Board of Trustees, Home Development Mutual Fund (1999)**].
- h) If there is discrepancy between the basic law and an administrative rule, the basic law prevails. [**Maxima Realty v Parkway Real Estate (2004)**]
- i) May not unilaterally impose a new legislative policy, requiring the adjustment of various other contending policies. [**Ople v Torres (1998)**]
- j) May not dismantle a regulatory system that was set up by law. (**Ass'n of Phil. Coconut Desiccators v PHILCOA (1998)**)
- k) May not delegate, to a mere constituent unit (e.g. Bureau of Corrections), the rulemaking authority legislatively vested in the head of an executive department (e.g. DOJ), such being an abdication of responsibility [**Echegaray v Secretary of Justice (1998)**]

3. Publication and effectivity.

Art. 2, Civil Code (as amended by EO 200, June 8, 1987). – Laws shall take effect after 15 days

following the completion of their publication either in the *Official Gazette* or in a *newspaper* of general circulation in the Philippines, unless it is otherwise provided.

Sec. 4, 1987 Admin Code. Effectivity. – In addition to other rule-making requirements provided by law not inconsistent with this Book, **each rule shall become effective 15 days from the date of filing as above provided** unless a different date is fixed by law, or specified in the ruling in cases of imminent danger to public health, safety, and welfare, the existence of which must be expressed in a statement accompanying the rule. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.

Sec. 5, 1987 Admin Code. Publication and Recording. – The University of the Philippines Law Center shall:
 (1) Publish a quarterly bulletin setting forth the text of rules filed with it during the preceding quarter; and
 (2) Keep an up-to-date codification of all rules thus published and remaining in effect together with a complete index and appropriate tables.

Sec. 6, 1987 Admin Code. Omission of Some Rules. – (1) The University of the Philippines Law Center may omit from the bulletin or the codification any rule if its publication would be unduly cumbersome, expensive or otherwise inexpedient, but copies of that rule shall be made available on application in the agency which adopted it, and the bulletin shall contain a notice stating the general subject matter of the omitted rule and how copies thereof may be obtained.

Rules as to Publication Requirement
 a. Administrative Rules and Regulations

- *General rule:* Administrative rules and regulations are subject to the publication and effectivity rules of the Admin Code in relation to the Civil Code:
- Effectivity: 15 days after publication, *not* 15 days from date of filing with the UP Law Center. [Republic v Express Telecomm (2002)]
 → **Exceptions:**
 (a) Different date is fixed by law or specified in the rule.
 (b) In case of imminent danger to public health, safety and welfare.

b. Publication as indispensable

General rule: Publication is indispensable especially if the rule is general.

→ **Exceptions:**

- (a) Interpretative rules.
- (b) Internal regulations (i.e. regulating personnel).
- (c) Letters of instructions issued by administrative superior to subordinates.

Case:

The legislature may in its discretion provide that the usual 15-day period for publication be shortened or extended. [Tanada v Tuvera

Laws, Regulations, Circulars

- Laws, Regulations or Circulars prescribing penalties for violations should be published before becoming effective and binding, for the people to be officially informed. [People v Que Po Lay (1954)]

4. Penal regulations

Sec. 6, 1987 Admin Code. Omission of Some Rules. – (2) Every rule establishing an offense or defining an act which, pursuant to law is punishable as a crime or subject to a penalty shall in all cases be published in full text.

- If a rule is penal, it must be published before it takes effect. (People v Que Po Lay (1954))
- The law itself must **declare the act as punishable and must also define or fix the penalty** for the violation.
- *Penal statutes are exclusive to the legislature and cannot be delegated.* Administrative rules and regulations must not include, prohibit or punish acts which the law does not even define as a criminal act. [People v Maceren (1977)]

4. Interpretative rules.

- Administrative agencies in the discharge of their duties are necessarily called upon to construe and apply the provisions of the law under which they function. They can interpret their own rules, which have the force and effect of law.

PROVIDED:

- o Does not change the character of a ministerial duty,
- o Does not involve unlawful use of legislative or judicial power.

- Administrative interpretations: may **eliminate construction and uncertainty in doubtful cases.** When laws are susceptible of two or more interpretations, the administrative agency should make known its official position.

- **Construction and interpretation** by an administrative agency of provide a **practical guide** as to how the agency will seek to apply the law, and to which courts and litigants may properly resort for guidance.

- **Administrative construction/interpretation not controlling as to the proper construction of a statute,** but generally it is given great weight, has a very **persuasive influence** and may actually be regarded by the courts as the controlling factor.

- Still, **regulations enacted, pursuant to the broad rule-making power** under a statute conferring a privilege to be exercised "under regulations pre-caused" by an administrative agency, **will not be disturbed except for cogent and persuasive reasons and clear conviction of error.**

- **No hearing required in the promulgation of a general regulation** by an administrative body.

Where

- a) the rule is procedural, or
- (b) the rules in effect are merely legal opinions, or
- (c) the rules are substantive,

- d) the class to be affected is large, e) and questions to be resolved involve discretion committed to the rule-making body [Corona v United Harbor Pilots Ass'n of the Phils. (1997)]

• **Rules as Admin. Legislation:**

1. Designed to *implement a law* by providing its details;
2. *Hearing required* before adoption
3. If it *substantially adds to or increases the burden* of those concerned, a *hearing is also required before issuance.*

- **Rules as Interpretative rules may be found erroneous by the successor of the promulgating administrative official.** A vested right cannot spring from a wrong

construction of law [**Hilado v Collector (1956)**].

- A wrong interpretation cannot place the Government in estoppel. [**Phil. Bank of Communications v CIR (1999)**]
- 5. Administrative interpretation: merely advisory; Courts finally determine what the law means. [**Victorias v Social Security Commission (1962)**]
- 6. *General requirements:*
 - (a) must have been issued on authority of law
 - (b) must be within the scope and purview of the law;
 - (c) must be reasonable.

Legislative Rules	Interpretative Rules
promulgated pursuant to its quasi-legislative / rule-making functions.	passed pursuant to its quasi-judicial capacity.
create a new law, a new policy, with the force and effect of law.	merely clarify the meaning of a pre-existing law by inferring its implications.
need publication.	need not be published.
So long as the court finds that the legislative rules are within the power of the administrative agency to pass, as seen in the primary law, then the rules bind the court. The court cannot question the wisdom or correctness of the policy contained in the rules.	The court may review their correctness of the interpretation of the law given by the administrative body, and substitute its own view of what is correct to the administrative body. If it is not within the scope of the administrative agency, court can only invalidate the same but not substitute its decision or interpretation or give its own set of rules.
Due process involves whether the parties were afforded the opportunity to be notified and heard before the issuance of the ruling.	Due process means that the body observed the proper procedure in passing rules.

d. Fixing of rates, wages and prices

Sec. 9, 1987 Admin Code. Public Participation. – (1) If not otherwise required by law, an agency shall, as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.

(2) In the fixing of rates, no rule or final order shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least 2 weeks before the first hearing thereon.

(3) In cases of opposition, the rules on contested cases shall be observed.

Sec. 2(3), 1987 Admin Code. “Rate” means any charge to the public for a service open to all and upon the same terms, including individual or joint rates, tolls, classification or schedules thereof, as well as communication, mileage, kilometrage and other special rates which shall be imposed by law of regulation to be observed and followed by any person.

- Generally, the power to fix rates is a quasi-legislative function.
- It becomes **judicial when:** rate is applicable only to an individual

Distinctions:

Basis	Quasi-legislative	Quasi-judicial
As to procedural standards	The procedure is that normally observed in the making of rules.	The procedure must observe the requirements of due process in the 7 cardinal rules.
As to time	Rule-making is prospective in character, for it only governs future acts.	Adjudication is retrospective in character, for it investigates acts already done and then applies the law on the facts.
As to application	Legislative rules are of general application	Adjudicative rulings apply only to parties

- All rules with respect to fixing of rates **must be accompanied with notice and hearing.**(Sec. 9 (2) Admin Code)
- *The power to fix rates cannot be delegated to a common carrier or other public service.* The latter may propose new rates, but these will not be effective without the approval of the administrative agency. [**KMU v Garcia (1994)**]
- In fixing the rate, the ff. have to be considered:
 - the present valuation of all the property of a public utility,
 - the fixed assets.
- The property is deemed taken and condemned by the public at the time of filing the petition, and the rate should go up and down with the physical valuation of the property. [**Ynchausti v Public Utility Commissioner (1922)**]

e. Licensing Function

Sec. 17, 1987 Admin Code. Licensing Procedure. – (1) When the grant, renewal, denial or cancellation of a license is required to be preceded by notice and hearing, the provisions concerning contested cases shall apply insofar as practicable. (2) Except in cases of willful violation of pertinent laws, rules and regulations or when public security, health, or safety require otherwise, no license may be withdrawn, suspended, revoked or annulled without notice and hearing.

Sec. 18, 1987 Admin Code. Non-expiration of License. – Where the licensee has made timely and sufficient application for the renewal of a license with reference to any activity of a continuing nature, the existing license shall not expire until the application shall have been finally determined by the agency.

Sec. 2(10), 1987 Admin Code. “License” includes the whole or any party of any agency permit, certificate, passport, clearance, approval, registration, charter, membership, statutory exemption or other form of permission, or regulation of the exercise of a right or privilege.

Sec. 2(11), 1987 Admin Code. “Licensing” includes agency process involving the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification or conditioning of a license.

- No expiry date does not mean the license is perpetual. A license permit is a special privilege, a permission or authority to do what is within its terms. It is always revocable. [**Gonzalo Sy Trading v Central Bank (1976)**]
- Notice and hearing in licensing: **only required if it is a contested case.** Otherwise, it can be dispensed with.(e.g. driver’s licenses).

B. Judicial Function

1. Investigation and adjudication:

Sec. 10, 1987 Admin Code. Compromise and Arbitration. – To expedite administrative proceedings involving conflicting rights or claims and obviate expensive litigations, every agency shall, in the public interest, encourage amicable settlement, compromise and arbitration.

Sec. 11. Notice and Hearing in Contested Cases. - (1) In any contested case all parties shall be entitled to notice and hearing. The notice shall be served at least 5 days before the date of the hearing and shall state the date, time and place of the hearing.

(2) The parties shall be given opportunity to present evidence and argument on all issues. If not precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement or default.

(3) The agency shall keep an official record of its proceedings.

Sec. 12. Rules of Evidence. - In a contested case:

(1) The agency may admit and give probative value to evidence commonly accepted by reasonably prudent men in the conduct of their affairs.

(2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, the parties shall be given opportunity to compare the copy with the original. If the original is in the official custody of a public officer, a certified copy thereof may be accepted.

(3) Every party shall have the right to cross-examine witnesses presented against him and to submit rebuttal evidence.

(4) The agency may take notice of judicially cognizable facts and of generally cognizable technical or scientific facts within its specialized knowledge. The parties shall be notified and afforded an opportunity to contest the facts so noticed.

Sec. 13. Subpoena. - In any contested case, the agency shall have the power to require the attendance of witnesses or the production of books, papers, documents and other pertinent data, upon request of any party before or during the hearing upon showing of general relevance. Unless otherwise provided by law, the agency may, in case of disobedience, invoke the aid of the Regional Trial Court within whose jurisdiction the contested case being heard falls. The Court may punish contumacy or refusal as contempt.

Sec. 14. Decision. - Every decision rendered by the agency in a contested case shall be in writing and shall state clearly and distinctly the facts and the law on which it is based. The agency shall decide each case within 30 days following its submission. The parties shall be notified of the decision personally or by registered mail addressed to their counsel of record, if any, or to them.

Sec. 15. Finality of Order. - The decision of the agency shall become final and executory 15 days after the receipt of a copy thereof by the party adversely affected unless within that period an administrative appeal or judicial review, if proper, has been perfected. One motion for reconsideration may be filed, which shall suspend the running of the said period.

- No uniform procedure for all agencies.
- Depends on the function of the agency:
 - If:
 1. Adjudicative – akin to courts
 2. Rule Making – like those of legislative bodies
 3. Licensing – modified judicial procedure
 4. Dispensing Govt. Largess- Due Process
(As Largesses are new forms of property.
 Examples: Pensions, License to practice profession, social benefits, basic services)
- Administrative agencies’ **power to conduct investigations and hearings, and make findings and recommendations** thereon are *inherent* in their functions as administrative agencies.
- The findings of facts by administrative bodies which observed procedural safeguards (e.g. notice and

hearing parties, and a full consideration of evidence) are recorded the greatest respect by courts.

- **Not inherent (requires explicit grant from law) :**
 - Adjudicative power
 - power to decide controversies involving rights and obligations of 3rd persons appearing before them, or
 - power to pass upon legal questions, which involve the application of the law to the facts.

NOTE: Most administrative agencies only have the power of investigation and not of adjudication.

EXCEPT: in the case of agencies with specific grant of adjudicative power (NLRC, SEC, CBAA),

	Administrative	Judicial
Kind of Proceedings		
Nature of Proceedings	Inquisitorial	Adversarial
Rules of Procedure	Liberal applied	Follow technical rules in the Rules of Court
Nature and Extent of Decision	Decision limited to matters of general concern	Decision includes matters brought as issue by the parties
Parties	The agency itself may be a party to the proceedings before it	The parties are only the private litigates

2. Power to issue subpoena and declare contempt

Sec. 13, 1987 Admin Code. Subpoena. – In any contested case, the agency shall have the power to require the attendance of witnesses or the production of books, papers, documents and other pertinent data, upon request of any party before or during the hearing upon showing of general relevance. Unless otherwise provided by law, the agency may, in case of disobedience, invoke the aid of the Regional Trial Court within whose jurisdiction the contested case being heard falls. The Court may punish contumacy or refusal as contempt.

Sec. 6, P.D. 902 – A. In order to effectively exercise such jurisdiction, the SEC shall possess the following powers:

a) To punish for contempt of the Commission, both direct and indirect, in accordance with the pertinent provisions of, and penalties prescribed by, the Rules of Court.

xxx

e) To issue subpoena duces tecum and summon witnesses to appear in any proceedings of the Commission and in appropriate cases order search and seizure or cause the search and seizure of all documents, papers, files and records as well as books of accounts of any entity or person under investigation as may be necessary for the proper disposition of cases before it.

- Subpoena Power
- **All agencies with quasi-judicial functions** have the power to issue subpoena *even if the charter is silent as to such power.* Why: Adjudicative power will be rendered inutile if there is no subpoena power
- Subpoenas may be enforced
 - WON adjudication is involved,
 - WON probably cause is shown
 - Before the issuance of a complaint.
- A pending specific charge/ complaint is not necessary. It is enough that the investigation is for a lawfully authorized purpose.
- Purpose of the subpoena: discover evidence and not to prove a pending charge.

- Test for valid enforcement of subpoena: [Evangelista v Jarencio (1975)]
 - (a) Within the authority of the agency.
 - (b) Demand not too indefinite.
 - (c) Information reasonably relevant.

Power to Cite for Contempt

- **Not all agencies with quasi-judicial functions have the power to cite for contempt**
- Power to cite for contempt: must be expressly granted in the charter (ex. PD 902-A creating the SEC).
 - If there is no grant, the RTC must be invoked (power to punish for contempt = inherently judicial).
- *Contempt power can be used for quasi-judicial functions* (but NOT ministerial ones) [Guevarra v COMELEC (1958)]
- *The SC cannot whittle down the authority conferred on administrative agencies to assure the effective administration of a statute.* If the matter is properly within its cognizance, the means necessary to give it force and effectiveness should be deemed implied, unless the power sought to be exercised is so arbitrary as to trench upon private rights. [Catura v CIR (1971)]
- *Public Officials exercise powers, NOT RIGHTS.* The government is merely an agency through which the will of the State is expressed and enforced. Its officers are likewise agents entrusted with the responsibility of discharging its functions. As such there is no presumption that they are empowered to act. [Tolentino v Inciong (1979)]

3. Warrants of arrest, administrative searches

Art. III, Sec. 2, 1987 Consti. *The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge, after examination under oath or affirmation by the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.*

Art. IV, Sec. 3, 1973 Consti. *The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and whatever purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.*

COMPARING 1973 with 1987

- Phrase “or such other responsible officer as may be authorized by law” (1973) deleted to forestall human rights abuses during Martial Law, when one could be arrested by the military on mere suspicion by the strength of the warrant of arrest, ASSO or PDA.
- “Shall” was added to “warrant of arrest shall issue” ; the subsequent phrase was reworded: “to be determined personally” by the judge. This gives more responsibility to the issuing judge, who will be accountable.
- Both provisions are express guarantees against unwarranted violations of the privacy and security of persons and their properties.

ON WARRANTS OF ARREST

- Administrative agencies **cannot** issue warrants of arrest. Only a judge may issue warrants. [Salazar v Achacoso (1990)]
 - **Exception:** deportation of illegal and undesirable aliens following a final order of deportation. . [Qua Chee Gan v Deportation Board (1963)]
- Two ways of deporting:
 - (a) Commissioner of Immigration (Sec 37 of CA618)
 - (b) President after due investigation (Sec 69 of Admin Code)
 - no grounds needed; has sole discretion under international law
- *The President’s power of investigation may be delegated and the Deportation Board is his authorized agent but the power to arrest may not be so delegated.* The exercise of such power demands the exercise of discretion by the one exercising the same, to determine whether under specific circumstances, the curtailment of liberty is warranted. And while ministerial duties may be delegated, official functions requiring exercise of discretion and judgment may not be so delegated. [Qua Chee Gan v Deportation Board (1963)]
 - Note: The Constitution does not distinguish between warrants in a criminal case and administrative warrants in administrative proceedings.
- *The CFI has no jurisdiction to restrain deportation proceedings as they are within the jurisdiction of the Immigration authorities.* But issuance of the warrants of arrest by the Commissioner, solely for the purpose of investigation and before a final order of deportation is issued, conflicts with paragraph 3, Sec. 1, Art. III of the 1935 Constitution, which states that the power to determine probable cause for warrants of arrest is limited to judges.. *Warrants of arrest issued solely for the purpose of investigation and before a final order of deportation is issued are therefore null and void.* Notice and bonds are sufficient to ensure that the subject will appear at the hearing without prejudice to more drastic measures in case of recalcitrant respondents [Vivo v Montesa (1968)]

Cases **Contradicting Qua-Chee Gan: HARVEY and LUCIEN.** (allowing arrest by Commissioner upon determination of ground to deport).

- [Harvey v Defensor-Santiago (1988)]
 - The Commissioner can arrest aliens upon a warrant issued by him and deported upon warrant issued by the same after a determination of the existence of a ground for deportation by the Board of Commissioners.* Deportation proceedings are administrative in nature, not penal, but merely preventive. Thus, it need not be conducted strictly in accordance with ordinary court proceedings. The requirement of probable cause, determined by a judge, does not extend to deportation proceedings. What is essential however is that (1) there be a specific charge against the alien, (2) there be a fair hearing conducted, and (3) the charge be substantiated by competent evidence.
- [Lucien Tran Van Nghia v Liwag (1989)]
 - Lucien’s arrest and detention by the CID preparatory to the deportation proceedings is illegal. Here, the particular circumstances place doubt on the propriety of the arrest. The Mission Order was issued on the basis of sworn complaints of a single individual. The essential requisite of probable cause is absent. But even assuming that the arrest was at first illegal, supervening events

have rendered this petition for habeas corpus moot and academic.

→ The two cases are glitches. The **Qua Chee Gan doctrine prevails**, as supported by **Salazar**. Not only is **Salazar** a later case, it was also decided en banc, while **Harvey** was decided by a division.

- **[Salazar v Achacoso (1990)]**
Art. 38 of the Labor Code allowing the Secretary of Labor the power to issue warrants of arrest is unconstitutional. Only a judge may issue search or arrest warrants. **Vivo v. Montesa** is not a precedent because the arrest warrant was given to carry out a final decision of deportation. The SC reaffirms the following principles: (1) Under Sec.2, Art. III of the Constitution, only judges may issue search warrants and warrants of arrest; and (2) the exception is in cases of deportation of illegal and undesirable aliens, whom the President or the Commissioner may order arrested, following a final order of deportation, for the purpose of the same
→ Note: Following (2), the **Harvey** and **Lucien** cases prove to be anomalies.
- A warrant of arrest issued by a commissioner to be valid must be for the sole purpose of executing a final order of deportation. A warrant of arrest issued by the commissioner for purposes of investigation only, is null and void for being unconstitutional, following **Qua Chee Gan**. [**Board of Commissioners v Dela Rosa (1991)**]

CASES, WARRANTS:

[Camara v Municipal Court (1967)]

- *Warrantless non-emergency inspection of residential and commercial premises by city health officials: significant intrusions upon the interests protected by the 4th Amendment.* It is surely anomalous to say that the individual and his private property are fully protected by the constitution only when he is suspected of criminal behavior. Warrants should normally be sought only after entry is refused unless there is a citizen complaint or other satisfactory reason for securing immediate entry.

[See v Seattle]

- *For official inspection for enforcement of laws prescribing minimum physical standards for commercial premises: A warrant must first be secured.* There is no justification for relaxing 4th Amendment safeguards. Warrants are a necessary and tolerable limitation on the right to enter upon and inspect places of business. Limitations on administrative subpoenas of corporate books and documents:
 - (a) Limited in scope.
 - (b) Relevant in purpose.
 - (c) Specific directives so compliance will not be unreasonably burdensome.
 - (d) Subpoena must designate the needed documents.
 - (e) Subpoena may not be made and enforced in the field.
 - (f) Subpoenaed party may obtain judicial review of reasonableness of demand prior to suffering penalties for refusal to comply.

The particular agency's demand for access will be measured against a flexible standard of reasonableness that takes into account the public need for effective enforcement of regulations.

4. *Imposition of fines and penalties:*
 - Agencies have the power to impose fines and penalties.
 - Test for valid imposition:
 - (a) Subject matter must be within authority of Congress to legislate.
 - (b) Penalty to be imposed must be administrative or civil in character.
 - (c) Agency expressly authorized to impose penalty. [**Oceanic Steam Navigation v Stranahan (1908)**]

- Where the *statute does not authorize executive officials themselves to impose the penalty, recourse will have to be made to the ordinary courts.*
- *Imposition of criminal penalties, if not clearly stated in the statute, is a judicial function and not administrative.* [**Scoty's Department Store v Micaller (1956)**]
- *The fixing of penalties for criminal offenses: a power of the Legislature, which cannot be delegated.* [**US v Barrias (1908)**]
- A fine in the nature of a civil penalty exacted not so much for violation of administrative rules but for the need to stress desistance from wanton disregard of existing rules, is an administrative penalty which administrative officers are empowered to impose without criminal prosecution. [**Civil Aeronautics Board v Phil. Airlines (1975)**]

C. *Judicial determination of sufficiency of standards*

1. **Interest of law and order.**
[**Rubi v Provincial Board of Mindoro (1919)**]
 2. **Public interest.**
[**People v Rosenthal & Osmeña (1939)**]
 3. **Justice, equity and substantial merits of the case.**
[**International Hardwood v Pangil (1940)**]
 4. **What is moral, educational or amusing.** [**Mutual Film Corp v Industrial Commission (1914)**]
 5. **Adequate and efficient instruction.**
[**PACU v Secretary (1955)**]
 6. **Reasonableness (implied standard in every law).**
[**Wisconsin v Whitman (1928)**]
 7. **Promote simplicity, economy or efficiency.** [**Cervantes v Auditor-General (1952)**]
 8. **Maintain monetary stability, promote rising level of production & real income.**
[**People v Joliffe (1959)**]
- What is sacrilegious is **not** a sufficient standard. [**Burstyn v Wilson (1952)**]

IV. Administrative Procedure

A. *In Rule-Making: Price, wage or rate-fixing (see related areas in this reviewer)*

B. *In Adjudication of cases*

1. *Rules of Procedure*
2. *Due Process*
 - a. Cardinal Primary Rights:
[Ang Tibay v CIR (1950)]
 1. Right to a hearing.
 - Includes the right of a part to present his own case and submit evidence in support thereof.
 2. The tribunal must consider the evidence presented.
 3. Decision must be supported by evidence.
 4. Evidence must be **substantial**;
Substantial Evidence: such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable would opine otherwise.
 5. Decision must be rendered on the evidence presented at the hearing or at least contained in the record and disclosed to the parties affected..
 6. Independent consideration of judge.
 - Must not simply accept the views of a subordinate.
 7. Decision rendered in such a manner as to let the parties know the various issues involved and the reasons for the decision rendered.

- Due process does not always entail notice and hearing *prior* to the deprivation of a right. Hearing may occur *after* deprivation, as in emergency cases [**Goss v Lopez (1975)**], in which case, there must be a chance to seek reconsideration. [**UP Board of Regents v CA (1999)**]
- Presence of a party at a trial is not always the essence of due process. All that the law requires is the *element of fairness*; that the parties be given notice of trial and
 - (a) *an opportunity to be heard* [**Asprex v Itchon (1966)**] or,
 - (b) in administrative proceedings, *an opportunity to seek reconsideration* [**De la Cruz v Abille (2001)**] or
 - (c) *an opportunity to explain one's side* [**Pilipinas Loan v SEC (2001)**].
- *The law, in prescribing a process of appeal to a higher level, contemplates that the reviewing officer is a person different from the one who issued the appealed decision.* Otherwise, the review becomes a farce; it is rendered meaningless. [**Rivera v CSC (1995)**]
- *"To be heard" means both verbal arguments in court and being heard through pleadings.* [**Casimiro v Tandog (2005)**].
- *WON to hold an adversarial trial is discretionary.* Parties cannot demand it as a matter of right. [**Vinta Maritime v NLRC (1978)**].
- *Administrative due process cannot be fully equated to due process in the strict judicial sense.* [**Ocampo v Office of the Ombudsman (2000)**].
- *No notice is necessary for suspension, because the latter is only preventive in nature.* [**Busuego v CA (1999)**].
- *The right of a party to confront and cross-examine opposing witness is a fundamental right which is part of due process.* If without his fault, this right is violated, he is entitled to have the direct examination stricken off the record. [**Bachrach Motors v CIR (1978)**]
- *Evidence on record must be fully disclosed to the parties.* [**American Inter-Fashion v Office of the President (1991)**]
- *Respondents in administrative cases are not entitled to be informed of findings of investigative committees but only of the decision of the administrative body.* [**Pefianco v Moral (2000)**]
- *Mere consultations and conferences: not valid substitutes for notice and hearing.* [**Equitable Banking v NLRC (1997)**]
- *Three factors determining constitutional sufficiency of administrative procedures:*
 - (a) Private interest that will be affected.
 - (b) Risk of erroneous deprivation of such interest and probable value of safeguards.
 - (c) Public interest vis-à-vis government costs. [**Matthews v Eldridge**]
- *Due process: violated when:*
 - (a) there is failure to sufficiently explain the reason for the decision rendered; or
 - (b) if not supported by substantial evidence;
 - (c) and imputation of a violation and imposition of a fine despite absence of due notice and hearing. [**Globe Telecom v NTC (2004)**].
- *The right against self-incrimination may be invoked by the respondent at the time he is*

called by the complainant as a witness. However, if he voluntarily takes the witness stand, he can be cross examined; but he may still invoke the right when the question calls for an answer which incriminates him for an offense other than that charged. [**People v Ayson**]

- b. Notice and hearing:
 1. When required:
 - (a) When the law specifically requires it. [**Equitable Banking v NLRC (1997)**]
 - (b) When it affects a person's status and liberty. [**Commissioner of Immigration v Fernandez**]
 2. When not required:
 - (a) Urgent reasons.
 - (b) Discretion is exercised by an officer vested with it upon an undisputed fact. [**Suntay v People (1957)**]
 - (c) If it involves the exercise of discretion and there is no grave abuse. [**De Bisschop v Galang**]
 - (d) When rules to govern future conduct of persons or enterprises, unless law provides otherwise. [**Toxicab Operators of Manila v Board of Transportation**]
 - (e) In the valid exercise of police power. [**Pollution Adjudication Board v CA (1991)**]
- c. Form and promulgation of judgment

Sec. 2(8), 1987 Admin Code. "Decision" means the whole or any part of the final disposition, not an interlocutory character, whether affirmative, negative, or injunctive in form, of an agency in any matter, including licensing, rate fixing, and granting of rights and privileges.

Sec. 14. Decision. — Every decision rendered by the agency in a contested case shall be in writing and shall state clearly the facts and the law on which it is based. The agency shall decide each case within thirty days following its submission. The parties shall be notified of the decision personally or by registered mail addressed to their counsel of record, if any, or to them.

Sec. 15. Finality of order. — The decision of the agency shall be final and executory after the receipt of copy thereof by the party adversely affected unless within that period an administrative appeal or judicial review, of proper, has been perfected. One motion for reconsideration may be filed, which shall suspend the running of the said period.

Sec. 16. Publication and Compilation of Decisions. — Every agency shall publish and make available for public inspection all decisions or final orders in the adjudication of contested cases. It shall be the duty of the records officer of the agency or his equivalent functionary to prepare a register or compilation of those decisions or final orders for use by the public.

CASES, JUDGMENT.

- **Ang Tibay v CIR**
Decision should state the facts, issues and the law on which the decision was based, and not merely conclusions of law
- **Indias v Phil Iron Mines (1957)**

Not necessary that the court make its own discussion of the evidence and findings of fact if it is satisfied with the examiner's report which already contains the discussions of findings and conclusions. The rule is otherwise when the court disagrees with the examiner in which case the court must specify and discuss the reasons for their dissent.

- **American Tobacco v Director of Patents (1975)**
If power to decide is granted to a specific authority, it can't abdicate from this responsibility by delegating the duty to decide the case.
- **Neria v Commissioner of Immigration (1968)**
The date of the promulgation of the judgment is the date when the Board voted and resolved to admit the alien. This date can be ascertained from the minutes of the proceedings had before the Board. The operative date of the Board's action is when the decision was voted and adopted by them as a Board, regardless of the date when the decision in extenso was prepared, written and signed.
- **Sichangco v Board of Commissioners of Immigration (1979)**
The word "noted" on the decision does not constitute an exercise of the power of review. Absent a reversal, the decision of the BSI prevails and becomes final after the lapse of 1 year from the rendition of the decision. However, in the case of a reversal, notice thereof may be sent even after the lapse of 1 year.
- **Realty Exchange v Sendino (1994)**
The power to delegate a particular function can be implied from the power of administrative agencies to issue rules and regulations necessary to carry out its functions.

3. Jurisdiction

- Administrative agencies may only exercise - such powers as are explicitly or - by necessary implication conferred on them by law.
The jurisdiction over the subject matter of an administrative agency depends on the terms of the enabling statute delegating powers to it.
- No jurisdiction = void decision.

3. Administrative and judicial proceedings arising from the same facts

- The practice in the Philippines has been to *allow an administrative proceeding and a judicial proceeding to take place at the same time so long as the 2 actions are independent of each other.*
- The *difference in the proceeding* (one administrative, the other criminal) is not legal incompatibility, but merely **physical incompatibility**. They involve *different causes of action* and therefore can proceed simultaneously. [(Galang v CA (1961))]
- *Material matters in an administrative case are not necessarily relevant in the criminal case.* Findings in criminal cases cannot be conclusive for administrative purposes. There are defenses, excuses, and attenuating circumstances of value in admin proceedings that are not admissible in criminal cases which can have a blunting effect on the conviction. Due process should be upheld. Conviction does not *ex proprio vigore* justify automatic suspension. [Villanos v Subido (1971)]

- *Acquittal in the criminal case does not carry with it relief from administrative liability.* Different standards apply. The administrative case requires only a preponderance of evidence to establish administrative guilt; the criminal case requires proof beyond reasonable doubt of the criminal charge. [Police Commission v Lood (1980)]

→ Note: Can there be a conviction in a criminal case and an acquittal in the administrative case? YES. See **Villanos v Subido**.

→ Note: Can there be an acquittal in a criminal case and a conviction in the administrative case? YES. See **PNR v Domingo** which also states that

while the accused acquitted of the crime imputed against him may claim payment of back salaries during his suspension or reinstatement in case of dismissal, his relief lies in the proper administrative or civil action prescribed by law (NLRC).

The trial court has no jurisdiction to order reinstatement since the judgment in a criminal case is limited to acquittal or conviction with necessary penalties. However, the case also discusses **Consigna** where reinstatement was granted by the trial court because the acquittal was for absolute lack of evidence and a concomitant finding that the dismissal was unfair. Whether or not the **Consigna** doctrine should be seen as an exemption is still a gray area. Some say that it is not to be considered as good law, while others argue that if the criminal case results in an acquittal due to *absolute lack of evidence*, then the administrative case must also result in an acquittal.

- Should a public official or employee be found guilty of violation of election laws or failure to comply with COMELEC instructions, orders, or decisions, the corresponding proper authority shall, upon COMELEC's recommendation, take appropriate action. The executive department to which the charged official or employee belongs has ultimate authority to impose the recommended disciplinary action, which respects the general administrative authority of the government department [Tan v COMELEC (1994)]
- The dismissal of the criminal case will not foreclose administrative action. [Ocampo v Office of the Ombudsman (2000)]
- The criminal and civil cases are altogether different from the administrative matters such that disposition in the first two will not inevitably govern the third, and vice versa. [Mirales v Go (2001)]

4. Rules of Evidence

- Apply the specific rules of the administrative agency.
 - In the absence thereof, apply the general rules on procedure.
 - However, administrative agencies are not bound by the technical rules of evidence of ordinary courts, so long as due process is observed. (**the Pervasive Principle**)
- Rationale: to allow administrative agencies to act with speed and flexibility.
- The Pervasive Principle applies in at least three areas:
 - (a) **Admissibility:** Generally, agencies are not bound by the technical rules of admissibility.
 - (b) **Judicial Notice:** Administrative bodies may take into account not only such evidence as may be presented by the parties in the determination of the case. They may also make their inquiry into facts at issue, and take judicial notice of certain other matters.

- (c) *Quantum of Evidence*: Only substantial evidence is required to support a decision.
- Ocular inspection is not equivalent to a trial or presentation of evidence, as it is only an auxiliary remedy. Parties are still entitled to hearing. But if the issue can be resolved through ocular inspection, there is no prohibition. [**Phil. Movie Pictures Workers Assoc v Premier Productions (1953)**]
 - Administrative agencies may act on their own and use methods which may best constitute substantial evidence. The SC is not required to examine proof de novo. [**Estate of Buan v Pambusco (1956)**]
 - The only function of the SC is to determine WON there is evidence before the administrative agency upon which its decision might be reasonably based. [**Rizal Light v Municipality of Rizal**]. However, evidence received at an administrative investigation conducted with manifest disregard of due process may not justify the conclusion based thereon. [**Borja v Moreno**].
 - The order of testimony/ witnesses is within the discretion of the court. Such a relaxed procedure is especially true in administrative bodies. In the broad interest of justice, the administrative body may except itself from technical rules and apply such suitable procedure as shall promote the objectives. [**Maceda v ERB (1991)**]
 - When findings of fact of administrative agencies are **not conclusive** upon the courts:
 - a. When the decision was rendered by an almost evenly divided court and the division was precisely on the facts as borne out by the evidence. [**Gonzales v Victory Labor Union (1969)**]
 - b. When the decision was rendered in consequence of fraud, imposition or mistake, other than error of judgment in estimating the value or effect of the evidence. [**Ortua v Singson (1934)**]
 - c. When the decision is not supported by substantial evidence. [**Manahan v People (1988)**]
 - d. When the findings are based merely on their position papers. There is no trial through position papers where the adversarial process would ensure a better presentation and appreciation of the evidence. [**PAL v Confessor (1994)**]
→ Reconcile with **Bantolino case**: Rules of evidence are not strictly observed in proceedings before administrative bodies where decisions may be reached on the basis of position papers only. [**Bantolino v Coca-Cola Bottlers Phils. (2003)**]
 - e. The SC will intervene only when the standard appears to have been misapprehended or grossly misapplied. [**Universal Camera v NLRC (1951)**]
- A generalization as to when judicial review is available is hazardous. Factors to consider:
 - (a) If what is involved is a **question of constitutionality**, judicial review is available.
 - Regular courts have jurisdiction to pass upon the validity or constitutionality of an administrative rule or regulation issued in the performance of quasi-legislative functions. [**Smart Communications v NTC (2003)**]
 - (b) **History of the statute involved**. Intention of Congress prevails.
 - Except when the Constitution requires or allows it, judicial review may be granted or withheld as Congress chooses. Thus, the law may provide that a determination made by an administrative agency shall be final and irreviewable. In such a case, there is no violation of due process.
 - However, Art. 8 Sec. 1 par. 2 of the 1987 Constitution, which provides that the judicial power includes the power of the courts of justice to determine WON there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any government agency or instrumentality, clearly means that judicial review of administrative decisions cannot be denied the courts when there is an allegation of grave abuse of discretion.
 - (c) **Nature of problem** involved:
 - *Right* (should be protected by law) v *Privilege* (can be unilaterally withdrawn).
 - *Question of Law* v *Question of Fact*.
 - Question of law: reviewable (since the court is the final interpreter of the law.) A question on the substantiality of evidence is a question of law.
 - Question of fact: It depends on WON the finding of fact is supported by substantial evidence.
 - If YES: not reviewable [Sec. 25 Book VII Admin Code];
 - If NO: reviewable.
 - *Question of Discretion*: When discretion is granted by law, the exercise of such is generally not to be disturbed by the court.
 - *Exception*: When there is grave abuse of discretion.
 - *Question of Policy*: Traditionally, policymaking is not judicial business.
 - (d) **Finality of the administrative decision**.
 - The doctrines of forum shopping, *litis pendentia* and *res judicata* also apply to administrative agencies.
 - d. *Forum shopping*: The certification against forum shopping shall state that the party "has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or **quasi-judicial agency**, and to the best of his knowledge, no such other action or claim is pending therein." (Rule 7 Sec. 5 Rules of Court)
 - e. *Res judicata* applies to adversary administrative proceedings, because they are quasi-judicial in nature. [**United Pepsi Cola Supervisory Union v Laguesma**]. However, *res judicata* does not apply in administrative adjudication relative to citizenship, *unless* the following conditions all obtain: (1) The question of citizenship is resolved by a court or administrative body as a material issue in the controversy after a full-blown hearing; (2) with the active participation of the Sol-Gen; and (3) The finding on the citizenship issue is affirmed by the SC. [**Zita Ngo Burca v Republic**] Nor does *res judicata* apply where the administrative decision gives an award that is less than what the law provides. [**B.F. Goodrich v WCC (1988)**]. Although a judicial concept, *res judicata* may be applied to administrative agencies performing quasi-legislative functions.
 - f. *Litis pendentia* may apply in cases involving forum shopping or the doctrine of primary jurisdiction.

V. Judicial Review of Administrative Decisions

- Judicial review is an effective mechanism to check acts which are arbitrary or beyond the authority given to any agency by its enabling statute.
- There is an *underlying power* in the courts to scrutinize the acts of administrative agencies exercising quasi-judicial power on questions of law and jurisdiction even though no right of review is given by the statute. Judicial review keeps the administrative agency within its jurisdiction and protects substantial rights of parties affected by its decisions. Judicial review is proper in cases of lack of jurisdiction, error of law, grave abuse of discretion, fraud or collusion, or in case the administrative decision is corrupt, arbitrary or capricious. [**San Miguel Corp. v Labor Secretary (1975)**]

C. Factors Affecting Finality of Administrative Decisions

- When a court reviews an agency's construction, it deals first with the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, the court and the agency must give effect to the unambiguous expressed intent of Congress. If not, the court does not simply impose its own construction on the statute. If the statute is silent or ambiguous with respect to the issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. [**Chevron v Natural Resources Defense Council (1984)**]
- When no one seasonably filed a motion for reconsideration, the Office of the President lost jurisdiction to reopen the case, more so modify its decision. It thus had no more authority to entertain the second motion for reconsideration. The orderly administration of justice requires that the judgments of a court or quasi-judicial body reach a point of finality set by the law, rules and regulations. [**Fortich v Corona (1998)**]
- Compliance with the period provided by law for the perfection of an appeal is a mandatory and jurisdictional requirement. Thus, failure to comply with the reglementary period has the effect of rendering final the judgment of the court. Even administrative decisions must end sometime, as fully as public policy demands that finality be written on judicial controversies. *Non quieta movere*: What was already terminated cannot be disturbed. [**Antique Sawmill v Zayco (1966)**]
- The Courts will not interfere with the decision of an administrative officer, unless the Court is of the clear opinion that such decision is (a) wrong, (b) manifestly arbitrary and unjust, and (c) not based upon any reasonable interpretation of the law. [**Sotto v Ruiz (1921)**]
- General rule: Courts refuse to interfere with proceedings undertaken by administrative bodies or officials in the exercise of administrative functions.
→ Exceptions: administrative proceedings may be reviewed by

the courts upon a showing that the board or official:

- a. Has gone beyond his statutory authority;
 - b. Exercised unconstitutional powers;
 - c. Clearly acted arbitrarily and without regard to his duty, or with grave abuse of discretion; or
 - d. The decision is vitiated by fraud, imposition or mistake. [**Manuel v Villena (1971)**]
- When judicial review is valid *despite finality* of administrative decisions:
 - (a) Decision is wrong;
 - (b) Manifestly arbitrary, capricious, unjust decision;
 - (c) Not based upon any reasonable interpretation of law;
 - (d) Vitiated by fraud, imposition or mistake;
 - (e) Violates or fails to comply with some mandatory provision of law;
 - (f) Administrative body or officer has gone beyond its/his statutory authority;
 - (g) Administrative agency exercised unconstitutional powers;
 - (h) Lack of jurisdiction;
 - (i) Grave abuse of discretion.

D. Availability of Judicial Review

1. *Whether the enabling statute permits judicial review.* There is no problem when the statute itself expressly grants or prohibits judicial review. But when it is silent, generally, judicial review is available. Since an administrative agency has a narrower view of the case, and its existence derogates the judicial prerogative lodged in the courts by the Constitution, judicial review is needed to offer these considerations.
2. *Whether the plaintiff has standing.*
3. *Whether the defendant is the proper defendant.* The defendant could either be a private party, or the very administrative agency before whom the right is being applied.
4. *Whether the forum is the proper forum.* The forum is usually provided for in the enacting statute. In its absence, the Uniform Appeals Act is applicable. It is very seldom that the forum is in the RTC, since administrative agencies are usually given the rank equal to or higher than the RTC.

5. *Whether the timing for the filing of the case is proper.* The period for filing the case must also be considered in view of the statute of limitations, as well as the period required by the statute or rules for the filing of appeals.
6. *Whether the case is ripe for adjudication.* When a person has not exhausted all the administrative remedies available to him, his case is said to be not ripe for judicial review yet. He is said to have invoked the intervention of the court prematurely. Although this is not a jurisdictional requirement, failure to abide by the doctrine affects petitioner's cause of action.

E. Exhaustion of Administrative Remedies

1. *When the doctrine applies*
 - a. The administrative agency is performing a quasi-judicial function.
 - b. Judicial review is available.
 - c. The court acts in its appellate jurisdiction.
2. *Rationale*
 - a. Legal reason: The law prescribes a procedure.
 - b. Practical reason: To give the agency a chance to correct its own errors [**Bernardo v Abalos (2001)**] and prevent unnecessary and premature resort to the courts [**Lopez v City of Manila (1999)**].
 - c. Reasons of comity: Expedience, courtesy, convenience.
3. *General Rule:* Where the law has delineated the procedure by which administrative appeal or remedy could be effected, the same should be followed before recourse to judicial action can be initiated. [**Pascual v Provincial Board (1959)**]
 - a. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's juridical power can be invoked. Premature invocation of the court's intervention is fatal to one's cause of action. [**Paat v CA (1997)**]
 - b. Courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies. [**Lopez v City of Manila (1999)**]
 - c. Recourse through court action cannot prosper until after all such administrative remedies would have first been exhausted. The doctrine does not warrant a court to arrogate unto itself the authority to resolve or interfere in a controversy the jurisdiction over which is lodged initially with an administrative body of special competence. [**Garcia v CA (2001)**]
4. *Exceptions*
 - a. Purely legal questions. [**Castro v Secretary (2001)**]
 - b. Steps to be taken are merely matters of form. [**Pascual v Provincial Board (1959)**]
 - c. Administrative remedy not exclusive but merely cumulative or concurrent to a judicial remedy. [**Pascual**]
 - d. Validity and urgency of judicial action or intervention. [**Paat v CA (1997)**]
 - e. No other plain, speedy, adequate remedy in the ordinary course of the law. [**Paat; Information Technology Found'n v COMELEC (2004)**]
 - f. Resort to exhaustion will only be oppressive and patently unreasonable. [**Paat; Cipriano v Marcelino (1972)**]
 - g. Where the administrative remedy is only permissive or voluntary and not a prerequisite to the institution of judicial proceedings. [**Corpuz v Cuaderno (1962)**]
 - h. Application of the doctrine will only cause great and irreparable damage which cannot be prevented except by taking the appropriate court action. [**Cipriano; Paat**]

- i. When it involves the rule-making or quasi-legislative functions of an administrative agency. [**Smart v NTC (2003)**]
- j. Administrative agency is in estoppel. [**Republic v Sandiganbayan (1996)**]
- k. *Doctrine of qualified political agency*: The act of the department head is presumptively the act of the President (as his *alter ego*), unless revoked by the latter. [**Estrada v CA (2004); Paat**]
 - Note: Undersecretary is held to have acted on behalf (as alter ego) of the Secretary. [**Nazareno v CA**]
 - *Exceptions*:
 - Where the law expressly provides for exhaustion via an appeal to the President. [**Tan v Director of Forestry**]
 - Where the appeal to the Office of the President was not acted upon despite follow-ups, and in the meantime, the assailed administrative resolution continued to be put in effect. [**Ass'n of Phil. Coconut Desiccators v Phil. Coconut Authority**]
- l. Subject of controversy is private land in land case proceedings. [**Paat**]
- m. Blatant violation of due process. [**Paat; Pagara v CA**]
- n. Where there is unreasonable delay or official inaction. [**Republic v Sandiganbayan**]
- o. Administrative action is patently illegal amounting to lack or excess of jurisdiction. [**Paat**]
- p. Resort to administrative remedy will amount to a nullification of a claim. [**DAR v Apex Investment (2003); Paat**]
- q. No administrative review provided by law. [**Estrada**]
- r. Issue of non-exhaustion of administrative remedies rendered moot. [**Estrada**]
- s. In quo warranto proceedings. [**Garcia**]
- t. Law expressly provides for a different review procedure. [**Samahang Magbubukid v CA (1999)**]

5. *Remedy*: Failure to observe doctrine does not affect jurisdiction of the court. The only effect of non-compliance is it will deprive complainant of a cause of action, which is a ground to dismiss. But if not invoked at the proper time, this ground is deemed waived. [**Republic v Sandiganbayan (1996)**]

F. Primary Jurisdiction or Preliminary Resor

1. *When the doctrine applies*
 - a. The administrative body and the regular court have *concurrent* and *original* jurisdiction.
 - b. The question to be resolved requires expertise of administrative agency.
 - c. The legislative intent on the matter is to have uniformity in rulings.
 - d. The administrative agency is performing a quasi-judicial or adjudicatory function (not rule-making or quasi-legislative).
2. *General rule*: Courts will not intervene if the question to be resolved is one which requires the expertise of administrative agencies and the legislative intent on the matter is to have uniformity in the rulings. It can only occur where there is a concurrence of jurisdiction between the court and the administrative agency. It is a question of the court yielding to the agency because of the latter's expertise, and does not amount to ouster of the court. [**Texas & Pacific Railway v Abilene (1907)**]
 - It is the recent jurisprudential trend to apply the doctrine of primary jurisdiction in many cases that demand the special competence of administrative agencies. It may occur that the Court has jurisdiction to take cognizance of a particular case, which means that the matter involved is also judicial in character. However, if the determination of the case requires the expertise, specialized skills and knowledge of the proper administrative bodies because technical

matters or intricate questions of facts are involved, then relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court. [**Industrial Enterprises v CA (1990)**]

- It is presumed that an administrative agency, if afforded an opportunity to pass upon a matter, would decide the same correctly, or correct any previous error committed in its forum [**Caballes v Sison (2004)**]

3. Exceptions

- a. If the agency has exclusive jurisdiction. [**Texas**]
- b. When the issue is not within the competence of the administrative body to act on. [**Phil Global Communications v Relova (1980)**]
- c. When the issue involved is clearly a factual question that does not require specialized skills and knowledge for resolution to justify the exercise of primary jurisdiction. [**Conrad v CA (1995)**]

4. Effect

- Application of the doctrine does not call for the dismissal of the case, but only its *suspension* until after the matters within the competence of the administrative agency are threshed out and determined. [**Industrial**] For while no prejudicial question arises in civil proceedings, this is in the interest of good order. [**Viadad v RTC (1993)**]
- While primary jurisdiction to determine preliminary matters is vested in an administrative agency, such determination is *subject to challenge* in the courts. [**Philippine Veterans Bank v CA (2000)**]

E. Ripeness

1. *When doctrine applied*
 - a. Administrative agency's decision is final.
 - b. Judicial review available/appropriate.
 - c. Administrative agency exercising its rule-making or quasi-legislative function
2. *Purpose* [**Abbot Laboratories v Gardner (1967)**]
 - d. To prevent courts, thru avoidance of premature adjudication, from entangling themselves in abstract agreement over administrative policies.
 - e. To protect agencies from judicial interference until a decision has been formalized and its effect is felt in a concrete way or the imminence of the effect is demonstrable.
3. *Two-fold test for a controversy to be ripe* [**Abbot**]
 - f. Fitness of the issue for judicial decision.
 - g. Hardship to the parties of withholding such court action.

VI. Modes of Judicial Review

- Classes of methods of obtaining judicial review:
 - (1) *Statutory v Non-statutory*:
 - Statutory methods are available pursuant to specific statutory provisions.
 - Non-statutory methods are those taken when there is no express statute granting review, and relief is obtained by means of the common law remedies or by the prerogative writs of certiorari, mandamus, habeas corpus, quo warranto or prohibition.
 - If statutory methods for judicial review are available, they are ordinarily exclusive, and the use of non-statutory methods will not likely be permitted.
 - (2) *Direct v Collateral*:

- Direct attacks are those which attempt to question in subsequent proceedings the administrative action for lack of jurisdiction, grave abuse of discretion, etc.
- Collateral attack is when relief from administrative action is sought in a proceeding where the primary objective is the grant of a relief other than the setting aside of the judgment, although an attack on the judgment may be incidentally involved.
- Judicial review is not trial *de novo*. It is merely an ascertainment of WON the findings of the administrative agency are consistent with law, free from fraud or imposition, and supported by evidence.
- *Who* may seek judicial review:
 - ☐ Any party aggrieved or adversely affected by an agency decision.
- *Against* whom:
 - the agency, or its officers, and all indispensable and necessary parties as defined in the Rules of Court.
- *When* to appeal:
 - ☐ Within 15 days from receipt of copy of administrative decision.
 - One motion for reconsideration may be allowed. If the motion is denied, the movant shall perfect his appeal during the remaining period for appeal reckoned from receipt of the resolution of denial. If the decision is reversed on reconsideration, the appellant shall have 15 days from receipt of the resolution to perfect his appeal.
- *How*:
 - File with the agency a notice of appeal, and with the reviewing court, a petition for review.
 - Copies of the petition shall be served upon the agency and all parties of record.
 - Contents of petition:
 - concise statement of the issues involved
 - grounds relied upon for the review
 - true copy of the order appealed from, copies of such material portions of the records as are referred to therein and other supporting papers.
 - show that it was filed within the period fixed (by stating the specific material dates)
 - Form of petition: under oath
- *Where* to file:
 - ☐ In the court specified by the statute or, in the absence thereof, in any court of competent jurisdiction in accordance with the provision on venue of the Rules of Court. [Sec. 25 Book VII Admin Code]
- Authority of the CA to review decisions of quasi-judicial agencies is **exclusive**, if such is indicated in the law or charter. If not, their decisions can be reviewed by the RTC through the special civil action for certiorari under Rule 65.
- *Judicial Review by CA*. Rule 43 of the Rules of Civil Procedure provides that the Court of Appeals shall have appellate jurisdiction over awards, judgments, final orders of resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions.
 - Grants the CA with exclusive jurisdiction to review decisions of 19 administrative agencies.
 - Excludes the NLRC by virtue of BP 129 Sec. 9(3) (as amended by RA 7902).
 - Mentions only one constitutional body – the Civil Service Commission.
 - Listing is **not** exclusive since it provides “among these agencies” – *eiusdem generis*.
 - SC retains the special civil action for certiorari if there is grave abuse of discretion amounting to lack or excess of jurisdiction.
- *Judicial Review by SC*. Decisions, orders and rulings of Constitutional Commissions may be brought to the Supreme Court on certiorari by the aggrieved party within 30 days from receipt of a copy thereof. [1987 Consti Art IX-A Sec 7]

NOTE: The Constitution uses the word “*may*”, meaning, review is not mandatory but only discretionary.
- Where the law provides for an appeal from the decisions of administrative bodies to the SC or to the CA, it means that

such bodies are co-equal with the RTC in terms of rank and stature and, logically, beyond the control of the latter. [**Philippine Sinter v Cagayan Electric (2002)**] This doctrine of non-interference by trial courts with co-equal administrative bodies is intended to ensure judicial stability in the administration of justice whereby the judgment of a court of competent jurisdiction may not be opened, modified or vacated by any court of equal rank.

→ NOTE: There are cases which held that review by the RTC of

certain administrative agencies (Commission on Immigration and Deportation, Laguna Lake Development Authority, and court martials) is valid.

a. Certiorari

→ *Kinds*

a. Simple or ordinary [Rule 45 (Appeal by Certiorari to the SC)]

→ NOTE, however, that in the case of administrative agencies performing quasi-judicial functions, the proper mode of appeal is through Rule 43 (Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the CA).

→ Rule 45: Considered as a “gatekeeper provision”, it is applicable only when questions of law are raised. Review under this rule is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons therefore (**Rule 45, Sec. 6**)

b. Special civil action [Rule 65 Sec. 1 (Petition for Certiorari)]

	Rule 43	Rule 45	Rule 65
Court(s) with Jurisdiction	CA	SC	SC, CA and RTC
Nature of Jurisdiction	appellate jurisdiction	appellate jurisdiction	original jurisdiction
Issues	question of law, of fact or mixed question of law and fact (Sec 3)	only questions of law (Sec 1)	question of jurisdiction or grave abuse of discretion
Scope	appeals from judgments or final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions (Sec 1); n/a judgments or final orders issued under the Labor Code. (Sec 2)	appeals from judgments or final orders or resolutions of the CA, the Sandiganbay an, the RTC or other courts. (Sec 1)	only to an order or act of an officer or board exercising judicial or quasi-judicial functions, and not for judgments. [Republic v CA]
Reglementary Period	Appeal shall be taken within <u>15 days</u> from notice of the award, judgment or final order or resolution, or from the date of its last	Petition shall be filed within <u>15 days</u> from notice of the judgment or final order or resolution, or of the denial of the motion	Within <u>60 days</u> from notice of judgment, order or resolution. (Sec. 4)

	publication, or of the denial of the motion for new trial or reconsideration; subject to 15-day extension and further extension. (Sec 4)	for new trial or reconsideration; subject to 30-day extension. (Sec 2)	
Effect	Award, judgment, final order or resolution not stayed unless the CA directs otherwise. (Sec 12)	Judgment is stayed.	Order is not stayed unless a preliminary injunction is issued.
Parties	original parties (court or agency is not impleaded) (Sec 6)	original parties (become appellant and appellee)	aggrieved party (petitioner); administrative agency and the prevailing parties (respondents).

- **Requisites of Petition for Certiorari:**
 - a. Lack of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction.
 - b. No plain, adequate or speedy remedy.
 - c. Administrative agency performing a quasi-judicial function.
- **Purpose:** To set aside or nullify proceedings.
- **When not applicable:**
 - a. A petition for certiorari inquires into errors of jurisdiction or grave abuse of discretion, and not errors of judgment. **[Purefoods Corp v NLRC (1989); Azores v SEC (1996)]**
 - b. Review under Rule 65 of the Rules of Court does not include a correction of evaluation of the evidence but is confined to issues of jurisdiction or grave abuse of discretion. **[Villaruel v NLRC (1998)]**
 - c. It has been a long-standing policy and practice of the Court to respect the conclusions of quasi-judicial agencies. They are highly specialized bodies that have necessarily developed an expertise on their specific subjects. Thus, the Court adheres to their findings, unless there is an abuse or improvident exercise of authority. **[Commissioner of Internal Revenue v General Foods (2003)]**
- The remedy of a party is to file a motion for reconsideration at the administrative level, then avail of a special civil action for certiorari under Rule 65. In the case of NLRC decisions, the intent of the legislature was to make a special civil action for certiorari as the proper vehicle for review. Thus, all references in the law to "appeals" from the NLRC to the SC must be interpreted to mean petitions for certiorari under Rule 65. All such petitions must initially be filed in the CA following the hierarchy of courts. **[St. Martin Funeral Homes v NLRC (1998)]**
- While findings of facts of administrative bodies are entitled to great weight and should not generally be disturbed, there is grave abuse of discretion justifying the issuance of the writ of certiorari when there is such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction as where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal hostility amounting to an evasion of positive duty, or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law. **[Police Commission v Bello (1971)]**
- Certiorari is a writ issued by a superior court to an inferior court, board or officer exercising judicial or quasi-judicial functions whereby the record of a particular case is ordered to be elevated for review and correction in matters of law.

[Meralco Securities Industrial v Central Board of Assessment Appeals (1982)]

- Findings of fact of an administrative agency must be respected, so long as they are supported by substantial evidence; but lacking such support, the factual finding cannot stand on its own and is therefore not binding on the Court. **[Cruz v Gangan (2003)]**
- This remedy applies to administrative decisions up to the highest level and includes even a decision rendered "by authority of the President." **[De Leon v Heirs of Gregorio Reyes (1987)]**

b. Prohibition [Rule 65 Sec. 2]

- **Requisites**
 - a. Lack of jurisdiction or grave abuse of discretion.
 - b. No plain, adequate and speedy remedy.
 - c. Agency performs quasi-judicial and/or ministerial functions.
- **Purpose:** To prohibit or stop a proceeding.
 - A preventive remedy – thus, not for acts already performed. If *fait accompli*, prohibition can no longer be filed.
 - Exception: prohibition can restrain an act which is already a *fait accompli* if such act is patently illegal and unconstitutional, and it creates a mischief and dangerous precedent whereby those in the corridors of power could avoid judicial intervention and review by merely speedily and stealthily completing the commission of an illegality **[Tan v COMELEC (1986)]**

→ **When not applicable**

- a. Prohibition does not lie against legislative functions. **[Ruperto v Torres (Unreported)]**
 - b. When an act is already accomplished. **[Simon, Jr. v CHR (1994)]**
 - c. When there is another and complete remedy at law. **[Paredes v CA (1996)]**
- General rule is that the Deportation Board has original jurisdiction to resolve the issue of citizenship. Mere claim of citizenship will not divest it of its jurisdiction. Exception is when there is substantial or conclusive proof to support the claim of citizenship, in which case the court, using its sound discretion, may allow intervention. The effect of granting the writ of prohibition is to suspend the administrative proceeding pending the resolution of the issue of the citizenship in the judicial proceeding. **[Chua Hiong v Deportation Board (1955)]**

c. Mandamus [Rule 65 Sec. 3]

- **Requisites**
 - a. Public officer or agency has a positive duty, which is *ministerial*, and unlawfully neglects to perform such duty.
 - ☑ Exception: Mandamus will lie against a discretionary duty when the official or agency refuses to exercise the duty itself.
 - ☑ Discretion means the power or right conferred upon the office by law of acting officially under certain circumstances according to the dictates of his judgment and conscience and not controlled by the judgment of conscience of others. **[Meralco v Savellano (1982)]**
 - ☑ A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. **[Meralco]**
 - ☑ Duty to ascertain facts is discretionary. Duty to act after the facts have been ascertained is ministerial. **[Tan v Veterans Backpay Commission (1959)]**
 - b. Right of petitioner is clear and controlling.
 - ☑ Mandamus can be availed of only by the party who has a direct legal interest in the right sought to be enforced.
 - ☑ Exception: If the question is one of public right and the object of mandamus is to procure the performance of a public duty, it is sufficient to show that the petitioner is a

citizen even if he has not special interest in the result. [Tañada v Tuvera (1985)]

- c. No other plain, speedy and adequate remedy.
 ☐ Exception: Where the case involves only legal questions, the litigant need not exhaust all administrative remedies before mandamus can be sought. [Español v The Chairman of the PVA (1985)]

→ Purpose: To compel a party to perform an act arising out of a positive duty enjoined by law.

→ The function of mandamus is not to establish a right but to enforce one that has been established by law. If no legal right has been violated, there can be no application of a legal remedy, and the writ of mandamus is a legal remedy for a legal right. There must be a well-defined, clear and certain legal right to the thing demanded. [PRC v De Guzman (2004)]

→ When not applicable:

- a. The writ of mandamus will not issue to control or review the exercise of discretion of a public officer. Where the law imposes upon a public officer the right and duty to exercise judgment, reference to any matter to which he is called upon to act, it is his judgment that is to be exercised and not that of the court. [Blanco v Board of Examiners (1924)]

☐ Exceptions: When mandamus lies to compel performance of discretionary duties.

1. Where there has been *grave abuse of discretion*, manifest injustice, or palpable excess of authority, in which case the respondent can be ordered to act in a particular manner, especially where a constitutional right has been violated. [Kant Wong v PCGG (1987)]
2. Where such discretion of the court can be legally exercised in only one way and it refuses to act, mandamus will lie to compel the court to exercise it. [People v Orias]
3. To prevent a failure of justice or irreparable injury where there is a clear legal right and there is an absence of any adequate remedy; where there is no appeal; or when such remedy of appeal is inadequate. [Orias]
4. To prevent an abuse of discretion or to correct an arbitrary action which does not amount to exercise of discretion. [Orias]
5. Privilege is distinguishable from a *matter of right*, the latter being demandable if denied. [PRC v De Guzman (2004)]

- b. Mandamus will not lie to compel the issuance of a visa. Issuance of a visa is not a matter of course since it involves the exercise of discretion on the part of the consular officer as to the question if the entry of the applicant would be contrary to public safety. [Ng Gioc Liu v Secretary of Foreign Affairs (1950)]

- c. Mandamus will lie only to compel the board or officer to take some action when it refuses to BUT will not attempt to prescribe the action to be taken and thereby control the discretion or judgment of the board or officer. [Policarpio v Phil Veterans Board (1956)]

- d. Mandamus does not lie to require anyone to fulfill contractual obligations or to compel a course of conduct. In these cases, the proper remedy is specific performance. [Province of Pangasinan v Reparations Commission (1977)]

- e. While mandamus lies to compel a court to give due course to the appeal which it has erroneously dismissed, mandamus will not lie to compel a court to dismiss the appeal as the remedy is to assign such failure to dismiss as an error in the course of the appeal. [Lapisan v Alfonso]

d. Declaratory Relief [Rule 63 Sec. 1]

→ An action for declaratory relief must be brought in the RTC. It is not among the actions within the original jurisdiction of the SC even if only questions of law are involved. [Remotigue v Osmeña (1967); Rural Bank of Olongapo v Commissioner of Land Registration (1981)]. However, if the petition has far-

reaching implications and it raises questions that should be resolved, it may be treated as one for prohibition [De la Llana v Alba (1982)] or for mandamus [Alliance of Government Workers v Minister of Labor and Employment (1983)].

→ Requisites

- a. Subject matter must be a deed, will, contract or written instrument in which petitioner is legally interested, or law or governmental regulation which affects his rights.
- b. The terms of the written instrument are, or the validity of the law or regulation is, doubtful and requires judicial construction. [Santos v Aquino]
- c. Petition is filed before breach or violation of the instrument or regulation. [Reparations Commission v Northern Lines (1970)]
- d. There must be an actual justiciable controversy between persons with adverse interests. [Mirando v Wellington (1978)]
- e. Petitioner must have legal interest in the controversy. [Mirando]
- f. Controversy must be ripe for adjudication [Mirando]. All administrative remedies have been exhausted. [Tolentino v Board of Accountancy]
- g. Adequate relief is not available through other means or other forms of action or proceeding. [Ollada v Central Bank (1962)]

→ Purpose: To determine the construction, validity and declaration of rights thereunder.

→ When not applied:

- a. In securing a judicial declaration of citizenship. [(Azajar v Ardalles (1955)]
- b. Where petition for declaratory relief is filed after the breach of law took place. [De Borja v Villadolid (1949)]
- c. Where a taxpayer questions his liability; the proper procedure is for the tax to be paid first and to sue for its recovery afterwards. [National Dental Supply v Meer (1951)]
- d. Where petitioner never acquired any interest in the object of the controversy, and enjoyed no rights which were violated. [Mirando]
- e. Where declaratory relief would not terminate the uncertainty of controversy.
- f. Where the relief sought would be determinative of issues rather than a construction of definite stated rights, status and other relations commonly expressed in written instruments – since this remedy is available only if it is limited to a declaration of rights, and not to a determination, trial or judicial investigation of issues. [Kawasaki v Amores (1991)]

e. Habeas Corpus [Rule 102 Sec. 1]

→ Nature: The great writ of liberty is intended as a speedy remedy to secure the release of a person deprived of his liberty. A person detained upon the orders of an agency may test the validity of his detention through the privilege of the writ of habeas corpus, which is a constitutionally guaranteed right.

→ Requisites

- a. There is illegal confinement or detention.
- b. There is illegal restraint of liberty.
- c. Rightful custody of any person is withheld from the person entitled thereto.

→ Purpose: Secure the release of a person deprived of his liberty, and test the validity of detention as ordered by an agency.

→ The writ of habeas corpus will issue when (1) an alien has been detained by the DOJ for an unreasonably long period of time after it has become apparent that the deportation order cannot be effectuated; and (2) no criminal charges have been formally made or a judicial order issued for his detention. In such case, the order of deportation which was not executed is *functus officio* and the alien is being held without authority of law. [Mejoff v Director of Prisons (1951)]

→ Bail renders a writ of habeas corpus moot and academic, as the bail bond gives petitioner liberty. [Co v Deportation Board (1977)]

☐ Note, however, that a writ of habeas corpus may still issue despite the granting of bail when there is still effective detention.

- The release of a detained person, whether permanent or temporary, renders a petition for the writ of habeas corpus moot and academic, unless there are restraints attached which precludes his freedom. [*Lucien Tran Van Nghia v. Liwag (1989)*]

f. Injunction as provisional remedy [Rule 58 Sec. 1]

→ *Nature*: An ancillary remedy provided to preserve the petitioner's rights while main action is pending.

→ *Purpose*:

1. Prevent the commission of certain acts complained of; or
2. Order the continued performance of some act for the purpose of preventing further injury.

→ *Requisites*:

- a. Plaintiff is entitled to relief demanded.
 - The right to the writ is clear when: 1) there is willful invasion of the petitioner's right, and the injury is a continuing one; and 2) effect of the writ is to re-establish the pre-existing relation. [*Lemi vs. Valencia (1966)*]
- b. Commission or continuance of an act complained of would probably work injustice to him.
- c. Defendant, is doing, threatens or about to do an act in violation of petitioner's rights which may render the judgment ineffective.
- d. Injunction can only be issued by superior to an inferior body; if co-equals, the injunction cannot prosper. [*Honda v San Diego (1966)*]

→ *Types*

- a. Preliminary Mandatory Injunction – Plaintiff wants to compel defendant to do something.
- b. Preliminary Injunction – To prevent or stop defendant from doing something
- c. Restraining Order – Life span of 20 days, after which hearing is then held to decide propriety of the injunction.
- d. Permanent Injunction – If plaintiff wins the case, injunction becomes permanent (otherwise, the writ is dissolved).

→ The general rule is that injunction cannot be issued in tax collection. An exception is that if the collection of the tax is prejudicial to the interest of the government and of the taxpayer, the CTA is authorized to restrain the Collector from proceeding with its collection. [*Collector vs. Reyes (1957)*]

g. Suit for damages (indirect method)

→ Parties aggrieved by some agency action may be able to obtain judicial review in an action for damages brought against the agency or its officials. Whether or not the action will prosper will depend on the determination of such other questions such as state immunity from suit and the applicable statutes.

→ A quasi-judicial officer is usually given immunity from liability to persons who may be injured as a result of an erroneous or mistaken decision, provided that the acts complained of were done under the color of authority and in good faith. [*Philippine Racing Club v Bonifacio (1960)*]

VII. Extent of Judicial Review

- Generally, laws creating administrative agencies and providing for judicial review may indicate the scope of that review. Whether the courts may inquire into questions of law, of fact or of both as well as of administrative discretion will depend on the enabling act.
- *General rules*:
 1. Questions of law are always reviewable by the courts;
 2. Substantial Evidence Rule: Findings of fact, if based on substantial evidence, are conclusive and binding on the courts;
 3. If the decision of a case is discretionary on the part of the agency, courts can review if the decision is attended with capriciousness; and

4. Questions of jurisdiction are always reviewable as they go into the question of authority to decide.

a. The Law-Fact Distinction

- There is no clear-cut line that separates questions of law from questions of fact. There may be cases where the issues raised may easily be classified under one or the other, but some cases may involve mixed questions of law and fact.
- The problem with these shady areas is that they are usually dependent on the predilection of the judge reviewing the case. If he is inclined to review it, he will treat it as a question of law; otherwise, he will waive it off as a question of fact. As a reviewing judge though, he must ascertain whether the agency's decision is supported by substantial evidence for him to do the waiving-off act.
- *Brandeis Doctrine of Assimilation of Facts*: Where what purports to be a finding upon a question of fact is so involved with and dependent upon a question of law as to be in substance and effect a decision on the latter, the court will, in order to decide the legal question, examine the entire record including the evidence if necessary.
- If the reviewing court is convinced that substantial evidence supports the agency's ruling, the court may confirm findings. Otherwise, it should review. [*Donato v. Philippine Marine Officer Association (1959)*]
- The conclusion drawn from facts is a question of law. [*Dauan v Secretary (1959)*]
- Whether a question of fact overcomes a presumption of law is a question of law. [*Reyes Vda. De Santiago v Reyes (1960)*]
- Non-controversion of a claim for workmen's compensation simply means an admission of facts, and not an admission of a legal conclusion. [*Aboitiz v Pepito (1966)*]

b. Question of Law

- General rule: Questions of law are subject to judicial review.
- A party challenging an administrative action may direct his attack against the:
 - Constitutionality of the statute creating the agency and granting its powers;
 - Validity of the agency action if this transcend the limit established by law; or
 - Correctness of the agency's interpretation and application of the law.
- An administrative official's action which is based on a misconstruction of law can be corrected and is not conclusive upon the courts. [*Ortua v Singson (1934)*]
- When the conclusion drawn by an administrative official from the facts found is erroneous or not warranted by law, it is a question of law reserved to the court's determination. [*Mejia vs. Mapa (1954)*]
- Judicial review is proper where the act of the administrative official constitutes not only an excess of regulatory power conferred upon him, but also an exercise of legislative power which he does not have. [*People v Santos (1936)*]
- The interpretation of articles of incorporation, which involves a question of law, is reviewable by the courts. [*Japanese War Notes Claimants vs. SEC (1957)*]
- The issue of WON an ER-EE relationship exists is a question of law. [*Ysmael v CIR (1960)*]
- ☐ Note: There is an alternative view saying that the question of WON there is an EER is a mixed question of fact and law, because the court has to examine the facts vis-à-vis the four-fold test.

c. Question of Fact

- A question of fact exists if the issue involved is:
 - WON a certain thing exists;
 - WON an event has taken place; or
 - Which of the two versions of the happening of an event is correct.

- Finality is attached to findings of fact of some agencies when these findings are supported by substantial evidence and as long as there is no grave abuse of discretion. This is but a recognition of the expertise of the agency as to questions in matters which have been entrusted to them for regulation or decision. But the courts have the power to review the findings of fact when the evidence on record is not substantial, and whether or not such is substantial is for the court to say.
- It is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency on the sufficiency of evidence. The court recognizes that the trial court or administrative body, as a trier of facts, is in a better position to assess the demeanor of the witnesses and the credibility of their testimonies as they were within its proximal view during the hearing or investigation. [**Mollaneda v Umacob (2001)**]
- One circumstance where the court may not accept the agency's findings of fact is when the decision rendered by an almost evenly divided court and the division was precisely on the facts as borne out by the evidence. In such a situation the court, in order to determine the substantiality of the evidence, must consider evidence not only in its quantitative but also in its qualitative aspects. For, to be substantial, evidence must first of all be credible. [**Gonzales v Victory Labor Union (1969)**]
- Only errors of law, and not rulings on the weight of the evidence, are reviewable by the courts. [**Acting Commissioner of Customs vs. MERALCO (1977)**]
- When there is grave abuse of discretion amounting to lack of jurisdiction, there is a justification for the courts to set aside the administrative determination. [**Banco Filipino v Central Bank (1991)**]
- The court is inclined to review the findings of fact of an administrative official if they are not based on a thorough examination of the parties' contending claims, wherein the adversarial process would ensure a better presentation and appreciation of evidence. [**PAL v. Confessor (1994)**]
- A quasi-judicial body can determine any question without regard to technicalities. [**Suarnaba v WCC (1978)**]
- In administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint. Substantial evidence does not necessarily import preponderance of evidence as in an ordinary civil case. Rather, it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise. [**Tapiador v Office of the Ombudsman (2002)**]
- Administrative proceedings are governed by the substantial evidence rule. A finding of guilt in an administrative case would have to be sustained for as long as it is supported by substantial evidence that the respondent has committed the acts stated in the complaint or formal charge. This is different from the quantum of proof required in criminal proceedings which necessitates a finding of guilt of the accused beyond reasonable doubt. Ergo, the dismissal of the criminal case will not foreclose administrative action against respondent. [**Velasquez v Hernandez (2004)**]
- The substantial evidence standard is not modified in any way when officials of an administrative agency disagree in their findings. [**Universal Camera v NLRC (1951)**]

d. Question of Discretion

1. Discretionary acts v Ministerial acts

Discretionary	Ministerial
When applied to public functionaries, discretion may be defined as the power or right conferred upon them by law to act officially under certain circumstances, according to the dictates of their own judgment and conscience and not controlled by the judgment of others.	A ministerial act has been defined as one performed in response to a duty which has been positively imposed by law and its performance required at a time and in a manner or upon conditions specifically designated, the duty to perform under the conditions specified not being dependent upon the officer's judgment or discretion.
Discretion is the power to make a choice among permissive actions or policies. The very essence of discretionary power is that the person or persons exercising it may choose which of several courses of action should be followed.	Ministerial duty is one in respect to which nothing is left to discretion. It is a simple, definite duty arising under conditions admitted or proved to exist, and imposed by law.

2. *Judicial review of administrative discretion v Substitution of judicial discretion for administrative discretion*
 - Questions of policy or discretion are reviewable only for unreasonableness, departure from statutory standards, or lack of evidentiary support; and questions of wisdom, propriety or expediency are for the agency and not for the courts. The court will not substitute its discretion or judgment for that of the administrative agency, but will determine the lawfulness of its action. The ruling of an administrative agency, on questions of law, while not as conclusive as its findings of facts, is nevertheless persuasive and given much weight especially if the agency is one of special competence and experience.
3. *General rule:* In the exercise of discretion lawfully given, the court will not interfere.
 - Rationale: Recognition of the expertise of the agency.
 - Exception: If discretion was exercised in a capricious, whimsical, arbitrary, abusive, partial, and hostile manner.
 - The erroneous appreciation of the significance of the facts before the administrative agency does not mean that the administrative agency had abused its discretion. [**Laguna Tayabas v PSC (1957)**]
 - Courts should not intervene in that administrative process, save upon a very clear showing of serious violation of law or of fraud, personal malice or wanton oppression. Courts have none of the technical and economic or financial competence which specialized administrative agencies have at their disposal, and in particular must be wary of intervening in matters which are at their core technical and economic in nature but disguised in the habiliments of a "question of legal interpretation." [**PLDT v NTC (1995)**]

VIII. Enforcement of Agency Action

a. Res Judicata; Finality of Judgment

- *When it applies.* The doctrine of res judicata applies only to judicial or quasi-judicial proceedings and not to the exercise of purely administrative functions. Administrative proceedings are non-litigious and summary in nature; hence, res judicata does not apply. **[Nasipit Lumber Co. v NLRC (1989)]**
- The essential requisites of res judicata are:
 - 1) The former judgment must be final;
 - 2) It must have been rendered by a court having jurisdiction over the subject matter and the parties;
 - 3) It must be a judgment on the merits; and
 - 4) There must be identity of parties, subject matter and cause of action. **[Ipekdiyan Merchandising v CTA (1963)]**
- Decisions and orders of administrative bodies rendered pursuant to their quasi-judicial authority have, upon their finality, the force and effect of a final judgment within the purview of the doctrine of res judicata, which forbids the reopening of matters once judicially determined by competent authorities. **[Dulay v Minister of Natural Resources (1993)]**

b. Writ of Execution; Mandamus

- General rule: Administrative agencies performing quasi-judicial functions have the implied power to issue writs of execution.
 - Exception: If the enabling law expressly provides otherwise.
 - If the law is silent, presume that the agency has the power to enforce its decisions emanating from its quasi-judicial powers. **[Apolega v Hizon (1968)]**
- The legislature may aid the enforcement of administrative determination by providing a penalty for failure to comply therewith. Also, direct and positive sanctions (grant of subpoena power and contempt powers) are afforded by provisions for administrative or judicial processes to compel obedience or prevent violation of the determination.
- Administrative functions:

Adjudicative function	Enforce decision.
Rule-making function	Promulgate rules.
Executive function	Issue or withhold license.
Dispensing government largess	Dole out or withhold.

- Administrative enforcement includes:
 - Focusing on public opinion;
 - Revocation;
 - Suspension;
 - Refusal to renew license;
 - Refusal to grant clearance paper to ships;
 - Withholding or denying benefits;
 - Imposing conditions seizure and sale or destruction of property;
 - Exclusion and deportation;
 - Imposition and collection of fines and penalties; and
 - Summary enforcement without need for adjudication:
 - Distrain of personal property or levy on real property (Commissioner of Internal Revenue);
 - Abatement of nuisance (Secretary of Health); and
 - Sequestration of ill-gotten wealth (PCGG);
- If officials refuse to implement a final and executory judgment, the remedy is mandamus. **[Vda. De Corpuz v**

The Commanding General of the Philippine Army (1978)]

- Execution must conform to that ordained or decreed in the dispositive part of the decision. Where the order of execution is not in harmony with and exceeds the judgment which gives it life, the order *pro tanto* has no validity. **[Clavano v HLURB (2002)]**

LOCAL GOVERNMENT LAW
I. BASIC PRINCIPLES

A. Principles of Local Government, Decentralization, Autonomy

1987 Constitution Article X,
LGC IRR Sec. 24.

- Principles on Local Government and Devolution
 - Devolution
 - Definition (Sec.24(b) LGC IRR): Devolution is the transfer of power and authority from the National Government to LGUs to enable them to perform specific functions and responsibilities
 - Characteristics of the local government structure
 - Territorial and political subdivisions enjoy local autonomy (Sec.2, Art. X, Constitution)
 - System of decentralization effected through a local government code (Sec.3, Art. X, Constitution)
 - With effective mechanisms of recall, initiative and referendum
 - Allocation of powers, responsibilities and resources
 - Provide for qualifications, election, appointment and removal, term, salaries, powers, functions and duties of local officials
 - Delivery of basic services and facilities in accordance with established national polices, guidelines and standards (Sec.24(a) LGC IRR)
 - Full autonomy in the exercise of proprietary functions (Sec. 22(d) LGC)
 - Other matters relating to the organization and operation of local units
 - Development into self-reliant communities and active participants in the attainment of national goals (Sec. 18 LGC)
 - Subsequent change in national policies, guidelines and standards are subject to prior consultation with LGUs (Sec.24 LGC IRR)

Pimentel v. Aquirre (2000): Sec. 1, insofar as it "directs" LGUs to reduce expenditures by at least 25%, is a valid exercise of the President's power of general supervision over LGUs as it is advisory only. Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body. (*The other doctrine in this case is under Power to generate revenue, infra.*)

NOTES:

- *Local autonomy*: power of LGUs to decide for themselves certain matters without need for clearance or approval by the national government
- *Decentralization*: may either be deconcentration or devolution
- *Deconcentration*: decentralization of administration; flow of autonomy from the national government towards regional agencies
- *Devolution*: decentralization of power; act by which the national government confers power and authority upon the various LGUs to perform specific functions and responsibilities (LGC, Sec. 17); the transfer of power and authority from the National Government to LGUs to enable them to perform specific functions and responsibilities (Art. 24, IRR of the LGC)

Limbona v Mangelin: Now, autonomy is either decentralization of administration or decentralization of power. There is decentralization of administration when the central government delegates administrative powers to political subdivisions in order to broaden the base of government power and in the process to make local governments "more responsive and accountable," and "ensure

their fullest development as self-reliant communities and make them more effective partners in the pursuit of national development and social progress." At the same time, it relieves the central government of the burden of managing local affairs and

enables it to concentrate on national concerns. The President exercises "general supervision" over them, but only to "ensure that local affairs are administered according to law." He has no control over their acts in the sense that he can substitute their judgments with his own.

B. The Local Government Code

1. EFFECTIVITY

LGC Sec. 5d, 536

- Local Government Code
 - Scope of Application (Sec. 5 LGC)
 - Provinces
 - Cities
 - Municipalities
 - Barangays
 - Other political subdivisions as may be created by law
 - Officials, offices, or agencies of the national government, as provided in LGC
- Effectivity Clause (Sec. 536 LGC)
 - January 1, 1992 (unless otherwise provided)
 - After complete publication in at least 1 newspaper of general circulation

2. RULES OF INTERPRETATION

LGC Sec. 5

- In case of doubt on any provision on a power of an LGU
 - Liberal interpretation
 - in favor of devolution of powers
 - in favor of existence of power
- In case of doubt on any tax ordinance or revenue measure
 - Construed strictly against LGU
 - Construed liberally in favor of taxpayer
 - Tax exemption, incentive or relief is construed strictly against person claiming it
- General welfare provisions
 - Liberally interpreted to give more powers to LGU in accelerating economic development and upgrading quality of life for the people of the community
- Rights and obligations existing on effectivity of LGC
 - Arising from contracts or other source
 - Governed by
 - original terms and conditions of contract, OR
 - law in force at the time the rights were vested
- Resolution of controversies under the LGC
 - Where no legal provision or jurisprudence applies
 - Resort to customs and traditions in the place where the controversies take place

C. Creation and Dissolution of Local Government Units

1. CREATION

CONST. Art. X Sec. 1, 7, 10, 11, 15, 16, 19
LGC Sec. 6-10

- Territorial and Political LGUs (Sec. 1, Art. X, Constitution)
 - Provinces
 - Cities
 - Municipalities
 - Barangays
 - Autonomous regions
 - Muslim Mindanao
 - Cordilleras
 - LGUs may group themselves, consolidate or coordinate their efforts, services, and resources for purposes commonly beneficial to them in accordance with law (Sec. 13, Art. X, Constitution)

- Cities independent of the province (Sec. 12, Art. X, Constitution)
 - Highly urbanized cities: as determined by law
 - Component cities whose charters prohibit their voters from voting for provincial elective officials
 - Regional development councils and other similar bodies
 - Composition: local government officials, regional heads of departments and other government offices, and representatives from non-governmental organizations within the regions
 - Purpose: administrative decentralization
 - to strengthen the autonomy of the units
 - to accelerate the economic and social growth and development of the units in the region
 - Creation, Merger and Dissolution [Territorial and political subdivisions except autonomous regions]
 - What LGUs are subject (Sec. 10, Art. X, LGC)
 - Province
 - City
 - Municipality
 - barangay
 - What actions may be done (Sec. 10, Art. X, LGC)
 - Creation
 - Division
 - Merger
 - Abolition
 - Substantial alteration of boundary
 - Requirements (Sec. 10, Art. X, Constitution; Sec. 10 LGC)
 -
 - Plebiscite
 - Approval by majority of the votes cast in a plebiscite in the political units directly affected
 - Conducted by the Commission on Elections (COMELEC)
 - Within 120 days from the effectivity date of the law or ordinance, unless the law or ordinance fixes another date
 - Criteria in LGC
 - By law enacted by Congress: province, city, municipality or other political subdivision (Sec. 6 LGC)
 - By ordinance passed by the sangguniang panlalawigan or sangguniang panlungsod concerned: barangay within its territorial jurisdiction (Sec. 6 LGC)
 - Verifiable indicators of viability and projected capacity to provide services (Sec. 7 LGC)
 - Income - sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population
 - Population - total number of inhabitants within the territorial jurisdiction
 - Land area
 - must be contiguous, unless it comprises two or more islands or is separated by a local government unit independent of the others
 - properly identified by metes and bounds with technical descriptions
 - sufficient to provide for such basic services and facilities to meet the requirements of its populace
 - Indicators attested to by: (Sec.
- 7 LGC)
 - Department of Finance (DOF)
 - National Statistics Office (NSO)
 - Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR)
- Autonomous regions (Sec. 15 and 18, Art. X, Constitution)
 - Muslim Mindanao and Cordilleras
 - Consisting of provinces, cities, municipalities and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics
 - Limitations: within the framework of the Constitution, the national sovereignty and territorial integrity of the country
 - First Congress shall enact the organic acts within 18 months from organization of both Houses of Congress
 - Define the basic structure of government consisting of the executive department and legislative assembly, both elective and representative of the constituent political units
 - Provide for special courts with personal, family, and property law jurisdiction
 - With the assistance and participation of the regional consultative commission
 - composed of representatives appointed by the President
 - from a list of nominees from multi-sectoral bodies
 - Plebiscite
 - Approved by majority of the votes cast by the constituent units
 - Only provinces, cities, and geographic areas voting favorably shall be included in the autonomous region
- Metropolitan political subdivisions (Sec. 11, Art. X, Constitution)
 - Created by Congress, by law
 - Plebiscite
 - Component cities and municipalities retain basic autonomy and entitled to their own local executive and legislative assemblies
 - Jurisdiction limited to basic services requiring coordination

(For creation of specific LGUs, check LGC 385-386, 441-442, 449-450, 460-461; SEE TABLE FOR SUMMARY)

Requirements	Province LGC Sec. 460-461	City RA 9009 (2001)	Municipality LGC Sec. 441-442	Barangay LGC Sec. 385-386
Income	Average annual income, as certified by the Department of Finance, of not less than P20,000,000 based on 1991 constant prices	Average annual income, as certified by the Department of Finance, of at least P100,000,000 for the last 2 consecutive years based on 2000 constant prices	Average annual income, as certified by the provincial treasurer, of at least P2,500,000.00 for the last two consecutive years based on 1991 constant prices	
Population	250,000 inhabitants	150,000 inhabitants	25,000 inhabitants	2,000 inhabitants 5,000 inhabitants, in cities and municipalities within MM and other metropolitan political subdivisions or in highly urbanized cities
Territory	contiguous territory of at least 2,000 km ²	contiguous territory of at least 100 km ²	contiguous territory of at least 50 km ²	Territory need not be contiguous if it comprises 2 or more islands
	territory need not be contiguous if it comprise 2 or more islands or is separated by a chartered city or cities which do not contribute to the income of the province	requirement on land area shall not apply where the city proposed to be created is composed of 1 or more islands; the territory need not be contiguous if it comprises 2 or more islands	requirement on land area shall not apply where the municipality proposed to be created is composed of 1 or more islands; territory need not be contiguous if it comprises 2 or more islands	
Manner of Creation	By an Act of Congress	By an Act of Congress	By an Act of Congress	By law or by an ordinance of the sangguniang panlalawigan or panlungsod; case of the creation of barangays by the sangguniang panlalawigan, the recommendation of the sangguniang bayan concerned shall be necessary
				By an Act of Congress, to enhance the delivery of basic services in the indigenous cultural communities
Plebiscite (in LGUs directly affected)	Approval must be by majority of the votes cast; except otherwise provided in the Act of Congress, the plebiscite shall be held within 120 days from effectivity	Approval must be by majority of the votes cast; except otherwise provided in the Act of Congress, the plebiscite shall be held within 120 days from effectivity	Approval must be by majority of the votes cast; except otherwise provided in the Act of Congress, the plebiscite shall be held within 120 days from effectivity	Approval must be by majority of the votes cast; plebiscite shall be held within such period of time as may be determined by the law or ordinance creating said barangay

NOTES:

- The creation of local government units is essentially legislative in nature (*Pelaez v Auditor General 1965*). In the absence of any Constitutional limitations, a legislative body may create any corporation it deems essential for the more efficient administration of government. Authority to create municipal corporations granted by to the President would give the President the power of control over local governments, which is violative of the Constitution (*Pelaez, supra*).
- In *Toralba v Sibagat*, the court held that the enactment of an LGC is not a condition *sine qua non* for the creation of a municipality, and before the enactment of such code, the power remains plenary except that the creation should be

approved by the people concerned in a plebiscite called for the purpose.

- The Regional Assembly of the ARMM may prescribe standards lower than those mandated by the LGC in the creation, division, merger, abolition, or alteration of the boundaries of provinces, cities, municipalities, or barangay.
- Provinces, cities, municipalities, or barangay created, divided, merged, or whose boundaries are altered without observing the standards prescribed by the LGC shall not be entitled to any share of the taxes that are allotted to the local governments units under the provisions of the Code. (Art. VI, Sec. 19; RA 9054, 2001)
 - holding of a plebiscite to determine the will of the majority of the voters of the areas affected by the

creation, division, merger, or whose boundaries are being altered shall be observed

The LGU created is a juridical person. In *Barangay No. 24 v. Imperial (2000)*, the court held that an LGU is subject to the payment of docket fees because of its nature as a juridical person.

Padilla v. COMELEC (1992):

- "in the political units directly affected.": the residents of the political entity who would be economically dislocated by the separation of a portion thereof have the right to vote in said plebiscite
- "political units directly affected": is the plurality of political units which would participate in the plebiscite.

Cawaling v. COMELEC (2001): The petitioner is not assailing the non-compliance with the criteria set by the Local Government Code, but the mode of its creation. The phrase "A municipality or a cluster of barangays may be converted into a component city" is not a criterion but simply one of the modes by which a city may be created. The creation of an entirely new LGU through a division or merger of existing LGUs is recognized under the Const., provided that such merger or division shall comply with the requirements prescribed by the Code.

Miranda v. Aquirre (1999): [downgrading of Santiago City from an ICC to a component city only by a law] The downgrading falls within the meaning of creation, division, merger, abolition, or substantial alteration of boundaries; hence, ratification in a plebiscite is necessary. There is material change in the political and economic rights of the LGUs directly affected as well as the people therein. It is therefore but reasonable to require the consent of the people to be affected.

- Effects of downgrading: (a) the city mayor will be placed under the administrative supervision of the governor, (b) resolutions and ordinances will have to be reviewed by the provincial board, (c) taxes will have to be shared with the province.

PLEBISCITE REQUIREMENT

NOTES:

- Purpose of plebiscite: to prevent gerrymandering (i.e. the practice of creating legislative districts to favor a particular candidate or party) and creation or abolition of units for purely political purposes
- Where a plebiscite was held with its principal subject being the conversion of the municipality of Mandaluyong into a HUC and the matter of separate district representation being merely ancillary thereto, the SC held that the exclusion of the inhabitants of San Juan (who belonged to the same congressional district as Mandaluyong) from the plebiscite was proper (*Tobias v. Abalos*)

AREA

NOTES:

- *Rationale for requiring metes and bounds in ascertaining territory*: They define the limits of the territorial jurisdiction of a LGU. An LGU can legitimately exercise power of government only within the limits of its territorial jurisdiction. Beyond these limits, its acts are ultra vires.

Mariano v. COMELEC (1995): The requirement on metes and bounds was meant merely as a tool in the establishment of LGUs. So long as the territorial jurisdiction of a city may be reasonably ascertained, the intent behind the law (i.e., the determination of the territorial jurisdiction over which governmental powers may be exercised) has been sufficiently served. A cadastral type description is not necessary.

NOTE: The ruling in *Mariano* is an exception to the general rule

of proper identification because of its peculiar facts: (1) the

legislature deliberately omitted the description in metes and

bounds because of the pending litigation between Makati and

Taguig over Fort Bonifacio; (2) RA 7854 provided that the

territory of the City of Makati will be the same as that of the

Municipality of Makati, thus making the territorial jurisdiction of

Makati ascertainable (*subject, of course, to the result of the*

unsettled boundary dispute). Likewise, the ruling in *City of Pasig*

(Settlement of Boundary Disputes) is an exception.

Samson v. Aquirre (1999): Compliance with population OR land area, in addition to income, is sufficient to satisfy the requirements in the creation of a city. Both the population and income requirements were met. Thus, there is no need to consider the land area of the LGU.

INCOME

Alvarez v. Guingona (1996): IRAs form part of the income of LGUs. The funds generated from local taxes, IRAs and national wealth utilization proceeds accrue to the general fund of the LGU and are used to finance its operations subject to specified modes of spending the same as provided for in the LGC and its implementing rules and regulations. As such, for purposes of budget preparation, which budget should reflect the estimates of the income of the LGU, among others, the IRAs and the share in the national wealth utilization proceeds are considered items of income.

NOTES:

- For provinces and cities, the income requirement must be satisfied and EITHER population OR territory.
- In the creation of barangays, there is no minimum requirement for area and income.
- As to the income requirement, average annual income shall include the income accruing to the general fund, exclusive of special funds, transfers, and non-recurring income

SUB-PROVINCES

1987 CONST., Art XVIII Sec. 9.

LGC Sec. 462

- Conversion of existing sub-provinces into regular provinces
 - Plebiscite
 - Approval by majority of the votes cast in a plebiscite to be held in the subprovince and original provinces directly affected
 - Conducted by COMELEC
 - Simultaneous with the national elections following effectivity of LGC

Griño v. COMELEC (1992): The law is silent on whether the voters of the sub-province proposed to be converted into a regular province shall no longer be allowed to vote for the provincial officials in the election held simultaneously with the plebiscite. The law however is clear that in case of a negative vote, the elected officials of the sub-province only shall be appointed by the President. The law did not provide that the President shall also appoint provincial officials of the sub-province because, by a negative vote, the people of the sub-province shall continue to be represented by the provincial official.

SELECTION AND TRANSFER OF LOCAL GOVERNMENT SITE

LGC Sec. 11

- LGU Site, Offices and Facilities (Sec. 11 LGC)
 - Law or ordinance creating or merging LGUs shall

- specify the seat of government from where governmental and corporate services shall be delivered
- o Factors in selection of site
 - geographical centrality
 - accessibility
 - availability of transportation and communication facilities
 - drainage and sanitation
 - development and economic progress
 - other relevant considerations
- o Transfer of seat of government
 - Conditions have significantly changed subsequent to establishment of seat
 - Sanggunian may transfer to a site better suited to its need
 - Public hearing
 - Vote of 2/3 of all the members of the sanggunian
 - New site is not outside the territorial boundaries
 - Old site with improvements may be disposed of
 - By sale or lease or converted to other use
 - As the sanggunian deems beneficial to the LGU and its inhabitants
- o Transfer, relocation or conversion to other uses of offices and facilities
 - Public hearing
 - Vote of majority of all members of the sanggunian

Samson v. Aguirre (1999): The failure of RA 8535 (creating the city of Novaliches) to specify the seat of government is not fatal to its validity. Under Sec. 12 of the LGC, the city can still establish a seat of government after its creation. While Sec. 12 speaks of the site of government centers, such site can very well also be the seat of government, “from where governmental and corporate service shall be delivered.”

2. DIVISION AND MERGER; ABOLITION

DIVISION AND MERGER

- Division and merger of existing LGUs shall comply with the same requirements prescribed for their creation
 - o however, such division should not reduce the income, population, or land area of the LGUs concerned to less than the minimum requirements prescribed in the LGC
 - o the income classification of the original LGU or units should not fall below its current classification prior to such division

ABOLITION

LGC Sec. 9

- Abolished when:
 - o its income, population, or land area has been irreversibly reduced
 - less than the minimum standards prescribed for its creation, as certified by the national agencies to Congress or to the sangguniang concerned
- Law or ordinance abolishing the LGU:
 - o specify the province, city, municipality, or barangay with which the local government unit sought to be abolished will be incorporated or merged

Sarangani v. COMELEC (2000): A barangay may officially exist on record and the fact that nobody resides in the place does not result in its automatic cessation as a unit of local government.

Salva v. Makalintal (2000): The issuance of a resolution, governing the conduct of a plebiscite, is a ministerial duty of the COMELEC after it ascertains the issuance of the ordinance and resolution declaring the abolition of a LGU.

3. SETTLEMENT OF BOUNDARY DISPUTES

LGC Sec. 118 – 119

- **Boundary dispute**: when a portion or the whole of the territorial area of an LGU is claimed by two or more LGUs.

- **Policy**: Boundary disputes between or among LGUs shall, as much as possible, be settled amicably.

IRR of LGC

Art. 16. Jurisdictional Responsibility

- Boundary disputes shall be referred for settlement to:
 - o Sangguniang panlungsod or sangguniang bayan – involving 2 or more barangays in the same city/municipality, as the case may be;
 - o Sangguniang panlalawigan – involving 2 or more municipalities within the same province
 - o Jointly, to the sanggunians of provinces concerned – involving component cities/ municipalities of different provinces; or
 - o Jointly, to the respective sanggunians – involving a component city/municipality and a HUC; or 2 or more HUCs

Art. 17. Procedure for Settling Boundary Disputes

1. Filing of petition — The sanggunian concerned may initiate action by filing a petition, in the form of a resolution, with the sanggunian having jurisdiction over the dispute.
 - a. Contents: the grounds, reasons or justifications
 - b. Documents attached to petition
 - i. Duly authenticated copy of the law or statute creating the LGU or any other document showing proof of creation of the LGU
 - ii. Provincial, city, municipal, or barangay map, as the case may be, duly certified by the LMB
 - iii. Technical description of the boundaries of the LGUs concerned
 - iv. Written certification of the provincial, city, or municipal assessor, as the case may be, as to territorial jurisdiction over the disputed area according to records in custody
 - v. Written declarations or sworn statements of the people residing in the disputed area
 - vi. Such other documents or information as may be required by the sanggunian hearing the dispute
2. Answer of adverse party — Upon receipt by the sanggunian concerned of the petition together with the required documents, the LGU or LGUs complained against shall be furnished copies and shall be given 15 working days within which to file their answers
3. Hearing — Within 5 working days after receipt of the answer of the adverse party, the sanggunian shall hear the case and allow the parties concerned to present their respective evidences
 - a. Joint hearing: When two or more sanggunians jointly hear a case, they may sit en banc or designate their respective representatives. Where representatives are designated, there shall be an equal number of representatives from each sanggunian. They shall elect from among themselves a presiding officer and a secretary. In case of disagreement, selection shall be by drawing lot.
4. Failure to settle — In the event the sanggunian fails to amicably settle the dispute within 60 days from the date such dispute was referred, it shall issue a certification to that effect and copies thereof shall be furnished the parties concerned
5. Decision — Within 60 days from the date the certification was issued, the dispute shall be formally tried and decided by the sanggunian concerned. Copies

of the decision shall, within 15 days from the promulgation, be furnished the parties concerned, DILG, local assessor, COMELEC, NSO, and other NGAs concerned

- 6. Appeal — Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the sanggunian concerned to the proper RTC having jurisdiction over the dispute by filing therewith the appropriate pleading, stating among others, the nature of the dispute, the decision of the sanggunian concerned and the reasons for appealing. The RTC shall decide the case within 1 year from the filing. Decisions on boundary disputes promulgated jointly by 2 or more sangguniang panlalawigans shall be heard by the RTC of the province which first took cognizance of the dispute.

Art. 18. Maintenance of Status Quo

- Pending final resolution of the dispute: status of the affected area prior to the dispute shall be maintained and continued for all purposes

Municipality of Jimenez v. Baz (1996): The power of provincial boards to settle boundary disputes is limited to implementing the law creating a municipality. Thus, provincial boards do not have the authority to approve agreements which in effect amend the boundary stated in the creating statute.

City of Pasig v. COMELEC: The conduct of plebiscites, to determine whether or not a barangay is to be created, should be suspended or cancelled in view of a pending boundary dispute between two local governments. Precisely because territorial jurisdiction is an issue raised in the pending boundary dispute, until and unless such issue is resolved with finality, to define the territorial jurisdiction of the proposed barangays would only be an exercise in futility.

II. GENERAL POWERS AND ATTRIBUTES OF LGUs

A. Powers in General

- 1. **SOURCES**
 - a. CONST. Sec. 25, Art. II; Sec. 5-7, Art X
 - b. Statutes, e.g., LGC
 - c. Charter (particularly of cities)
 - d. Doctrine of the right of self-government, but applies only in States which adhere to the doctrine
- 2. **CLASSIFICATION**
 - a. express, implied, inherent
 - b. public or governmental, private or proprietary
 - c. intramural, extramural
 - d. mandatory, directory; ministerial, discretionary
- 3. **EXECUTION OF POWERS**
 - a. where statute prescribes the manner of exercise, the procedure must be followed
 - b. where statute is silent, LGUs have discretion to select reasonable means and methods of exercise

B. Political and Corporate Nature of LGUs

LGC Sec. 18.

- Local government units shall have the power and authority to Generate and Apply Resources
 - Own sources of revenues (Sec. 5, Art. X, Constitution; Sec. 18 LGC)
 - Power to create own sources
 - Levy taxes, fees and charges
 - Shall accrue exclusively for their own use and disposition
 - Limitation: guidelines Congress may provide

- Just share in national taxes (Sec. 6, Art. X, Constitution; Sec. 18 LGC)
 - Determined by law
 - Automatically and directly released
- Equitable share in utilization and development of national wealth (Sec. 7, Art. X, Constitution; Sec. 18 LGC)
 - Within respective territorial jurisdictions
 - In the manner provided by law
 - Sharing with inhabitants by way of direct benefits
- Acquire, develop, lease, encumber, alienate, or otherwise dispose of property (Sec. 18 LGC)
 - Real or personal property
 - Held in a proprietary capacity
- Apply resources and assets (Sec. 18 LGC)
 - Purposes: productive, developmental, or welfare purposes
 - In the exercise of their governmental or proprietary powers and functions

MUNICIPAL CORPORATIONS

LGC Sec. 14. Beginning of Corporate Existence

- the election and qualification of
 - chief executive AND
 - majority of the members of its sanggunian
- unless some other time is fixed therefor by the law or ordinance creating it

LGC Sec. 15. Political and Corporate Nature of Local Government Units

- Local government unit created or recognized under this Code is a
 - body politic AND
 - corporate endowed with powers to be exercised by it in conformity with law
- Exercise of powers (as a):
 - political subdivision of the national government AND
 - corporate entity representing the inhabitants of its territory

Vilas v. City of Manila (1911): The action was brought upon the theory that the city, under its present charter from the Government of the Philippine Islands, was the same juristic person, and liable upon the obligations of the old city. The City was held liable since the juristic identity of the corporation was not affected, and the present city is, in every legal sense, the successor of the old. As such it is entitled to the property and property rights of the predecessor corporation, and is also subject to all of its liabilities.

Lidasan v. COMELEC (1967): A municipal corporation performs twin functions. Firstly, it serves as an instrumentality of the State in carrying out the functions of a government. Secondly, it acts as an agency of the community in the administration of local affairs. It is in the latter character that it is a separate entity acting for its own purposes and not a subdivision of the State.

Torio v. Fontanilla (1978): The holding of a town fiesta is a proprietary function, though not for profit, for which a municipality is liable for damages to 3rd persons ex contractu or ex delicto.

NOTES:

Difference Between the Political Nature and Corporate Nature of LGUs

Political/Governmental	Corporate/Municipal
Political subdivision of national government	Corporate entity representing inhabitants of its territory
Administering the powers of state and promoting public welfare	Exercised for special benefit and advantage of the community
Includes the legislative, judicial, public and political	Includes those which are ministerial, private and corporate

LGU cannot be held liable <i>Except:</i> if statute provides otherwise Art. 2189, CC	Can be held liable ex contractu or ex delicto
Examples: <ul style="list-style-type: none"> regulations against fire, disease preservation of public peace maintenance of municipal prisons establishment of schools, post offices, etc. 	Examples: <ul style="list-style-type: none"> municipal waterworks slaughterhouses markets stables bathing establishments wharves ferries fisheries maintenance of parks, golf courses, cemeteries, airports

DE FACTO CORPORATIONS

Malabang v. Benito (1969): There can be no color of authority in an unconstitutional statute. An unconstitutional act confers no rights, imposes no duties, affords no protection and creates no office. However, even if the EO was invalid, it does not mean that the acts done by the municipality of Balabagan in the exercise of its corporate powers are a nullity. This is because the existence of the EO is “an operative fact which cannot justly be ignored.”

NOTES:

- Requisites for de facto municipal corporations**
 - valid law authorizing incorporation
 - attempt in good faith to organize under it
 - colorable compliance with the law
 - assumption of corporate powers
- When the inquiry is focused on the legal existence of a body politic, the action is reserved to the State in a *proceeding for quo warranto* or *any other direct proceeding*. Collateral attacks shall not lie.
 - proceeding must be (1) brought in the name of the Republic of the Philippines; (2) commenced by the Sol-Gen or the fiscal when directed by the President; (3) timely raised (*Municipality of San Narciso v. Mendez*)
- In *Municipality of San Narciso v Mendez*, the SC held that the municipality can still be considered to have attained at least a status closely approximating that of a de facto corporation despite the invalidity of the EO creating it. This is because the State itself recognized the continued existence of San Andres when it classified it as a 5th class municipality. And, more importantly, Sec. 442 (d) of the LGC cured whatever defect there was in its creation.

C. Governmental Powers

1. GENERAL WELFARE

LGC Sec. 16

- Police Power
 - Preservation of peace and order within respective regions (Sec. 21, Art. X, Constitution)
 - Responsibility of local police agencies
 - Local police shall be organized, maintained, supervised and utilized in accordance with applicable laws
 - Defense and security of regions (Sec. 21, Art. X, Constitution)
 - Responsibility of National Government
 - General Welfare Clause (Sec. 16 LGC)
 - Powers expressly granted
 - Powers necessarily implied
 - Powers necessary, appropriate or incidental for efficient and effective governance
 - Powers essential to the promotion of general welfare
 - Shall ensure and support
 - preservation and enrichment of culture

- promotion of health and safety
- enhancement of the right of the people to a balanced ecology
- development of appropriate and self-reliant scientific and technological capabilities
- improvement of public morals
- economic prosperity and social justice
- promotion of full employment among residents
- maintenance of peace and order
- preservation of the comfort and convenience of inhabitants

Laguna Lake Development Authority v. CA (1995): The power of the municipal government to issue fishing privileges is only for revenue purposes. The power of the LLDA to grant permits is for

the purpose of effectively regulating and monitoring activities in the lake region and is in the nature of police power.

Binay v. Domingo (1991): The police power of a municipal corporation extends to all the great public needs, and, in a broad sense includes all legislation and almost every function of the municipal government. Public purpose is not unconstitutional merely because it incidentally benefits a limited number of persons. The drift is towards social welfare legislation geared towards state policies to provide adequate social services, the promotion of general welfare and social justice.

Rural Bank of Makati Inc. v. Municipality of Makati (2004): The General Welfare Clause has 2 branches: (1) the general legislative power, which authorizes municipal councils to enact ordinances and make regulations not repugnant to law as may be necessary to carry into effect and discharge the powers and duties conferred upon it by law; (2) the police power proper, which authorizes the municipality to enact ordinances as may be proper and necessary for the health and safety, prosperity, morals, peace, good order, comfort and convenience of the municipality and its inhabitants, and for the protection of their property. Here, the ordinances imposing the licenses and permits for any business establishments, for purposes of regulation enacted by the municipal council of Makati falls under the 1st branch.

NOTES:

- The general welfare clause cannot be used to justify an act that is not specifically authorized by law.
- Powers of LGUs under the general welfare clause (LGC, Sec. 16)
 - Powers expressly granted to the LGU
 - Powers necessarily implied therefrom
 - Powers necessary, appropriate, or incidental for its efficient and effective governance
 - Powers which are essential to the promotion of general welfare
- Other ordinances/acts deemed valid under the general welfare clause:
 - A municipal ordinance prescribing the zonification and classification of merchandise and foodstuff sold in the public market (*Ebona v. Mun. of Daet*)
 - A proclamation reserving certain parcels of the public domain for street widening and parking space purposes (*Republic v. Gonzales*)
 - Condemnation and demolition of buildings found to be in a dangerous or ruinous condition within the authority provided for by municipal ordinances (*Chua Huat v. CA*)
 - LTO v. City of Butuan (2000)* LGUs now have the power to regulate the operation of tricycles-for-hire and to grant franchises for the operation thereof. However, this power is still subject to the guidelines prescribed by the DOTC. Moreover, the newly delegated powers pertain to the franchising and regulatory powers theretofore exercised by the LTFRB.
 - Patalinghug v. CA (1994):* The declaration of an area as a commercial zone through a municipal ordinance is an

exercise of police power to promote the good order and general welfare of the people in the locality. Corollary thereto, the state may interfere with personal liberty, with property and with business and occupations. Thus, persons may be subjected to certain kinds of restraints and burdens in order to secure the general welfare of the state and to this fundamental aim of government, the rights of the individual may be subordinated.

- *Villanueva v. Castañeda (1987)* In 1961, the municipal council of San Fernando authorized some merchants to construct permanent stalls and sell along a public street. In 1982, the incumbent mayor issued a resolution requiring the demolition of the stalls. The merchants filed a petition for prohibition to prevent

the demolition. The SC dismissed the petition. The problems caused by the usurpation of the place by the merchants, such as obstruction of traffic and deteriorated sanitation, are covered by the police power as delegated to the municipality under the general welfare clause. Moreover, the place in question was declared to be a public plaza, which is beyond the commerce of man and cannot be the subject of lease or any other contractual undertaking.

- **NOT PART OF POLICE POWER:** *Balacuit v. CFI (1988)*: Butuan City Board passes an ordinance requiring that the sale of tickets to movies, exhibitions or other performances to children between 7-12 years of age should be at half price. The evident purpose of the ordinance is to help ease the burden of cost on the part of parents. The said ordinance was declared void. The theater operators are merely conducting their legitimate businesses. There is nothing immoral or injurious in charging the same price for both children and adults. In fact, no person is under compulsion to purchase a ticket. It is a totally voluntary act on the part of the purchaser if he buys a ticket to such performances. How can the municipal authorities consider the movies an attractive nuisance and yet encourage parents and children to patronize them by lowering the price of admission for children?

To constitute public use:

- the public in general should have equal or common rights to use the land or facility involved on the same terms
- the number of users is not the yardstick in determining whether property is properly reserved for public use or public benefit (*Republic v. Gonzales*)

ABATEMENT OF NUISANCE

LGC sec. 447 and 458.

Sangguniang Bayan and Sangguniang Panlungsod have:

- power to regulate activities relative to the use of land, buildings and structures within their jurisdiction

→ to promote the general welfare and

→ for said purpose declare, prevent or abate any nuisance

Estate of Francisco v. CA (1991): Respondents cannot seek cover under the general welfare clause authorizing the abatement of nuisances without judicial proceedings. That tenet applies to a nuisance per se, or one which affects the immediate safety of persons and property and may be summarily abated under the undefined law of necessity (*Monteverde v. Generoso*).

NOTES:

- The provisions of the Code DO NOT make a distinction between nuisance per se and nuisance per accidens, thus creating a presumption that LGUs can abate all kinds of

nuisances without need of a judicial order. However, the jurisprudence holds that LGUs can abate extrajudicially only nuisances per se.

LGC Sec. 21

- Closure of Roads
 - What roads are subject, those within jurisdiction of LGU
 - Local road
 - Alley
 - Park
 - square
 - Permanently close or open
 - Ordinance: Vote of at least 2/3 of all members of the sanggunian
 - When necessary, an adequate substitute for the public facility should be provided
 - Make provisions for public safety
 - If permanently withdrawn from public use
 - may be used or conveyed for any purpose for which other real property belonging to LGU may be lawfully used or conveyed
 - freedom park: must have provision for relocation to new site
 - Temporarily close or open
 - Ordinance
 - May be done
 - during actual emergency
 - fiesta celebrations
 - public rallies
 - agricultural or industrial fairs
 - undertaking of public works and highways, telecommunications, and waterworks projects
 - Duration specified in written order by local chief executive
 - If for athletic, cultural, or civic activities: must be officially sponsored, recognized, or approved by LGU
 - Temporarily closure and regulation of any local street, road, thoroughfare, or any other public place
 - By any city, municipality, or barangay
 - Where shopping malls, Sunday, flea or night markets, or shopping areas may be established
 - Where goods, merchandise, foodstuffs, commodities, or articles of commerce may be sold

Dacanay v. Asistio (1992): A public street is property for public use hence, outside the commerce of man. It may not be the subject of lease or other contract. Such leases are null and void for being contrary to law. The right of the public to use the city street may not be bargained away through contract. The authorization given for the use of the city street as a vending area for stallholders who were granted licenses by the City Government contravenes the general law that reserves city streets and roads for public use. It may not infringe upon the vested right of the public to use city streets for the purpose they were intended to serve.

NOTES:

- In *Cabrera v. CA (1991)*, the provincial council has the authority to determine whether or not a certain property (in this case, a provincial road) is still necessary for public use. In *Favis v. City of Baquiao*, it was similarly ruled that the city council has the authority.

2. POWER TO GENERATE REVENUE

LGC Sec. 18

SOURCES OF LGU FUNDS

1. Own sources of revenues
2. Taxes, fees and charges which shall accrue exclusively for their use and disposition and which shall be retained by them;
3. Just share in national taxes which shall be automatically and directly released to them without need of any further action
4. Equitable share in the proceeds from the utilization and development of the national wealth and resources within their respective territorial jurisdictions including sharing the same with the inhabitants by way of direct benefits

Fundamental principles governing the exercise of the taxing and other revenue-raising powers of LGUs LGC Sec. 130

- Taxation shall be uniform in each LGU;
- Taxes, fees, charges and other impositions shall be equitable and based as far as practicable on the taxpayer's ability to pay; levied and collected only for public purposes; not unjust, excessive, oppressive, or confiscatory; not

contrary to law, public policy, national economic policy, or in restraint of trade;

- The collection of local taxes, fees, charges and other impositions shall in no case be let to any private person;
- The revenue shall inure solely to the benefit of, and be subject to disposition by, the LGU, unless otherwise specifically provided herein; and,
- Each LGU shall, as far as practicable, evolve a progressive system of taxation.

Fundamental principles governing the financial affairs, transactions and operations of LGUs LGC Sec. 305

- No money shall be paid out of the local treasury except in pursuance of an appropriations ordinance or law;
- Local government funds and monies shall be spent solely for public purposes;
- Local revenue is generated only from sources expressly authorized by law or ordinance, and collection thereof shall at all times be acknowledged properly;
- All monies officially received by a local government officer in any capacity or on any occasion shall be accounted for as local funds, unless otherwise provided by law;
- Trust funds in the local treasury shall not be paid out except in fulfillment of the purpose for which the trust was created or the funds received;
- Every officer of the LGU whose duties permit or require the possession or custody of local funds shall be properly bonded, and such officer shall be accountable and responsible for said funds and for the safekeeping thereof in conformity with the provisions of law;
- Local governments shall formulate sound financial plans, and the local budgets shall be based on functions, activities, and projects, in terms of expected results;
- Local budgets shall operationalize approved local development plans;
- LGUs shall ensure that their respective budgets incorporate the requirements of their component units and provide for equitable allocation of resources among these component units;
- National planning shall be based on local planning to ensure that the needs and aspirations of the people as articulated by the local government units in their respective local development plans are considered in the formulation of budgets of national line agencies or offices;
- Fiscal responsibility shall be shared by all those exercising authority over the financial affairs, transactions, and operations of the local government units; and
- The LGU shall endeavor to have a balanced budget in each fiscal year of operation.

Pimentel v. Aquirre (2000): LGUs, in addition to administrative autonomy, also enjoy fiscal autonomy. LGUs have the power to create their own sources of revenue, in addition to their equitable share in the national taxes as well as the power to allocate resources in accordance with their own priorities. A basic feature of local fiscal autonomy is the automatic release of the shares of the LGUs in the national internal revenue. This is mandated by no less than the Const. Any retention is prohibited.

3. EMINENT DOMAIN

LGC Sec. 19

- Through chief executive of LGU
- Acting pursuant to an ordinance
- Purpose
 - Public use or welfare
 - For the benefit of the poor and landless
- Payment of just compensation
 - Amount determined by proper court
 - Based on fair market value at the time of taking
- Valid and definite owner made to and rejected by owner
- Immediately take possession
 - Upon filing of expropriation proceedings
 - Upon deposit with proper court of at least 15% of the fair market value of the property

ARTICLE 35 IRR of LGC

- Offer to buy private property for public use of purpose shall be in WRITING. IT shall specify the property sought to be acquired, the reasons for the acquisition, and the price offered.
- If the owner/s accept the offer in its entirety, a contract of sale shall be executed and payment made.
- If the owner/s are willing to sell their property but at a price higher than that offered to them, the local chief executive shall call them to a conference for the purpose of reaching an agreement on the selling price. The chairman of the appropriation or finance committee of the sanggunian, or in his absence, any member of the sanggunian duly chosen as its representative, shall participate in the conference. When an agreement is reached by the parties, a contract of sale shall be drawn and executed.
- The contract of sale shall be supported by the following documents:
 - Resolution of the sanggunian authorizing the local chief executive to enter into a contract of sale. The resolution shall specify the terms and conditions to be embodied in the contract.
 - Ordinance appropriating the amount specified in the contract, and
 - Certification of the local treasurer as to availability of funds together with a statement that such fund shall not be disbursed or spent for any purpose other than to pay for the purchase of the property involved.

Local Government
Payment of 15% of value in order to take possession
Formal offer previously made but was rejected (<i>City of Cebu v. CA</i>)
There must be an ordinance (LGC §19; <i>Suquitan v. City of Mandaluyong</i>)

City of Cebu v. Apolonio (2002): Although the general rule in determining just compensation in eminent domain is the value of the property as of the date of the filing of the complaint, the rule admits of an exception: where the SC fixed the value of the property as of the date it was taken and not at the date of the commencement of the expropriation proceedings. Finally, while Sec. 4, Rule 67 of the Rules of Court provides that just compensation shall be determined at the time of the filing of the complaint for expropriation, such law cannot prevail over the Local Government Code, which is substantive law.

Bardillon v. Masili (2003): Requisites for immediate entry of LGU: 1. Filing of complaint for expropriation sufficient in form and substance. 2. The deposit of the amount equivalent to 15% of the fair market value of the property to be expropriated based on its current tax declaration.

City of Iloilo v. Legaspi (2004): Upon compliance with the requirements for immediate entry, the issuance of a writ of possession becomes ministerial. No hearing is required for the issuance of the writ. The LGC did not put a time limit as to when a

LGU may immediately take possession of the property. As long as the expropriation proceedings have been commenced and the deposit made, the LGU cannot be barred from praying for the issuance of writ of possession.

NOTES:

- **Requisites in the Exercise of the Power of Eminent Domain** (*Suquitan v. City of Mandaluyong*):
 1. An ordinance is enacted by the local legislative council authorizing the local chief executive, in behalf of the LGU, to exercise the power of eminent domain or pursue expropriation proceedings over a particular private property.
 2. The power of eminent domain is exercised for public use, purpose or welfare, or for the benefit of the poor and the landless.
 3. There is payment of just compensation (based on the fair market value at the time of the taking, not at the time of payment), as required under Sec. 9, Art. III of the Const., and other pertinent laws.
 4. A valid and definite offer has been previously made to the owner of the property sought to be expropriated, but said offer was not accepted.

10 (MODES of acquisition). If land sought to be expropriated is located in urban areas and falls under the UDHA, the LGU must allege compliance with Secs. 9 and 10 for their suit to prosper. Otherwise, their suit is premature.]

Filstream International Inc. v. CA (1998): Under the Urban Land and Housing Act, there is a priority in expropriation, of which the properties of the government or any of its subdivisions rank number one and privately owned properties ranked last. Also, the said Act provides that expropriation should be the last alternative, giving way to other modes of acquisition like **community mortgage and swapping**. **Otherwise, there is deprivation of property.**

City of Mandaluyong v. Aquilar (2001): The UDHA introduced a limitation on the size of the land sought to be expropriated for socialized housing. It exempted "small property owners." The elements for small property owners are: (1) Those owners of real property which consists of residential lands with an area of not more than 300 m² in highly urbanized cities (800 in other urban cities); (2) That they do not own real property other than the same.

SOCIALIZED HOUSING

[The UDHA and Expropriation by LGUs— Sec. 9 (which speaks of PRIORITIES in acquisition) should be read in connection with Sec.

4. BASIC SERVICES AND FACILITIES

LGC Sec. 17

Barangay	Municipality	Province	City
Agricultural support services	Agriculture and fishery extension and on-site research services and facilities	Agricultural extension and on-site research services and facilities; organization of farmers and fishermen’s cooperatives	See municipality and province
Health services	Same; health centers and clinics	Same, including hospitals and tertiary health services	See municipality and province
Social welfare services	Same	Same, including rebel returnees and evacuees, relief operations population development services	See municipality and province
General hygiene and sanitation	Same		See municipality and province
Solid waste collection	Solid waste disposal system or environmental management system		
Katarungang pambarangay	N/A	N/A	N/A
Maintenance of roads, bridges and water supply systems	Roads, bridges, communal irrigation, artesian wells, drainage, flood control	Similar to those for municipality	See municipality and province
Infrastructure facilities (e.g. plaza, multi-purpose hall)	Municipal buildings, cultural centers, public parks		See municipality and province
Information and reading center	Information services, tax and marketing information systems and public library	Upgrading and modernization of tax information and collection services	See municipality and province
Satellite or public market	Public markets, slaughterhouses		See municipality and province
	Implementation of community-based forestry projects	Enforcement of forestry laws, limited to community-based forestry projects, pollution control law, small-scale mining law, mini-hydroelectric projects for local purposes	See municipality and province
	School buildings		See municipality and province
	Pubic cemetery		See municipality and province
	Tourism facilities	Tourism development and promotion programs	See municipality and province
	Police, fire stations, jail	Same	Same
		Industrial research and development services	Same
		Low-cost housing and other mass dwellings	Same
		Investment support services	Same
		Inter-municipal telecommunication services	Adequate communication and transportation facilities

5. RECLASSIFICATION OF LANDS

LGC Sec. 20

- By a city or municipality
 - Through an ordinance passed by sanggunian
 - After conducting public hearings
 - Reclassification of agricultural lands
 - Provide manner of disposition
 - land ceases to be economically feasible and

- Creation of sources of revenues
- Ancestral domain and natural resources
- Personal, family, and property relations
- Regional urban and rural planning development
- Economic, social, and tourism development
- Educational policies
- Preservation and development of the cultural heritage
- Such other matters as may be authorized by law for the promotion of the general welfare of the people of the region

LGC Sec. 48-59.

- Exercised by (Sec. 48)
 - sangguniang panlalawigan for the province
 - sangguniang panlungsod for the city
 - sangguniang bayan for the municipality
 - sangguniang barangay for the barangay
- Presided by (sec. 49):
 - Vice-governor or vice-mayor or punong barangay → he will vote only in case of a tie (because he is not a member of the Sanggunian *Perez v. De la Cruz [1969]*)
 -
 -
 - Inability of the above: members present and constituting a quorum shall elect from among themselves a temporary presiding officer
 - Who shall certify within 10 days from the passage of ordinances enacted and resolutions adopted by the sanggunian in the session over which he temporarily presided
- Internal Rules of Procedure (sec. 50):
 - Adopted/ update on the 1st regular session following election of its members → within 90 days
 - Provides for:
 - Organization of the sanggunian and the election of its officers
 - Standing committees
 - Creation (including the committees on appropriations, women and family, human rights, youth and sports development, environmental protection, and cooperatives; the general jurisdiction of each committee
 - Election of the chairman and members of each committee
 - Order and calendar of business for each session
 - Legislative process
 - Parliamentary procedures (including the conduct of members during sessions)
 - Discipline of members for disorderly behavior and absences (without justifiable cause for 4 consecutive sessions)
 - Penalty: censure, reprimand, or exclusion from the session, suspension for not more than sixty 60 days, or expulsion
 - Suspension or expulsion: requires concurrence of at least 2/3 vote of all the sanggunian members
 - A member convicted by final judgment to imprisonment of at least 1 year for any crime involving moral turpitude shall be automatically expelled from the sanggunian
 - Other rules as the sanggunian may adopt
- Quorum (sec. 53)
 - Quorum: Majority of all the members of the sanggunian who have been elected and qualified
 - Question of quorum is raised: the presiding officer shall immediately proceed to call the roll of the members and announce the results
 - No quorum: the presiding officer may declare a recess until such time as a quorum is constituted
 - OR a majority of the members present may adjourn from day to day and may compel the immediate attendance of any member absent without justifiable cause by arresting the absent member and present him at the session
- Sessions (sec. 52)
 - Regular sessions: fixed by resolution on 1st day of the session immediately following the election of its members
 - Minimum numbers of regular sessions: once a week (panlalawigan, panlungsod, bayan) and twice a month for the sangguniang barangay
 - Special session: may be called by the local chief executive or by a majority of the members of the sanggunian → cause: when public interest demands
 - Written notice: served personally at the member's usual place of residence at least 24 hours before the session
 - Unless otherwise concurred in by 2/3 vote of the sanggunian members present, there being a quorum, no other matters may be considered except those stated in the notice
 - Open to the public
 - UNLESS a closed-door session is ordered by an affirmative vote of a majority of the members present (there being a quorum)
 - in the public interest or for reasons of security, decency, or morality.
 - No 2 sessions may be held in a single day
 - Journal and record of its proceedings which may be published upon resolution of the sanggunian concerned
- Approval, veto and review of ordinances
 - Every ordinance shall be presented to the governor or mayor, as the case may be.
 - Approves: affix his signature on each and every page
 - Disapprove: veto it and return the same with his objections to the sanggunian
 - Override: 2/3 vote of all its members making the ordinance effective even without the approval of the local chief executive concerned
 - Veto communicated to the sanggunian within 15 days in the case of a province, and 10 days in the case of a city or a municipality; otherwise, the ordinance shall be deemed approved
 - **Veto** (sec. 55): local chief executive may veto any ordinance on the ground that it is ultra vires or prejudicial to the public welfare, stating his reasons in writing
 - Veto an ordinance or resolution only once.
 - Local chief executive (except the punong barangay): power to veto any particular item or items
 - an appropriations ordinance
 - ordinance or resolution adopting a local development plan and public investment program
 - ordinance directing the payment of money or creating liability
 - (where the veto shall not affect the item or items which are not objected to)
 - Review of [component] City or Municipal Ordinances
 - Within 3 days after approval, the secretary shall forward to the sangguniang panlalawigan for review, copies of approved ordinances and the resolutions approving the local development plans and public investment programs formulated by the local development councils
 - Within 30 days after the receipt of copies, the sangguniang panlalawigan shall examine the documents or transmit them to the provincial attorney, or if there be none, to the provincial prosecutor for examination.
 - Provincial attorney or prosecutor shall: within 10 days from receipt, inform the sanggunian in writing of his comments or recommendations
 - Finding: beyond the power conferred, it shall declare such ordinance or resolution invalid in whole or in part → action entered in the minutes and shall advise the corresponding city or municipal authorities of the action → (sec. 58) Any attempt to enforce any ordinance or any resolution approving the local development plan and public investment

program, after the disapproval, shall be sufficient ground for the suspension or dismissal of the official or employee

- No action within 30 days after submission: presumed consistent with law and valid
- Ordinances enacted by the sangguniang barangay shall, upon approval by the majority of all its members, be signed by the punong barangay
 - Review by Sangguniang Panlungsod or Bayan
 - Within 10 days after its enactment, the sangguniang barangay shall furnish copies to the sangguniang panlungsod or sangguniang bayan concerned for review as to whether the ordinance is consistent with law and city or municipal ordinances

Summary of Review of Ordinances

	Component City or Municipality Ordinances and Resolutions	Barangay Ordinances
Reviewed by	Sangguniang Panlalawigan	Sangguniang Panlungsod or Sangguniang Bayan
Furnish copies of ordinance or resolution within	3 days after approval of ordinance or resolution approving the local development plans and public investment programs formulated by the local development councils	10 days after enactment of ALL ordinances
Period to examine documents	30 days after receipt of copies, after which the ordinance or resolution is presumed valid if no action is taken	30 days after receipt of copies, after which the ordinance is presumed valid if no action is taken
	within the 30 days, it may also be transmitted to the provincial attorney or prosecutor for examination; said atty. or prosecutor shall give his written recommendations within 10 days from receipt of document	
Ground to invalidate ordinance or resolution	ordinance or resolution is beyond the power conferred upon the Sanggunian concerned	ordinance is inconsistent with law and city or municipal ordinances
		in such case, the sangguniang barangay may adjust, amend or modify the ordinance within 30 days from receipt from the sangguniang panlungsod or sangguniang bayan

- Effectivity of ordinances or resolutions (sec. 59)
 - General rule: the same shall take effect after 10 days from the date a copy is posted
 - in a bulletin board at the entrance of the provincial capitol or city, municipal, or barangay hall AND
 - in at least 2 other conspicuous places in the local government unit concerned
 - Secretary to the sanggunian:
 - cause the posting of an ordinance or resolution not later than five (5) days after approval

- No action for 30 days from receipt: ordinance shall be deemed approved
- Finding: inconsistent with law or city or municipal ordinances → the sanggunian shall, within 30 days from receipt, return the same with its comments and recommendations to the sangguniang barangay for adjustment, amendment, or modification
 - Effectivity: suspended until such time as the revision called for is effected

→ record such fact in a book kept for the purpose, stating the dates of approval and posting

- Text of the ordinance or resolution shall be disseminated and posted in Filipino or English and in the language understood by the majority of the people in the local government unit concerned
- Exception: unless otherwise stated in the ordinance or the resolution approving the local development plan and public investment program
- Ordinances with penal sanctions: gist shall be published in a newspaper of general circulation within the province where the local legislative body concerned belongs
 - Absence of any newspaper: posting shall be made in all municipalities and cities of the province where the sanggunian of origin is situated
- Highly urbanized and independent component cities: the main features of the ordinance or resolution in addition to being posted, be published once in a local newspaper of general circulation within the city
 - Absence of local newspaper: any newspaper of general circulation
- Full disclosure of Financial and Business Interests of Sanggunian Members (sec. 50)
 - Upon assumption to office, make a full disclosure of
 - his business and financial interests
 - professional relationship or any relation by affinity or consanguinity within the fourth civil degree
 - which he may have with any person, firm, or entity affected by any ordinance or resolution which relationship may result in conflict of interest including:
 - Ownership of stock or capital, or investment, in the entity or firm to which the ordinance or resolution may apply
 - Contracts or agreements with any person or entity which the ordinance or resolution under consideration may affect
 - conflict of interest: one where it may be reasonably deduced that a member of a sanggunian may not act in the public interest due to some private, pecuniary, or other personal considerations that may tend to affect his judgment to the prejudice

of the service or the public

Casiño v. CA (1991): Although the general law requires only a majority, the higher requisite vote shall govern since municipal authorities are in a better position to determine the evils sought to be prevented by the inclusion or incorporation of particular provisions in enacting a particular statute and, therefore, to pass the appropriate ordinance to attain the main object of the law.

Malonzo v. Zamora (1999): The LGC does not mandate that no other business may be transacted on the first regular session except to take up the matter of adopting or updating rules. All that the law requires is that “on the 1st regular session...the sanggunian concerned shall adopt or update its existing rules or procedure.” Until the completion of the adopted or updated rules, the rules of the previous year may be used.

- o Disclosure shall be made in writing and submitted to the secretary of the sanggunian
 - form part of the record of the proceedings and shall be made in the following manner
 - made before the member participates in the deliberations on the ordinance or resolution under consideration
 - o if the member did not participate during the

deliberations, the disclosure shall be made before voting on the ordinance or resolution on second and third readings

- made when a member takes a position or makes a privilege speech on a matter that may affect the business interest, financial connection, or professional relationship

Updated rules, the rules of the previous year may be used.

De Los Reyes v. Sandiganbayan (1997): The signature of the mayor is not a mere ministerial act, but involves the exercise of discretion on the part of the local chief executive.

Incidents of Law-making (Legislative) Power

- Posting and Publication
 - o Tax Ordinances and Revenue Measures Sec. 188 LGC
 - Within 10 days after approval
 - Certified true copies of all provincial, city or municipal tax ordinances or revenue measures
 - Published in full for 3 consecutive days
 - In a newspaper of local circulation
 - Where no such newspaper: posted in at least 2 conspicuous and publicly accessible place
 - o Ordinances with Penal Sanctions Sec. 511 LGC
 - Posting
 - At prominent places in the provincial capitol, city, municipal or barangay hall
 - Minimum period: 3 consecutive weeks
 - Publication
 - In a newspaper of general circulation, where available
 - Within territorial jurisdiction
 - Except: barangay ordinances
 - Effectivity: unless otherwise provided, on the day following its publication or at the end of period of posting, whichever is later
 - Violation by public officer or employee
 - o Violation by public officer or employee
 - a. May be meted administrative disciplinary

action

- b. Without prejudice to filing of appropriate civil or criminal action
- o Duty of Secretary of Sanggunian
 - c. Transmit official copies to the chief executive of Official Gazette
 - d. Within 7 days following approval of ordinance
 - e. Purpose: for publication
 - o If with penal sanction: for archival and reference purposes

NOTES:

- Tests/Requisites of a valid ordinance (Tatel v. Municipality of Virac)
 1. it must not contravene the Const. or any statute;
 2. it must not be unfair or oppressive;
 3. it must not be partial or discriminatory;
 4. it must not prohibit, but may regulate trade;
 5. it must be general in application and consistent with public policy
 6. it must not be unreasonable

JUDICIAL INTERVENTION

RULES OF COURT, Rule 63, Sec. 4 Local Government Ordinances

- Actions involving the validity of a local government ordinance:
 - o prosecutor or attorney of the LGU involved shall be notified and entitled to be heard
 - o Alleged to be unconstitutional: Solicitor General shall also be notified and entitled to be heard

Homeowners’ Association of the Phil., Inc. v. Municipal Board of City of Manila (1968): The failure of the Sol-Gen to appear in the lower court to defend the constitutionality of an ordinance is not fatal to the case.

The determination of the question of WON the Sol-Gen should be required to appear “in any action involving the validity of any treaty, law, executive order, rule or regulation” is a matter left to the discretion of the Court pursuant to the Rules of Court. Inasmuch as the said requirement is not mandatory, but discretionary, non-compliance therewith affected neither the jurisdiction of the trial court nor the validity of the proceedings.

III. LOCAL INITIATIVE AND REFERENDUM

NOTE:

- Garcia v COMELEC (1994): both a resolution and an ordinance may be the proper subjects of an initiative or a referendum

(Based on LGC Sec. 120-127 and RA 6735: An act providing for a system of initiative and referendum)

- Initiative: legal process whereby the registered voters of a LGU may directly propose, enact, or amend any ordinance
- Referendum: legal process whereby the registered voters of the LGUs may approve, amend or reject any ordinance enacted by the sanggunian.
- Who may exercise — all registered voters of the provinces, cities, municipalities and barangays
- Requirements
 - a. referendum or initiative affecting a resolution or ordinance passed by the legislative assembly of a province or city: petition must be signed by at least 10% of the registered voters in the province or city, of which every legislative district must be represented by at least 3% of the registered voters therein; Provided, however, That if the province or city is composed only of 1 legislative district, then at least each municipality in a province or each barangay in a city should be

represented by at least 3% of the registered voters therein.

- b. **referendum or initiative on an ordinance passed in a municipality: petition must be signed by at least 10% of the registered voters in the municipality, of which every barangay is represented by at least 3% of the registered voters therein**
 - c. **referendum or initiative on a barangay resolution or ordinance: must be signed by at least 10% of the registered voters in said barangay**
- *Procedure*
 - a. not less than 1,000 registered in case of provinces and cities, 100 in case of municipalities, and 50 in case of barangays, may file a petition with the local legislative body, respectively, proposing the adoption, enactment, repeal, or amendment, of any law, ordinance or resolution
 - b. if no favorable action thereon is made by local legislative body within 30 days from its presentation, the proponents through their duly authorized and registered representative may invoke their power of initiative, giving notice thereof to the local legislative body concerned
 - c. 2 or more propositions may be submitted in an initiative
 - d. proponents shall have 90 days in case of provinces and cities, 60 days in case of municipalities, and 30 days in case of barangays, from notice mentioned in subsec. (b) hereof to collect the required number of signatures
 - e. the petition shall be signed before the Election Registrar, or his designated representative, in the presence of a representative of the proponent, and a representative of the regional assemblies and local legislative bodies concerned in a public place in the LGU
 - f. if the required number of the signatures is obtained, the COMELEC shall then set a date for the initiative for approval of the proposition within 60 days from the date of certification by the COMELEC in case of provinces and cities, 45 days in case of municipalities, and 30 days in case of barangays
 - *Effectivity of Local Propositions* — If the proposition is approved by a majority of the votes cast, it shall take effect 15 days after certification by the COMELEC
 - *Limitations on 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
 - *Limitations Upon Local Legislative Bodies* — Any proposition or ordinance or resolution approved through the system of initiative and referendum as herein provided shall not be repealed, modified or amended, by the local legislative body concerned within 6 months from the date therefrom, and may be amended, modified or repealed by the local legislative body within 3 years thereafter by a vote of 3/4 of all its members: Provided, however, that in case of barangays, the period shall be 18 months after the approval thereof
 - *Local Referendum* — Any local legislative body may submit to the registered voters of autonomous region, provinces, cities, municipalities and barangays for the approval or rejection, any ordinance or resolution duly enacted or approved
 - Courts are not precluded from declaring null and void any proposition approved for violation of the Const. or want of capacity of the local legislative body to enact the said measure.

SBMA v. COMELEC (1996):

- Initiative: power of the people to propose bills and laws, and to enact or reject them at the polls independent of the legislative assembly.
- Referendum is the right reserved to the people to adopt or reject any act or measure which has been passed by a legislative body and which in most cases would without action on the part of electors become law.
- These law-making powers belong to the people and the COMELEC only exercises administration and supervision of the process. Hence, COMELEC cannot control or change the substance or the content of the legislation.

IV. MUNICIPAL LIABILITY

A. Specific Provisions making LGUs liable

LGC Sec. 24

LGUs and their officials are not exempt from liability for death or injury to persons or damage to property.

Civil Code Art. 34

When a member of a city or municipal police force refuses or fails to render aid or protection to any person in case of danger to life or property, such police officer shall be primarily liable for damages, and the city or municipality shall be subsidiarily responsible therefor.

Civil Code Art. 2180, par. 6.

The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible. X X X The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in Article 2176 shall be applicable.

Civil Code Art. 2189.

Provinces, cities and municipalities shall be liable for damages for the death of, or injuries suffered by, any person by reason of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision.

B. Liability for Torts, Violation of the Law and Contracts

NOTES:

- If the LGU fails to perform a governmental function (e.g., maintenance of roads under CC Art. 2189, rendering aid and protection under CC Art. 34), it may be held liable for tort. Exercise of due diligence in the selection and supervision is not a defense.
- If damage resulted from an act of LGU in the performance of governmental functions, it is not liable for tort.
- If engaged in proprietary functions, LGU may be held liable. However, defense of due diligence in the selection and supervision available only if the function involved is a corporate function because this defense is available only to private employers.
- Among those that can make the LGU liable are:
 - Back pay or wages of employees illegally dismissed, including those involving primary governmental functions (eg policemen) [*Guilleraan v Ganson (1966)*]
 - LGUs are also liable to pay their employees statutory minimum wage (even though the reason is lack of funds) [*Racho v Municipality of Iliqaan (1968)*]
 - Damages suffered through accidents in national roads under the control and supervision of an LGU → cause is unsafe road conditions, especially when there is gross negligence [*Municipality of San Juan v. CA (2005)*]
 - Also exemplary damages when public officials acted with gross negligence [*Quezon City v Dacana (2005)*]

- Contempt for refusal to abide by a TRO issued by the court [*Moday v CA (1997)*]
- **Personal liability of public official:**
 - Mayor exceeding authority in vetoing a resolution passed by the Sanggunian [*Pilar v Sangguniang Bayan ng Dasol (1984)*] [Note that under CC27, a public servant is personally liable for damages for his refusal or neglect to perform his official duty]
- The LGU is liable on a contract it enters into, provided the contract is intra vires. If the contract is ultra vires, the LGU is not liable.
- A private individual who deals with a LGU is imputed with constructive knowledge of the extent of the power or authority of the LGU to enter into contracts. Thus, ordinarily, the doctrine of estoppel does not lie against the LGU.

Mendoza v. De Leon (1916): Municipal corporations' liability to private persons for the wrongful exercise of the corporate powers is the same as that of a private corporation or individual. Officers of municipalities charged with the administration of patrimonial property of a municipal corporation are managing officers of private corporations; not for mere mistakes of judgment, but only when their acts are so far opposed to the true interests of the municipality as to lead to the clear inference that no one thus acting could have been influenced by any honest desire to secure such interests, but that they must have acted with an intent to serve some outside purpose regardless of the consequences to the municipality and in a manner inconsistent with its interests.

Tuzon v. CA (1992): A public officer, whether judicial, quasi-judicial or executive, is not personally liable to one injured in consequence of an act performed within the scope of his official authority, and in line of his official duty.

Torio v. Fontanilla (1978): The holding of a town fiesta is a proprietary function, though not for profit, for which a municipality is liable for damages to 3rd persons ex contractu or ex delicto.; that under the principle of respondeat superior the principal is liable for the negligence of its agents acting within the scope of their assigned tasks; and that the municipal councilors have a personality distinct and separate from the municipality, hence, as a rule they are not co-responsible in an action for damages for tort or negligence unless they acted in bad faith or have directly participated in the commission of the wrongful act.

V. INTERGOVERNMENTAL RELATIONS – NATIONAL GOVERNMENT AND LGUs

Executive Supervision

1987 CONST., Art. X, Sec. 2 and 4 (*supra*)

ADMINISTRATIVE CODE OF 1987 Title XII Chapter I, as amended by RA 6975

THE DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT

- DILG has primary role of preserving internal security (including suppression of insurgency)
- AFP has primary role in preserving external security
- Primary role of AFP, supportive role of PNP
 - Upon call of President → upon recommendation of peace and order council
 - In areas where there are serious threats to national security and public order
 - insurgents have gained considerable foothold in the community thereby necessitating the employment of bigger tactical forces and the utilization of higher caliber armaments and better armored vehicles
- National Supervision over LGU
 - Supervision is exercised
 - to ensure that acts of local governments and their component

units are within the scope of their prescribed powers and functions. (Sec. 4, Art. X, Constitution; Sec. 25(a) LGC)

- to ensure that laws are faithfully executed in autonomous regions. (Sec. 16, Art. X, Constitution)

- President of the Philippines shall exercise general supervision over
 - Local governments (Sec.4, Art. X, Constitution; Sec. 25(a) LGC)
 - Direct supervision over
 - Provinces
 - Highly urbanized cities
 - Independent component

cities

- Through the province, with respect to
 - Component cities
 - Municipalities
- Through the city and municipality, with respect to barangays

- Autonomous regions (Sec.16, Art. X, Constitution)

- National agencies (Sec. 25 (b),(c),(d) LGC)

- With project implementation functions: ensure participation of LGUs in planning and implementation of national projects
- With field units or branches in an LGU: furnish the local chief executive of the LGU concerned with monthly reports including duly certified budgetary allocations and expenditures
- Upon request of LGU, the President may direct the appropriate national agency to provide financial, technical or other forms of assistance at no extra cost to the LGU concerned

Ganzon v. CA, supra: The petitioners are under the impression that the Const. has left the President mere supervisory powers, which supposedly excludes disciplinary authority and the power of investigation. It is a mistaken impression because supervision is not incompatible with disciplinary authority, and “investigating” is not inconsistent with “overseeing” in supervision, although it is a lesser power than “altering” in control. The Const. did not, for the sake of local autonomy, intend to deprive the legislature or the President of all authority over municipal corporations, in particular, concerning discipline.

Drilon v. Lim (1994): Sec. 187 of the LGC authorizes the Secretary of Justice to review only the Constitutionality or legality of the tax ordinance and, if warranted, to revoke it on either or both of these grounds. He is not permitted to substitute his own judgment for the judgment of the local government that enacted the measure. An officer in control may order the act undone, or redone, or may even decide to do it himself. Thus, the act of the DOJ Secretary in declaring the Manila Revenue Code null and void for non-compliance with the requirements of the law was not an act of control but of mere supervision.

Consultations

LGC Sec. 2(c), 26, 27

Declaration of Policy

- Policy of the state: require all national agencies and offices to conduct periodic consultations (before implementation of any project or program) with
 - appropriate local government units
 - nongovernmental and people's organizations
 - other concerned sectors of the community

Maintenance of Ecological Balance Sec. 26 LGC

- Duty of national agency or government-owned or controlled corporation
 - Involved in planning and implementation of any project
 - That may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species
 - Consultation with LGUs, nongovernmental organizations, and other sectors concerned

Prior Consultation Sec. 27 LGC

- No project or program shall be implemented
 - without prior consultation
 - with LGUs, non-governmental and people's organizations, and other concerned sectors of the community, conducted by all national agencies and offices (Sec. 2(c) LGC)
 - with LGUs, nongovernmental organizations, and other sectors concerned (Sec. 26 LGC)
 - conducted by the national agency or government-owned or -controlled corporation
 - authorized or involved in the planning and implementation of any project or program that may cause
 - pollution
 - climatic change
 - depletion of non-renewable resources
 - loss of crop land, rangeland, or forest cover
 - extinction of animal or plant species
 - explain the goals and objectives
 - explain its impact upon the people and the community in terms of environmental or ecological balance
 - measures that will be undertaken to prevent or minimize the adverse effects
 - without prior approval of sanggunian concerned
 - without provision for appropriate relocation sites for occupants who will be evicted

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- all officers and employees of National Government agencies and offices, including GOCCs, to strictly comply with the provisions of the LGC (and its IRR) on consultation

Lina v. Paño (2001): The provisions on consultation apply only to national programs and/or projects which are to implemented in a particular local community. Moreover, Sec. 27 of the LGC should be read in conjunction with Sec. 26 thus, the projects and programs mentioned in Sec. 27 should be interpreted to mean projects and programs that may:

- cause pollution
- bring about climatic change
- cause the depletion of non-renewable resources
- result in the loss of crop land, range-land or forest cover
- eradicate certain animal or plant species from the face of the planet; and
- call for the eviction of a particular group of people residing in the locality where the said project/program will be implemented

NOTES:

- It shall be the duty of every national agency or GOCC authorized or involved in the planning and implementation of any project or program that may cause pollution, climactic change, depletion of non-renewable resources, loss of crop land, rangeland or forest cover, extinction of animal of plant species
 1. to consult with the LGUs, NGOs and other sectors concerned; and
 2. to explain: (a) the goals and objectives of the project or program (b) its impact upon the people and the community in terms of environmental or ecological balance; (c) the measures that will be undertaken to prevent or minimize the adverse effects thereof (*LGC, Sec. 26*)
- No project or program shall be implemented by government authorities unless:

1. the consultations mentioned above are complied with; and
 2. sanggunian concerned gave prior approval (*LGC, Sec. 27*)
- Occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the Const.

Relations with Philippine National PoliceLGC Sec. 28

- Powers of Local Chief Executives over the Units of the PNP
- Extent of operational supervision and control of local chief executives shall be governed by RA6975 (DILG Act of 1991) and other rules and regulations → over the following
 - police force
 - fire protection unit
 - jail management personnel assigned in their respective jurisdictions

RA 8551, Sec. 62-65**PARTICIPATION OF LOCAL GOVERNMENT EXECUTIVES IN THE ADMINISTRATION OF THE PNP**

- operational supervision and control: power to direct, superintend, and oversee the day-to-day functions of police investigation of crime, crime prevention activities, and traffic control
 - includes the power to direct the employment and deployment of units or elements of the PNP, through the station commander, to ensure public safety and effective maintenance of peace and order within the locality
 - city and municipal mayors shall have the following authority over the PNP units in their respective jurisdictions:
 - 1) authority to choose the chief of police from a list of 5 eligibles recommended by the provincial police director, preferably from the same province, city or municipality
 - 2) authority to recommend to the provincial director the transfer, reassignment or detail of PNP members outside of their respective city or town residences
 - 3) authority to recommend from a list of eligibles previously screened by the peace and order council the appointment of new members of the PNP to be assigned to their respective cities or municipalities without which no such appointments shall be attested
- control and supervision of anti-gambling operations shall be within the jurisdiction of local government executives
- Governors and mayors, upon having been elected and living qualified as such, are automatically deputized as representatives of the National Police Commission in their respective jurisdiction
 - As deputized agents of the Commission, local government executives can inspect police forces and units, conduct audit, and exercise other functions as may be duly authorized by the Commission
- Grounds for suspension or withdrawal of deputation:
 1. frequent unauthorized absences
 2. abuse of authority
 3. providing material support to criminal elements
 4. engaging in acts inimical to national security or which negate the effectiveness of the peace and order campaign

Andaya v. RTC (1999): The authority of the mayor to choose the chief of police is very limited. In reality, he has no power of appointment; he has only the limited power of selecting one from among the list of recommendees. In effect, the power to appoint the chief of police is vested in the Regional Director.

VI. LOCAL OFFICIALS**A. Elective Officials****1. QUALIFICATIONS** LGC Sec. 39

- a. citizen of the Philippines
- b. registered voter in the place where s/he seeks to be elected

- c. residency, in place where s/he seeks to be elected, for at least 1 year immediately preceding the day of the election
- d. able to read and write Filipino or any other local language or dialect
- e. age requirements:
 - o Candidates for the position of governor, vice-governor, or member of the sangguniang panlalawigan, or mayor, vice-mayor or member of the sangguniang panlungsod of highly urbanized cities – at least 21 years of age on election day
 - o Candidates for the position of mayor or vice-mayor of independent component cities, component cities, or municipalities – at least 21 years of age on election day
 - o Candidates for the position of member of the sangguniang panlungsod or sangguniang bayan – at least 18 years of age on election day
 - o Candidates for the position of punong barangay or member of the sangguniang barangay – at least 18 years of age on election day
 - o Candidates for the sangguniang kabataan – at least 15 years of age but not more than 18 years of age on election day (as amended under RA 9164)

Cipriano v. COMELEC (2004): COMELEC may not deny due course or cancel a certificate without proper proceedings. To receive and acknowledge receipt of the certificates of candidacy is a *ministerial duty* of COMELEC. The COMELEC does not have discretion to give or not to give due course to the certificate. It may not look into matters not appearing on their face.

CITIZENSHIP

Labo v. COMELEC (1992): The ineligibility of a candidate receiving the majority of votes does not entitle the eligible candidate receiving the next highest number of votes to be declared winner. The rule would be different if the electorate, fully aware of a candidate's disqualification so as to bring such awareness within the realm of notoriety, would nonetheless cast the votes in favor of the ineligible candidate. In such case, the electorate may be said to have waived the validity and efficacy of their votes by notoriously applying their franchises or throwing away their votes in which case, the eligible candidate obtaining the next highest number of votes may be deemed elected.

Frivaldo v. COMELEC (1996): The LGC does not specify any particular date or time when the candidate must possess citizenship, unlike the requirements for residence and age. An official begins to discharge his functions only upon his proclamation and on the day the law mandates his term of office to begin. Since Frivaldo reassumed his citizenship on the very day the term of office began, he was therefore already qualified to be proclaimed, to hold office and to discharge the functions and responsibilities thereof.

RESIDENCY

Torayno v. COMELEC (2000): The residence requirement is rooted in the desire that officials of districts or localities be acquainted with the needs, difficulties, and other matters vital to the common welfare of the constituents. The actual, physical and personal presence is substantial enough to show his intention to fulfill the duties of mayor and for the voters to evaluate his qualifications for the mayorship. A very legalistic, academic and technical approach to the residence requirement does not satisfy the rationale for the said requirement.

Coquilla v. COMELEC (2002): The term "residence" is to be understood as referring to "domicile" or legal residence, i.e., "the

place where a party actually or constructively has his permanent home, where he, no matter where he may be found at any given time, eventually intends to return and remain (*animus manendi*). Unlike citizenship may be complied with even on the day the candidate assumes office, residency requires that the candidate must have been a resident of the municipality "for at least 1 year immediately preceding the day of the election."

2. DISQUALIFICATIONS

LGC Sec. 40

- The following persons are disqualified from running for any elective local position:
 - o Sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by 1 year or more of imprisonment, within 2 years after serving sentence
 - o Removed from office as a result of an administrative case
 - o Convicted by final judgment for violating the oath of allegiance to the Republic
 - o With dual citizenship
 - o Fugitives from justice in criminal or non-political cases here or abroad
 - o Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this LGC
 - o Insane or feeble-minded

RA 8295: An act providing for the proclamation of a lone candidate for any elective office in a special election, and for other purposes
Sec. 4. *Disqualification*

- In addition to the disqualifications in Sec. 12 and 68 of the Omnibus Election Code and LGC Sec. 40
 - o whenever the evidence of guilt is strong, the following persons are disqualified to run in a special election
 - Any elective official who has resigned from his office by accepting an appointive office or for whatever reason which he previously occupied but has caused to become vacant due to his resignation
 - Any person who, directly or indirectly, coerces, bribes, threatens, harasses, intimidates or actually causes, inflicts or produces any violence, injury, punishment, torture, damage, loss or disadvantage to any person or persons aspiring to become a candidate or that of the immediate member of his family, his honor or property that is meant to eliminate all other potential candidate [*also constitutes an election offense under Sec.5 RA8295 and punishable under Sec. 264 of the Omnibus Election Code*]

RA 9225. Sec. 5

Civil and Political Rights and Liberties.

- Those seeking elective public office in the Philippines shall meet the qualification for holding such public office as required by the Const. and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer and oath
- Those appointed to any public office shall subscribe and swear to an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to assumption of office.

Provided, that they renounce their oath of allegiance to the country where they took that oath

- That right to vote or be elected or appointed to any public office in the Philippines cannot be exercised by, or extended to, those who are:
 - candidates for or are occupying any public office in the country of which they are naturalized citizens; and/or
 - in active service as commissioned officers in the armed forces of the country which they are naturalized citizens.

GROUNDINGS FOR DISQUALIFICATION

- Moral turpitude:
 - Fencing (*Dela Torre v COMELEC [1996]*)
 - Direct bribery (*Maqno v COMELEC [2002]*)
- Dual Citizenship:
 - Not an automatic disqualification; filing of certificate of candidacy is sufficient to renounce foreign citizenship (declaration under oath of maintenance of true faith and allegiance to the Constitution of the Philippines) [*Valles v COMELEC (2000)*]
 - *Mercado v Manzano (1999)*: Not equivalent to dual allegiance (a person simultaneously owes, by some positive act, loyalty to 2 or more states)
 - Dual citizenship: result of the concurrent application of different laws of two or more states, wherein a person is simultaneously considered a national by said states
- Fugitive from justice:
 - *Rodriguez v COMELEC (1996)*: Intent to evade must be the compelling factor which animates one's flight from a particular jurisdiction
 - There is intent if there is knowledge by the fleeing subject of an already instituted indictment or of a promulgated judgment of conviction
- Other grounds:
 - Vote-buying (upon determination in a summary administrative proceeding) [*Nolasco v COMELEC (1997)*]
 - Removal by administrative proceedings: {perpetual disqualification [*Lingating v COMELEC (2002)*]}
 - Removal of candidate PRIOR to LGC cannot be used as a ground for disqualification [*grego v COMELEC (1997)*]
 - Should be a final determination [*Lingating v COMELEC (2002)*]
 - Subsequent re-election cannot be deemed a condonation if there was already a final determination of his guilt before the re-election [*Reves v COMELEC (1996)*]
 - When re-election considered a condonation: if proceedings is abated due to elections → there is no final determination of misconduct [*Malinao v Reves (1996)*]
- Effect of probation:
 - No effect to applicability of Sec. 40a as it only suspends the execution of the sentence [*dela Torre v COMELEC (1996)*]

3. TERM OF OFFICE

Constitution Art. X sec. 8.
LGC Sec. 43.

- All elective local officials, except barangay officials (Sec. 8, Art. X, Constitution; Sec. 43 LGC)

- Term of office: 3 years from noon of June 30, 1992 or date provided by law
 - all local officials first elected during the local elections immediately following the ratification of the 1987 Constitution shall serve until noon of June 30, 1992
- No official shall serve for more than 3 consecutive terms for the same position
- Voluntary renunciation of the office for any length of time: not an interruption in the continuity of his service for the full term for which he was elected
- Barangay officials and members of the sangguniang kabataan (Sec. 43 LGC)
 - Term of office: 3 years
 - After the regular election of barangay officials on the second Monday of May 1994
- Existing sub-provinces converted into regular provinces (Sec. 462 LGC)
 - New legislative districts continue to be represented in Congress by the duly-elected representatives of the original districts out of which the new provinces or districts were created
 - until their own representatives are elected in the next regular congressional elections and qualified
 - Incumbent elected officials shall continue to hold office until June 30, 1992
 - Vacancy in the offices occupied by incumbent elected officials or resulting from expiration of their terms of office in case of a negative vote in the plebiscite results:
 - by appointment by the President
 - appointees shall hold office until their successors are elected in the regular local elections following the plebiscite
 - After conversion of the newly-created province, President shall appoint
 - Governor
 - Vice-governor
 - Members of the sangguniang panlalawigan
 - Shall hold office until their successors are elected in the next regular local elections and qualified
 - qualified appointive officials and employees in the career service of the subprovinces at the time of their conversion into regular provinces shall continue in office in accordance with civil service law, rules and regulations

RA 9164 (2002) Sec. 2 Term of Office

- Term of office of barangay and sangguniang kabataan officials: 3 years
- No barangay elective official shall serve for more than 3 consecutive terms in the same position
 - Reckoned from the 1994 barangay elections
 - Voluntary renunciation of office for any length of time shall not be considered as an interruption

RA 9006 (Fair Election Act) Sec. 14

- An elective official running for any office other than the one which he is holding in a permanent capacity, is NO LONGER considered ipso facto resigned from his office upon the filing of his certificate of candidacy

WHAT CONSTITUTES TERM OF OFFICE?

Borja v. COMELEC (1998): The Const. contemplates service by local officials for three consecutive terms as a result of election. The term limits for elective local officials must be taken to refer to the right to be elected as well as the right to serve in the same elective position. Consequently, it is not enough that an individual has fully served three consecutive terms in an elective local office. He must also have been elected to the same position for the same number of times before the disqualification can apply.

Lonzanida v. COMELEC (1999): [3rd term cut short as his proclamation was declare void] His assumption of office in 1995 cannot be deemed to have been by reason of a valid election. Also, he did not fully serve the 1995-98 mayoral term by reason of involuntary relinquishment of office as he was ordered to vacate his

post before the expiration of the term. Although he served the greater portion of the term, the requisite is that he serve three full consecutive terms.

Socrates v. COMELEC (2002): The constitutional and statutory provisions have two parts: 1. provides that an elective local official cannot serve for more than 3 consecutive terms. The clear intent is that only consecutive terms count in determining the 3-term rule limit 2. Voluntary renunciation of the office for any length of time does not interrupt the continuity of service.

The clear intent is that involuntary severance from office for any length of time interrupts continuity of service and prevents the service before and after the interruption from being joined together from a continuous service or consecutive terms. Hagedorn's candidacy in the recall election does not fall under said prohibition. Hagedorn became a private citizen for 15 months. Said period is clearly an interruption in the continuity of Hagedorn's service as mayor not because of voluntary renunciation but because of a legal prohibition. Const does not require that the interruption be a full term of 3 years. The clear intent is that interruption for any length of time is sufficient to break an elective local official's continuity of service.

Latasa v. COMELEC (2003): [The mayor of a municipality held his post for three terms. During his last term, the municipality became a city and he was declared hold-over mayor by the charter] The SC did not allow him to run. If he were allowed, he would have served the same people for a term more than what is allowed by law.

Aguinaldo v. COMELEC (1999): Sec. 67 seeks to ensure that elective public officials serve out their entire term of office by discouraging them from running for another public office and thereby cutting short their tenure by making it clear that should they fail in their candidacy, they cannot go back to their former position. Law deems it a "voluntary renunciation."

4. RULES ON SUCCESSION

LGC Sec. 44-47

Successors in permanent vacancies in office of local chief executive: §44, LGC

- (1) Office of governor or mayor:
 - Vice-governor or vice-mayor.
- (2) Office of governor, vice-governor, mayor or vice-mayor:
 - [unclear ito. better to say: "(governor & vice-governor) or (mayor & vice-mayor)"]
 - Highest ranking sanggunian member; In case of his permanent inability, the 2nd highest ranking sanggunian member; Subsequent vacancies are filled automatically by the other sanggunian members according to their ranking.
- (3) Office of punong barangay:
 - Highest ranking sanggunian barangay member; In case of his permanent inability, the 2nd highest ranking sanggunian member.
- A tie between/among the highest ranking sanggunian members is resolved by drawing of lots.
- Successors under S44, LGC serve only the unexpired terms of predecessors.
- Permanent vacancy = When an elective local official:
 - 1) fills a higher vacant office;
 - 2) refuses to assume office;
 - 3) fails to qualify;
 - 4) dies;
 - 5) is removed from office;
 - 6) voluntarily resigns; or
 - 7) is otherwise permanently incapacitated to discharge the functions of his office.
- Ranking in the sanggunian = Based on immediately preceding local election:

Votes obtained by the winning candidate

Total number of registered voters in each district

Permanent vacancies in the sanggunian §45, LGC

- If S44 automatic succession does not apply, vacancy to be filled in by appointment made by:
 - (1) The President (through the Executive Secretary):
 - (a) for sangguniang panlalawigan;
 - (b) for sangguniang panlungsod of:
 - (i) highly urbanized cities;
 - (ii) independent component cities.
 - (2) The governor:
 - (a) for sangguniang panlungsod of component cities
 - (b) for sangguniang bayan;
 - (3) The city/municipal mayor for sangguniang barangay upon recommendation of the sangguniang barangay concerned.
- General rule:
 - S45 appointee must be a nominee of the political party under which the sanggunian member (whose elevation to the position next higher in rank created the vacancy) had been elected.
 - Conditions sine qua non: Nomination & certificate of membership from the highest official of the political party; Else, appointment is:
 - null and void ab initio; &
 - a ground for administrative action against the responsible official.
 - If sanggunian member who caused vacancy does not belong to any political party, the local chief executive shall appoint a qualified person, upon recommendation of the sanggunian.
 - S45 appointee serves the unexpired term of the vacant office.
 - Exception: Sangguniang barangay.
- If vacancy is barangay or youth representation in the sanggunian, vacancy is automatically filled by the official next in rank of the organization concerned.

Temporary vacancy in the office of the local chief executive. §46, LGC

- Examples of local chief executive's temporary incapacity to perform duties for physical/legal reasons:
 - (1) leave of absence;
 - (2) travel abroad;
 - (3) suspension from office.
- General rule: Vice-governor, city/municipal vice-mayor, or the highest ranking sangguniang barangay member shall automatically exercise the powers and perform the duties and functions of the local chief executive.
 - Exception: The power to appoint/suspend/dismiss EEs can be exercised only if the period of temporary incapacity exceeds 30 working days.
- General rule: The local chief executive cannot authorize any local official to assume the powers/duties/functions of his office, other than the vice-governor, city/municipal vice-mayor, or highest ranking sangguniang barangay member.
 - Exception: If the local chief executive is traveling within the country but outside his territorial jurisdiction for a period not exceeding 3 consecutive days, he may designate in writing the officer-in-charge.
 - The authorization shall specify the powers and functions that the officer-in-charge shall exercise.
 - Exception: The power to appoint/suspend/dismiss EEs.
- If the local chief executive fails/refuses to issue the authorization, the vice-governor, city/municipal vice-mayor, or highest ranking sangguniang barangay member has right to assume the powers/duties/functions of the office on the 4th day of absence.

- Exception: The power to appoint/suspend/dismiss EEs.
- Termination of the temporary incapacity:
Upon submission to the sanggunian of a written declaration that he has reported back to office.
If the temporary incapacity is due to legal causes, must also submit necessary documents showing that the legal causes no longer exist.

Approval of leaves of absence. [S47, LGC]

- Local elective officials' LOA are approved by:
 - (1) The President (or his duly authorized representative):
 - (a) for governors;
 - (b) mayors of (i) highly urbanized cities or (ii) independent component cities.
 - (2) The local chief executive:
 - (a) for vice-governors;
 - (b) for city/municipal vice-mayors.
 - (3) The governor:
 - (a) for city/municipal mayors of component cities/municipalities.
 - (4) The Vice-governor or city/municipal vice-mayor:
 - (a) for sanggunian panlalawigan/panlungsod/pambayan members;
 - (b) its employees.
 - (5) The city/municipal mayor:
 - (a) for punong barangays.
 - (6) The punong barangay:
 - (a) for sangguniang barangay members.
- If the application for LOA is not acted upon within 5 working days after receipt, application is deemed approved.

Instances of permanent vacancy

When an elective local official:

- fills a higher vacant office
- refuses to assume office
- fails to qualify
- dies
- is removed from office
- voluntarily resigns
- is otherwise permanently incapacitated to discharge the functions of his office

Office where Permanent Vacancy Occurs	Who Succeeds into Office
Governor	Vice-governor
Mayor	Vice-mayor
Governor and vice-governor, or Mayor and vice-mayor, or Punong barangay	Highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member
Member of Sanggunian Panlalawigan or Sangguniang Panlungsod of highly urbanized cities and independent component cities	Person appointed by the President, through the Executive Secretary
Member of Sangguniang Panlungsod of component cities and the Sangguniang Bayan	Person appointed by the governor
Member of the Sangguniang Barangay	Person appointed by the mayor, upon recommendation of the Sangguniang Barangay concerned
Representation of the youth and the barangay in the sanggunian	Official next in rank of the organization concerned

Office where Temporary	
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Vacancy Occurs	Who Temporarily Succeeds into Office
Governor	Vice-governor (automatically)
Mayor	Vice-mayor (automatically)
Punong barangay	Highest ranking sanggunian member (automatically)
Local chief executive traveling within the country but outside his territorial jurisdiction for a period not exceeding three (3) consecutive days	<ol style="list-style-type: none"> 1) Person designated in writing by the said local chief executive → Authorization shall specify the powers and functions that the designate will exercise, <i>except</i> the power to appoint, suspend, or dismiss employees 2) Vice-governor, vice-mayor or highest Sangguniang Barangay member, if the local chief executive fails or refuses to designate → In this case, assumption into office shall be on the 4th day of absence of the local chief executive (automatically)

When does temporary incapacity terminate?

- Termination of temporary incapacity:
 - Upon submission to the appropriate sanggunian of a written declaration by the local chief executive concerned that he has reported back to office
 - In cases where the temporary incapacity is due to legal causes, the local chief executive shall also submit the necessary documents showing that said legal causes no longer exist

Menzon v. Petilla (1991): The LGC is silent on mode of succession when there is a temporary vacancy in the office of the vice-governor. In this case, there was a vacancy when the vice-governor automatically assumed the governorship pending the determination of who is the local chief executive. Because of such circumstances, the President, through the Secretary of Local Government, may make the temporary appointment.

Gamboa v. Aguirre (1999): A vice-governor who is concurrently an acting governor is actually a quasi-governor. Being the acting governor, the vice cannot continue to simultaneously exercise the duties of the latter office, since the nature of the duties of the governor for a full-time occupant to discharge them. Hence, there is an "inability" on the part of the regular presiding officer (vice-governor) to preside during the sanggunian sessions, which calls for the election of a temporary presiding officer.

Fariñas v. Barba (1996): The governor has the power to fill vacancy in the Sangguniang Bayan caused by a member not belonging to any political party. It is the same manner as where the member belonged to a political party. Where there is no political party to make the nomination, the Sanggunian, where the vacancy occurs, must be considered authority for making the recommendation. The appointing authority is limited to the appointment of those recommended to the governor. The recommendation is a condition sine qua non for the validity of the appointment.

5. RECALL

[LGC Sec. 69-75]

- Who has power: Power of recall for loss of confidence is exercised by the registered voters of the LGU. [S69, LGC]
- Effectivity: Upon the election and proclamation of a successor in the person of the candidate receiving the highest number of votes cast during the election on recall. Thus, if the official sought to be recalled receives the highest number of votes, confidence in him is affirmed and he shall continue in office. [S72, LGC]

- Prohibition on resignation: Elective local official sought to be recalled is not allowed to resign while the recall process is in progress. [S73, LGC]
- Limitations on Recall: [S74, LGC]
 - An elective local official may be the subject of a recall election only once during his term of office for loss of confidence.
 - Recall cannot shall take place within 1 year:
 - from the date of the official's assumption to office; or
 - immediately preceding a regular local election.
- Expenses: Annual General Appropriations Act has a contingency fund at the disposal of the COMELEC. [S75, LGC]

RA 9244. An act eliminating the preparatory recall assembly as a mode of instituting recall of elective local government officials, amending for the purpose sec. 70-71 of the LGC of 1991

Sec. 70. Initiation of the Recall Process

Petition of a registered voter in the LGU concerned, supported by percentage of registered voters during the election in which the local official sought to be recalled was elected.
(Percentage decreases as population of people in area increases. Also, the supporting voters must all sign the petition)



Within 15 days after filing, COMELEC Must certify the sufficiency of the required number of signatures. Failure to obtain required number automatically nullifies petition.



Within 3 days of certification of sufficiency, COMELEC provides official with copy of petition and causes its publication for 3 weeks (once a week) in a national newspaper and a local newspaper of general circulation. Petition must also be posted for 10 to 20 days at conspicuous places. **PROTEST SHOULD BE FILED AT THIS POINT and ruled with finality 15 days after filing.**



COMELEC verifies and authenticates the signatures.



COMELEC announces acceptance of candidates

Sec. 71. Election on Recall

- COMELEC sets election within 30 days upon completion of previous section in barangay/city/municipality proceedings (45 days in case of provinces)
- Officials sought to be recalled are automatically candidates

Evardone v. COMELEC (1991): Whether or not the electorate of the municipality has lost confidence in their incumbent mayor is a political question. Loss of confidence is the formal withdrawal by the electorate of their trust in a person's ability to discharge his office previously bestowed on him by the same electorate.

Garcia v. COMELEC (1993): Recall is a mode of removal of a public official by the people before the end of his term of office. The people's prerogative to remove a public official is an incident of their sovereign power and in the absence of constitutional restraint, the power is implied in all governmental operations. Such power has been held to be indispensable for the proper administration of public affairs. There is nothing in the Const. that suggests that people have sole and exclusive right to decide on whether to initiate a recall proceeding. What the Const. simply required is that the mechanisms of recall to be chosen by Congress should be effective. By enacting the LGC, the Congress deemed it wise to enact alternative modes of initiating recall elections, such as recall initiated by the Preparatory Recall Assembly.

NOTE: Under RA9244, the Congress removed the Preparatory Recall Assembly as a mode of recall.

Paras v. COMELEC (1996): Regular local election: election for the office held by the local elective official sought to be recalled.

Limitations on the holding of recalls

- No recall shall take place within 1 year from the date of assumption of office of the official concerned
Rationale: to provide a reasonable basis for judging the performance of an elective local official
- No recall shall take place within 1 year immediately preceding a regular local election
Rationale: a recall election is potentially disruptive of the normal working of the LGU necessitating additional expenses

6. DISCIPLINE

AO 23, as amended by AO 159 (1994) and AO 66 (1999): Prescribing the rules and procedures on the investigation of administrative disciplinary cases

- *Coverage:* administrative disciplinary charges against –
 - a. the governors, and members of the sangguniang panlalawigan;
 - b. the mayors, vice mayors, and members of the sangguniang panlungsod of highly urbanized cities, independent component cities, and component cities; and
 - c. the mayors, vice mayors, and members of the sangguniang panlungsod or bayan of cities or municipalities in Metropolitan Manila
- *Disciplining Authority* — The President, who may act through the Executive Secretary
 - May, in the interest of the service, still constitute a Special Investigating Committee in lieu of the DILG Secretary
 - nothing shall prevent the President from assuming jurisdiction at any stage of the proceedings over cases to be preliminarily investigated by the DILG; in such event, the same shall immediately be forwarded to the Special Investigating Committee after it may have been constituted by the Disciplining Authority
- *Investigating Authority* — DILG Secretary
 - may constitute an Investigating Committee in the DILG for the conduct of investigation
 - (see also powers of the Disciplining Authority)
- *Grounds for administrative action* (discipline, suspension, removal):
 - a. Disloyalty to the Republic of the Philippines;
 - b. Culpable violation of the Const.;
 - c. Dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty;

- d. Commission of any offense involving moral turpitude or any offense punishable by at least prison mayor, which is from 6 years and 1 day to 12 years imprisonment;
 - e. Abuse of authority;
 - f. Unauthorized absence for 15 consecutive working days in case of local chief executives and 4 consecutive sessions in the case of members of the sanggunian;
 - g. Application for, or acquisition of, foreign citizenship or residence of the status of an immigrant of another country; and
 - h. Such other grounds as may be provided by the Local Government Code of 1991; Republic Act No. 6713; Republic Act No. 3019; Administrative Code of 1987; Revised Penal Code; and all other applicable general and special laws.
- *how initiated*
 - by any private individual or any government officer or employee by filing a sworn written complaint (verified)
 - by the Office of the President or any government agency duly authorized by law to ensure that LGUs act within their prescribed powers and functions
 - *Preventive suspension*
 - may be imposed by the Disciplining Authority in cases where the respondent is an elective official of the following LGUs:
 - provinces
 - HUCs
 - independent component cities
 - cities and municipalities in Metro Manila
 - The governor shall, upon the direct order of the Disciplining Authority, preventively suspend an elective official of a component city, who is under formal administrative investigation by the Office of the President.
 - No preventive suspension shall be imposed within 90 days immediately prior to any local election. If the preventive suspension has been imposed prior to the 90-day period immediately preceding a local election, it shall be deemed automatically lifted upon the start of period
 - Grounds:
 - at any time after the issues are joined (after respondent has answered the complaint)
 - when the evidence of guilt is strong and,
 - given the gravity of the offense, there is a great probability that the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence
 - Period: Any single preventive suspension of local elective officials shall not extend beyond 60 days; provided that, in the event that several administrative cases are filed against an elective official, he cannot be preventively suspended for more than 90 days within a single year on the same ground or grounds existing and known at the time of the first suspension
 - Expiration: the suspended elective official shall be deemed reinstated in office without prejudice to the continuation of the proceedings against him. However, if the delay in the proceeding of the case is due to his fault, or request, other than the appeal duly filed, the duration of such delay shall not be counted

in computing the time of termination of the case

- Compensation: officer shall receive no salary or compensation during such suspension; but, upon subsequent exoneration and reinstatement, he shall be paid his full salary or compensation, including such emoluments accruing during such suspension
- Limitations: The penalty of suspension shall not exceed the unexpired term of the respondent, or a period of 6 months for every administrative offense, nor shall said penalty

be a bar to the candidacy of the respondent so suspended as long as he meets the

qualifications required for the office. When the respondent has been meted 2 or more penalties of suspension for 2 or more administrative offenses, such penalties shall be served successively.

- An elective local official may be removed from office by order of the proper court or the Disciplining Authority whichever first acquires jurisdiction to the exclusion of the other. The penalty or removal from office as a result of an administrative investigation shall be considered a bar to the candidacy of the respondent for any elective position.

Elective Official against whom Administrative Complaint is Filed	Where to File Complaint
Provincial or city official	Office of the President
Municipal official	Sangguniang Panlalawigan
Barangay official	Sangguniang Panlungsod or Sangguniang Bayan

SUSPENSION

Espiritu v. Melgar (1992): The provincial governor is authorized to preventively suspend the municipal mayor any time after the issues have been joined and any of the following grounds were shown to exist:

- When there is reasonable ground to believe that the respondent has committed the act or acts complained of
- When the evidence of culpability is strong
- When the gravity of the offense so warrants
- When the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence.

There is nothing improper in suspending an officer before the charges are heard and before he is given an opportunity to prove his innocence. Preventive suspension is allowed so that respondent may not hamper the normal course of the investigation through the use of his influence and authority over possible witnesses. When a local government official believes that he has been wrongfully suspended, the proper procedure is to exhaust administrative remedies, i.e. seek relief from the DILG Secretary, and not to file a case in court.

Berces v. Guingona (1995): Sec. 68 of the LGC merely provides that an "appeal shall not prevent a decision from becoming final or executory." As worded, there is room to construe the provision as giving discretion to the reviewing officials to stay the execution of the appealed decision.

Ganzon v. CA (1991): Piecemeal suspensions should not be issued. If there are several administrative cases against a public official, these cases should be consolidated for the purpose of ordering preventive suspension, instead of issuing an order of suspension for each case. Elective local officials should be given the benefit of simultaneous service of suspension.

NOTE: The ruling in this case as to simultaneous service of

suspension is more of an exception than the rule, because of the following circumstances:

- o Three separate orders of 60-day preventive suspension were issued against Ganzon
- o Another order of preventive suspension was issued before the SC promulgated the decision ruling that suspension should not be issued piecemeal
- o The simultaneous service of suspension will lessen the harsh effects of whatever ill motive may be behind the successive suspension orders issued

Flores v. Sangguniang Panlalawigan of Pampanga (2005): LGC Sec. 61 says that a complaint against any elective official of a municipality shall be filed before the *Sangguniang Panlalawigan* whose decision may be appealed to the Office of the President.

Without filing a MR, any other action he takes is premature, unless he shows that he has a valid reason for doing so.

The Ombudsman

Haqad v. Gozo-Dadole (1993): The Ombudsman and the Office of the President have concurrent jurisdiction to conduct administrative investigations over local elective officials. The LGC did not withdraw the power of the Ombudsman under RA 6770.

Preventive Suspension under RA 6770	Preventive Suspension under the LGC
<p><u>Requirements:</u></p> <ul style="list-style-type: none"> • the evidence of guilt is strong; AND • that any of the following circumstances are present: <ul style="list-style-type: none"> o the charge against the officer or employee should involve dishonesty, oppression or grave misconduct or neglect in the performance of duty; o the charges should warrant removal from office; or o the respondent's continued stay in office would prejudice the case filed against him 	<p><u>Requirements:</u></p> <ul style="list-style-type: none"> • there is reasonable ground to believe that the respondent has committed the act or acts complained of • the evidence of culpability is strong • the gravity of the offense so warrants; or • the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence
<p><u>Maximum period:</u> 6 months</p>	<p><u>Maximum period:</u> 60 days</p>

Castillo-Co v. Barbers (1998): It is not only the Ombudsman, but also his Deputy, who may sign an order preventively suspending officials. Also, the length of the period of suspension within the limits provided by law and the evaluation of the strength of the evidence both lie in the discretion of the Ombudsman. It is immaterial that no evidence has been adduced to prove that the official may influence possible witnesses or may tamper with the public records. It is sufficient that there exists such a possibility.

The Courts
RA 3019

Segovia v. Sandiganbayan (1999): The term "office" in Sec. 13 of RA 3019 (pertaining to mandatory preventive suspension) applies to any office which the officer might currently be holding and not necessarily the particular office in relation to which the official is charged. The imposition of the suspension, though mandatory, is not automatic or self-operative. A pre-condition is the existence of a valid Information, determined at a pre-suspension hearing.

Sandiganbayan
PD 1606, as amended by RA 8249

Llorente v. Sandiganbayan (2000): It is the official's grade that determines his or her salary, and not the other way around. An official's grade is not a matter of proof but a matter of law which the court must take judicial notice. Under Sec. 444(d) of the LGC, the municipal mayor shall receive a minimum monthly compensation corresponding to SG 27. Thus, the cases filed against the petitioner are within the exclusive jurisdiction of the Sandiganbayan.

Inding v. Sandiganbayan (2004): If the law states that a certain officer is within the jurisdiction of the Sandiganbayan, the fact that the officer's SG is below 27 does not divest jurisdiction.

Rodriguez v. Sandiganbayan (2004): RA 8249 provides that as long as one of the accused is an official of the executive branch occupying the position otherwise classified as SG 27 and higher (in this case, Mayor Rodriguez), the Sandiganbayan exercises exclusive original jurisdiction. To vest Sandiganbayan with jurisdiction, public office must be an element of the crime OR that without the public office, the crime could not have been committed.

EFFECT OF RE-ELECTION

Aquinaldo v. Santos (1992): Re-election renders the administrative complaint against the local official moot and academic. A public official cannot be removed for administrative misconduct committed during a prior term, since the re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefore. But this rule is applicable only to administrative cases, not to criminal cases.

REMOVAL

Publico v. Villapando (2002): Local legislative bodies and/or the Office of the President cannot validly impose the penalty of dismissal or removal from service on erring local elective officials. It is clear from Sec. 60 of LGC that an elective local official may be removed from office on the grounds enumerated above by order of the proper court. But remember if it's appointive, OP may remove. (NOTE: Prof. Gatmaytan does not agree with this case.)

B. Appointive Officials

1. APPOINTMENTS

Dimaandal v. COA (1998): Governor designated acting assistant provincial treasurer. SC held officer was not allowed to recover compensation as assistant provincial treasurer because designation was not under color of authority. Under the LGC and RAC, provincial governor is not authorized to appoint or even designate a person in cases of temporary absence or disability. Power resides in the President or Secretary of Finance.

NOTE: *Difference between designation and appointment* – In designation, additional tasks are assigned, but there is no corresponding salary increase.

Flores v. Drilon (1993): Bases Conversion Act says that the mayor of Olongapo shall be appointed SBMA chairman for first year of operations. This violates constitutional prohibition against appointment or designation of elective officials to other government posts. Appointive officials may be allowed by law or primary functions of his position to hold multiple offices. Elective officials are not allowed, except as otherwise recognized in the Constitution. The provision also encroaches on executive power to appoint.

CSC'S ROLE IN APPOINTMENTS

cannot appoint but can say if qualified or unqualified. If unqualified, can kick out of office (basis is the Omnibus Implementing Rules of RAC).

Grounds for RECALL of appointment

1. Non-compliance with procedure or criteria provided in the agency's merit promotion plan

2. Failure to pass through agency's selection/promotion board
3. Violation of existing collective agreement between management and employees relative to promotion
4. Violation of other existing civil service law rules and regulations

Mathay v. CSC (1999): In disapproving or approving appointments, CSC only examines

- the conformity of the appointment with applicable provisions of law
- WON appointee possesses the minimum qualifications and none of the disqualifications

Mathay v. CA (1999): CSC has no authority to direct that an appointment of a specific individual be made. It can only attest to WON person chosen may fill the position. According to BP 337, the power to appoint rests exclusively with the local chief executive and can't be usurped by anyone else.

De Rama v. CA (2001): Constitutional prohibition on midnight appointments applies only to presidential appointments. They do not apply to LGUs, as long as the appointments met all the requisites of a valid appointment. Once an appointment has been made and accepted, the appointing authority cannot unilaterally revoke it. But the CSC may do so if it decides that the requirements were not met.

NEPOTISM

Debulgado v. CSC (1994): Mayor is not allowed to appoint wife as head of Office of General Services even if she's qualified because of prohibition against nepotism appointments. This is based on Sec. 59 Book 5 of RAC. Note that this prohibition covers all appointments, original and personnel actions (promotion, transfer, reinstatement, re-employment).

CSC v. Tinaya (2005): Prohibition also covers against nepotism appointments. This time, the boyfriend of daughter of the mayor was appointed a post. When his appointment was temporary, he became the son-in-law. Mayor then recommended that his appointment become permanent. This was considered nepotism and was disallowed.

2. DISCIPLINE

- The appointing authority is generally the disciplining authority.

Garcia v. Pajaro (2002): Employee of Dagupan's City Treasurer's Office was suspended by the City Treasurer because of formal charges. SC held that City Treasurer has authority to discipline said official. Power to discipline is specifically granted by the RAC to heads of departments, agencies and instrumentalities, provinces, and cities. Power to commence admin proceedings against subordinate officer is granted by Omnibus Rules to secretary of department, head of office, head of LGU, chief of agency, regional director, or person with sworn written complaint. City treasurer may also motu proprio institute disciplinary proceedings against subordinate. These rules must be reconciled with LGC, which gives mayor authority to institute admin/judicial proceedings against any official or employee of the city. In case of employees of city treasurer's office, mayor must file his complaint with the treasurer's office or with DOF.

Sangguniang Bayan of San Andres v. CA (1998):

Requisites to constitute resignation:	Essential elements of abandonment:
1. Intention to relinquish a part of the term 2. Act of relinquishment 3. Acceptance by the proper authority	1. Intent to abandon 2. Overt act by which the intention is to be carried into effect

3. REMOVAL

City Government of Makati City v. CSC (2002): Clerk was dropped from rolls allegedly for going AWOL. But she was actually in prison

for crime she didn't commit. When she came back, CSC held that she can go back to her position because she was on AUTOMATIC LEAVE OF ABSENCE while she was in prison. SC upheld CSC ruling, stating that such rule was within the constitutionally delegated power of the CSC to interpret its own rules. In this case, CSC was merely interpreting its rule on requirement of approved leave.

4. OFFICIALS COMMON TO ALL MUNICIPALITIES, CITIES AND PROVINCES

- | | |
|-----------------------------------------|----------------------------------------------|
| a. Secretary to the Sanggunian | k. Legal Officer |
| b. Treasurer | l. Agriculturist |
| c. Assessor | m. Social Welfare and Development Officer |
| d. Accountant | n. Environment and Natural Resources Officer |
| e. Budget Officer | o. Architect |
| f. Planning and Development Coordinator | p. Information Officer |
| g. Engineer | q. Cooperatives Officer |
| h. Health Officer | r. Population Officer |
| i. Civil Registrar | s. Veterinarian |
| j. Administrator | t. General Services Officer |

- Exceptions as to appointments by local chief executive
 - secretary (appointed by vice-governor or vice-mayor)
 - treasurer (appointed by secretary of Finance)
- In the barangay, the mandated appointive officials are the Barangay Secretary and the Barangay Treasurer, although other officials of the barangay may be appointed by the punong barangay.

C. Provisions Applicable to Elective and Appointive Officials

1. PROHIBITED INTERESTS

LGC Sec. 89

Prohibited business and pecuniary interest.

- Unlawful for any local government official/EE to in/directly:
 - (1) Engage in any business transaction with LGU local government unit:
 - (a) in which he is an official/EE;
 - (b) over which he has the power of supervision;
 - (c) with any of its authorized boards, officials, agents, or attorneys,
 if money/property or any thing of value is to be in/directly transferred out of the resources of the LGU to such person or firm;
 - (2) Hold interests in any cockpit or other games licensed by an LGU;
 - (3) Purchase any realty/property forfeited in favor of the LGU
 - (a) for unpaid taxes/assessment; or
 - (b) by virtue of a legal process at the instance of the LGU.
 - (4) Be a surety for any person contracting or doing business with the LGU which a surety is required;
 - (5) Possess/use any public property of the LGU for private purposes.
- Other prohibitions governing the conduct of national public officers relating to prohibited business and pecuniary interest:
 - (1) RA 6713 (Code of Conduct and Ethical Standards for Public Officials/EEs);
 - (2) Other laws.

Teves v. Sandiganbayan (2004): Teves was charged with unlawful intervention in issuance of license to operate cockpit but was convicted of having direct financial or pecuniary interest instead. SC upheld conviction, holding that VARIANCE DOCTRINE applied to this

case. Variance Doctrine – crime charged includes crime proved, convict of crime proved. Also applies when crime proved includes crime charged, convict of crime charged.

Elements of unlawful intervention	Elements of prohibited interest
Accused is public officer	Public Officer
Accused has direct or indirect financial or pecuniary interest in any business, contract, or transaction, WON prohibited by law	He has direct or indirect financial or pecuniary interest in any business, contract, transaction
He intervenes or takes part in his official capacity in connection with such interest	He is prohibited from having such interest by the Const. or law

PRACTICE OF PROFESSION

LGC Sec. 90

Section 90. Practice of Profession. -

(a) All governors, city and municipal mayors are prohibited from practicing their profession or engaging in any occupation other than the exercise of their functions as local chief executives.

(b) Sanggunian members may practice their professions, engage in any occupation, or teach in schools except during session hours: Provided, That sanggunian members who are also members of the Bar shall not:

- (1) Appear as counsel before any court in any civil case wherein a local government unit or any office, agency, or instrumentality of the government is the adverse party;
- (2) Appear as counsel in any criminal case wherein an officer or employee of the national or local government is accused of an offense committed in relation to his office.
- (3) Collect any fee for their appearance in administrative proceedings involving the local government unit of which he is an official; and
- (4) Use property and personnel of the government except when the sanggunian member concerned is defending the interest of the government.

(c) Doctors of medicine may practice their profession even during official hours of work only on occasions of emergency: Provided, That the officials concerned do not derive monetary compensation therefrom.

Ramos v. CA (1981): A municipality cannot hire private counsel to file a suit in its behalf. The RAC provides that only the provincial fiscal and the municipal attorney can represent a municipality in its lawsuits, except in cases where original jurisdiction is vested in the SC, or where the municipality is a party adverse to the provincial government or the case is between two municipalities. The intent of Congress is to prohibit a municipality from employing private counsel in its lawsuits. The fact that the municipal attorney and the fiscal are supposed to collaborate with a private law firm does not legalize the latter’s representation of the municipality. While a private prosecutor is allowed in criminal cases, an analogous arrangement is not allowed in civil cases where a municipality is the plaintiff.

Pillilla v. CA (1994): The municipality’s authority to employ a private lawyer is expressly limited only to situations where the provincial fiscal is disqualified to represent it. For the exception to apply, the fact that the provincial fiscal was disqualified to handle the municipality’s case must appear on record. The refusal of the provincial fiscal to represent the municipality is not a legal justification for employing the services of private counsel. Instead of engaging the services of a special attorney, the municipal council should request the Secretary of Justice to appoint an acting provincial fiscal in place of the provincial fiscal who has declined to handle and prosecute its case in court.

Mancenido v. CA (2000): In resolving whether a local government official may secure the services of private counsel in an action filed

against him in his official capacity, the nature of the action and the relief sought are to be considered. In view of the damages sought, which if granted, could result in personal liability, respondents could not be deemed to have been improperly represented by private counsel.

NOTES:

- **Instances when a private lawyer can represent a LGU**
 - When the municipality is an adverse party in a case involving the provincial government or another municipality or city within the province
 - Where original jurisdiction is vested with the SC
- **Test as to when a local government official can secure the services of private counsel: Nature of the action and the relief that is sought**

3. PROHIBITION AGAINST APPOINTMENT

- No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure [*Flores v Drilon (1993)*]
- Except for losing candidates in barangay elections, no candidate who lost in any election shall, within one year after such election, be appointed to any office in the government or any GOCC or their subsidiaries.

D. Local Boards

1. LOCAL SCHOOL BOARDS

COA Cebu Province v. Province of Cebu (2001): The Special Education Fund covers the salary and benefits of extension classes teachers but not college scholarship funds.

2. LOCAL HEALTH BOARDS

3. LOCAL DEVELOPMENT COUNCILS

4. LOCAL PEACE AND ORDER COUNCIL

VII. LOCAL GOVERNMENT UNITS

A. The Barangay

LGC Sec. 384-439

People v. Recto (2001): A barangay captain is a person in authority and an attack on him would amount to direct assault. On the other hand, an attack on a barangay chief tanod who was a mere bystander (not in the performance of his duties) at the time the crime was committed, is not direct assault as he is merely an agent of a person in authority.

Alquizola v. Ocol (1999): Since there is no other provision that treats the power of the punong barangay to remove the barangay secretary or other appointive barangay officials, and the duration of their term of office is not fixed by law, it is a sound rule to consider the power of removal as being an incident to the power to appoint. Verily, the power of appointment is to be exercised conjointly by the punong barangay and a majority of all the members of the sangguniang barangay.

1. KATARUNGANG PAMBARANGAY

LGC Sec. 399 – 422

Uy v. Contreras (1994): The previous law on Katarungang Pambarangay has already been revised by the LGC and it has three significant features:

PD 1508	Local Government Code
Authority over criminal offenses limited to those punishable by imprisonment not exceeding 30 days or a fine not exceeding	Authority over criminal offenses limited to those punishable by imprisonment not exceeding 1 year or a fine not exceeding

P200	P5,000
No similar provision	Disputes arising from the workplace where the contending parties are employed or at the institution where such parties are enrolled for study, shall be brought in the brgy where such workplace or institution is located
No similar provision	Prescriptive periods of offenses suspended during the pendency of the mediation, conciliation or arbitration process

requirements of general laws and implementing administrative rules.

Acebedo Optical v. CA (2000): Distinction must be made between the grant of a license or permit to do business and the issuance of a license to engage in the practice of a particular profession. A business permit cannot, by the imposition of conditions, be used to regulate the practice of a profession.

License/permit to do business	License to engage in a profession
Granted by the local authorities	Board or Commission tasked to regulate the particular profession
Authorizes the person to engage in business or some form of commercial activity	Authorizes a natural person to engage in the practice or exercise of his or her profession

2. SANGGUNIANG KABATAAN

LGC Sec. 423 – 439

- RA 9164 (2002) amended Sec. 424 and 428 of the LGC by lowering the maximum age of the members of the Katipunan ng Kabataan and elective officials of the Sangguniang Kabataan from 21 to 18 years of age.

Alunan III v. Mirasol (1997): The COMELEC may delegate the control and supervision of SK elections to the DILG. There is no abdication of the functions of the COMELEC because the DILG supervision was to be exercised within the framework of detailed and comprehensive rules embodied in the resolution issued by the COMELEC.

Garvida v. Sales (1997): An elective official of the Sangguniang Kabataan should not be more than 21 years (now 18 years) of age on the day of his election. "Not more than 21 years old" is not equivalent to "less than 22 years old."

The power to issue licenses and permits necessarily includes the power to revoke, withdraw or restrict through the imposition of certain conditions. However, the conditions must be reasonable and cannot amount to an arbitrary interference with the business.

Canet v. Dacena (2004): Only the Sanggunian, not the mayor of the city, has the power to allow cockpits, stadiums, etc. Without an ordinance, he cannot compel mayor to issue him a business license.

B. The Municipality

LGC Sec. 440 – 447

Olivarez v. Sandiganbayan (1995): The municipal mayor has the authority to issue permits and licenses for the holding of activities for any charitable or welfare purpose [LGC444(b)(3)].

D. The Province

LGC Sec. 459 – 468

C. The City

LGC Sec. 448 – 458

1. AUTHORITY OVER OFFICERS

Negros Oriental II Electric Cooperative v. Sangguniang Panlungsod (1987): The Sangguniang Panlungsod has no authority to issue subpoenas and punish non-members for legislative contempt. The contempt power of the legislature is sui generis and local legislative bodies cannot correctly claim to possess it for the same reasons that the national legislature does. The power to subpoena witnesses and punish non-members for contempt may not also be implied in the delegation of legislative power as such partake of a judicial nature.

E. Leagues of LGUs and Elective Officials

LGC Sec. 491 – 510

Galarosa v. Valencia (1993): The incumbent presidents of the Association of Barangay Councils (ABC) are also ex-officio members of the Sangguniang Bayan. The term of office of the ABC Presidents as SB members are co-terminous with that of the members of the sanggunian. However, they remain ABC Presidents and can hold over as SB members. This holdover authority of ABC Presidents is expressly recognized by the IRR of the LGC.

Bito-onon v. Fernandez (2001): The ligas are primarily governed by the provisions of the LGC. However, their respective Const. and by-laws shall govern all other matters affecting the internal organization of the liga not otherwise provided for in the LGC, provided that they shall always conform to the provisions of the Const. and existing laws. Thus, the President, and his alter-ego, exercises the power of general supervision over the liga ng mga barangay. This being so, the DILG Secretary does not have the authority to amend and modify the guidelines promulgated by the National Liga Board as such would be an exercise of the power of control, not of mere supervision.

Dadole v. COA (2002): DBM cannot control amount a city wants to give its judges as allowance, as long as city has money to do so.

2. LICENSES AND PERMITS

Gordon v. Veridiano II (1988): A permit issued by the mayor to a drugstore not previously cleared with and licensed by the FDA will be a nullity. However, the issuance of a mayor's permit is not mandatory once it is shown that the FDA has licensed the operation of the applicant. The city mayor may only revoke the permits issued for violation of the local requirements imposed, not with the

VIII. MISCELLANEOUS AND FINAL PROVISIONS

Provisions for Implementation

Posting and publication of ordinances with penal sanctions. [S511, LGC]

- General rule:** Ordinances with penal sanctions shall be:
 - posted at prominent places in the provincial capitol or city/municipal/barangay hall for at least 3 consecutive weeks; &
 - published in a newspaper of general circulation (if available) within the territorial jurisdiction of the LGU;
 - Exception:** Barangay ordinances.
- Effectivity of ordinances with penal sanctions: On the day following its publication, or at the end of the period of posting, whichever occurs later.
 - Exception:** Ordinance provides otherwise.

- Effect of public officer/EE violating an ordinance: Administrative disciplinary action, without prejudice to civil/criminal action.
- For publication, the secretary to the sanggunian shall transmit official copies of ordinances to the Official Gazette chief executive office, within 7 days following the approval of the ordinance. OG may publish ordinances with penal sanctions for archival and reference purposes.

Penalties for violation of tax ordinances. §516, LGC

- LGU sanggunian is authorized to prescribe penalties for violation of tax ordinances:
 - (1) Fines should be at least P1,000 but not more than P5,000;
 - **Exception:** Sangguniang barangay may prescribe a fine of at least P100 but not more than P1,000.
 - (2) Imprisonment should be at least 1 month but not more than 6 months.
- Penalties are imposed at the discretion of the court.

TITLE II: PROVISIONS FOR IMPLEMENTATION

Mandatory review every 5 years. §521, LGC

- Congress shall review LGC at least once every 5 years and as often as it may deem necessary;
- Primary purpose: Pproviding a more responsive and accountable local government structure.

Inventory of infrastructure and other community facilities. §524, LGC

- LGU shall conduct a periodic inventory of infrastructure and other community facilities;
- LGU shall maintain/repair/improve/reconstruct community facilities through a closer cooperation among the various agencies of the national government operating within the province/city/municipality.
- Cannot undertake infrastructure or community project within LGU's territorial jurisdiction, without informing the local chief executive and sanggunian.

Records and properties. §525, LGC

- All records/equipment/buildings/facilities/properties of any LGU body/office abolished/reorganized under the LGC shall be transferred to the office/body to which its powers/functions/responsibilities are substantially devolved.

Transitory Provisions

Section 528.

Deconcentration of Requisite Authority and Power

- 6 months after the effectivity of LGC, the national government shall effect the deconcentration of requisite authority and power
 - to appropriate regional offices or field offices of national agencies or offices (major functions are not devolved to LGUs)

LGC Sec. 529.

Tax Ordinances or Revenue Measures

- All existing tax ordinances or revenue measures of LGUs shall continue to be in force and effect after the effectivity of this Code UNLESS
 - amended by the sanggunian concerned
 - or inconsistent with, or in violation of, the provisions of LGC

Application of the Code to LGUs in the Autonomous Regions

LGC Sec. 526

Application of this Code to Local Government Units in the Autonomous Regions

- LGC applies to all provinces, cities, municipalities and barangays in the autonomous regions until such time as the regional government has enacted its own LGC

A. The Autonomous Region in Muslim Mindanao

Limbona v. Mangelin (1989): The autonomous governments of Mindanao involved in this case were created by PD 1618, even before the 1987 Const. They were never meant to exercise the kind of autonomy wherein the central government commits an act of self-immolation. In fact, PD 1618 mandates that the "President shall have the power of general supervision and control over Autonomous Regions."

NOTE: Under Sec. 16, Art. X of the Const., "The President shall exercise general supervision over autonomous regions to ensure that the laws are faithfully executed."

Pandi v. CA (2002): The passage of the LGC in 1991 did not amend the ARMM Organic Act of 1989 since the former is a general law and cannot prevail over a special law like the Organic Act. Thus, the devolved powers and functions under the 1991 LGC could not have applied to the ARMM. This is bolstered by Sec. 526 of the LGC, which limits the application of the LGC to autonomous regions created after its effectivity. However, through the passage of the Organic Act of 2001 (RA 9054), the devolved powers and functions under the LGC could now be applied to the ARMM. This means that the powers and functions of a Provincial Governor under the LGC are now enjoyed, as a minimum, by a Provincial Governor in the ARMM.

B. Cordillera Administrative Region

- There is no CAR since the organic laws, RA 6676 and 8438, were not ratified by its inhabitants. Cordillera Broad Coalition v. COA (1990): The CAR is not a public corporation or a territorial and political subdivision. It does not have a separate juridical personality, unlike provinces, cities and municipalities. Neither is it vested with the powers that are normally granted to public corporations, e.g. the power to sue and be sued, the power to own and dispose of property, the power to create its own sources of revenue, etc. The CAR was created primarily to coordinate the planning and implementation of programs and services in the covered areas. The creation of administrative regions for the purpose of expediting the delivery of services.

C. The Metropolitan Manila Development Authority

RA 7924 (1995)

An act creating the metropolitan manila development authority, defining its powers and functions, providing funds therefor and for other purposes

- MM, embracing the cities of Caloocan, Manila, Mandaluyong, Makati, Pasay, Pasig, Quezon, and Muntinlupa, and the municipalities of Las Piñas, Malabon, Marikina, Navotas, Parañaque, Pateros, San Juan, Tagig, and Valenzuela, is constituted into a special development and administrative region subject to direct supervision of the President
- The MMDA shall perform planning, monitoring and coordinative functions, and in the process exercise regulatory and supervisory authority over the delivery of metro-wide services within Metro Manila without diminution of the autonomy of the LGUs concerning purely local matters.
- *Scope of MMDA Services*
 - Services which have metro-wide impact and transcend local political boundaries or entail huge expenditures such that it would not be viable for said services to be provided by the individual LGUs comprising MM including:
 - development planning, investments programming, and coordination and monitoring of plan, program and project implementation
 - transport and traffic management, provision for the mass transport system and the institution of a system to regulate road users, traffic engineering

services and traffic education programs, including the institution of a single ticketing system in MM

- solid waste disposal and management
- flood control and sewerage management
- urban renewal, zoning, and land use planning, and shelter services
- health and sanitation, urban protection and pollution control
- public safety which includes the formulation and implementation of programs and policies to achieve

public safety, especially preparedness for preventive or rescue operations during times of calamities and disasters, and coordination and mobilization of resources and the implementation of contingency plans for the rehabilitation and relief operations in coordination with national agencies concerned

- *Metro Manila Council* — the governing board and policy making body of the MMDA
 - Voting members: composed of the mayors of the 8 cities and 9 municipalities, the president of the MM Vice Mayors League and the president of the MM Councilors League
 - Non-voting members: heads of the DOTC, DPWH, DOT, DBM, HUDCC, and PNP or their duly authorized representatives
- *Functions and Powers of the MMDA*
 - Formulate, coordinate and regulate the implementation of medium and long-term plans and programs for the delivery of metro-wide services, land use and physical development within MM, consistent with national development objectives and priorities
 - Prepare, coordinate and regulate the implementation of medium-term programs for metro-wide services (indicate sources and uses of funds for priority programs and projects, and include the packaging of projects and presentation to funding institutions)
 - Undertake and manage on its own metro-wide programs and projects for the delivery of specific services under its jurisdiction, subject to the approval of the Council
 - Coordinate and monitor the implementation of such plans, programs and projects in MM; identify bottlenecks and adopt solutions to problems of implementation
 - Set the policies concerning traffic, and coordinate and regulate the implementation of all programs and projects concerning traffic management, specifically pertaining to enforcement, engineering and education. Upon request, it shall be extended assistance and cooperation, including but not limited to, assignment of personnel, by all other government agencies and offices concerned
 - Install and administer a single ticketing system; fix, impose and collect fines and penalties for all kinds of violations of traffic rules and regulations, and confiscate and suspend or revoke drivers' licenses in the enforcement of such traffic laws and regulations
 - Perform other related functions required to achieve the objectives of the MMDA, including the undertaking of delivery of basic services to the LGUs, when deemed necessary subject to prior coordination with and consent of the LGU concerned
- Implementation of the MMDA's plans, programs, and projects shall be undertaken by the LGUs, the concerned NGAs, the POs, NGOs and the private sector and the MMDA itself where appropriate. For this purpose, the MMDA may enter into contracts, MOA and other cooperative arrangements
- 5% of the total annual gross revenue of the preceding year, net of the IRA, of each LGU, shall accrue and become payable monthly to the MMDA by each city or municipality. In case of failure to remit the said fixed contribution, the DBM shall cause the disbursement to the MMDA chargeable against the IRA allotment of the city or municipality concerned

MMDA v. Bel-Air Village Association (2000): RA 7924 does not grant the MMDA police power or legislative power. All its functions are administrative in nature. The MMDA is not a political unit of

government. There is no grant of authority to enact ordinances and regulations for the general welfare of the inhabitants of the metropolis. It is the LGUs, acting through their respective legislative councils, that possess legislative and police power.

MMDA v. Garin (2005): MMDA cannot get licenses without an ordinance.

MMDA v. Trackworks Rail Transit (2005): The issuance of preliminary injunction against MMDA is proper pending the trial court's determination of MMDA's power.

LAW ON PUBLIC OFFICERS

I. PUBLIC OFFICE AND OFFICERS

A. Public Office

1. Definition

- (nature) right, authority and duty
- (origin) created and conferred by law
- (duration) by which for a given period – either fixed by law or enduring at the pleasure of the appointing power
- an individual is invested with some portion of the sovereign functions of the government
- (purpose) to be exercised by him for the benefit of the public. (*Fernandez v Sto. Tomas, March 7, 2005*)

2. Purpose

- to effect the end for the government’s institution : common good;
- ≠ profit, honor, or private interest of any person, family or class of persons (*63 Am Jur 2d 667*)

3. Nature

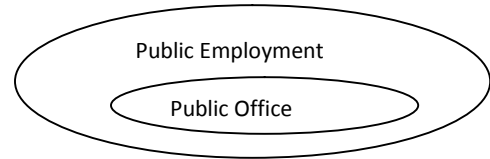
- A public office is a public trust. (Art. XI, Sec. 1, 1987 Consti)
- It is a responsibility, ≠ a right. (*Morfe v. Mutuc*)

4. Elements

- (Modes of Creation): Public office must be created by either:
 - ◊ Constitution
 - ◊ National Legislation
 - ◊ Municipal or other body’s legislation, via authority conferred by the Legislature;
- (Characteristic of Office):
 - ◊ *Delegated Power*. It must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public;
- *Defined Powers and Duties*. Its conferred powers and discharged duties must be DEFINED, directly or impliedly by the Legislature or through legislative authority;
- *Unhindered Performance*. Its duties must be performed independently and without control of a superior power other than the law;
 - Except for duties of an inferior or subordinate office that created or authorized by the Legislature and which inferior or subordinate office is placed under the general control of a superior office or body;
- It must be *permanent* and *continuous*.
 - Note: These elements are dispensable.
 - On the dispensability of the element of permanence, an example is the public office of the Board of Canvassers, yet its duties are only for a limited period of time.
 - On the dispensability of the element of continuance, Mechem in one case states that the “the most important characteristic” in characterizing a position as a public office is the DELEGATION to the individual of some of the sovereign functions of government [*Laurel v. Desierto (April 12, 2002)*].
 - Here, the court held that Laurel, as chair of the National Centennial Commission (NCC), is a public officer. The public office of NCC was delegated and is performing executive functions: it enforces the

conservation and promotion of the nation’s historical and cultural heritage. Such delegated function is a policy embodied in the Constitution. It is inconsequential that Laurel was not compensated during his tenure. A salary is a usual (but ≠ necessary) criterion for determining the nature of a position. Also, the element of continuance is ≠ indispensable.

5. Public Office v. Public Employment



- Public employment is broader than public office. All public office is public employment, but not all public employment is a public office.
- A public office is created by law. Its delegated duties involve the exercise of some portion of the sovereign power and its performance concerns the public. Meanwhile, public employment as a position lacks either one or more of the foregoing elements.

6. Public Office v. Public Contract

	Public Office	Public Contract
How Created	Incident of sovereignty. Sovereignty is omnipresent.	Originates from will of contracting parties
Object	To carry out the sovereign as well as governmental functions affecting even persons not bound by the contract	Obligations imposed only upon the persons who entered into the contract
Subject Matter	Tenure, duration, continuity	Limited duration
Scope	Duties that are generally continuing and permanent	Duties are very specific to the contract
Where duties are defined	The law	Contract

7. No vested right to public office.

- GENERAL RULE: A public office, being a mere privilege given by the state, does not vest any right in the holder of the office. This rule applies when the law is clear.
- EXCEPTION: When the law is vague, the person’s holding of the office is protected and he should not be easily deprived of his office.
- A public office is ≠ property and it is ≠ a public contract. Although there is a vested right to an office, which may not be disturbed by legislation, yet the incumbent has, in a sense, a right to his office. If that right is to be taken away by statute, the terms should be clear (*Segovia v. Noel*).

8. Public Office ≠ property.

- A public office is not the property of the public officer within the meaning of the due process clause of the non-impairment of the obligation of contract clause of the Constitution.
 - ▶ It is a *public trust/agency*. Due process is violated only if an office is considered property. However, a public office is not property within the constitutional guaranties of due process.

It is a public trust or agency. As public officers are mere agents and not rulers of the people, no man has a proprietary or contractual right to an office (Cornejo v. Gabriel).

▶ *It is personal.* Public office being personal, the death of a public officer terminates his right to occupy the contested office and extinguishes his counterclaim for damages. His widow and/or heirs cannot be substituted in the counterclaim suit. (Abeja v. Tanada)

- Exceptions:
 - In quo warranto proceedings relating to the question as to which of 2 persons is entitled to a public office
 - In an action for recovery of compensation accruing by virtue of the public office

9. Creation of Public Office

- **Modes of Creation of Public Office**
 - by the Constitution
 - by statute / law
 - by a tribunal or body to which the power to create the office has been delegated
- **Who Creates a Public Office**
 - GENERAL RULE: The creation of a public office is PRIMARILY a Legislative Function.
 - Exceptions:
 - o where the offices are created by the Constitution;
 - o where the Legislature delegates such power.
- **Legislature should Validly Delegate the Power to Create a Public Office**
 - *Or else, the office is inexistent.* The President's authority to "reorganize within one year the different executive departments, bureaus and other instrumentalities of the Government" in order to promote efficiency in the public service is limited in scope and cannot be extended to other matters not embraced therein. Therefore, an executive order depriving the Courts of First Instance of jurisdiction over cases involving recovery of taxes illegally collected is null and void, as *Congress alone* has the "power to define, prescribe and apportion the jurisdiction of the various courts." (U.S.T. v. Board of Tax Appeals)

10. Methods of Organizing Public Offices

Method	Composition	Efficiency
Single-head	one head assisted by subordinates	Swifter decision and action but may sometimes be hastily made
Board System	collegial body for formulating policies and implementing programs	Mature studies and deliberations but may be slow in responding to issues and problems

11. Modification and Abolition of Public Office

- GENERAL RULE: The power to create an office includes the power to modify or abolish it (i.e. Legislature generally has this power)
 - EXCEPTIONS:
 - o Where the Constitution prohibits such modification / abolition;
 - o Where the Constitution gives the people the power to modify or abolish the office [i.e. Recall]
 - *Abolishing an office also abolishes unexpired term.* The legislature's abolition of an office (i.e. court) also abolishes the

unexpired term. The legislative power to create a court carries with it the power to abolish it. (Ocampo v. Secretary of Justice)

- Is Abandonment = Abolition? When a public official voluntarily accepts an appointment to an office newly created by law -- which new office is incompatible with the former -- he will be considered to have abandoned his former office.
 - Except when the public official is constrained to accept because the non-acceptance of the new appointment would affect public interest (Zanduetta v. De la Costa)

12. Estoppel in Denying Existence of Office

- A person is estopped from denying that he has occupied a public office when he has acted as a public officer -- more so when he has received public monies by virtue of such office.

B. Public Officer

1. Definition

- (What he is) He performs governmental public functions / duties which involve the exercise of discretion (≠ clerical or manual)
- (How he became Public Officer) by virtue of direct provision of law, popular election, or appointment by competent authority.
- (Most Important Element of his Office) This most important characteristic creates and confers to an office a delegation to the individual of some of the sovereign functions of government [i.e. legislative, judicial or executive], which delegation attaches to him for the time being. Such portion of sovereignty should be exercised for the public benefit. This characteristic distinguishes his public office from public employment. (Laurel v. Desierto, April 12, 2002)
- (Who MAY BE Public Officers) The term "officer" includes any government employee, agent, or body authorized to exercise governmental power in performing particular acts or functions (Sec. 2(14) Administrative Code)
 - ▶ *Persons in authority and their agents.* Article 152, Revised Penal Code.
 - ◇ A PERSON IN AUTHORITY is any person, either an individual or a member of a governmental body, who is directly vested with jurisdiction.
 - The barrio captains and barangay chairmen are included.
 - For RPC Articles 148 [Direct Assaults] and 151 [Resistance and Disobedience], teachers, professors, and persons charged with the supervision of public or duly recognized private schools, colleges and universities are included.
 - ◇ An AGENT of a person in authority is charged with the maintenance of public order and the protection and security of life and property.
 - They become such either by direct provision of law, by election or by a competent authority's appointment.
 - Examples are barrio captain, barrio councilman, barrio policeman, barangay leader, and any person who comes to the aid of persons in authority.

▶ *Temporary performer of public functions.* A person performing public functions - even temporarily - is a public official. Here, a laborer temporarily in charge of issuing summons and subpoenas for traffic violations in a judge's sala was convicted for bribery under RPC 203. (Maniego v. People)

▶ *Money order-sorter and -filer.* A person sorting and filing money orders in the Auditor's Office of the Bureau of Posts is obviously doing a public function or duty. Such

person here was convicted for infidelity in the custody of documents. (*People v. Paloma*)

- (Who are **NOT** Public Officers)
 - ▶ Special policemen salaried by a private entity and patrolling only the premises of such private entity (*Manila Terminal Co. v. CIR*);
 - ▶ Concession forest guards (*Martha Lumber Mill v. Lagradante*);
 - ▶ Company cashier of a private corporation owned by the government (*Tanchoco v. GSIS*)

2. A person cannot be compelled to accept a public office.

- EXCEPTIONS:
 - ⊖ When citizens are required, under conditions provided by law, to render personal military or civil service (Sec. 4, Art. II, 1987 Const.);
 - ⊖ When a person who, having been elected by popular election to a public office, refuses without legal motive to be sworn in or to discharge the duties of said office.

3. Public Officer's Power = Delegated (≠Presumed)

- A public official exercises power, not rights. The government itself is merely an agency through which the will of the state is expressed and enforced. Its officers therefore are likewise agents entrusted with the responsibility of discharging its functions. As such, there is no presumption that they are empowered to act. There must be a DELEGATION of such authority, either express or implied. In the absence of a valid grant, they are devoid of power (*Villegas v. Subido*).

C. Classification of Public Offices and Public Officers

Creation	Constitutional Statutory
Public Body Served	National Local
Department of government to which their functions pertain	Legislative Executive Judicial
Nature of functions	Civil Military
Exercise of Judgment or Discretion	Quasi-judicial Ministerial
Legality of Title to office	De Jure De Facto
Compensation	Lucrative Honorary

D. De Facto Officers

1. De Facto Doctrine

It is the principle that a person who is admitted and sworn into office by the proper authority is deemed to be rightfully in such office until:

- (a) he is ousted by judicial declaration in a proper proceeding; or
- (b) his admission thereto is declared void.

Doctrine's Purpose: to ensure the orderly functioning of government. The public cannot afford to check the validity of the officer's title each time they transact with him.

2. De Facto Officer Defined

- A person is de facto officer when the duties of his office are exercised under ANY of the following circumstances:

- ⊖ There is no known appointment or election, but people are induced by circumstances of reputation or acquiescence to suppose that he is the officer he assumes to be. Consequently, people do not to inquire into his authority, and they submit to him or invoke his action;
- ⊖ He possessed public office under color of a known and valid appointment or election, but he failed to conform to some precedent requirement or condition (e.g., taking an oath or giving a bond);
- ⊖ He possessed public office under color of a known election or appointment, but such is VOID because:
 - He's ineligible;
 - The electing or appointing body is not empowered to do such;
 - His exercise of his function was defective or irregular;
 - (Important) The public does NOT KNOW of such ineligibility, want of power, or defect being.
- ⊖ He possessed public office under color of an election or an appointment by or pursuant to a public, unconstitutional law, before the same is adjudged to be such.
 - Note: What is unconstitutional is the officer's appointment to an office not legally existing, (≠ creation of an unconstitutional office). (*Norton v. County of Shelby*)

• **Officer De Jure v. Officer De Facto**

	De Jure	De Facto
Requisites	A de jure office exists; He is legally qualified for the office; He is lawfully chosen to such office; He undertakes to perform the duties of such office according to law's prescribed mode.	De jure office; He assumed office under color of right or general acquiescence by the public; He actually and physically possessed the office in good faith.
Basis of Authority	Right: He has the lawful right / title to the office	Reputation: He possesses office and performs its duties under color of right, but he is not technically qualified to act in all points of law
How ousted	Cannot be ousted.	In a direct proceeding (quo warranto); (≠ collaterally)
Validity of official acts	Valid, subject to exceptions (e.g., acting beyond his scope of authority, etc.)	Valid as to the public until his title to the office is adjudged insufficient.
Rule on Compensation	Rightfully entitled to compensation; The principle "No work, no pay" is inapplicable to him.	Conditionally entitled to receive compensation: only when no de jure officer is declared; He is paid only for actual services rendered.

• **Officer De Facto v. Intruder**

	De Facto	Intruder
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Nature	He becomes officer under any of the 4 circumstances discussed under Part II (above).	He possesses office and performs official acts without actual or apparent authority.
Basis of authority	Color of right or title to office	None. Neither lawful title nor color of right to office.
Validity of "official" acts	Valid as to the public until his title to the office is adjudged insufficient	Absolutely void; His acts can be impeached at any time in any proceeding (unless and until he continues to act for a long time, creating a presumption of his right to act)
Rule on compensation	Entitled to receive compensation only when no de jure officer is declared and only for actual services rendered.	Not entitled to compensation at all.

- An intruder / usurper may be presumed a de facto officer with the passage of time, when the public presumes in their minds IN GOOD FAITH that the intruder is rightfully acting as a public officer.

3. Elements of a De Facto Officership

- (1) De jure office
- (2) Color of right or general acquiescence by the public;
- (3) Actual physical possession of the office in good faith

Who are NOT considered De Facto Officers?

- A judge who has accepted an appointment as finance secretary and yet renders a decision after his acceptance (Luna v. Rodriguez);
- A judge whose position has already been lawfully abolished, and yet promulgates a decision in a criminal case after the abolition and over the fiscal's objection (People v. So)

4. Office created under an unconstitutional statute

- The prevalent view is that a person appointed or elected in accordance with a law later declared to be unconstitutional may be considered de facto at least before the declaration of unconstitutionality.

5. Legal Effect of Acts of De Facto Officers

- As regards the officers themselves: A party suing or defending in his own right as a public officer must show that he is an officer de jure. It is not sufficient that he be merely a de facto officer.
- As regards the public and third persons: The acts of a de facto officer are valid as to third persons and the public until his title to office is adjudged insufficient.
RATIONALE: For the public's protection.
- De Facto Officer's Official Acts ≠ subject to collateral attack
 - ⚡ RULE: A de facto officer's and his acts' validity cannot be collaterally questioned (in proceedings where he is not a party, or were not instituted to determine the very question.
 - ⚡ REMEDY: Quo warranto proceedings filed by:
 - The person claiming entitlement to the office;
 - The Republic of the Philippines (represented by the Solicitor-General or a public prosecutor)

6. Liabilities of De Facto Officers

- A de facto officer generally has the same degree of liability in accountability for official acts like a de jure officer.
- The de facto officer may be liable for all imposable penalties for ANY of the following acts:
 - ⚡ usurping or unlawfully holding office;
 - ⚡ exercising the functions of public office without lawful right;
 - ⚡ ineligibility for the public office as required by law
- The de facto officer cannot excuse responsibility for crimes committed in his official capacity by asserting his de facto status.

7. Right to Compensation of De Facto Officer

- GENERAL RULE: None. A de facto officer cannot sue for the recover of salary, fees or other emoluments attached to the office, for the duties he has performed. His acts, as far as he himself is concerned, are theoretically void.

MORE SO, the rightful incumbent may recover from the *de facto* officer the salary received by the latter during his wrongful tenure, even though he entered into the office in good faith and under color of title (Monroy v CA).

- EXCEPTIONS

⊖ Where there is no *de jure* public officer, the officer *de facto* who in good faith has had possession of the office and has discharged the duties pertaining thereto is legally entitled to the emoluments of the office.

⊖ One who becomes a public officer de facto in good faith and renders the services required of the office may recover the compensation.

⊖ When the de jure officer assumed another position under protest for which she was also compensated, in the case of Gen. Manager, Philippine Ports Authority v. Monserate (April 17, 2002)

⇒ A de facto officer, not having good title, takes the salaries at his risk and must account to the de jure officer (when there's one) for whatever salary he received during the period of his wrongful tenure, even if he occupied the office in good faith.

⇒ BUT HERE, the de jure officer assumed another position under protest, for which she received compensation. Thus, while her assumption to the said position and her acceptance of the corresponding emoluments do not constitute abandonment of her rightful office, she cannot recover full back wages for such. She is only entitled to back pay differentials between the salary rates for the lower position she assumed and the position she is rightfully entitled to.

II. ELIGIBILITY AND QUALIFICATIONS

A. Definition

- Eligibility: endowment / requirement / accomplishment that fits one for a public office.
- Qualification: endowment / act which a person must do before he can occupy a public office.

Note: Failure to perform an act required by law could affect the officer's title to the given office. Under BP 881, the office of any elected official who fails or refuses to take his oath of office within six months from his proclamation shall be considered vacant unless said failure is for cause or causes beyond his control.

B. Power to Prescribe Qualifications

- GENERAL RULE: Congress is empowered to prescribe the qualifications for holding public office.

In the absence of constitutional inhibition, Congress has the same right to provide disqualifications that it has to provide qualifications for office.

- RESTRICTIONS on the Power of Congress to Prescribe Qualifications:

- ⊖ Congress cannot exceed its constitutional powers;
- ⊖ Congress cannot impose conditions of eligibility inconsistent with constitutional provisions;
- ⊖ The qualification must be germane to the position ("reasonable relation" rule);
- ⊖ Where the Constitution establishes specific eligibility requirements for a particular constitutional office, the constitutional criteria are exclusive, and Congress cannot add to them except if the Constitution expressly or impliedly gives the power to set qualifications.

⊖ Congress cannot prescribe qualifications so detailed as to practically amount to making a legislative appointment: it is unconstitutional and therefore void for being a usurpation of executive power – examples:

☞ Extensions of the terms of office of the incumbents;

☞ Designating an unqualified person. The People's Court Act, which provided that the President could designate Judges of First Instance, Judges-at-large of First Instance or Cadastral Judges to sit as substitute Justices of the Supreme Court in treason cases without them necessarily having to possess the required constitutional qualifications of a regular Supreme Court Justice. (Vargas v. Rilloraza);

☞ A proviso which limits the choices of the appointing authority to only one eligible, e.g. the incumbent Mayor of Olongapo City (Flores v. Drilon);

☞ Automatic transfer to a new office. A legislative enactment abolishing a particular office and providing for the automatic transfer of the incumbent officer to a new office created (contemplated in Manalang v. Quitariano);

☞ Requiring inclusion in a list. A provision that impliedly prescribes inclusion in a list submitted by the Executive Council of the Phil. Medical Association as one of the qualifications for appointment; and which confines the selection of the members of the Board of Medical Examiners to the 12 persons included in the list (Cuyeqkenq v. Cruz);

C. Time of Possession of Qualifications

- At the time specified by the Constitution or law.
- If time is unspecified, 2 views:
 1. qualification during commencement of term or induction into office;
 2. qualification / eligibility during election or appointment
- Eligibility is a continuing nature, and must exist throughout the holding of the public office. Once the qualifications are lost, the public officer forfeits the office.

⊖ No estoppel in ineligibility. Knowledge of ineligibility of a candidate and failure to question such ineligibility before or during the election is not a bar to questioning such eligibility after such ineligible candidate has won and been proclaimed. Estoppel will not apply in such a case. (Castaneda v. Yap)

⊖ Citizenship requirement should be possessed on start of term (i.e. ≠ on filing candidacy). The Local Government Code does not specify any particular date or time when the candidate must possess the required citizenship, unlike for residence and age. The requirement is to ensure that no alien shall govern our people and country or a unit of territory thereof. An official begins to govern or discharge his functions only upon proclamation and on start of his term. This liberal interpretation gives spirit, life and meaning to our law on qualifications consistent its purpose. (Frialdo v. COMELEC, June 28, 1996)

D. Eligibility is Presumed

- IN FAVOR of one who has been elected or appointed to public office.
- The right to public office should be strictly construed against ineligibility.

E. Qualifications USUALLY Prescribed

1. For President (Sec. 2, Art. VI, Constitution) and Vice President (Sec. 3, Art. VII, Constitution)

- ⊃ Natural-born citizen
- ⊃ 40 years old on election day
- ⊃ Philippine resident for at least 10 years immediately preceding election day

2. For Senator (Sec. 3, Art. VI, Constitution)

- ⊃ Natural-born citizen
- ⊃ 35 years old on election day
- ⊃ able to read and write
- ⊃ registered voter
- ⊃ resident of the Philippines for not less than two years immediately preceding election day

3. For Congressmen (Sec. 6, Art. VI, Constitution)

- ⊃ Natural-born citizen
- ⊃ 25 years old on election day
- ⊃ able to read and write
- ⊃ registered voter in district in which he shall be elected
- ⊃ resident thereof for not less than one year immediately preceding election day

4. Supreme Court Justice

- ⊃ Natural born citizen
- ⊃ at least 40 years old
- ⊃ 15 years or more a judge or engaged in law practice
- ⊃ of proven CIPI (competence, integrity, probity and independence)

5. Civil Service Commissioners (Sec. 1 [1], Art. IXB. Constitution)

- ⊃ Natural-born citizen
- ⊃ 35 years old at time of appointment
- ⊃ proven capacity for public administration
- ⊃ not a candidate for any elective position in election immediately preceding appointment

6. COMELEC Commissioners (Sec. 1[1], Art. IXC)

- ⊃ Natural-born citizen
- ⊃ 35 years old at time of appointment
- ⊃ college degree holder
- ⊃ not a candidate for elective position in election immediately preceding appointment

- ⊃ chairman and majority should be members of the bar who have been engaged in the practice of law for at least 10 years

7. COA Commissioners

- ⊃ Natural-born citizen
- ⊃ 35 years old at time of appointment
- ⊃ CPA with >10 year of auditing experience or
- ⊃ Bar member engaged in practice of law for at least 10 years
- ⊃ Not candidates for any elective position in election immediately preceding appointment.
- *“Practice of Law” defined.* Practice of law means any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience. Generally, to practice law is to give notice or render any kind of service which requires the use in any degree of legal knowledge or skill. (Cayetano v. Monsod)
- *“Residency” defined.* In election law, residence refers to domicile, i.e. the place where a party actually or constructively has his permanent home, where he intends to return. To successfully effect a change of domicile, the candidate must prove an actual removal or an actual change of domicile. Here, it was held that leasing a condominium unit in the district was not to acquire a new residence or domicile but only to qualify as a candidate (here, as Congressman). (Aquino v. COMELEC)
- *Presumption in favor of domicile of origin.* Domicile requires the twin elements of actual habitual residence and *animus manendi* (intent to permanently remain). Domicile of origin is not easily lost; it is deemed to continue absent a clear and positive proof of a successful change of domicile. (Marcos v. COMELEC)

F. Religious Test/Qualification ≠ Required

- for the exercise of civil or political rights. (Art. III, Sec. 5, 1987 Constitution)

G. Disqualifications to Hold Public Office

- **IN GENERAL:** Individuals who lack ANY of the qualifications prescribed by the Constitution or by law for a public office are ineligible (i.e. disqualified from holding such office).
- **General Constitutional Disqualifications**
 - a) Losing candidates should not be appointed to any governmental office within one year after such election. (Art. IX-B Sec. 6)
 - b) Elective officials during their tenure are ineligible for appointment or designation in ANY capacity to ANY public office or position (Art. IX-B Sec. 7(1))
 - c) Appointive officials shall not hold any other governmental position.
 - ⇒ Unless otherwise allowed by law or his position’s primary functions (Art. IX-B Sec 7 (2))
- Note: There is no violation when another office is held by a public officer in an *ex officio* capacity (where one can’t receive compensation or other honoraria anyway), as provided by law and as required by the primary functions of his office (National Amnesty Commission v COA, September 8, 2004)
- **Specific Constitutional Disqualifications**
 - 1) The President, Vice President, the Members of the Cabinet and their deputies or assistants shall not hold any other office or employment during their tenure, UNLESS otherwise provided in the Constitution, (Art. VII, Sec. 13)
 - 2) No Senator or Member of the House of Representatives during his term 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, or else he forfeits his seat. He shall

also not be appointed to any office when such was created or its emoluments were increased during his term. (Art. VI, Sec 13)

- 3) Members of the Supreme Court and other courts established by law shall not be designated to any agency performing quasi-judicial or administrative functions. (Art. VIII, Sec. 12)
- 4) Members of the Constitutional Commission during their tenure shall not hold any other office or employment. (Art. IX-A, Sec. 2)
- 5) Previous disqualification applies to the Ombudsman and his Deputies. (Art. XI, Sec. 8)
- 6) The Ombudsman and his Deputies are disqualified to run for any office in the election immediately succeeding their cessation from office. (Art. XI, Sec. 11)
- 7) Members of Constitutional Commissions, the Ombudsman and his Deputies must not have been candidates for any elective position in the elections immediately preceding their appointment (Art IX-B, Sec. 1; Art. IX-C, Sec. 1; Art. IX-D, Sec. 1; Art XI, Sec. 8)
- 8) Members of Constitutional Commissions, the Ombudsman and his Deputies are appointed to 7-year term, without reappointment (Sec. 1(2) of Arts. IX-B, C, D; Art. XI, Sec. 11)
- 9) The President’s spouse and relatives by consanguinity or affinity within the fourth civil degree during his tenure shall not 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. (Art. VIII, Sec. 13)

• **Other Disqualifications**

- 1. *Mental or physical incapacity*
- 2. *Misconduct or crime:* persons convicted of crimes involving moral turpitude are USUALLY disqualified from holding public office.
- 3. *Impeachment*
- 4. *Removal or suspension from office:* ≠ presumed → non-imposable when such ineligibility is not constitutional or statutory declared.
- 5. *Previous tenure of office:* for example, an appointed Ombudsman is absolutely disqualified for reappointment (Article XI, Constitution).
- 6. *Consecutive terms limit:*
 - a. Vice-President = 2 consecutive terms
 - b. Senator = 2 consecutive terms
 - c. Representative = 3 consecutive terms
 - d. Elective local officials = 3 consecutive terms (Sec. 8, Art. X, Constitution)
 - ▶ Public officer’s voluntary renunciation of office for any length of time ≠ an interruption in the continuity of his service for the full term for which he was elected.
- 7. *Holding more than one office:* to prevent offices of public trust from accumulating in a single person, and to prevent individuals from deriving, directly or indirectly, any pecuniary benefit by virtue of their dual position-holding.

▶ Civil Liberties Union v. Executive Secretary

⊖ Section 7, Article IX-B of the Constitution generally prohibits elective and appointive public officials from holding multiple offices or employment in the government unless they are otherwise allowed by law or by the primary functions of their position. This provision does NOT cover the President, Vice-President and cabinet members – they are subject to a stricter prohibition under Section 13 of Article VII.

⊖ To apply the exceptions found in Section 7, Article IX-B to Section 13, Article VII would obliterate the distinction set by the framers of the Constitution as to the high-ranking officials of the Executive branch.

⊖ However, public officials holding positions without additional compensation in ex-officio capacities as provided by law and as required by their office's primary functions are not covered by the Section 13, Article VII prohibition.

8. Relationship with the appointing power

- ▶ Exceptions to rule on nepotism:
 - ⊖ persons employed in a confidential capacity
 - ⊖ teachers
 - ⊖ physicians
 - ⊖ members of the Armed Forces of the Philippines

9. Under the Local Government Code

- a. Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by 1 year or more of imprisonment, within 2 years after serving sentence;
- b. Those removed from office as a result of an administrative case;
- c. Those convicted by final judgment for violating the oath of allegiance to the Republic;
- d. Those with dual citizenship;
- e. Fugitive from justice in criminal or non-political cases here or abroad;
- f. Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of the Local Government Code;
- g. The insane or feeble-minded.

III. FORMATION OF OFFICIAL RELATION

A. Modes of Commencing Official Relation

- ▶ Election
- ▶ Appointment
- ▶ Others:
 - ⊖ Succession by operation of law;
 - ⊖ Direct provision of law, e.g. ex-officio officers

B. Election

- ▶ Selection or designation by a popular vote

C. Appointment

1. Definition

	Designation	Appointment
Definition	Imposition of additional duties upon existing	Appointing authority selects an individual

	office	who will occupy a certain public office
Extent of Powers	Limited	Comprehensive
Security of tenure?	No.	Yes.
Is prior/1st office abandoned when...	...a 2nd designated position is assumed? NO	...a 2nd appointive position is assumed? Usually YES

- *Political.* Appointment is generally a political question so long as the appointee fulfills the minimum qualification requirements prescribed by law.
- *Vacancy for Validity.* For the appointment to be valid, the position must be vacant (*Costin v Quimbo*)

2. Nature of Power to Appoint

- The power to appoint is intrinsically an executive act involving the exercise of discretion. (*Concepcion v. Paredes*)
- *Must be unhindered and unlimited by Congress.* Congress cannot either appoint a public officer or impose upon the President the duty to appoint any particular person to an office. The appointing power is the exclusive prerogative of the President, upon which no limitations may be imposed by Congress, EXCEPT those:
 - ⊖ requiring the concurrence of the Commission on Appointments; and
 - ⊖ resulting from the exercise of the limited legislative power to prescribe the qualifications to a given appointive office. (*Manalang v. Quitoriano*)
- The President's power to appoint under the Constitution should necessarily have a reasonable measure of freedom, latitude, or discretion in choosing appointees. (*Cuyegkeng v. Cruz*)
- Where only one can qualify for the posts in question, the President is precluded from exercising his discretion to choose whom to appoint. Such supposed power of appointment, sans the essential element of choice, is no power at all and goes against the very nature itself of appointment. (*Flores v. Drilon*)

3. Classification of Appointments

- Permanent:
 - ▶ the permanent appointee:
 - ⊖ must be qualified
 - ⊖ must be eligible
 - ⊖ is constitutionally guaranteed security of tenure
 - ▶ (Duration) until lawful termination.
 - ▶ Note: Conditional appointments ≠ permanent.
- Temporary:
 - ▶ an acting appointment;
 - ▶ the temporary appointee NEED NOT be qualified or eligible;
 - ▶ (No Security of Tenure) revocable at will: just cause or valid investigation UNNECESSARY;
 - ⊖ A temporary appointee is like a designated officer – they:
 - ▶ occupy a position in an acting capacity and
 - ▶ do not enjoy security of tenure. (*Sevilla v CA*)
 - ⊖ Even a Career Service Officer unqualified for the position is deemed temporarily-appointed. Thus he does not enjoy security of tenure – he is terminable at will.

- ⊖ A public officer who later accepts a temporary appointment terminates his relationship with his former office. (*Romualdez III v CSC*)
- ⊖ EXCEPT *Fixed-Period Temporary Appointments*: may be revoked **ONLY** at the period's expiration. Revocation before expiration must be for a valid cause.
- ▶ (Duration) until a permanent appointment is issued.

4. Steps in Appointing Process

- For Appointments requiring confirmation:

Regular Appointments (NCIA)

1. President nominates.
2. Commission on Appointments confirms.
3. Commission issues appointment.
4. Appointee accepts.

Ad-Interim Appointments (NIAC)

1. President nominates.
2. Commission issues appointment.
3. Appointee accepts.
4. Commission on Appointments confirms.

- For Appointments not requiring confirmation (AIA)

1. Appointing authority appoints.
2. Commission issues appointment.
3. Appointee accepts.

Note: If a person is appointed to the career service of the Civil Service, the Civil Service Commission must bestow attestation.

3. Presidential Appointees

- Who can be nominated and appointed by only WITH the Commission on Appointments' consent?
 - ▶ Heads of the executive departments (Art. VII, Sec. 16, 1987 Const.);
 - ▶ Ambassadors (*ibid*);
 - ▶ Other public ministers and consuls (*ibid*);
 - ▶ Officers of the armed forces from the rank or colonel or naval captain (*ibid*);
 - ▶ Other officers whose appointments are vested in him by the Constitution (*ibid*), including Constitutional Commissioners (Art. IX-B, Sec. 1 (2) for CSC; Art. IX-C, Sec. 1 (2) for COMELEC; Art. IX-D, Sec. 1 (2) for COA).
- Who can the President appoint WITHOUT CA's approval?
 - ▶ All other officers of the government whose appointments are not otherwise provided for by law;
 - ▶ Those whom he may be authorized by law to appoint;
 - ▶ Members of the Supreme Court;
 - ▶ Judges of lower courts;
 - ▶ Ombudsman and his deputies
- Kinds of Presidential Appointments
 - ▶ Regular: made by the President while Congress is in session after the nomination is confirmed by the Commission of Appointments, and continues until the end of the term.
 - ▶ Ad interim: made while Congress is not in session, before confirmation by the Commission on Appointments; immediately effective and ceases to be valid if disapproved or bypassed by the Commission on Appointments. This is a permanent appointment and it being subject to confirmation does not alter its permanent character.
 - *Efficient*. Recess appointment power keeps in continuous operation the business of government when Congress is not in session. The individual chosen may thus qualify and perform his function without loss of time.
 - *Duration*. The appointment shall cease to be effective upon rejection by the Commission on Appointments, or if not acted upon, at the adjournment of the next session, regular or special, of Congress.

- *Permanent*. 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. (*Matibag v. Benipayo April 2, 2002*)
- ≠ *Acting*. An *ad interim* appointment is distinguishable from an "acting" appointment which is merely temporary, good until another permanent appointment is issued.
- *Applicable to COMELEC Commissioners*, being permanent appointments, do not violate the Constitutional prohibition on temporary or acting appointments of COMELEC Commissioners.
- *By-passed Appointee may be Reappointed*. Commission on Appointments' failure to confirm an *ad interim* appointment is NOT disapproval. An *ad interim* appointee disapproved by the COA cannot be reappointed. But a by-passed appointee, or one whose appointment was not acted upon the merits by the COA, may be appointed again by the President.

D. Qualification Standards and Requirements under the Civil Service Law

1. Qualification Standards

- It enumerates the minimum requirements for a class of positions in terms of education, training and experience, civil service eligibility, physical fitness, and other qualities required for successful performance. (Sec. 22, Book V, Administrative Code)
- The Departments and Agencies are responsible for continuously establishing, administering and maintaining the qualification standards as an incentive to career advancement. (Sec. 7, Rule IV, Omnibus Rules)
- Such establishment, administration, and maintenance shall be assisted and approved by the CSC and shall be in consultation with the Wage and Position Classification Office (*ibid*)
- It shall be established for all positions in the 1st and 2nd levels (Sec. 1, Rule IV, Omnibus Rules)

2. Political Qualifications for an Office (i.e. membership in a political party)

- GENERAL RULE: Political qualifications are Not Required for public office.
- EXCEPTIONS:
 - Membership in the electoral tribunals of either the House of Representatives or Senate (Art. VI, Sec. 17, 1987 Const.);
 - Party-list representation;
 - Commission on Appointments;
 - Vacancies in the Sanggunian (Sec. 45, Local Government Code)

3. Junk Property Qualifications

- They are against the nature and essence of the Republican system ordained in our Constitution and its social justice principle. Since sovereignty resides in the people, it is necessarily implied that the right to vote and to be voted should not be dependent upon a candidate's wealth. Poor people should also be allowed to be elected to public office because social justice presupposes equal opportunity for both rich and poor. (*Maquera v. Borra* and *Aurea v. COMELEC*)

4. Citizenship

- Aliens not eligible to public office
- To ensure that no alien shall govern our people and country or a unit of territory thereof. (*Frivaldo v. COMELEC, June 28, 1996*)

5. Effect of removal of qualifications during the term

- Termination from office.

6. Effect of pardon upon the disqualification to hold public office

- GENERAL RULE: Pardon will not restore the right to hold public office. (Art. 36, Revised Penal Code)
- EXCEPTIONS:
 - When the pardon's terms expressly restores such (Art. 36, RPC);
 - When the reason for granting pardon is non-commission of the imputed crime. (Garcia v. Chairman, COA)

E. Discretion of Appointing Official

- *Presumed.* Administrators of public officers, primarily the department heads should be entrusted with plenary, or at least sufficient, discretion. Their position most favorably determines who can best fulfill the functions of a vacated office. There should always be full recognition of the wide scope of a discretionary authority, UNLESS the law speaks in the most mandatory and peremptory tone, considering all the circumstances, (Reyes v. Abeleda)
- *Example of a Discretionary Act.* Appointment is an essentially discretionary power. It must be performed by the officer in whom it is vested, the only condition being that the appointee should possess the qualifications required by law. (Lapinid v. CSC)
- *Scope.* The discretion of the appointing authority is not only in the choice of the person who is to be appointed but also in the nature and character of the appointment intended (i.e., whether the appointment is permanent or temporary).
- *Inclusive Power.* The appointing authority holds the power and prerogative to fulfill a vacant position in the civil service.
- *Widely used (need not state reason) in Transferring, Reinstating, Reemploying or Certifying.* To hold that the Civil Service Law requires filling up any vacancy by promotion, transfer, reinstatement, reemployment, or certification IN THAT ORDER would be tantamount to legislative appointment which is repugnant to the Constitution. The Civil Service Law requirement under the that the appointing power set forth the REASON for failing to appoint the officer next in rank applies only in cases of promotion and not in cases where the appointing power chooses to fill the vacancy by transfer, reinstatement, reemployment or certification, not necessarily in that order. (Pineda v. Claudio)
- *Promotion of "next-in-rank" career officer ≠ Mandatory.* The appointing authority should be allowed the choice of men of his confidence, provided they are qualified and eligible.
- *When Abused, use Mandamus.* Where the palpable excess of authority or abuse of discretion in refusing to issue promotional appointment would lead to manifest injustice, mandamus will lie to compel the appointing authority to issue said appointments. (Gesolqon v. Lacson)
- *"Upon recommendation" = Merely Advisory.* Sec. 9, Chapter II, Title III Book IV of the Admin Code provides that all provincial and city prosecutors and their assistants shall be appointed by the President upon recommendation of the Secretary of Justice. The phrase "upon recommendation of the Sec. of Justice" should be interpreted to be a mere advise = persuasive in character, BUT is not binding or obligatory upon the person to whom it is made.

F. Effectivity of Appointment

- Immediately upon appointing authority's issuance. (Rule V, Sec. 10, Omnibus Rules).

G. Effects of a complete, final and irrevocable appointment

- GENERAL RULE: An appointment, once made, is irrevocable and not subject to reconsideration.
 - ▶ It vests a legal right → It cannot be taken away EXCEPT for cause, and with previous notice and hearing (due process).
 - ▶ It may be issued and deemed complete before acquiring the needed assent, confirmation, or approval of some other officer or body.
- EXCEPTIONS:
 - ▶ Appointment = Absolute Nullity (Mitra v. Subido);
 - ▶ Appointee commits fraud (Mitra v. Subido);
 - ▶ Midnight appointments
 - *General Rule:* A President or Acting President shall not appoint 2 months immediately before the next presidential elections until his term ends. (Art. VII, Sec. 15, 1987 Const.)
 - *Exception:* Temporary appointments to executive positions when continued vacancies will prejudice public service or will endanger public safety.

H. Civil Service Commission's (CSC's) Jurisdiction

- *Exclusive Jurisdiction*
 - ▶ Disciplinary cases
 - ▶ cases involving "personnel action" affecting the Civil Service employees
 - ⊖ appointment through certification
 - ⊖ promotion
 - ⊖ transfer
 - ⊖ reinstatement
 - ⊖ reemployment
 - ⊖ detail, reassignment
 - ⊖ demotion
 - ⊖ separation
 - ▶ employment status
 - ▶ qualification standards
- *Recall.* Includes the authority to recall an appointment which has been initially approved when it is shown that the same was issued in disregard of pertinent CSC laws, rules and regulations.
- *Review Appointee's Qualifications.* The only function of the CSC is to review the appointment in the light of the requirements of the Civil Service Law, and when it finds the appointee to be qualified and all other legal requirements have been otherwise satisfied, it has no choice but to attest to the appointment. (Lapinid v. CSC)
- *What it cannot do.*
 - ▶ It cannot order the replacement of the appointee simply because it considers another employee to be better qualified. (Lapinid v. CSC)
 - ▶ The CSC cannot co-manage or be a surrogate administrator of government offices and agencies.
 - ▶ It cannot change the nature of the appointment extended by the appointing officer. (Luego v. CSC)

I. Appointments to the Civil Service

- **SCOPE:** Embraces all branches, subdivisions, instrumentalities and agencies of the Government, including GOCCs with original charters (Art. IX-B Sec. 2(1), Constitution)
- **Classes of Service**
 - a) **Career Service** – Entrance based on merit and fitness determined by competitive examinations, or based on highly technical qualifications, opportunity for

advancement to higher career positions and security of tenure.

b) Non-career Service – Entrance on bases other than those of the usual tests. Tenure limited to a period specified by law or which is coterminous with the appointing authority or the duration of a particular project. Ex. elective officials, Department Heads and Members of Cabinet

• **Requisites:**

▶ Appoint only according to merit and fitness, to be determined as far as practicable.

▶ Require a competitive examination.

→ **Exceptions:** (Positions where Appointees are Exempt from Competitive Examination Requirements)

⊖ *Policy determining* - in which the officer lays down principal or fundamental guidelines or rules; or formulates a method of action for government or any of its subsidiaries

⊖ *Primarily Confidential* – denoting not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which ensures freedom of intercourse without embarrassment or freedom from misgivings or betrayals on confidential matters of the state (“Proximity Rule” as enunciated in *De los Santos v Mallare*)

⊖ *Highly Technical* – requires possession of technical skill or training in a superior degree. ex. City Legal Officer

NOTE: It is the nature of the position which determines whether a position is policy determining, primarily confidential or highly technical

• **Other Personnel Actions**

▶ *Promotion* is a movement from one position to another with increase in duties and responsibilities as authorized by law and is usually accompanied by an increase in pay.

⊖ Next-in-rank Rule.

⚡ The person next in rank shall be given PREFERENCE in promotion when the position immediately above his is vacated.

⚡ BUT the appointing authority still exercises discretion and is not bound by this rule, although he is required to specify the “special reason or reasons” for not appointing the officer next-in-rank.

⊖ Automatic Reversion Rule.

⚡ All appointments involved in a chain of promotions must be submitted simultaneously for approval by the Commission.

⚡ The disapproval of the appointment of a person proposed to a higher position invalidates the promotion of those in the lower positions and automatically restores them to their former positions.

⚡ However, the affected persons are entitled to payment of salaries for services actually rendered at a rate fixed in their promotional appointments. (Sec. 13 of the Omnibus Rules Implementing Administrative Code)

⚡ Requisites:

- a) series of promotions
- b) all promotional appointments are simultaneously submitted to the Commission for approval
- c) the Commission disapproves the appointment of a person to a higher position.

▶ *Appointment through Certification* is issued to a person who is:

⊖ selected from a list of qualified persons certified by the Civil Service Commission from an appropriate register of eligibles

⊖ qualified

▶ *Transfer* is a movement from one position to another which is of equivalent rank, level or salary without break in service.

⊖ This may be imposed as an administrative remedy.

⊖ If UNconsented = violates security of tenure.

EXCEPTIONS:

⚡ Temporary Appointee

⚡ Career Executive Service Personnel whose status and salaries are based on ranks (≠ positions)

▶ *Reinstatement.* It is technically the issuance of a new appointment and is discretionary on the part of the appointing power.

⊖ It cannot be the subject of an application for a writ of mandamus.

⊖ Who may be reinstated to a position in the same level for which he is qualified:

⚡ Any permanent appointee of a career service position

⚡ No commission of delinquency or misconduct, and is not separated.

⊖ *Same effect as Executive Clemency*, which completely obliterates the adverse effects of the administrative decision which found him guilty of dishonesty. He is restored *ipso facto* upon grant of such. Application for reinstatement = unnecessary.

▶ *Detail* is the movement of an employee from one agency to another without the issuance of an appointment.

⊖ Only for a limited period.

⊖ Only for employees occupying professional, technical and scientific positions.

⊖ Temporary in nature.

▶ *Reassignment.* An employee may be reassigned from one organizational unit to another in the SAME agency.

⊖ It is a *management prerogative* of the CSC and any dept or agency embraced in the Civil Service.

⊖ It does not constitute *removal without cause*.

⊖ Requirements:

⚡ NO reduction in rank, status or salary.

⚡ Should have a definite date or duration (c.f. Detail). Otherwise, a floating assignment = a diminution in status or rank.

▶ *Reemployment.* Names of persons who have been appointed permanently to positions in the career service and who have been separated as a result of reduction in force and/or reorganization, shall be entered in a list from which selection from reemployment shall be made.

ELECTION LAW

I. GENERAL PRINCIPLES

A. Sources of Election Law

- 1987 Constitution
- BP 881 (Omnibus Election Code, 1985)
- RA 6646 (Electoral Reforms Law of 1987)
- RA 6735 (Law Providing for Initiative and Referendum)
- RA 7160 (Local Government Code)
- RA 7166 (1991 Synchronized Elections Law)
- RA 7941 (Party-List System Act, 1995)
- RA 8189 (Voters Registration Act of 1996)
- RA 8295 (Proclamation of Lone Candidates in Special Elections, 1997)
- RA 8436 (Automated Election System, 1997)
- RA 9006 (Fair Election Act of 2001)
- RA 9189 (The Overseas Absentee Voting Act of 2003)
- The COMELEC Rules of Procedure

B. Theory of Popular Sovereignty

Art. II, Sec. 1 1987 Constitution.
 The Philippines is a democratic and republican state. Sovereignty resides in the people and all government authority emanates from them.

→ A democratic and republican government derives all its powers, directly or indirectly, from the people at large. Its essence is indirect rule. Actual sovereignty is exercised by the people by means of suffrage.

C. Suffrage

1. Suffrage in General

- *suffrage*
 - = the right and obligation of qualified citizens to vote in
 - (a) the election of certain national and local officials, and
 - (b) the decision of public questions submitted to the people.
 - = a political right which enables every citizen to participate in the process of government to assure that it derives its powers from the consent of the governed
 - ≠ a natural right
 - = a privilege which may be given or withheld by the lawmaking power, subject to constitutional limitations
 - * not necessarily an accompaniment of citizenship; granted only upon the fulfillment of certain minimum conditions.
- (US v Cueto)
- (GAD v COMELEC)
 - (Rulloda v COMELEC, 2003)
 - Nature of right of suffrage. (Pungutan v Abubakar)

2. Requirements for Exercise (CARA)

- (1) Citizenship
- (2) Age
- (3) Residency
- (4) Absence of disqualifications
 - * (see also III. Voter Registration > B. Qualifications, *infra*)
 - * No literacy, property or other substantive requirement shall be imposed (Sec. 1, Art. V, Constitution).
 A property or taxpaying requirement is not only inconsistent with the concept of a republican government, but with the social justice principle of equal opportunity as well.
 - * Congress, to a limited extent, can regulate exercise of the right of suffrage by:
 - o defining the qualifications of voters
 - o regulating elections and the manner of their conduct
 - o prescribing the form of official ballot
 - o providing for the manner of choosing candidates and the names to be printed on the ballot
 - o suppressing evils incident to the election of public officers, , pursuant to its duty to secure the secrecy and sanctity of the ballots (Sec. 2, Art. V, Constitution)

- **Actual, not stated, residence.** It is the fact of residence, not a statement in the certificate of candidacy, which ought to be decisive in determining whether or not an individual has satisfied the Constitution’s residency qualification requirement (Romualdez v COMELEC)
- **Change of domicile =**
 - (1) an actual removal or an actual change of domicile;
 - (2) a *bona fide* intention of abandoning the former place of residence and establishing a new one; and
 - (3) acts corresponding to such purpose (Romualdez v COMELEC)

3. Scope

a. Elections

= the means by which the people choose their officials for definite periods and to whom they entrust the exercise of powers of government, for the time being as their representatives. It involves the choice of candidates to public office by popular vote.

i. Regular Election

= an election participated in by those who possess the right of suffrage, are not disqualified by law, and are registered voters

- (a) *for President and VP*
 → 2nd Monday of May every 6 years after 1992
 * assumption of office: 12nn 30 June following election (Sec. 13, BP 881; Sec. 2, RA 7166)
- (b) *for Senators, elective Congressmen, and all elective Provincial, City, and Municipal Officials*
 → 2nd Monday of May every 3 years after 1992
 * Every year, only 12 out of the total 24 Senators shall be elected.
 - (i) *Sangguniang Panlalawigan*
 → provinces with 2 or more legislative districts: shall be elected by legislative districts, the number of seats being apportioned equitably. (Sec. 3, RA 7166)
 → provinces with only 1 legislative district: shall be divided for this purpose into 2 districts, the number of seats of elective members of their respective sanggunian being equitably apportioned between them.
 - (ii) *Sangguniang Panlungsod* (Sec. 2 and 3, RA 6636)

City	Councilors per District
Manila, Quezon City, Caloocan City	6
Pasay City	12
Municipality of Pateros	8
all other Metro Manila municipalities	10
Cebu City, Davao City, and any other city with more than 1 district	8
Cagayan de Oro, Zamboanga, Bacolod, Iloilo and other cities comprising 1 district	12
all other cities	10

- (iii) *Sangguniang Bayan*
 → to be elected by district beginning 1995

ii. Special Election

- may be called in case of permanent vacancy in Congress at least 1 year before expiration of the term (Sec. 9, Art. VI, Constitution; Sec. 4, RA 7166)
 - * The Senator or Congressman thus elected shall serve only for the unexpired term.
 - * COMELEC shall call and hold such special election 60-90 days after the occurrence of such vacancy.
 But if the vacancy is in the Senate, the special election shall be held simultaneously with the next regular elections (Sec. 4, RA 7166).

b. Initiative and Referendum**(i) Initiative**

= the power of the people to propose amendments to the Constitution or to propose and enact legislation through an election called for the purpose. (Sec. 2(a), R.A. 6735)

→ 3 systems of initiative:

- (a) *Initiative on the Constitution*: a petition proposing amendments to the Constitution;
- (b) *Initiative on statutes*: a petition proposing to enact a national legislation;
- (c) *Initiative on local legislation*: a petition proposing to enact a regional, provincial, city, municipal or barangay law, resolution or ordinance.

(ii) Referendum

= the power of the electorate to approve or reject legislation through an election called for the purpose. (Sec. 2(c), R.A. 6735)

= a system whereby the people can directly propose and enact, or approve, or reject any national or local legislation or part thereof (Sec. 32, Art. VI, Constitution)

→ *prereq*: registered petition therefor, signed by at least 10% of total registered voters, out of which every legislative district must be represented by at least 3% of the registered voters thereof

* *local initiative* = the legal process whereby the registered voters of a local government unit may directly propose, enact, or amend any ordinance (Sec. 120, RA 7160).

→ 2 classes:

- (a) *Referendum on statutes*: a petition to approve or reject an act or law, or part thereof, passed by Congress; and
- (b) *Referendum on local law*: a petition to approve or reject a law, resolution or ordinance enacted by regional assemblies and local legislative bodies.

c. Plebiscite

= the electoral process by which an initiative on the Constitution is approved or rejected by the people (Sec. 3(e), RA 6735).

- (1) Validity of amendment to, or revision of, Constitution
 - majority of votes cast
 - (a) via Congress or const'l convention
 - * held 60-90 days after approval of amendment or revision
 - (b) via people's initiative
 - * held 60-90 days after certification by COMELEC of the sufficiency of the petition (Sec. 4, Art. XVII, Constitution)
- (2) Province, city, municipality, or barangay:
 - (a) creation
 - (b) division
 - (c) merging
 - (d) abolition
 - (e) substantial alteration of boundary
 - majority votes cast, in the political units directly affected (Sec. 10, Art. XVII, Constitution)
- (3) Creation of autonomous region: Effectivity of Organic Acts enacted by Congress for each
 - majority of votes cast, by the constituent units
 - * Only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region. (Sec. 18, Art. XVII, Constitution)

d. Recall

= the termination of official relationship of a local elective official for loss of confidence prior to the expiration of his term through the will of the electorate.

* Process (Sec. 70, RA 7160):

- (4) initiation of recall by resolution of the preparatory recall assembly or by petition of at least 25% of all registered voters in that local government unit

* preparatory recall assembly: at the provincial, city, and legislative district levels

- (5) filing with COMELEC of a written petition for recall; publication in order to verify the authenticity and genuineness of the petition and the required percentage of voters
- (6) announce acceptance and prepare list of candidates, including the official sought to be recalled

SEC. 69, RA 7160. *By Whom Exercised*. - The power of recall for loss of confidence shall be exercised by the registered voters of a local government unit to which the local elective official subject to such recall belongs.

SEC. 70. *Initiation of the Recall Process*. - (a) Recall may be initiated by a preparatory recall assembly or by the registered voters of the local government unit to which the local elective official subject to such recall belongs.

(b) There shall be a preparatory recall assembly in every province, city, district, and municipality which shall be composed of the following:

- (1) Provincial level. - All mayors, vice-mayors, and sanggunian members of the municipalities and component cities;
- (2) City level. - All punong barangay and sangguniang barangay members in the city;
- (3) Legislative District level. - In cases where sangguniang panlalawigan members are elected by district, all elective municipal officials in the district; and in cases where sangguniang panlungsod members are elected by district, all elective barangay officials in the district; and
- (4) Municipal level. - All punong barangay and sangguniang barangay members in the municipality.

(c) A majority of all the preparatory recall assembly members may convene in session in a public place and initiate a recall proceeding against any elective official in the local government unit concerned. Recall of provincial, city, or municipal officials shall be validly initiated through a resolution adopted by a majority of all the members of the preparatory recall assembly concerned during its session called for the purpose.

(d) Recall of any elective provincial, city, municipal, or barangay official may also be validly initiated upon petition of at least twenty-five percent (25%) of the total number of registered voters in the local government unit concerned during the election in which the local official sought to be recalled was elected.

(1) A written petition for recall duly signed before the election registrar or his representative, and in the presence of a representative of the petitioner and a representative of the official sought to be recalled, and in a public place in the province, city, municipality, or barangay, as the case may be, shall be filed with the Comelec through its office in the local government unit concerned. The Comelec or its duly authorized representative shall cause the publication of the petition in a public and conspicuous place for a period of not less than ten (10) days nor more than twenty (20) days, for the purpose of verifying.

(2) Upon the lapse of the aforesaid period, the Comelec or its duly authorized representative shall announce the acceptance of candidates to the position and thereafter prepare the list of candidates which shall include the name of the official sought to be recalled.

SEC. 71. *Election on Recall*. - Upon the filing of a valid resolution or petition for recall with the appropriate local office of the Comelec, the Commission or its duly authorized representative shall set the date of the election on recall, which shall not be later than thirty (30) days after the filing of the resolution or petition for recall in the case of the barangay, city, or municipal officials, and forty-five (45) days in the case of provincial officials. The official or officials sought to be recalled shall automatically be considered as duly registered candidate or candidates to the pertinent positions and, like other candidates, shall be entitled to be voted upon.

SEC. 72. *Effectivity of Recall.* - The recall of an elective local official shall be effective only upon the election and proclamation of a successor in the person of the candidate receiving the highest number of votes cast during the election on recall. Should the official sought to be recalled receive the highest number of votes, confidence in him is thereby affirmed, and he shall continue in office.

SEC. 73. *Prohibition from Resignation.* - The elective local official sought to be recalled shall not be allowed to resign while the recall process is in progress.

SEC. 74. *Limitations on Recall.* - (a) Any elective local official may be the subject of a recall election only once during his term of office for loss of confidence.

(b) No recall shall take place within one (1) year from the date of the official's assumption to office or one (1) year immediately preceding a regular local election.

SEC. 75. *Expenses Incident to Recall Elections.* - All expenses incident to recall elections shall be borne by the Comelec. For this purpose, there shall be included in the annual General Appropriations Act a contingency fund at the disposal of the Comelec for the conduct of recall elections.

II. THE COMELEC

A. General Concept

1. Character

- an independent administrative tribunal, co-equal with the other departments with respect to the powers vested in it, not under any of the branches of Government
- intent: to place it outside the influence of political parties and the control of the legislative, executive, and judicial organs of the government
 - * For this reason, appointments or designations in temporary or acting capacities are not allowed (Sec. 1(2), Art. IX-C, Constitution).

2. Purposes

- to protect the sanctity of the ballot
- to ensure the free and honest expression of the popular will

B. Administrative Matters

1. Composition

- = Chairman + 6 Commissioners (Sec. 1(1), Art. IX-C); 2 divisions (Sec. 3)
 - * Election cases, incl. pre-proclamation controversies, shall be heard and decided in division. *But* MFRs shall be decided *en banc*.
- Field Offices:
 - (1) Regional Election Office
 - (2) Provincial Election Office
 - (3) City / Municipal Election Office
 - delegation of functions and powers; implementation / enforcement of orders, rulings, decisions (Sec. 53, BP 881)
- COMELEC may make changes in the composition, distribution and assignment of field offices, as well as its personnel, whenever the exigencies of the service and the interest of free, orderly, and honest election so require.
 - * *except* within 30 days before election, *unless* for cause and after due notice and hearing
 - effective and enforceable only for the duration of the election period concerned
 - shall not affect the tenure of office of the incumbents of positions affected
 - shall not constitute a demotion, either in rank or salary, nor result in change of status
 - * No assignment where a regional / provincial / municipal election officer, or his spouse, will be related to any candidate within the 4th civil degree of consanguinity or affinity. (Sec. 56, BP 881)

2. Qualifications

1. Natural-born citizen
 2. At least 35 years old at the time of appointment
 3. Holders of a college degree
 4. Not candidate for any elective position in the immediately preceding elections
- * Majority of the members, including the Chairman, should be members of the Bar who have been engaged in the practice of law for at least 10 years. (Sec. 1(1), Art. IX-C, Constitution)
 - * *For Regional Director, Asst. Regional Director, Provincial Election Supervisor, and Election Registrar:* members of the Philippine Bar
 - * *But if none available and not city / capital town,* graduates of the ff, possessing the appropriate civil service eligibility:
 - duly recognized schools of law
 - liberal arts
 - education
 - business administration

5. Term of Office

- 7 years, without reappointment (appointed by President)
 - * staggered: 3-2-2 members and Chairman, appointments every 2 years
 - * Appointment to any vacancy shall be only for the unexpired term of the predecessor.
 - * In no case shall any Member be appointed or designated in a temporary or acting capacity. (Sec. 1(2), Art. IX-C, Constitution)
- * The staggering of terms makes the COMELEC a continuing body. Its members have the benefit of the experience and expertise of the older members in the performance of its functions.
- * COMELEC Commissioners are subject to the same disabilities imposed on the President and the Vice-President, including the prohibition against holding any other office or engaging in any other profession or business.

6. Inhibition and Disqualification

- *Rule of conduct in the discharge of functions:* Chairman and members of COMELEC shall be subject to the canons of judicial ethics. (Sec. 58, BP 881)
- *Disqualifications for Chairman or Commissioner:* (Sec. 1, Rule 4, COMELEC Rules of Procedure)
 - (a) relationship (or that of his spouse/child) to:
 - i. any party, within the 6th civil degree or consanguinity or affinity, *or*
 - ii. the counsel of any of the parties, within the 4th civil degree of consanguinity or affinity
 - (b) public expression of prejudgment, shown by convincing proof
 - (c) The subject matter of the case is a decision promulgated by him while previously serving as presiding judge of an inferior court.
 - * *unless* consent by the parties:
 - (i) in writing
 - (ii) signed by them
 - (iii) entered in the records of the case
 - * No Member shall be the *ponente* of an *en banc* decision/resolution on a MFR on a decision/resolution written by him in a Division.
 - (d) voluntary inhibition
 - In the exercise of his sound discretion
 - For just or valid reasons other than above
- *Procedure for disqualification:*
 1. filing of objection
 - in writing
 - with the COMELEC
 - stating the ground therefor
 2. The official concerned shall
 - (a) continue to participate in the hearing *or*
 - (b) withdraw therefrom,
 in accordance with his determination of the question of his disqualification.

3. decision
 - in writing
 - filed with the other papers of the case, in accordance with the Rules of Court, with the COMELEC for proper notation
- * No appeal or stay shall be allowed from, or by reason of, his decision in favor of his own competency until after final judgment in the case.
- * If a disqualification should result in a lack of quorum in the COMELEC sitting *en banc*, upon the request of COMELEC, the Presiding Justice of the CA shall designate a justice of the CA to sit in the case for the purpose of hearing and reaching a decision. (Sec. 58, BP 881; Sec. 2, Rule 4, COMELEC Rules of Procedure)

C. Powers and Functions

1. enforcement and administration of laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall (Sec. 2 (1), Art. IX-C, Constitution; Sec. 57, BP 881)

- (a) *promulgation of rules and regulations* to implement such laws
 - * prescription of forms to be used in the election, plebiscite or referendum (Sec. 52(g), BP 881)
 - * The Commission shall publish, at least 10 days before an election, in a newspaper of general circulation, certified data on:
 - (1) the number of official ballots and election returns; and
 - (2) the names and addresses of the printers and the number printed by each (Sec. 59, BP 881).
 - * The COMELEC *en banc* may promulgate its own rules concerning pleadings and practice before it or before any of its offices. Such rules, however, shall not diminish, increase, or modify substantive rights (Sec. 6, Art. IX-A, Constitution).
 - * effectivity: upon the 16th day after publication in the Official Gazette, or in at least daily newspapers of general circulation (Sec. 52, BP 881)
 - * Orders and directives issued by the Commission pursuant to these shall be furnished by personal delivery to accredited political parties within 48 hours of issuance and shall take effect immediately upon receipt (Sec. 52, BP 881).
 - * COMELEC rules, regulations, orders or directives shall prevail over those issued by any other administrative office or agency of the government concerning the same matter relative to elections (Sec. 52, BP 881).
- (b) *direct and immediate supervision and control* over national and local officials or employees, including members of any national or local law enforcement agency and instrumentality of the government required by law to perform duties relative to the conduct of elections (Sec. 52, BP 881)
 - * *authorization of CMT cadets* 18 y.o. or older to act as its deputies for the purpose of enforcing its orders.
 - * *relief of any such officer or employee from the performance of his duties relating to electoral processes* if he violates the election law or fails to comply with its instructions, orders, decisions or rulings, and appoint his substitute.
 - * recommendation to the proper authority of suspension or removal from office of such officers or employees who may, after due process, be found guilty
- (c) *authorization of any member/s of the AFP, the NBI, the Integrated National Police or any similar agency or instrumentality of the government, except civilian home defense forces, to act as deputies* for the purpose of ensuring the holding of free, orderly and honest elections (during the period of the campaign and ending 30 days thereafter, when, in any area of

- the country, there are persons committing acts of terrorism to influence people to vote for or against any candidate or political party). (Sec. 52, BP 881)
- (d) *issuance of search warrants* after examination under oath / affirmation of the complainant and the witnesses (Sec. 57(1), BP 881)
 - (e) *stopping any illegal election activity; confiscation of, tearing down, and stopping* unlawful, libelous, misleading or false election propaganda, after due notice and hearing (Sec. 57(2) and 83, BP 881)
 - (f) declaration of *failure or postponement of elections*, as well as call for *special elections* (Sec. 4, RA 7166)
 - (g) *annulment or cancellation of illegal registry lists of voters* and ordering the preparation of a new one
 - (h) *inquiry into financial records* of candidates and any organization or group of persons, *motu proprio* or upon written representation for probable cause by any candidate or group of persons or qualified voter, after due notice and hearing (Sec. 57(3), BP 881)
 - * *availing for such purposes* of the assistance of the CoA, CB, NBI, BIR, AFP, Integrated National Police, barangay officials, and other government agencies
 - (i) *requirement and collection of legal fees* in payment of any business done in the Commission, at rates provided and fixed in its rules and regulations (Sec. 52, BP 881)
 - (j) *regulation of media* and other public utilities, and all grants, special privileges, or concessions granted by the Government or any instrumentality thereof (Sec. 4, Art. IX-C)
 - * procurement of print space, upon payment of just compensation, and free airtime, to be allocated free of charge equally and impartially among all the candidates for national office (Sec. 7, RA 9006)
 - * rationale:
 - to guarantee or ensure equal opportunity for public service and the equitable right to reply
 - for public information campaigns and fora among candidates
 - to assure free, orderly, honest, peaceful and credible elections
 - * No franchise or permit to operate a radio or television station shall be granted or issued, suspended or cancelled during the election period (Sec. 6(4), RA 9006).
 - (k) *fixing of election periods* and other reasonable periods for certain pre-election requirements in order that voters shall not be deprived of their right of suffrage and certain rights granted them by law (Sec. 52(m), BP 881)
 - (l) *procurement of supplies, equipment, materials, or services* needed for the holding of the election by public bidding, unless impractical, in which case then by negotiations or sealed bids, with due notice to the accredited parties (Sec. 52(h), BP 881)
 - (m) *prescription of the use / adoption of technological and electronic devices*, with notice to the authorized representatives of accredited political parties and candidates in areas affected by such use or adoption not less than 30 days prior to the effectivity thereof (Sec. 52(i), BP 881)
 - (n) *voter education campaign* through media to educate the public about election laws and other matters relative to the work and duties of the Commission and the necessity of clean, free, orderly and honest electoral processes (Sec. 52(j), BP 881)
 - (o) *assistance from private, non-partisan groups / organizations* in the implementation of BP 881 and the resolutions, orders and instructions of the Commission for the purpose of ensuring free, orderly and honest elections (Sec. 52(k), BP 881)
 - * *direct and immediate control and supervision* over such groups/organizations
 - * *revocability of designation* of any group or organization upon notice and hearing whenever, by its actuations, such group or

organization has shown partiality to any political party or candidate, or has performed acts in excess or in contravention of its functions and duties.

Specific functions and duties of such groups / organizations:

(A) before election day

1. information campaign on BP 881
2. dissemination of COMELEC orders, decisions and resolutions relative to the forthcoming election
3. voter registration drives in their respective areas
4. help in cleansing the list of voters of illegal registrants
5. reporting violations as to the conduct of the political campaign, election propaganda and electoral expenditures

(B) on election day

1. exhortation of registered voters to vote
2. nomination of citizen poll watchers for accreditation
3. reporting of instances of terrorism, intimidation of voters, and other similar attempts to frustrate the free and orderly casting of votes
4. such other functions as may be entrusted to such group or organization by the Commission.

(2) quasi-judicial powers

- * *Jurisdiction* (Sec. 2(2), Art. IX-C):
 - exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials
 - 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.
 - * Congress shall have its own Electoral Tribunal in each House to be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. (Sec. 17, Art. VI, Constitution; *see also* VII. Contested Elections > Election Contests > Jurisdiction > Electoral Tribunals of the Senate and HoR, *infra*)
- * *Period*. Any controversy submitted to the Commission shall, after compliance with the requirements of due process, be immediately heard and decided by it within 60 days from submission thereof. (Sec. 52(d), BP 881)
- * *Procedure*. No decision or resolution shall be rendered by the Commission, either *en banc* or by division, unless taken up in a formal session properly convened for the purpose. (Sec. 52(d), BP 881)
- * The Commission may sit *en banc* or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre- proclamation controversies.

General Rule: All such election cases shall be heard and decided in division.
 Exceptions: To be decided en banc:

1. MFRs (Sec. 3, Art. IX-C)
2. Petitions for correction of manifest errors in the Statement of Votes (Sec. 5, Rule 27, COMELEC Rules of Procedure)
3. Questions pertaining to proceedings of the Board of Canvassers (**Mastura v. COMELEC**)
4. Postponement of election (Sec. 4, RA 7166)
5. Declaration of failure of election (Sec. 4, RA 7166)
6. Calling of special elections (Sec. 4, RA 7166)

- *certiorari, prohibition and mandamus* (only in exercise of its appellate jurisdiction) (**Relampagos v Cumba**)
 - *conduct of hearings on controversies* pending before it in the cities or provinces, upon proper motion of any party (Sec. 52(l), BP 881)
 - *summons of parties; issuance of subpoenas/subpoenas duces tecum; taking of testimony* in any investigation or hearing before it (Sec. 52(d), BP 881)
 - * *delegation of such power* to any officer of the Commission also a member of the Philippine Bar
 - * *issuance of warrant to arrest a witness* who fails to attend despite proof of service of subpoena upon him, to bring said witness before the Commission or the officer before whom his attendance is required
 - *contempt* (Sec. 52(e), BP 881) as provided for in the Rules of Court, in the same procedure and with the same penalties provided therein
 - * *contempt* = any violation of any final and executory decision, order or ruling of the Commission
 - * to be wielded only in the exercise of quasi-judicial, NOT administrative, functions (**Masangkay v COMELEC**)
 - *availing, when necessary, of the assistance of any national or local law enforcement agency and/or instrumentality of the government* to execute, under its direct and immediate supervision, any of its final decisions, orders, instructions or rulings (Sec. 52(d), BP 881)
 - * The COMELEC's decisions, directives, orders and instructions shall have precedence over those emanating from any other authority, except (1) the Supreme Court and (2) those issued in *habeas corpus* proceedings. (Sec. 52(f), BP 881)
- (3) **decision of all questions affecting elections**, except the right to vote (Sec. 2(3) and 3, Art. IX-C; Sec. 17, Art.VI)
- e.g. number and location of polling places; appointment of election officials and inspectors; registration of voters
 - * COMELEC has NO jurisdiction over questions involving the right to vote (e.g. disqualifications of voters, right of a person to be registered), as these rest within the exclusive original jurisdiction of the MTC, appealable to the RTC.
- (4) **deputization of law enforcement agencies** (Sec. 2(4) and (8), Art. IX-C; Sec. 5(a) and (b), BP 881)
- (5) **registration of political parties**; accreditation of COMELEC citizens' arms (Sec. 2(5), Art. IX-C)
- Parties, in addition to other requirements, must present their platform or program of government.
 - Not to be registered:
 7. religious denominations and sects
 8. groups which:
 - (a) seek to achieve their goals through violence or unlawful means
 - (b) refuse to uphold and adhere to this Constitution
 - (c) are supported by any foreign government
- (6) **filing of petitions in court** for inclusion or exclusion of voters;
investigation and prosecution of election offenses (Sec. 2(6), Art. IX-C)
- * COMELEC has the power of a public prosecutor with exclusive authority to conduct the preliminary investigation and prosecute election offenses punishable under the election law, upon complaint or *motu proprio*.

(7) **recommendation**

- a. **to Congress**, of measures to Congress, to minimize election spending and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidacies (Sec. 2(7), Art. IX-C)
- b. **to the President**:
 - i. **of disciplinary action** against a deputized officer or employee for violation or disregard of, or disobedience to, its directive, order, or decision (Sec. 2(8), Art. IX-C)
 - ii. **of pardon, amnesty, parole, or suspension of sentence** for violation of election laws, rules or regulations (Sec. 5, Art. IX-C)

D. Judicial Review

- **Exclusive original jurisdiction**: SC over a petition for *certiorari* on any COMELEC decision, order, or ruling (Sec. 7, Art. IX-A, Constitution)
- **General Rule for Constitutionally Created Commissions**: Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within 60 days from the date of its submission for decision or resolution.
 - * deemed submitted for decision or resolution: upon the filing of the last pleading, brief, or memorandum required

III. VOTER REGISTRATION**A. Concept and Administration**

- *[voter] registration* = the act of accomplishing and filing of a sworn application for registration by a qualified voter before the election officer of the city or municipality wherein he resides, and including the same in the book of registered voters upon approval by the Election Registration Board (Sec. 3(a), RA 8189).
- It is the obligation of every citizen qualified to vote to register and cast his vote (Sec. 4, BP 881).
- **Necessity of registration**. The act of registration is part and parcel of the right to vote and an indispensable element in the election process. Thus ... registration cannot and should not be denigrated to the lowly stature of a mere statutory requirement. The State, in the exercise of its inherent police power, may then enact laws to safeguard and regulate the act of voter's registration for the ultimate purpose of conducting honest, orderly and peaceful elections. (*Akbayan-Youth v COMELEC*, 2001)

1. Election Registration Board

= the body constituted to act on all applications for registration (Sec. 3(g), RA 8189)

a. Composition and Disqualification

- **Composition**:
 - (1) Chairman: Election Officer
 - (2) Members:
 - (a) the public school official most senior in rank; *and*
 - (b) the local civil registrar, *or in his absence*, the city or municipal treasurer (Sec. 15, RA 8189).
- There shall be in each city and municipality as many as Election Registration Boards as there are election officers therein.
 - * *If* thickly populated cities/municipalities, the Commission may appoint additional election officers for such duration as may be necessary.
- **Disqualification**: relationship within the 4th civil degree of consanguinity or affinity to another Board member *or* to any incumbent city or municipal elective official
 - * *If* a Board member is so related to any city / municipal official newly elected, such member shall be automatically disqualified.

b. Functions

- to meet quarterly on the 3rd Monday of April, July, October and January of every calendar year

(or on the next following working day if such designated days fall on non-working holidays)

- to hear and process all applications for registration

c. Compensation

- honorarium = P200 /day of actual service rendered (Sec. 16, RA 8189)
 - * This amount may be adjusted by COMELEC every 3 years.
 - * No member of the Board shall be entitled to travelling expenses.

2. Procedurals

- * system of continuing voter registration
 - filing of application for voter registration
 - done personally
 - daily in the office of the Election Officer, during regular office hours
 - * *unless* within 120 days before a regular election *and* 90 days before a special election (Sec. 8, RA 8189)
- The purpose of having a 120-day prohibitive period is to enable the COMELEC to complete all the necessary pre-election activities, including the Project of Precincts, constitution of the BEI, Book of Voters and approved Voters Registration Records, Computerized Voters' List, and Voters Information Sheet. Registration of voters is not, contrary to popular opinion, merely the act of going to the Election Officer and writing the names down. It is, in fact, a long process that takes about 3 weeks to complete not even counting how long it would take to prepare for the registration in the first place. (*Akbayan-Youth v COMELEC*, 2001)
- * **Overseas Absentee Registration**
 - Filipino citizens abroad who failed to register under RA8189
 - **Guidelines for registration**: (Sec. 6, RA 9189)
 1. personal application with:
 - (a) the ERB of the city / municipality where they were domiciled immediately prior to their departure from the Philippines; *or*
 - (b) a representative of COMELEC at the Philippine embassies, consulates and other foreign service establishments that have jurisdiction over the locality where they temporarily reside.
 2. transmittal, within 5 days from receipt, of the accomplished registration forms to COMELEC
 3. COMELEC shall coordinate with the Election Officer of the city / municipality of the applicant's stated residence for verification, hearing and annotation in the permanent list of voters.
 - **Requirements**:
 - * No information other than those necessary to establish the identity and qualification of the applicant shall be required.
 - (1) valid Philippine passport; *if none*, a certification of the DFA:
 - that it has reviewed the appropriate documents submitted by the applicant and found them sufficient to warrant the issuance of a passport; *or*
 - that the applicant is a holder of a valid passport but is unable to produce the same for a valid reason
 - (2) accomplished COMELEC-prescribed registration form
 - mandatory information included:
 - a. Last known residence of the applicant in the Philippines before leaving for abroad
 - b. Address of applicant abroad, *or* forwarding address in the case of seafarers

- c. Where voting by mail is allowed, the applicant's mailing address outside the Philippines where the ballot for absentee voters will be sent, in proper cases; and
 - d. Name and address of applicant's authorized representative in the Philippines
- (3) *If* immigrant and permanent resident not otherwise disqualified to vote under this Act: an affidavit declaring:
- the intention to resume actual physical permanent residence in the Philippines not later than 3 years after approval of his/her registration as an overseas absentee voter *and*
 - that he/she has not applied for citizenship in another country.
- (4) [COMELEC may also require additional data to facilitate registration and recording]
- **Application to vote in absentia**
= sworn written application to vote submitted together with the photocopy of his/her overseas absentee voter certificate of registration
- *How:* personally at, or by mail to, the embassy, consulate or foreign service establishment
 - *When necessary:* every national election
 - *By whom:* every qualified citizen abroad whose application for registration has been approved (including those previously registered under RA8189)
 - *With whom:* officer of the embassy, consulate or other foreign service establishment authorized by COMELEC (which has jurisdiction over the country where he/she has indicated his/her address for purposes of the elections)
- **Action by COMELEC:**
Upon receipt, not later than 150 days before the day of elections
- (a) *approval:* issuance of overseas absentee voter identification card
 - (b) *disapproval:* may file a MFR with COMELEC. COMELEC shall act within 5 days from receipt and immediately notify the voter of its decision. The decision of the Commission shall be final and executory.

- * COMELEC is authorized to prescribe additional procedures for overseas absentee registration, taking into strict consideration the time zones and the various periods and processes.
- * *Seafarers:* COMELEC shall provide a special mechanism for the time and manner of personal registration.
- * *Role of the COMELEC in Continuing Registration:*
 1. Ensure that the benefits of the system of continuing registration are extended to qualified overseas absentee voters.
 2. Optimize the use of existing facilities, personnel and mechanisms of the various government agencies for data gathering, data validation, information dissemination and facilitation of the registration process.
 3. Utilize pre-departure programs, services and mechanisms offered and administered by the DFA, DOLE, POEA, OWWA, Commission on Filipinos Overseas and other appropriate agencies of the government. (Sec. 7, RA 9189)

B. Qualifications (CARA)

1. Citizenship

- Filipino citizen by birth or naturalization

2. Age: 18 y.o. or older

- person, who, on the day of registration may not have reached the required age or period of residence but, who, on the day of the election shall possess such qualifications (Sec. 9, RA 8189)

3. Residency

= *domicile* (Art. 50, Civil Code: "place of habitual residence")

= twin elements:

- (1) fact of residence / physical presence in a fixed place
- (2) *animus manendi* (intention to permanently return) (**Aquino v COMELEC**).

→ (a) at least 1 year in the Philippines

(b) at least 6 months in the place wherein they propose to vote

immediately preceding the election (Sec. 9, RA 8189).

* Once acquired, deemed to continue until acquisition of new residence, despite temporary absences, WON one has a house there.

* Temporary residence in another city, municipality, or country solely because of one's—

- (a) occupation
- (b) educational activities
- (c) work in military or naval reservations within the Phils.
- (d) service in the AFP or PNP, or
- (e) confinement in government institutions in accordance with law

≠ loss of original residence (Sec. 9, RA 8189).

4. Absence of disqualification

→ disqualifications: (Sec. 11, RA 8189)

(a) sentence by final judgment to imprisonment for at least 1 year, UNTIL the expiration of 5 years after service of sentence

(b) conviction by final judgment of:

- i. any crime involving disloyalty to the duly constituted government (e.g. rebellion, sedition, violation of the firearms law); or
- ii. any crime against national security UNTIL the expiration of 5 years after service of sentence.

(c) declaration as insane or incompetent by competent authority.

* The requirements for overseas absentee voters are the same *except for* residency (Sec. 4, RA 9189).

C. Disqualifications

Under RA9189 (Sec. 5):

1. Lost their Filipino citizenship in accordance with Philippine laws
2. Expressly renounced their Philippine citizenship and pledged allegiance to a foreign country
3. Committed and convicted in a final judgment by a court or tribunal of an offense punishable by imprisonment of not less than 1 year
 - including those who have committed and been found guilty of Disloyalty as defined under RPC137 such disability not having been removed by plenary pardon or amnesty
 - Provided that any person disqualified to vote under this subsection shall automatically acquire the right to vote upon expiration of 5 years after service of sentence
 - Provided, further, that COMELEC may take cognizance of final judgments issued by foreign courts or tribunals only on the basis of reciprocity and subject to the formalities and processes prescribed by the Rules of Court on execution of judgments;
4. Immigrant or a permanent resident
 - who is recognized as such in the host country
 - UNLESS he/she executes, upon registration, an affidavit
 - prepared for the purpose by the Commission
 - declaring that he/she shall resume actual physical permanent residence in the Philippines not later than 3 years from approval of his/her registration under this Act
 - also state that he/she has not applied for citizenship in another country

- [Failure to return shall be the cause for the removal of the name of the immigrant or permanent resident from the National Registry of Absentee Voters and his/her permanent disqualification to vote in absentia]
- 5. Previously declared insane or incompetent by competent authority in the Philippines or abroad
 - as verified by the Philippine embassies, consulates or foreign service establishments concerned
 - UNLESS such competent authority subsequently certifies that such person is no longer insane or incompetent

D. Application and Registration

1. General Rules

- *Permanent List of Voters*: all registered voters residing within the territorial jurisdiction of every precinct indicated by the precinct maps, in each city or municipality (Sec. 4, RA 9189)
 - Registration in such list is required to be able to vote in any election.
- *Application form* accomplished before the Election Officer on any date during office hours.
 - * Contents: (Sec. 10, RA 9189)
 - (a) Name, surname, middle name, and/or maternal surname;
 - (b) Sex;
 - (c) Date, and place of birth;
 - (d) Citizenship;
 - (e) Civil status, if married, name of spouse;
 - (f) Profession, occupation or work;
 - (g) Periods of residence in the Philippines and in the place of registration;
 - (h) Exact address with the name of the street and house number for location in the precinct maps maintained by the local office of the Commission, or in case there is none, a brief description of his residence, sitio, and barangay;
 - (i) A statement that the applicant possesses all the qualifications of a voter;
 - (j) A statement that the applicant is not a registered voter of any precinct; and
 - (k) Such information or data as may be required by the Commission.
 - + 3 specimen signatures; both thumbprints; photographs
- * At the hearing upon notice, the Election Officer shall receive evidence for or against the applicant. (Sec. 17, RA 9189)
 - Physical presence of the applicant is mandatory only in all cases where objections against his application have been seasonably filed.
- * Any voter, candidate or representative of a registered political party may challenge in writing any application for registration, stating the grounds therefor. (Sec. 18, RA 9189)
- *Voter's Identification Number (VIN)* = 3 parts:
 - (1) The current address (city/municipality and province);
 - (2) the current precinct assignment of the voter and
 - (3) the permanent birth and name code unique to every voter (Sec. 3(h), RA 9189)
- *Certified List of Voters*: to be posted 90 days before a regular election and 60 days before a special election

2. Overseas Absentee Voters

1. Receipt of the application
 - a. Election Officer shall set the application for hearing
 - i. Notice of hearing shall be posted in a conspicuous place in the premises of the city or municipal building of the applicant's stated residence for at least 1 week before the date of the hearing

- b. Election Officer shall furnish a copy of the application to the designated representatives of political parties and other accredited groups
2. When Election Registration board decides
 - a. If no verified objection to the application is filed
 - b. Election Officer shall forward the application to the Election Registration Board
 - i. Decide on the application within 1 week from the date of hearing without waiting for the quarterly meeting of the Board
 - c. The applicant shall be notified of the approval or disapproval of his/her application by registered mail
3. [IF there is an objection]
 - a. Objection filed prior to or on the date of hearing
 - i. Election Officer shall notify the applicant of objection by registered mail
 1. enclosed are copies of affidavits or documents submitted in support of the objection filed with the said Election Officer, if any
 - ii. The applicant shall have the right to file his counter-affidavit
 1. by registered mail
 2. clearly stating facts and defenses
 3. sworn before any officer in the host country authorized to administer oaths
4. Decision = approval or disapproval
 - a. approved or disapproved
 - b. based on the merits of the objection, counter-affidavit and documents submitted by the party objecting and those of the applicant
 - c. IF APPROVED:
 - i. any interested party may file a petition for exclusion
 - ii. not later than 210 days before the day of elections
 - iii. with the proper municipal or metropolitan trial court.
 - iv. petition shall be decided within 15 days after its filing on the basis of the documents submitted in connection
 - v. [Should the court fail to render a decision within the prescribed period, the ruling of the Election Registration Board shall be considered affirmed]
 - d. IF DISAPPROVED:
 - e. the applicant or his authorized representative shall have the right to file a petition for inclusion
 - f. with the proper municipal or metropolitan trial court
 - g. within a period of 5 days from receipt of the notice of disapproval
 - h. petition shall be decided within 5 days after its filing on the basis of documents submitted in connection therewith.

3. Illiterate and Disabled Voters

= one who cannot by himself prepare an application for registration because of his physical disability and/or inability to read and write

- The application for registration of a physically disabled person may be prepared by any relative within the 4th civil degree of consanguinity or affinity or by the Election Officer or any member of an accredited citizen's arm using the data supplied by the applicant. The fact of illiteracy or disability shall be so indicated in the application. (Sec. 14, RA 8189)

3. Deactivation and Reactivation of Registration

- * **Deactivation** = removal of registration records of certain persons from the registration records of the following persons from the corresponding precinct book of voters and place the same, properly marked and dated in indelible ink, in the inactive file (Sec. 27, RA 8189)
 - Grounds:
 - Being sentenced by final judgment to suffer imprisonment for at least 1 year, *and* not being subject to plenary pardon or amnesty
 - * automatic reacquisition of the right to vote after 5 years after service of sentence
 - conviction of any crime involving disloyalty to the duly constituted government such as rebellion, sedition, violation of the anti-subversion and firearms laws, or any crime against national security, unless restored to his full civil and political rights in accordance with law
 - * automatic reacquisition of the right to vote after 5 years after service of sentence
 - declaration by competent authority to be insane or incompetent *unless* subsequent declaration to no longer be insane or incompetent
 - not having voted in 2 successive preceding regular elections as shown by their voting records (excluding SK elections)
 - registration ordered excluded by the Court
 - loss of Filipino citizenship
- * **Reactivation**: to file with the Election Officer a sworn application for reactivation of his registration in the form of an affidavit stating that the grounds for the deactivation no longer exist (Sec. 28, RA 8189)
 - any time, *but* not later than 120 days before a regular election and 90 days before a special election
 - In case the application is approved, the Election Officer shall retrieve the registration record from the inactive file and include the same in the corresponding precinct book of voters.

4. Re-Registration

A voter who is registered in the permanent list of voters need not register anew for subsequent elections UNLESS:

- (a) he transfers residence to another city or municipality; or
 - (b) his registration was cancelled on the ground of disqualification
- AND such disqualification has been lifted or removed (Sec. 125, BP 881).

E. Inclusion and Exclusion

1. List of Voters

- = an enumeration of names of registered voters in a precinct duly certified by the Election Registration Board for use in the election (Sec. 3(d), RA 8189)
- * The Board of Election Inspectors must post the final list of voters in each precinct 15 days before the date of the regular or special election or referendum or plebiscite.
- * Any candidate or authorized representative of an accredited political party upon formal request to an election registrar shall be entitled to a certified copy of the most recent list of voters upon payment of a reasonable fee.

2. Jurisdiction: MTCs, appealable to RTCs

3. Procedure

1. filing of petition for inclusion, exclusion or correction of names of voters

* When to File:

- (a) *If for inclusion*: any time except 105 days before a regular election and 75 days before a special election (Sec. 34, RA 8189)
- (b) *If for exclusion*: any time except 100 days before a regular election and 65 days before a special election (Sec. 35, RA 8189)

2. service of notice of hearing upon the members of the Board and the challenged voter

3. decision

- * based on the evidence presented and in no case rendered upon a stipulation of facts
 - * If the question is whether or not the challenged voter is real or fictitious, his non-appearance on the day set for hearing shall be *prima facie* evidence that he is fictitious.
 - * Any voter, candidate or political party who may be affected by the proceedings may intervene and present his evidence.
 - * In all cases, the court shall decide these petitions not later than 15 days before the election. (Sec. 32, RA 8189)
- The petition for exclusion is a necessary component to registration since it is a safety mechanism that gives a measure of protection against flying voters, non-qualified registrants, and the like. The prohibitive period, on the other hand serves the purpose of securing the voter's substantive right to be included in the list of voters. (**Akbayan-Youth v COMELEC**, 2001)
 - The citizenship of a person to be stricken from the list may be decided in the exclusion proceedings. However, the decision does not acquire the nature of *res judicata* considering the summary character of the case.

F. Annulment of the Book of Voters

* **Book of Voters** = the compilation of all registration records in a precinct

→ annulment by COMELEC, upon verified petition of any voter or election officer or duly registered political party and after notice and hearing, of any book of voters prepared:

- (a) not in accordance with the provisions of this Act
- (b) through:
 - i. fraud
 - ii. bribery
 - iii. forgery
 - iv. impersonation
 - v. intimidation
 - vi. force
 - vii. any similar irregularity
- (c) containing data that are statistically improbable

* No order, ruling or decision annulling a book of voters shall be executed within 90 days before an election. (Sec. 3(c), RA 8189)

IV. ELIGIBILITY FOR CANDIDACY

A. Qualifications

- * Qualifications prescribed by law are continuing requirements and must be possessed for the duration of the officer's active tenure. Once any of the required qualifications are lost, his title to the office may be seasonably challenged. (**Frivaldo v COMELEC**; **Labo v COMELEC**)
- * An official begins to govern or discharge his functions only upon his proclamation and on the day the law mandates his term of office to begin. Since Frivaldo re-assumed his citizenship on the very day the term began, he was therefore already qualified to be proclaimed, to hold such office and to discharge the functions and responsibilities thereof as of the said date. (**Frivaldo v COMELEC**)

1. President / Vice President

- Natural-born citizen of the Philippines
- Able to Read and Write

- Registered Voter
- At least 40 yrs. of age on the day of the election
- Resident of the Philippines for at least 10 yrs immediately preceding such election (Sec. 63, BP 881)

2. Senate / House of Representatives

a. Senator

- Natural-born citizen of the Philippines
- Able to Read and Write
- Registered Voter
- At least 35 yrs of age on the day of the election
- Resident of the Philippines for at least 2 yrs immediately preceding such election

b. Member of the House

- Natural- born citizen of the Philippines
- Able to Read and Write
- Registered Voter in the district where he shall be elected
EXCEPT: Party-list Representatives
- At least 25 yrs of age on the day of the election
- Resident of the district for at least 1 yr. immediately preceding such election

3. Local Government Officials

a. In General – Elective Local Officials

- Citizen of the Philippines
- Able to Read and Write Filipino or any local language or dialect
- Registered Voter in the Barangay, Municipality, City, Province or District (for members of local legislative bodies) where he intends to be elected
- Resident of the Barangay, Municipality, City Province or District for at least 1 yr immediately preceding the day of the election

b. Specific Positions

- b.1 *Governor/ Vice Governor / Member of the Sangguniang Panlalawigan; Mayor / Vice Mayor/ Member of Sangguniang Panglungsod of Highly Urbanized Cities*
 - At least 23 yrs. of age on election day
- b.2 *Mayor / Vice Mayor (Independent Component Cities/ Component Cities / Municipalities)*
 - At least 21 yrs. of age on election day
- b.3 *Member of Sangguniang Panglungsod / Sangguniang Bayan*
 - At least 18 yrs. of age on election day
- b.4 *Punong Barangay / Member of Sangguniang Barangay*
 - At least 18 yrs. of age on election day
- b.5 *Candidates for Sangguniang Kabataan*
 - At least 15 yrs of age but not more than 21 yrs. on election day

B. Disqualification

1. Grounds

1. Disqualification from Candidacy / Holding of Office (Sec. 12, BP 881)

- Declared Insane or Incompetent by Competent Authority
Removed upon: *Declaration by Competent Authority that Insanity / Incompetence has been removed*
- Sentenced by Final Judgment for the ff:
 - i. Subversion
 - ii. Insurrection
 - iii. Rebellion
 - iv. Any Offense where Penalty Sentenced is more than 18 months
Removed Upon: *Expiration of 5 yrs from service of sentence UNLESS within the same 5 yrs person again becomes disqualified*

v. Crime Involving Moral Turpitude

UNLESS: plenary pardon or amnesty is given or granted

- Being a permanent resident or immigrant to a foreign country
UNLESS: such status has been waived, in accordance with residence requirement of the election laws (Sec. 68, BP 881)

2. Disqualification by *action / protest* and subsequently found guilty by *final decision* of a competent court or by COMELEC for the following: (Sec. 68, BP 881)

- Giving money/ other material consideration to Induce, Influence, or Corrupt Voters/ Public Officials performing electoral functions
- Committing acts of terrorism to enhance candidacy
- Spending an amount for his election campaign in excess of that allowed by the Code
- Soliciting, Receiving or Making Prohibited Contributions (to be discussed later)
- Violating Sections 80, 83, 86 and 291 (d), (e), (k), (v) (to be discussed later)

2.1 PROHIBITED CONTRIBUTIONS

i. What are Prohibited Contributions?

- Transportation, Food, Drinks and Things of Value (Sec. 89, BP 881)
 - any candidate, political party, organization or person
 - giving / receiving free of charge
 - directly/ indirectly
 - during 5 hrs. before and after a public meeting, on the day preceding the election, on the day of the election

ii. Who are Prohibited?

Prohibited from Contributing

1. Persons/ Organizations prohibited from contributing, directly/ indirectly, for partisan political activity (Sec. 95, BP 881)

- 1.1 Financial Institutions (Public/ Private)
PROVIDED: Loans are allowed, if the institution is in the business of lending money
- 1.2 Natural and Juridical Persons
 - operating a public utility
 - possessing/ exploiting natural resources of the nation
 - who have been granted Franchises, Incentives Exemptions, Allocations or Similar Privileges or Concessions by the Government/ Pol. Subdivisions / GOCCs
 - who, within 5 yrs before the election date, have been granted loans/ other accommodations in excess of P100k by the Government/ Pol. Subdivisions / GOCCs
- 1.3 Educational Institutions which have received grants of public funds in an amount not less than P100k.
- 1.4 Foreigners and Foreign Corporations
- 1.5 Officials/ Employees in the Civil Service
- 1.6 Members of the AFP

Prohibited from Soliciting/ Accepting

- 1.7 Persons/ Organizations (Civic/ Religious) – from soliciting/ accepting from any candidate, campaign manager, agent/ representative gifts, contributions or cash/ in kind donations (from

commencement of election period up to and including election day) (Sec 97, BP 881)

EXCEPTION: normal and customary religious stipends, tithes or collections on Sundays/ other collection days

- iii. Other Prohibited Acts (as to Contributions):
 1. Soliciting/ Receiving Contributions/ Aid from Foreign Sources (Sec. 96, BP 881)
 - for purposes of influencing election results
 2. Prohibited Raising of Funds for Election Campaigns/ Support for a Candidate (Sec. 97, BP 881)
 - Holding:
 - Beauty Contests, Dances
 - Lotteries and Bingo
 - Cockfights and Boxing Bouts
 - Games
 - Entertainments
 - Cinematographic, Theatrical or other Performances
 - * From Commencement of Election Period up to and including Election Day
 3. Prohibited Donations, Contributions and Undertakings by Candidates, their spouses and relatives within the 2nd degree of consanguinity or affinity, and by Parties, their treasurers or agents (Sec 104, BP 881)
 - Donations, Contributions or Gifts (cash or kind)
 - Undertakings or Contributions to Construction or Repair of Roads, Bridges, School Buses, Puericulture Centers, Medical Clinics and Hospitals, Churches, Chapels, Cement Pavements, Other Structures for Public Use/ Use by any Religious or Civic Organization

EXCEPT:

 1. *normal and religious dues and collections*
 2. *periodic payments for legitimate scholarships*
 3. *school contributions habitually made before the prohibited period*

2.2 VIOLATIONS LEADING TO DISQUALIFICATION

- i. Election Campaign/ Partisan Political Activity outside Campaign Period (Sec. 80, BP 881)
 - * However, political parties may hold political conventions/ meetings to nominate their candidates within 30 days before commencement of the election period, or within 45 days for Presidential and Vice-Presidential election.
- ii. Removal, Destruction or Defacement of Lawful Election Propaganda (Sec. 83, BP 881)
 - covers preventing distribution of such propaganda
- iii. Violations of Regulation of Election Propaganda by COMELEC (Sec. 86, BP 881)
 - a. Airtime Duration, Expenditures, Promotion/ Sponsoring Candidates on Air – (Sec. 86 (a))
 - covers violations of rules and regulations covering air time, including violations of expenditures/ rates prescribed
 - prohibits programs/ sponsors from manifestly favoring / opposing any candidate or party by unduly repeating, referring to or including

such candidate or party in the program

* However, broadcasting accounts of significant/ newsworthy events/ views on matters of public interest are allowed.

- b. Registration of Contracts Advertising Candidates (Sec. 86 (b))
 - requires registration with the COMELEC, before implementing, of contracts for advertising promotion/ opposition of candidates
 - the candidate concerned/ representative of the political party concerned must sign the contract

- c. Grant/ Issue/ Suspension/ Cancellation of Franchise/ Permit to operate a Radio or TV station (Sec. 86 (c))
 - No such permits/ franchise shall be granted, issued, suspended or cancelled during election period
 - Radio and TV stations, including those owned/ controlled by Government shall give free, equal air time to an accredited political party/ candidate if it gives air time to such parties/ persons for political purposes
 - COMELEC shall supervise the use of press, radio and TV to give candidates equal opportunities to make known their qualifications and stand on public issues
 - Rules under this section take effect on the 7th day from publication in at least 2 newspapers of general circulation; before effectivity, no political advertisement/ propaganda shall be published/ broadcast through mass media.

* Violations of COMELEC rules are punishable under Sec. 264, BP 881

- iv. Specific Prohibited Acts (Sec. 261 d, e, k, v)
 - a. *Coercion of Subordinates to aid, campaign, vote for/ against any candidate, aspirant, nominee (Sec. 261 (d))*
 - a.1 Coercion, Intimidation, Compulsion, Influence
 - coercion, intimidation, compulsion or influence by public officers, officers of corporations/ associations (public/ private), heads of religious organizations, and employers against subordinates, members, employees, parishioners tenants, helpers, tillers or lease holders
 - a.2 Dismissal/ Threats to Dismiss/ Punish/ Demote/ Transfer/ Suspend/ Excommunicate/ Eject/ Cause Annoyance against Subordinates
 - b. *Threats, Intimidation, Terrorism, Use of Fraudulent Devices, other forms of Coercion (Sec. 261 (e))*
 - inflicting/ threatening to inflict violence, injury, punishment, damage, loss or disadvantage on a person/ s or his immediate family, honor, property
 - use of fraud to compel or refrain registration, participation, desistance

- from campaign and voting of any voter
 - promises of such registration, campaigning, voting or omission to vote covered
- c. *Unlawful Electioneering (Sec 261 (k))*
- soliciting votes/ undertaking propaganda on registration day before the board of election inspectors and on the day of the election
 - within the polling place and within a radius of 30 meters from such place
- * This prohibition applies against all persons.
- d. *Release, Disbursement or Expenditure of Public Funds during 45 days before a regular election or 30 days before a special election*
- d.1 for Public Works
- * EXCEPTIONS:
1. Maintenance of existing/ completed public works projects
 - * PROVIDED: only the average no. of employees already employed during the 6 month period before the 45-day period before election day shall be permitted to work, and no additional laborers shall be employed during the said 45 days.
 2. Work undertaken by contract through public bidding/ negotiated contract held or awarded before the 45-day period before the election
 - ≠ work undertaken under "takay" or "pakiaw" system
 3. Payment for usual cost of preparing working drawings, specifications, bills of materials, estimates and other preparatory procedures to actual construction
 - including purchase of materials and equipment and wages of watchmen and laborers
 - * PROVIDED: number of workers should increase over the original number of those hired upon commencement of the project
 4. Emergency Work due to occurrence of public calamity
 - limited merely to restoration of the damaged facility
 - * No payment shall be made within 5 days before election date to workers who rendered services for projects other than those mentioned above.
- * EXCEPTIONS TO THE EXCEPTIONS:
- ongoing public works projects commenced before the campaign period
 - similar projects under foreign agreements
- d.2 for the Ministry of Social Services and Development and other ministries performing similar functions
- * EXCEPTIONS:
- Salaries of Personnel
 - Routine and Normal Expenses
 - Expenses authorized by the COMELEC
 - In cases of calamity/ disaster, which shall be distributed by the Red Cross and without the participation of a candidate, his/her spouse, or family member within the 2nd civil degree of affinity / consanguinity
- d.3 for the Ministry of Human Settlements and ministries performing similar functions
- * EXCEPTIONS:
- Salaries of personnel
 - Other necessary administrative expenses
 - Expenses authorized by the COMELEC
3. Disqualifications – Elective Local Positions (Sec. 40, RA 7160)
- those Sentenced by final judgment for an offense
 - Involving Moral Turpitude, or
 - Offense Punishable by 1 year/ more of imprisonment, within 2 yrs after serving sentence
 - those Removed from Office as a result of an administrative case
 - those Convicted by final judgment for violating the Oath of Allegiance to the Republic
 - those with Dual Citizenship
 - Fugitives from Justice, in criminal/ nonpolitical cases here or abroad
 - Permanent Residents in a foreign country/ those who acquired the right to reside abroad and who avail of such right after effectivity of the Local Government Code
 - the Insane/ Feeble Minded
4. Additional Disqualifications
- A. Disqualifications under RA 8295 – Special elections
- Whenever evidence of guilt is strong, the following are disqualified to run in a special election to fill the vacancy in an elective office:
- An elective official who resigned from office
 - by accepting an appointive office
 - or for whatever reason
 - which he previously occupied but caused to be vacant due to his resignation.
 - A person who directly/ indirectly bribes, threatens, harasses, intimidates or inflicts harm, violence, injury, punishment, torture, damage, loss or disadvantage to any person or persons aspiring to become a candidate or against his/ her immediate family, his honor or property, to eliminate other potential candidate.
- B. Disqualification under the Constitution – Ombudsman and his/ her Deputies (Sec.11, Art XI, Constitution)
- Not qualified to run for any office in the election immediately succeeding their

cessation from office (Ombudsman and Deputies serve for 7 years)

5. Effects of the Penalties of Perpetual/ Temporary Disqualification under the RPC

- A. Public Office (Sec. 30, RPC)
 - 1. Deprivation of Public Offices/ Employments the offender may have held even if by popular election
 - 2. Deprivation of the right to vote and the right to be voted for, in any election for popular office
 - 3. Disqualification for offices/ public employments and for exercise of the rights mentioned
 - 4. Loss of all right to retirement pay/ other pension for any office previously held
- * In case of temporary disqualification, nos. 2 & 3 shall last during the term of the sentence.
- B. Special Disqualification (Sec. 31, RPC)
 - 1. Deprivation of office, employment or calling affected
 - 2. Disqualification to hold similar offices/ employments, perpetually or during the sentence, according to the extent of disqualification
- C. Exercise of the Right of Suffrage (Sec. 32, RPC)
 - 1. Deprivation of the right to vote, perpetually or during the sentence, and according to the nature of the penalty, in any popular election for any public office, including the right to be elected to such office
 - 2. The offender shall not be permitted to hold any public office during the period of disqualification.

- "fugitive from justice"
 - = *intent to evade prosecution/punishment* as the compelling factor that animates one's flight from a particular jurisdiction
 - knowledge by the fleeing subject of an already instituted indictment, or of a promulgated judgment of conviction (**Rodriguez v COMELEC**, 1996)
 - = not only those who flee after conviction to avoid punishment, but likewise those who, after being charged, flee to avoid prosecution (**Marquez v COMELEC**)
 - ≠ arrival in the Phils. from the US preceded the filing of the felony complaint in an American court and the issuance thereby of an arrest warrant. (**Rodriguez v COMELEC**, 1996)

b. Status

c. Acts

d. Nuisance Candidacy

- Procedure under Sec. 69, BP 881
 - Initiation
 - i. Commission *motu proprio*
 - ii. Verified petition of an interested party
 - Petition for denial of due course or cancellation of a certificate of candidacy (Sec. 78, BP 881)
 - Excusive ground of any false material representation in the certificate required in Sec. 74
 - At any time not later than 25 days from the filing of the certificate
 - Due notice and hearing requirement
 - Decision not later than 15 days before the election
 - Action by Commission
 - i. Refuse to give due course to a certificate of candidacy
 - ii. Cancel a certificate of candidacy
 - Grounds
 - A showing:

- i. That certificate was filed to put the election process in mockery or disrepute
- ii. That certificate was filed to cause confusion among the voters by the similarity of the names of the registered candidates
- iii. Of other circumstances or acts which clearly show a lack of a bona fide intention to run for the office for which the certificate has been filed and prevent a faithful determination of the true will of the electorate

2. Procedure

- How to file
 - i. File personally
 - ii. Through duly authorized representative
 - No filing by mail allowed
- Who can file – any candidate for the same office within 5 days from the last day for the filing of certificates
- Summons – within 3 days from filing of the petition, Commission shall issue summons to the respondent candidate, with a copy of the petition and its enclosures, if any
- Verified Answer – filed by respondent within 3 days from receipt of summons, serving copy to petitioner
 - grounds for a motion to dismiss may be raised as affirmative defense
- Hearing
 - Commission may designate any of its officials who are lawyers to hear the case and receive evidence
 - Summary proceeding
 - Position papers may be required from the parties, with affidavits or counter-affidavits and other documentary evidence, in lieu of oral testimonies
- Report - Hearing officer to immediately submit his findings, reports and recommendations within 5 days from completion of such submission of evidence
- Decision - by Commission within 5 days from receipt of the report, findings and recommendations
- Finality – the decision, order or ruling shall be final and executory after 5 days from receipt of a copy thereof by the parties, unless stayed by the Supreme Court
- Service of decision – Commission shall within 24 hours, through the fastest available means, disseminate its decision or the decision of the Supreme Court to the city or municipal election registrars, boards of election inspectors and the general public in the political subdivision concerned

3. Effects of Disqualification Case

- shall not be voted for; votes cast for him shall not be counted (Sec. 6, RA 6646)
- * Nevertheless, if for any reason, a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong. (Sec. 6, RA 6646)
- * The fact that the candidate who obtained the highest number of votes is later declared to be disqualified or not eligible for the office to which he was elected, does not necessarily entitle the candidate who

obtained the second highest number of votes to be declared the winner of the elective office.

4. Effect of Death, Disqualification, or Withdrawal of Candidacy: Substitution

→ If, after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause:

Only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace such candidate. (Sec. 77, BP 881)

C. Certificate of Candidacy

* *candidate* = any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy by himself or through an accredited political party, aggroupment, or coalition of parties (Sec. 79(a), BP 881)

* *guest candidate* = a candidate not belonging to a political party, yet nominated or supported by it (Sec. 70, BP 881)

* UNLESS political party registered under the party-list system: Nominees must necessarily be *bona fide* members of the party.

1. Filing

a. Requirements

▪ Deadline

- Sec. 11, RA 8436 - not be later than 120 days before the elections
- Sec. 4, RA 6646 - filed in 12 legible signed copies with the offices mentioned in Sec. 75 of BP 881
- Sec. 75, BP 881 - filed on any day from the commencement of the election period but not later than the day before the beginning of the campaign period
- In cases of postponement or failure of election, no additional certificate shall be accepted except in cases of substitution of candidates.

▪ Venue

1. President, Vice-President and Senators - the main office of the Commission in Manila
2. Members of the House of Representatives - the provincial election supervisor of the province concerned
 - a. Those for legislative districts in the National Capital Region - the regional election director
 - b. Those for legislative districts in cities outside the National Capital Region which comprise one or more legislative districts - the city election registrar concerned
3. Provincial offices - the provincial supervisor concerned
4. City or municipal offices – the city or municipal election registrar concerned
 - **Number of Copies**
 - Certificates of candidacy for President and Vice-President shall be filed in 10 legible copies with the Commission which shall order the printing of copies for distribution to all polling places.
 - Certificates of candidacy for the other offices shall be filed in duplicate with the following offices:
 - i. For representative in the Batasang Pambansa - with the Commission, the provincial election supervisor, city election registrar in case of highly urbanized cities, or an officer designated by the Commission having jurisdiction over the province, city or representative district who shall send copies to all polling places in the province, city or district
 - ii. For provincial offices - with the provincial election supervisor of the province concerned who shall send copies to all polling places in the province

- iii. For city and municipal offices - with the city or municipal election registrar who shall send copies to all polling places in the city or municipality
- iv. For punong barangay or kagawad ng sangguniang barangay – secretary of the sangguniang barangay
 - Secretary's refusal to receive or absence or non-availability - file with the election registrar of concerned city or municipality

* **Withdrawal:** written declaration under oath (Sec. 73, BP 881)

b. Effect

→ Any person holding a public appointive office or position, incl. active members of the AFP and GOCC officers, shall be considered *ipso facto* resigned from his office. (Sec. 66, BP 881)

* An elective official running for any office other than one which he is holding in a permanent capacity is NO LONGER considered *ipso facto* resigned upon the start of the campaign period (Sec. 14, RA 9006).

→ Any mass media columnist, commentator, announcer, reporter, on-air correspondent or personality who is:

- (a) a candidate for any elective public office or
- (b) a campaign volunteer for or
- (c) employed or retained in any capacity by any candidate or political party

shall be deemed resigned, if so required by their employer, or shall take a leave of absence from his/her work as such during the campaign period. (Sec. 6.6, RA 9006)

2. Prohibition against Multiple Candidacies

- Prohibition - no person is eligible for more than one office to be filled in the same election, and if he files his certificate of candidacy for more than one office, he shall not be eligible for any of them
- Cancellation of filed certificate - before the expiration of the period for the filing of certificates, the person who was filed more than one certificate may declare under oath the office for which he desires to be eligible and cancel the certificate for other office or offices (Sec. 73, BP 881)

3. Form and Content

→ Content: (Sec. 74, BP 881)

▪ name

* *If there are two or more candidates for an office with the same name and surname:* Each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, *except* the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected.

* may also include one nickname or stage name by which he is generally or popularly known in the locality

- that the person filing it is announcing his candidacy for the office stated therein
- that he is eligible for said office
- *if Congressional candidate:* the province, including its component cities, highly urbanized city or district or sector which he seeks to represent
 - political party
 - civil status
 - date of birth
 - residence
 - post office address for all election purposes
 - profession or occupation
- that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto
- that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities

- that he is not a permanent resident or immigrant to a foreign country
- that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion
- that the facts stated in the certificate of candidacy are true to the best of his knowledge
- **Attachments:**
 - latest photograph
 - bio-data
 - program of government

4. Duty to Receive COCs

The COMELEC, provincial election supervisor, or the election registrar or officer designated by COMELEC or the BEI shall have the ministerial duty to receive and acknowledge receipt of the COC (Sec. 76, BP 881; Sec. 4, RA 6646).

5. Cancellation of COC

Grounds for cancellation of certificate of candidacy

- (1) False material representation in the certificate of candidacy;
- (2) If the certificate filed is a substitute Certificate of Candidacy, when it is not a proper case of substitution (Sec. 2, Rule 24, COMELEC Rules of Procedure)

6. Certified List of Candidates

= lists containing the names of all registered candidates for each office to be voted for in each province, city or municipality immediately followed by the nickname or stage name of each candidate duly registered in his certificate of candidacy and his political party affiliation, if any (Sec. 4, RA 6646)

* to be posted inside each voting booth during the voting period

D. Political Parties

= organized groups of persons pursuing the same ideology, political ideas or platforms of government and includes its branches and divisions. (Sec. 60, BP 881)

= organized groups of citizens advocating an ideology or platform, principles and policies for the general conduct of government and which, as the most immediate means of securing their adoption, regularly nominates and supports certain of its leaders and members as candidates for public office. (Sec. 3c, R.A. 7491)

* 2 Kinds:

- (1) **national party:** constituency is spread over the geographical territory of at least a majority of the regions
- (2) **regional party:** constituency is spread over the geographical territory of at least a majority of the cities and provinces comprising the region

1. Registration Requirement

* Purposes (Sec. 60, BP 881):

1. Acquire juridical personality
2. Qualify for subsequent accreditation
3. Entitle them to the rights and privileges granted to political parties:
 - b. To have a watcher in every Election Registration Board (Sec. 15, R.A. 8189)
 - c. To inspect and/or copy at its expense the accountable registration forms and/or the list of registered voters in the precincts constituting the constituency at which the political party is fielding candidates (Sec. 42, R.A. 8189)
 - d. To have a watcher and/or representative in the procurement and watermarking of papers to be used in the printing of election returns and official ballots and in the printing, numbering, storage and distribution thereof (Sec. 8, R.A. 6646)
 - e. To have one watcher in every polling place and canvassing center (Sec. 26, R.A. 7166)

- f. To be present and to have counsel during the canvass of the election returns (Sec. 25, R.A. 6646)
- g. *(If registered under the party-list system)*
To be voted upon as a party (Art. IX-C, Sec. 7, 1987 Constitution)
- h. *(If the ruling or dominant opposition party)*
To have watchers who shall verify the contents of the boxes containing the shipment of official ballots, election returns and sample official ballots received by the provincial, city and municipal treasurers (Sec. 189, BP 881)
- i. *(If the ruling or dominant opposition party)*
To receive the 4th copy *(if the dominant majority party)* or the 5th copy *(if the dominant minority party)* of the election returns (Sec. 27, R.A. 7166)

2. Parties that Cannot be Registered

- religious denominations and sects (Art. IX-C, Sec. 2 (5), 1987 Constitution; Sec. 61, BP 881)
- those which seek to achieve their goals through violence or unlawful means (Art. IX-C, Sec. 2 (5), 1987 Constitution, Sec. 61, BP 881)
- those which refuse to uphold and adhere to the Constitution (Art. IX-C, Sec. 2 (5), 1987 Constitution)

those supported by foreign governments (Art. IX-C, Sec. 2 (5), 1987 Constitution)

3. Registration Procedure

- 1) The political party seeking registration may file with the COMELEC a verified petition attaching thereto its constitution and by-laws, platform or program of government and such other relevant information as may be required by the COMELEC.
- 2) The COMELEC shall require publication of the petition for registration or accreditation in at least three newspapers of general circulation. (Sec. 62, BP 881)
- 3) After due notice and hearing, the COMELEC shall resolve the petition within 10 days from the date it is submitted for decision. (Sec. 61, BP 881)
 - * Sec. 62 poses a discrepancy: Resolution of the petition for registration or accreditation shall be 15 days from the date of submission for decision.

4. Forfeiture of Registration

- any registered political party, singly or in coalition with others
- fails to obtain at least 10% of the votes cast in the constituency in which it nominated and supported a candidate or candidates in the election next following its registration
- after notice and hearing
- deemed to have forfeited such status as a registered political party in such constituency (Sec. 60, BP 881)

5. Cancellation of Registration: Grounds

- (1) Accepting financial contributions from foreign governments or their agencies (Sec. 2 (5), Art. IX-C);
- (2) Being a religious sect or denomination, organization or association organized for religious purposes (Sec. 6 (1), R.A. 7941);
- (3) Advocating violence or unlawful means to seek its goal (Sec. 6 (2), R.A. 7941);
- (4) Being a foreign party or organization (Sec. 6 (3), R.A. 7941);
- (5) Receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties, for partisan election purposes (Sec. 6 (4), R.A. 7941);

- (6) Violation of or failure to comply with laws, rules or regulations relating to elections (Sec. 6 (5), R. A. 7941);
- (7) Untruthful statements in its petition for registration (Sec. 6 (6), R.A. 7941);
- (8) Ceasing to exist for at least 1 year (Sec. 6 (7), R.A. 7941);
- (9) Failure to participate in the last 2 preceding elections (Sec. 6 (8), R.A. 7941);
- (10) (IF registered under the party-list system) Failure to obtain at least 2% of the votes in the 2 preceding elections for the constituency in which it has registered (Sec. 6 (8), R.A. 7941)

- ½ of the seats allocated to party-list representatives
- filled, *as provided by law*, by selection or election from:
 - labor
 - peasant
 - urban poor
 - indigenous cultural communities
 - women
 - youth
 - such other sectors as may be provided by law
 - except the religious sector

E. The Party-List System

- Composition – 20% of the total number of representatives including those under the party list (Sec. 5(2), Art. VI, Constitution)
- Representation
 - for 3 consecutive terms after the ratification of the 1987 Constitution

* Under the party-list system, the COMELEC may refuse or cancel registration either *motu proprio* or upon verified complaint of any interested party, after due notice and hearing. (Sec. 6, RA 7941)

* Party-List Reps vs District Reps:

	Party-list representative	District representative
Scope of electorate	Elected nationally; <i>if</i> garners at least 3% of all the votes cast for the party-list system, <i>then</i> entitled to 1-3 seats, according to proportional representation	Elected according to legislative district by the constituents of such district
Residence req't	None	Must be a resident of his legislative district for at least 1 year immediately before the election
Manner of election of representative	Voted upon by party or organization, when latter is entitled to representation	Elected personally, i.e. by name
Effect of disaffiliation with party	Loses his seat; shall be substituted by another qualified member of the party / organization based on the list submitted to the COMELEC	Does not lose seat
Effect of change in affiliation within 6 months prior to election	Prohibited from sitting as representative under new party or organization	May still run under new party
Effect of vacancy	Substitution, made within the party, based on the list submitted to the COMELEC	A special election may be held, <i>if</i> the vacancy takes place at least 1 year before the next election
Effect of candidacy and defeat in prior election	May not sit	May still run again as a district representative

V. THE ELECTION CAMPAIGN

A. Concept

- * *election campaign / partisan political activity*
= an act designed to promote the election or defeat of a particular candidate/s to a public office (Sec. 79(b), BP 881)
→ *unless* performed for the purpose of enhancing the chances of aspirants for nomination for candidacy to a public office by a political party, aggroupment, or coalition of parties, *includes*:
 - (a) Forming organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign for or against a candidate;
 - (b) Holding political caucuses, conferences, meetings, rallies, parades, or other similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a candidate;
 - (c) Making speeches, announcements or commentaries, or holding interviews for or against the election of any candidate for public office;
 - (d) Publishing or distributing campaign literature or materials designed to support or oppose the election of any candidate; or
 - (e) Directly or indirectly soliciting votes, pledges or support for or against a candidate.
- ≠ public expressions of opinions or discussions of probable issues in a forthcoming election, or of attributes or criticisms of probable candidates proposed to be nominated in a forthcoming political party convention

political party or organization or political groups or coalition shall be held earlier than:

- President, Vice-President and Senators - 165 days before election day
- Members of the House of Representatives and elective provincial, city or municipal officials - 75 days before election day

B. Nomination

- Nomination periods - No political convention or meeting for the nomination or selection of the official candidates of any

C. Campaign Period

	<u>No. of Days before Election Day</u>
President, Vice-President and Senators	90
Congressmen and elective provincial, city and municipal officials	45

Person/s	Prohibited Acts	Basis
Any person	(a) Removal, destruction, obliteration or in any manner defacement of or tampering with lawful election propaganda (b) Prevention of the distribution of lawful election propaganda	
Candidate / Political Party / Other Person	(a) giving or accepting, directly or indirectly, free of charge, transportation, food or drinks or things of value during the 5 hours before and after a public meeting, on the day preceding the election, and on the day of the election (b) giving or contributing, directly or indirectly, money or things of value for such purpose	
Members of the Board of Election Inspectors	engaging in any partisan political activity; taking part in the election except to discharge their duties as such and to vote	Sec. 173, BP 881

Officers / employees of the civil service	engaging directly or indirectly in any electioneering or partisan political campaigns	Sec. 2 (4), Art. IX-B, Const.
Members of the military	engaging directly or indirectly in any partisan political activity except to vote	Sec. 5(3), Art. XVI, Const.
Foreigners, whether judicial or natural person	(a) aiding any candidate or political party, directly or indirectly; or (b) taking part in/ influencing in any manner any election; or (c) contributing or making any expenditure in connection with any election campaign or partisan political activity	Sec. 81, BP 881

D. ELECTION PROPAGANDA

1. Lawful Propaganda

a. Examples

- Pamphlets, leaflets, cards, decals, stickers or other written or printed materials – not exceeding 8 ½ inches in width and 14 inches in length
- Handwritten or printed letters urging voters to vote for or against any particular political party or candidate for public office
- Cloth, paper or cardboard posters whether framed, or posted – area not exceeding 2 feet by 3 feet
 - except that, streamers not exceeding 3 feet by 8 feet in size, shall be allowed at:
 - the site and on the occasion of a public meeting or rally, or
 - in announcing the holding of said meeting or rally
 - that said streamers may be displayed 5 days before the date of the meeting or rally and shall be removed within 24 hours after said meeting or rally
- Paid advertisements in print or broadcast media – requirements in Sec. 4, RA 9006 apply (see below)
- All other forms of election propaganda not prohibited by the Omnibus Election Code or this Act (Sec. 3, RA 9006)

b. Limitations

- Election propaganda whether on:
 - Television
 - cable television
 - radio
 - newspapers
 - any other medium
- Allowed for all
 - registered political parties
 - national, regional, sectoral parties or organizations participating under the party-list elections
 - bona fide candidates seeking national and local elective positions
- Subject to:
 - the limitation on authorized expenses of candidates and political parties
 - the limitation on observance of truth in advertising
 - to the supervision and regulation by the Commission on Elections (COMELEC)

c. Requirements for Published or Printed and Broadcast Election Propaganda

- Identification
 - Any newspaper, newsletter, news weekly, gazette or magazine advertising, posters, pamphlets, comic books, circulars, handbills, bumper stickers, streamers, simple list of candidates or any published or printed political matter
 - Any broadcast of election propaganda by television or radio
 - for or against a candidate or group of candidates to any public office
 - bear and be identified by the reasonably legible or audible words "political advertisement paid for,"

- followed by the true and correct name and address of the candidate or party for whose benefit the election propaganda was printed or aired
- "Free" label
 - If the broadcast is given free of charge by the radio or television station
 - It must be identified by "airtime for this broadcast was provided free of charge by" followed by the true and correct name and address of the broadcast entity
- Donations
 - Print, broadcast or outdoor advertisements donated to the candidate or political party
 - Shall not be printed, published, broadcast or exhibited without the written acceptance by the said candidate or political party
 - Written acceptance attached to the advertising contract and submitted to the COMELEC [Sec. 4, RA 9006]

- The prohibition against certain forms of election propaganda is a valid exercise of police power, to prevent the perversion and prostitution of the electoral apparatus, and of the denial of due process of law (**Badoy v COMELEC**).
- A COMELEC Resolution prohibiting the posting of decals and stickers on citizens' privately-owned cars and other moving vehicles is unconstitutional infringes on the right to freedom of expression and is equivalent to deprivation of property without due process of law (**Adiong v COMELEC**).

2. Equal Access to Media Time and Space

All registered parties and *bona fide* candidates are guaranteed equal access to media time and space (Sec. 6, RA 9006). To this end, the COMELEC has the power to supervise the use and employment of press, radio and television facilities insofar as the placement of political advertisements is concerned, to ensure that candidates are given equal opportunity under equal circumstances to make known their qualifications and their stand on public issues. Of course, such political advertisements must be within the limits set by law on election spending.

- The requirement of free airtime for candidates is a valid exercise of the plenary police power of the State to promote the general welfare, for the ff. reasons:
 - All broadcasting, whether by radio or TV, is licensed by the government, and the franchise is always subject to amendment, alteration or repeal by Congress when the common good requires. Free airtime will benefit not only the candidates but even more the public, particularly the voters, so that they will be informed of the issues in an election. After all, it is the right of the viewers and listeners, not of the broadcasters, that is paramount.
 - The COMELEC does not take over the operation of radio and television stations, but only the allocation of airtime.
 - There are substantial distinctions in the characteristics of the broadcast media from those of the print media which justify the different treatment accorded to each for purposes of free speech, viz: the physical limitations of the broadcast spectrum, the uniquely pervasive presence of the broadcast media in the lives of all Filipinos, and the earlier ruling that the freedom of TV and radio broadcasting is less than the freedom accorded to the print media. (**Telecommunications and Broadcast Attorneys of the Philippines v. COMELEC**)

a. Regulation of Volume

- Print advertisements - not exceed ¼ page in broadsheet and ½ page in tabloids thrice a week per newspaper, magazine or other publications, during the campaign period
- Broadcast advertisements – for each bona fide candidate or registered political party
 - for a nationally elective office, whether by purchase or donation, is entitled to not more than
 - ✓ 120 minutes of television advertisement, and
 - ✓ 180 minutes of radio advertisement
 - for a locally elective office, whether by purchase or donation, is entitled to not more than

- ✓ 60 minutes of television advertisement, and
- ✓ 90 minutes of radio advertisement
(Sec. 6, RA 9006)

b. Regulation of Location

- Authority – COMELEC may authorize:
 - Political parties and party-list groups - to erect common poster areas for their candidates in not more than 10 public places like plazas, markets, barangay centers and others
 - Poster areas shall not exceed 12 x 16 feet or its equivalent
 - Independent candidates with no political parties - to erect common poster areas in not more than 10 public places
 - Poster areas shall not exceed 4 x 6 feet or its equivalent
- Posting on private property - any lawful propaganda material in private places with owner's consent
- Posting on public places or property – allocated equitably and impartially among the candidates (Sec. 9, RA 9006)

c. Affirmative Action by COMELEC

- Procurement by COMELEC of free space and airtime
 - Print space
 - Upon payment of just compensation
 - From at least 3 national newspapers of general circulation wherein candidates for national office can announce their candidacies.
 - Such space shall be allocated free of charge equally and impartially among all the candidates for national office
 - Free airtime
 - From at least 3 national television networks and 3 national radio networks
 - Allocated free of charge equally and impartially among all candidates for national office
- Sponsored debates
 - COMELEC may require national television and radio networks to sponsor
 - at least 3 national debates among presidential candidates
 - ✓ first debate shall be scheduled within the first and second week of the campaign period
 - ✓ second debate within the fifth and six week of the campaign period
 - ✓ third debate shall be scheduled within the tenth and eleventh week of the campaign period
 - at least 1 national debate among vice presidential candidates.
- Sale of airtime
 - Sponsoring television or radio network may sell airtime for commercials and advertisements to interested advertisers and sponsors
 - COMELEC shall promulgate rules and regulations for the holding of such debates

d. Right to Reply

- a. Who - All registered parties and bona fide candidates
- b. Against - charges published against them
- c. How
 - i. Reply shall be given publicity by the newspaper, television and/or radio station which first printed or aired the charges
 - ii. With the same prominence or in the same page or section or in the same time slot as the first statement (Sec. 10, RA 9006)

e. COMELEC Supervision

- Scope
 - In all instances
 - COMELEC shall supervise the use and employment of press, radio and television facilities
 - Insofar as the placement of political advertisements is concerned
- Purpose
 - Ensure that candidates are given equal opportunities under equal circumstances to make

known their qualifications and their stand on public issues

- Within the limits set forth in the BP 881 and RA 7166 on election spending
- Regulation
 - COMELEC shall ensure that radio or television or cable television broadcasting entities shall not allow
 - Scheduling of any program or
 - Permit any sponsor to manifestly favor or oppose any candidate or political party
 - By unduly or repeatedly referring to or including said candidate and/or political party in such program
 - But respecting in all instances the right of said broadcast entities to air accounts of significant news or news worthy events and views on matters of public interest (Sec. 6.4, RA 9006)

f. Restrictions on Media

- Regulation of franchises [Sec. 6.4]
 - During the election period, no franchise or permit to operate a radio or television station shall be
 - granted or issued
 - suspended
 - cancelled
- Regulation of equal access [Sec. 6.4]
 - COMELEC shall supervise the use and employment of press, radio and television facilities insofar as the placement of political advertisements is concerned
 - To ensure that candidates are given equal opportunities under equal circumstances to make known their qualifications and their stand on public issues
 - Within the limits in BP 881 and RA 7166 on election spending
- Regulation of programming [Sec. 6.4]
 - COMELEC shall ensure that radio or television or cable television broadcasting entities
 - Shall not allow the
 - scheduling of any program or
 - permit any sponsor
 - To manifestly favor or oppose any candidate or political party
 - By unduly or repeatedly referring to or including said candidate and/or political party in such program
 - But respecting in all instances the right of said broadcast entities to air accounts of significant news or news worthy events and views on matters of public interest
- Regulation of media personalities [Sec. 6.6]
 - Any mass media columnist, commentator, announcer, reporter, on-air correspondent or personality who is a:
 - candidate for any elective public office or
 - campaign volunteer for or employed or retained in any capacity by any candidate or political party
 - Shall be deemed resigned, if so required by their employer, or shall take a leave of absence from his/her work as such during the campaign period
 - Any media practitioner who is an official of a political party or a member of the campaign staff of a candidate or political party shall not use his/her time or space to favor any candidate or political party
- Regulation of bio-pics [Sec. 6.7]
 - No movie, cinematograph or documentary portraying the life or biography of a candidate
 - Shall be publicly exhibited in a theater, television station or any public forum during the campaign period
- Regulation of film appearance [Sec. 6.8]
 - No movie, cinematograph or documentary portrayed by an actor or media personality who is a candidate

- Shall be publicly exhibited in a theater or any public forum during the campaign period

g. Public Forum

- a. The Commission shall encourage nonpolitical, nonpartisan private or civic organizations
- b. To initiate and hold in every city and municipality, public fora
- c. At which all registered candidates for the same office may simultaneously and personally participate to present, explain, and/or debate on their campaign platforms and programs and other like issues.
- d. Commission shall promulgate the rules and regulations for the holding of such fora to assure its nonpartisan character and the equality of access thereto by all candidates.

E. Election Surveys and Exit Polls

election surveys = the measurement of opinions and perceptions of the voters as regards a candidate's popularity, qualifications, platforms or a matter of public discussion in relation to the election, including voters' preference for candidates or publicly discussed issues during the campaign period (Sec. 5.1, RA 9006)

1. Election Surveys

a. Information Required to be Published Therein

- (i) name of person, candidate, party or organization who commissioned or paid for the survey
- (ii) name of person, polling firm or survey organization who conducted the survey
- (iii) period during which survey was conducted, the methodology used (number of individual respondents and areas where they are selected) and specific questions asked
- (iv) margin of error of the survey
- (v) margin of error of a specific question, if its margin of error is greater than the margin of error of the survey in (iv)
- (vi) mailing address and telephone number with indication if it is an address or telephone number at which sponsor can be contacted to obtain a written report regarding the survey (Sec. 5, RA 9006)

- Who must publish
 - any person, natural or juridical
 - candidate
 - organization
- When to publish information: if survey is published during election period

b. Availability for COMELEC Scrutiny

- What can be availed of
 - (i) survey
 - (ii) raw data gathered to support conclusions
- Who can avail
 - (i) COMELEC
 - (ii) Registered political party
 - (iii) Bona fide candidate
 - (iv) COMELEC-accredited citizen's arm
- For what purpose
 - (i) inspection
 - (ii) copying
 - (iii) verification (Sec. 5.3, RA 9006)

c. Publication Period

- *Surveys affecting national candidates*: not later than 15 days before election
- *Surveys affecting local candidates*: not later than 7 days before election (Sec. 5(4), RA 9006)

2. Exit Polls

Exit polls are valid. They do not violate the principle of secrecy of the ballot since such polls are purely voluntary on the part of the voter and do not require him or her to reveal his or her ballot. (**ABS-CBN v COMELEC**, 2000)

a. Requirements

- Pollsters shall: (Sec. 5(5), RA 9006)
 - not conduct surveys within 50 meters from polling place (whether in a home, dwelling place or other places)
 - wear distinctive clothing
 - inform voters that they may refuse to answer

b. Announcement of Results

- *When*: after closing of polls on election day
- *What information should be included in announcement*:
 - (i) clearly identify total number of respondents
 - (ii) places where they were taken
 - (iii) statement that announcement is unofficial
 - (iv) statement that it does not represent trend (Sec. 5(5)(d), RA 9006)

F. Rallies and Other Political Activity

- What activities allowed (Sec. 87, BP 881)
 - (i) peaceful political rallies
 - (ii) meetings
 - (iii) other similar activities
- Who may hold such activities (Sec. 87, BP 881)
 - (i) any political party supporting official candidates
 - (ii) any candidate individually or jointly with other aspirants
- Requirements
 - Prior to holding a lawful political activity
 - all application for permits (Sec. 87, BP 881)
 - (i) Are subject to requirements of local ordinance on issuance of permits
 - (ii) Be received in writing
 - (iii) Be immediately posted in a conspicuous place in the city or municipality building
 - (iv) Be acted upon in writing by local authorities within 3 days after filing
 - (v) Not acted upon are deemed approved
 - Notification to election registrar by political party or candidate (Sec. 88, BP 881)
 - Subsequent to holding public rally (Sec. 88, BP 881)
 - submission of statement of expenses incurred to election registrar
 - Appeal of denial of permits (Sec. 87, BP 881)
 - Only justifiable ground for denial of permit: prior written application by another political party or candidate and for the same purpose has been approved
 - To whom appeal may be taken:
 - (i) Provincial election supervisor
 - (ii) COMELEC
 - When resolution must be given: within 48 hours from time appeal was taken
 - Effect of resolution on appeal: final and executory
- Prohibited acts (Sec. 89, BP 881)
 - By whom committed
 - (i) candidate
 - (ii) political party
 - (iii) organization
 - (iv) any person
 - When prohibited and what constitutes the act
 - (i) During the 5 hours before and after the public meeting,
 - (ii) The day preceding the election
 - (iii) The day of the election, the following are prohibited:
 - a. to give or accept
 - b. directly or indirectly
 - c. free of charge
 - d. transportation, food, drinks or things of value
 - (iv) At any time, the following are prohibited:
 - a. to give or contribute
 - b. directly or indirectly
 - c. money or things of value

G. Campaign Funds

1. Acquiring and Managing Funds

a. Records

- Who are responsible (Sec. 106(a), BP 881)
 - (i) candidate
 - (ii) treasurer of political party
 - (iii) person acting under authority of candidate or treasurer of political party
- What are their responsibilities (Sec. 106, BP 881)
 - (i) issuance receipt for every contribution received
 - (ii) obtaining and keeping receipt, stating the particulars, of every expenditure
 - (iii) keeping detailed, full and accurate records of all contributions received and expenditure incurred by him and those acting under his authority
 - (iv) preservation of records of contributions and expenditures
 - with all pertinent documents
 - at least 3 years after the election to which they pertain
 - (v) production for inspection
 - a. by COMELEC
 - b. its duly authorized representative
 - c. upon presentation of subpoena duces tecum issued by COMELEC
- Effect of failure to preserve records or documents: deemed prima facie violation of Sec. 106, BP 881

b. Prohibited Ways of Acquiring Funds**i. Prohibited Contributions**

→ contribution includes: (Sec. 94(a), BP 881)

- a gift, donation, subscription, loan, advance or deposit of money or anything of value, or a contract, promise or agreement to contribute, whether or not legally enforceable, made for the purpose of influencing the results of the elections but shall not include services rendered without compensation by individuals volunteering a portion or all of their time in behalf of a candidate or political party
- the use of facilities voluntarily donated by other persons (the money value can be assessed based on the rates prevailing in the area)

- What constitutes prohibited acts

- (i) Contributions
 - a. Purpose: partisan political activity
 - b. Directly or indirectly
 - c. By any person prohibited by law
 - (ii) solicitations or receipt of any contribution from any person prohibited by law
- Who are prohibited
 - (i) public or private financial institution
 - (ii) persons, natural or juridical:
 - a. operating a public utility
 - b. exploiting a natural resource
 - c. who has been granted by the government or any of its divisions, subdivisions or instrumentalities,
 - i. contracts or sub-contracts to supply goods or services or to perform construction or other works
 - ii. franchises, incentives, exemptions, allocations or similar privileges or concessions (including government-owned or controlled corporations)
 - iii. within 1 year from date of election, granted loans or other accommodations in excess of P100,000 (including government-owned or controlled corporations)
 - (iii) educational institutions with grants of public funds not less than P100,000
 - (iv) officials or employees in the Civil Service
 - (v) members of the Armed Forces of the Philippines
 - (vi) Foreigners
 - (vii) Foreign corporations

ii. Prohibited Donations

- What are prohibited (directly or indirectly)
 - a. any donation, contribution or gift, in cash or in kind (Sec. 104, BP 881)

- b. to undertake or contribute to the construction or repair of (Sec. 104, BP 881):
 - i. roads
 - ii. bridges
 - iii. school buses
 - iv. periculture centers
 - v. medical clinics and hospitals
 - vi. churches or chapels cement pavements
 - vii. any structure for public use
 - viii. any structure for use of any religious or civic organization
- c. donations of corporations, domestic or foreign, if purpose is (Sec. 36, Corpo Code):
 - i. to aid any political party or candidate
 - ii. partisan political activity

- What are NOT prohibited (Sec. 104, BP 881)

- a. normal and customary religious dues or contributions (religious stipends, tithes, collections on Sundays or other designated collection days)
 - b. periodic payments for legitimate scholarships established before the prohibited period
 - c. school contributions habitually made before prohibited period
- When prohibited (Sec. 104, BP 881)
 - a. during the campaign period
 - b. the day before the election
 - c. the day of the election

- Who are prohibited

- a. Candidate (Sec. 104, BP 881)
- b. candidate's (Sec. 104, BP 881)
 - i. spouse
 - ii. relative within the second civil degree of consanguinity or affinity
 - iii. campaign manager
 - iv. agent
 - v. representative
- c. political party's (Sec. 104, BP 881)
 - i. treasurer
 - ii. agent
 - iii. representative
- d. domestic or foreign corporation (Sec. 36, Corpo Code)

iii. Prohibited Raising of Funds

- What are prohibited (Sec. 97, BP 881)

- a. Any person to hold:
 - a. Dances
 - b. Lotteries
 - c. Cockfights
 - d. Games
 - e. Boxing
 - f. Bouts
 - g. Bingo
 - h. Beauty contests
 - i. Entertainments
 - j. Cinematographic, theatrical or other performances
 - Purpose: raise funds for election campaign or to support any candidate
 - When prohibited: from commencement of election period up to day of election
 - b. Any person or organization, whether civic or religious
 - a. Solicit or accept, directly or indirectly
 - b. From:
 - i. Candidate for public office
 - ii. Candidate's campaign manager, agent or representative, or any person acting in their behalf
 - c. What: (in cash or in kind)
 - i. Gift
 - ii. Food
 - iii. Transportation
 - iv. Contribution
 - v. Donation
- What are NOT prohibited (Sec. 97, BP 881)

- Normal and customary religious stipends, tithes, or collections on Sundays and/or other designate collection days

2. Expenditures

→ *expenditures* = the aggregate amount that a candidate or registered political party may spend for an election campaign (Sec. 13, RA 7166). *e.g.*:

- the payment or delivery of money of anything of value, or a contract, promise or agreement to make an expenditure, for the purpose of influencing the results of the election
- the use of facilities personally owned by the candidate (the money value of such use can be assessed based on the rates prevailing in the area) (Sec. 94(b), BP 881)

a. Lawful Expenditures

- No expenditure allowed, directly or indirectly, except for the following purposes (Sec. 102, BP 881):
 - (i) traveling expenses of candidates and campaign personnel
 - a. in the course of the campaign
 - b. for personal expenses incident to campaign
 - (ii) compensation of campaigners, clerks, stenographers, messengers and other persons actually employed in campaign
 - (iii) telegraph and telephone tolls, postage, freight and express delivery charges
 - (iv) stationary, printing and distribution of printed matters relative to candidacy
 - (v) employment of watchers at polls
 - (vi) rent, maintenance and furnishing of campaign headquarters, office or place of meetings
 - (vii) political meetings and rallies, and use of sound systems, lights and decorations during meetings and rallies
 - (viii) newspaper, radio, television and other public advertisements
 - (ix) employment of counsel, cost not included in amounts in Sec. 100 and 101
 - (x) copying and classifying list of voters, investigating and challenging the right to vote of persons registered in the lists, costs not included in amount of expenses which a candidate or political party may have incurred under Sections 100 and 101
 - (xi) printing sample ballots in such color, size and maximum number authorized by COMELEC, cost not included in the amount under Sections 100 and 101
- Persons authorized to incur election expenditures (Sec. 103, BP 881)
 - (i) candidate
 - (ii) treasurer of a political party
 - (iii) person authorized by the candidate or treasurer
 - expenditures authorized: in support of or in opposition to any candidate or political party effect if duly authorized by a candidate or political party: considered as expenditures of such candidate or political party
 - Requirements for authority to incur expenditures:
 - a. in writing
 - b. signed by candidate or treasurer of political party
 - c. show expenditures authorized
 - d. state full name and exact address of person authorized
 - e. copy furnished to COMELEC

b. Limitations on Expenditures

- Amount that a candidate or registered political party may spend
 - for election campaign
 - for every voter currently registered in the constituency where he filed his certificate of candidacy
- (i) For candidates
 - a. President – P10
 - b. Vice President – P10
 - c. Other candidates
 - i. With political party OR with support from political party – P3

- ii. Without political party OR without support from political party – P5

- (ii) For political parties – P5
 - Exemption from gift tax:
 - (i) any contribution, in cash or in kind
 - (ii) to any candidate or political party or coalition of parties
 - (iii) for campaign purposes
 - (iv) duly reported to COMELEC

c. Duties of Persons to Whom Electoral Expenditures are Made

- Duty of contractor or firm to whom electoral expenditure is made (Sec. 112, BP 881)
 - (i) file with COMELEC a report
 - a. within 30 days after day of election
 - b. full names and exact addresses of candidates, treasurers of political parties and other persons incurring expenditures
 - c. nature or purpose of each expenditure
 - d. date and costs of each expenditure
 - e. other particulars COMELEC may require
 - f. signed and sworn to by supplier or contractor, or in case of a business firm or association, by its president or general manager
 - (ii) require of every agent of a candidate or treasurer of a political party to present written authority to incur electoral expenditures in behalf of a candidate or political party
 - (iii) keep and preserve records
 - a. subject to inspection by COMELEC or its authorized representatives
 - b. at its place of business
 - c. copies of written authority, contracts, vouchers, invoices and other records and documents relative to the expenditures
 - d. period of 3 years after the date of election to which they pertain
- Unlawful acts (Sec. 122, BP 881): for any supplier, contractor or business firm to enter into any contract involving election expenditures with representatives of candidates or political parties without written authority

3. Statement of Contributions and Expenses

- Form and Content of Statement (Sec. 14, RA 7166; Sec. 109, BP 881)
 - a. true, full and itemized statement
 - b. in writing
 - c. subscribed and sworn to by candidate or treasurer of party
 - d. complete as of the date next preceding the date of filing
 - e. for contributions:
 - i. amount of contribution
 - ii. date of receipt
 - iii. full name and exact address of person who gave contribution
 - f. for expenditures
 - i. amount of every expenditure
 - ii. date of every expenditure
 - iii. full name and exact address of person to whom payment was made
 - g. any unpaid obligation
 - i. nature
 - ii. amount
 - iii. to whom owing
 - h. other particulars which COMELEC may require if no contribution was received, no expenditure was made, or has no pending obligation: a statement expressing such fact
- By Whom Filed
 - a. candidate
 - b. treasurer of political party
- When required to be filed: within 30 days after day of election
- Where filed: offices of COMELEC
- Effect of failure to file (Sec. 14, RA 7166)

- a. person elected to public office shall not enter upon the duties of his office
- b. winning candidate nominated by political party (who failed to file statement) shall not enter upon the duties of his office
- c. administrative offense: subject to administrative fines, except for elective barangay officials
- d. for second and subsequent offense: perpetual disqualification to hold public office

- Penalties for failure to file (Sec. 14, RA 7166)

- a. For first offense:
 - o Administrative Fines
 - a. Amount: P1,000.00 – P30,000.00, subject to discretion of COMELEC
 - b. When to be paid: within 30 days from receipt of notice of failure
 - c. Effect of failure to pay: issuance by COMELEC of writ of execution against properties of offender
 - b. For second or subsequent offense:
 - a. Administrative Fines - Amount: P2,000.00 – P60,000.00, subject to discretion of COMELEC
 - b. Perpetual disqualification to hold public office
- Duty of city or municipal election registrar (Sec. 14, RA 7166)
 - a. to advise in writing
 - b. all candidates residing in his jurisdiction
 - c. to comply with their obligation to file their statements of contributions and expenditures
 - d. by personal delivery or registered mail
 - e. within 5 days from date of election

- The requirement to file the statement covers even those who *withdrew* as candidates after having filed their certificates because the law makes no distinction. (**Pilar v COMELEC**)

H. COMELEC Use of Media

1. Space and Time

COMELEC shall procure space (known as “COMELEC space” [for newspaper] and “COMELEC time” [for broadcast]) (Sec. 8, RA 9006)

- in at least one (1) newspaper of general circulation
 - o In absence of such newspaper: publication shall be done in any other magazine or periodical in said province or city
 - o Allocated to the COMELEC upon payment of just compensation
- and air time in at least one (1) major broadcasting station or entity in every province or city
 - o In absence of said broadcasting station or entity: broadcasting shall be done in any radio or television station in said province or city
 - o Allocated to the COMELEC free of charge
- COMELEC time and space shall be utilized exclusively by the COMELEC for public information dissemination on election-related concerns
- A COMELEC Resolution compelling print media companies to donate “COMELEC space” is not a valid exercise of the power of eminent domain. There is no showing of: the element of necessity for the taking; that the members of the Philippine Press Institute are unwilling to sell print space; or that COMELEC has been granted the power of eminent domain by the Constitution or the Legislature. Nor is the Resolution a valid exercise of police power: No showing of police power delegated to the COMELEC, or of a real and palpable or urgent necessity for such taking. (**Phil. Press Institute v COMELEC**)

2. Information Bulletin and Sample Ballot

- a. COMELEC Bulletin (Sec. 93, BP 881)
 - Printing and supervision of dissemination by COMELEC
 - Of such size as to adequately contain (of every candidate)
 - o Picture
 - o bio-data
 - o program of government
 - Disseminated to the voters or displayed in such places as to give due prominence
 - Any candidate may reprint at his expense

- o upon prior authority of COMELEC
 - o Printing of the names of the different candidates with their bio-data must be in alphabetical order irrespective of party affiliation
- b. Official Sample Ballots (Sec. 185, BP 881, as amended)
 - Provided by COMELEC to the Board of Election Inspectors
 - Rate of 30 ballots per polling place
 - Printed on colored paper, in all respects like the official ballots but bearing instead the words 'Official Sample Ballot'
 - o Function: to be shown to the public and used in demonstrating how to fill out and fold the official ballots properly
 - Not allowed:
 - o Name of any actual candidate shall be written on the spaces for voting
 - o To be used for voting

VI. THE ELECTION

- * An election is constituted when there is a plurality of votes sufficient for a choice conditioned on the plurality of valid votes or a valid constituency regardless of the actually number of votes cast. Otherwise, there would be no winner.
- * It is not necessary that a majority of voters should have elected the winning candidate. Even if a candidate wins due to a minority vote, if the election is lawfully held, a plurality of the majority is sufficient.
- * Those who did not vote are assumed to assent to the action of those who voted.

A. Special Elections

- Called by COMELEC
 - o In case a permanent vacancy shall occur in the Senate or House of Representatives at least 1 year before the expiration of the term
 - o Elections to be held not earlier than 60 days nor longer than 90 days after the occurrence of the vacancy
 - o Vacancy in the Senate: simultaneously with the succeeding regular election (Sec. 4, RA 7166)
- COMELEC role:
 - o send sufficient copies of resolution for the holding of the election to its provincial election supervisors and election registrars for dissemination
 - Who in turn: post copies in at least 3 conspicuous places preferably where public meetings are held in each city or municipality affected (Sec. 7, BP 881)

B. Postponement or Failure of Election

1. **Decision to Postpone or Declare Failure of Election**
→ shall be made by the COMELEC *en banc*, by a majority vote of its members. (Sec. 4, RA 7166)

2. **Postponement of Election**

When elections postponed by COMELEC:

- Motu proprio OR
- Upon a verified petition by any interested party
- After due notice and hearing
 - o All interested parties are afforded equal opportunity to be heard
- Causes:
 - o Any serious cause (examples):
 - Violence
 - Terrorism
 - Loss or destruction of election paraphernalia or records
 - Force majeure
 - Analogous causes of such a nature that the holding of a free, orderly and honest election should become impossible in any political subdivision
- Postponement

- To a date which should be reasonably close to the date of the election not held, suspended or which resulted in a failure to elect

Not later than 30 days after the cessation of the cause

3. Failure of Election

When there will be a failure of election:

- Declared by COMELEC
 - Based on a verified petition by any interested party
 - After due notice and hearing
 - Causes: (any of such cases the failure or suspension of election would affect the result of the election)
 - [the election in any polling place has not been held on the date fixed] OR
 - [suspended before the hour fixed by law for the closing of the voting] OR
 - [after the voting and during the preparation and the transmission of the election returns or in the custody or canvass, such election results in a failure to elect]
 - Because of (Sec. 6, BP 881)
 - force majeure
 - violence
 - terrorism
 - fraud
 - other analogous causes
- * may occur before or after the casting of votes or on the day of the election (Sec. 4, RA 7166)
- COMELEC to call for the holding or continuation of the election not held, suspended or which resulted in a failure to elect
 - on a date reasonably close to the date of the election
 - Not later than 30 days after the cessation of the cause (Sec. 6, BP 881)

• 3 instances of failure of elections (Sison v COMELEC, 1999):

- (1) Election not held in any polling place on the date fixed on account of *force majeure*, violence, terrorism, fraud, or other analogous causes.
 - (2) Suspension of election in any polling place before the hour fixed by law for the closing of the voting on account of *force majeure*, violence, terrorism, fraud, or other analogous causes.
 - (3) Resulting failure to elect, after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, on account of *force majeure*, violence, terrorism, fraud or other analogous causes.
- The COMELEC, in the case of actions for annulment of election results or declaration of failure of elections, may conduct technical examination of election documents and compare and analyze voters' signatures and fingerprints in order to determine whether or not the elections had indeed been free, honest and clean. (Loong v COMELEC)

Balindong v COMELEC

C. Election Proper

1. Precincts and Polling Places

2. Board of Election Inspectors

a. Composition

- Chairman
- 2 members
 - One shall be designated as poll clerk (Sec. 13, RA 6646)

• Qualifications:

- all of whom shall be public school teachers, giving preference to those with permanent appointments
- NOT ENOUGH public school teachers: (who may be appointed for election duty)
 - teachers in private schools
 - employees in the civil service

- other citizens of known probity and competence who are registered voters of the city or municipality

b. Qualifications

→ Chairman or member or substitute member of the BEI: (Sec. 166, BP 881)

- Good moral character and irreproachable reputation
- Registered voter of the city or municipality
- Never been convicted of
 - any election offense
 - or of any other crime punishable by more than 6 months of imprisonment
- No pending information for any election offense against him
- Must be able to speak and write English or the local dialect

* Before assuming their office, BEI members must take and sign an oath upon forms prepared by the Commission, before:

- an officer authorized to administer oaths
- in his absence, before any other member of the board of election inspectors present
- in case no one is present, any voter (Sec. 165, BP 881).

c. Disqualification, Substitution, and Vacancy

→ When disqualified: Related within 4th civil degree of consanguinity or affinity:

- to any other member of the BEI OR
- to any candidate to be voted for in the polling place or his spouse (Sec. 167, BP 881)

→ Relief and substitution: (Sec. 170, BP 881)

- (General rule): Public school teachers who are members of the board of election inspectors shall not be relieved nor disqualified
 - except for cause and after due hearing
- Member (who is nominated by a political party) and his substitute may at any time be relieved from office and substituted with another having the legal qualifications
 - Upon petition of the authorized representative of the party upon whose nomination the appointment was made
 - Unlawful to prevent said person from, or disturb him in, the performance of the duties of the said office
 - Record of each case of substitution shall be made
 - Setting forth the hour in which the replaced member has ceased in the office
 - Status of the work of the board of election inspectors
 - Record shall be signed by each member of the board of election inspectors including the incoming and outgoing officers

→ Substitutions in cases of vacancies (Sec. 175, BP 881)

- When: time of the meeting of the board of election inspectors, any member is absent, or the office is still vacant
- How:
 - Members present shall call upon the substitute of the absent members to perform the duties of the latter
 - In case such substitute cannot be found
 - the members present shall appoint any non-partisan registered voter of the polling place to temporarily fill said vacancy
 - In case there are two or more members present:
 - they shall act jointly
 - If the absent member is one who has been proposed by an accredited political party:
 - Representative of said political party OR
 - In his absence the watchers belonging to said party shall designate a registered voter of the polling place to temporarily fill vacancy

- In the event of refusal or failure of either representative or watchers of said political party to make the designation
 - Members of the board of election inspectors present shall choose a non-partisan registered voter

d. Powers and Functions

- * Conduct the voting and counting of votes in their respective polling places
 - * Act as deputies of COMELEC in the supervision and control of the election in the polling places where they are assigned
 - * Assure the holding of the elections is in a free, orderly and honest manner
 - * Perform such other functions prescribed
- * BEI duties:
= the conduct of the elections and the counting of votes
≠ determination of eligibility of candidates

e. Prohibited Acts

- Engaging in any partisan political activity OR
- Taking part in the election
 - except to discharge his duties as such and to vote (Sec. 173, BP 881)
- Before termination of voting, make any announcement as to
 - Whether a certain registered voter has already voted or not
 - As to how many have already voted or how many so far have failed to vote
 - Any other fact tending to show or showing the state of the polls
- Make any statement at any time, except as witness before a court, as to how any person voted

3. Watchers

Each candidate and each political party or coalition of political parties duly registered with the Commission including those participating under the party list system of representation, may appoint two watchers, to serve alternately, in every polling place.

However, candidates for Sangguniang Panlalawigan, Sangguniang Lunsod and Sangguniang Bayan, belonging to the same ticket or slate shall collectively entitled to 1 watcher.

Duly accredited citizens' arms of the Commission, shall be entitled to appoint a watcher in every polling place. Other civic, religious, professional, business, service, youth, and other similar organization, with prior authority from the Commission, shall be entitled collectively, to appoint 1 watcher in polling place.

Qualifications:

- 1) Qualified voter of the city or municipality
- 2) Good reputation
- 3) Never been convicted of any election offence or any crime
- 4) Knows how to read and write English, Pilipino or any of the prevailing local dialects
- 5) Not related within the 4th civil degree by consanguinity or affinity to any member of the BEI in the polling place where he seeks appointment as watcher.

Rights and duties:

- 1) Stay in the space reserved for them inside the polling place
- 2) Witness and inform themselves of the proceedings of the BEI
- 3) Take notes, photographs of proceedings
- 4) File protests against any irregularities or violation of law
- 5) Be furnished with a certificate of the number of votes cast for each candidate, duly signed and thumb marked by the members of the BEI (Sec. 179, BP 881)
- 6) *(If principal watcher, OR IF 1 or both principal watchers are unavailable, unwilling, or refuse to do so AND PREFERABLY with political affiliation or alignment compatible with that of the absent or unwilling watcher)* affix their signatures and thumbmarks on the election returns for that precinct (Sec. 12, RA 6646)
- 7) Full and unimpeded access to the proceedings, so that they can

read the names written on ballots being counted with unaided natural vision, consistent with good order in the polling place (Sec. 12, RA 6646)

4. Casting Votes

a. Voting Hours

- Casting of votes start: 7 am (Sec. 190, BP 881)
- Casting of votes end: 3 pm
 - Except when there are voters present within 30 meters in front of the polling place who have not yet cast their votes
 - Voting shall continue but only to allow said voters to cast their votes without interruption
 - How:
 - Poll clerk shall, without delay, prepare a complete list containing the names of voters consecutively numbered
 - Voters so listed shall be called to vote by announcing each name repeatedly 3 times in order
 - Any voter who is not present when his name is called out shall not be permitted to vote

b. Preliminaries

1. Meeting of board of election inspectors:
 - a. meet at the polling place at ^630am of election day
 - b. have:
 - i. the book of voters containing
 - a. all the approved applications of registration of voters pertaining to the polling place
 - b. the certified list of voters
 - c. the certified list of candidates
 - ii. the ballot box
 - iii. the official ballots
 - iv. sufficient indelible pencils or ball pens for the use of the voters
 - v. the forms to be used
 - vi. all other materials which may be necessary
2. Chairman (immediately thereafter):
 - a. open the ballot box
 - b. empty both of its compartments
 - c. exhibit them to all those present and
 - d. being empty, lock its interior covers with three padlocks
3. Chairman (further):
 - a. Show to the public and the watchers present the package of official ballots received from the city, or municipal treasurer duly wrapped and sealed
 - b. Number of pads
 - c. The serial numbers
 - d. Type forms of the ballots in each pad appearing on the cover
 - e. Book of voters duly sealed
4. Board of election inspectors:
 - a. Break the seals of the package of official ballots and the book of voters
 - b. Enter in the minutes the fact that the package of ballots, and the book of voters were shown to the public with their wrapping and corresponding seals intact and/or if they find that the wrapping and seals are broken, such fact must be stated in the minutes
 - i. Also, number of pads and the serial numbers of ballots that they find in the package
5. Spurious ballots: Ballots with separately printed serial numbers
 - a. Not be utilized by the board of election inspectors
 - b. Unless the COMELEC representative shall order their use in writing, stating the reasons

6. [Chairman and the 2 party members shall retain in their possession their respective keys to the padlocks during the voting]
7. Box shall remain locked until the voting is finished and the counting begins
 - a. Board of election inspectors: may open if it should become necessary to make room for more ballots
 - a. in the presence of the whole board of election inspectors and the watchers
 - b. Chairman shall press down with his hands the ballots contained without removing any of them
 - c. Board of election inspectors shall close the box and lock it with 3 padlocks (Sec. 191, BP 881)

c. Authentication of the Ballot

In every case before delivering an official ballot to the voter, the chairman of the board of election inspectors shall, in the presence of the voter, affix his signature at the back thereof. (Sec. 24, RA 7166)

- A ballot is valid even if it is not signed at the back by the BEI Chairman (**Punzalan v COMELEC**).
- There is nothing in the law that provides that a ballot which has not been authenticated shall be deemed spurious. The law merely makes the Chairman of the BEI accountable for such an omission. (**Libanan v. HRET, 1997**)

d. Voting

i. Principle of Secrecy of the Ballot

- The distinguishing feature of this mode of voting is that every voter is thus enabled to secure and preserve the most complete and violable secrecy in regard to the person for whom he votes. Thus he escapes the influences which, under the system of oral suffrage, may be brought to bear upon him with a view to overbear and intimidate, and thus prevent the real expression of public sentiment.
- A voter will not be compelled to disclose for whom he voted. Moreover, third persons are not permitted to testify to its purport.
- However, the voter may waive his privilege of secrecy and voluntarily disclose the contents of his ballot, e.g. in exit polls.

ii. Other Voting Fundamentals

1. Must vote in person.
 - * An infirm or aged voter may employ another to perform the mechanical act of depositing in the voter's presence the ballot which the latter has himself selected.
 - What is done in one's presence and by one's express direction is, in law, one's own act.
2. Must vote only once at any election, for each office or measure to be voted for.
3. Need not vote the whole ticket. He may vote for such offices as he chooses and for such of the several persons to be chosen to the same office as he prefers.

iii. Absentee Voting

Who may vote in city/municipality where he/she assigned on election day (not where he is registered):

- Any person who by reason of public functions and duties
- Not in his/her place of registration on election day
- He/she is a duly registered voter

Submission of list of officers and employees

- When: 30 days before the election
- Who: the appropriate head of office shall submit to COMELEC
- What: list (under oath) of officers and employees of the office with the request (under oath) that said officers and employees be provided with application forms to cast absentee ballots in their place of assignment
 - o Officers and employees must be:
 - registered voters AND
 - by reason of their duties and functions, will be in places other than their place of registration AND
 - who desire to exercise their right to vote

How to vote:

1. Voters who cast absentee voters shall vote 1 week before election day
2. They will deliver to COMELEC Regional Director, or the Provincial Election Supervisor or the City or Municipal Election Registrar of the place of their assignment the special Commission on Elections absentee ballot
 - a. Within 2 security envelopes
 - i. 1 containing the absentee ballots indicating only that it is an envelope of the COMELEC
 - ii. Other envelope indicating the name of the absentee voter and affidavit number
3. COMELEC official concerned to whom the absentee vote is delivered
 - a. transmit by the fastest means available to COMELEC:
 - i. absentee ballot within 2 security envelopes [so that the same are in the central office of the COMELEC 1 day before the elections]
 - ii. transmittal letter indicating
 1. the names of the persons who cast the absentee votes
 2. their voter's affidavit numbers
 3. their certificates of eligibility to vote absentee

iv. Procedure

1. Preparation of the ballots.

The voter, upon receiving his folded ballot, shall forthwith proceed to one of the empty voting booths and shall there fill his ballot by writing in the proper space for each office the name of the individual candidate for whom he desires to vote.

* Prohibited Acts

- entrance into a booth already occupied
- entrance into a booth accompanied by another, *unless* illiterate or disabled [*see below*] and accompanied by an assistor
- staying in a booth longer than necessary
- speaking with anyone other than as provided for by law while inside the polling place
- preparation of the ballot outside the voting booth
- exhibit of ballot's contents to any person
- erasure of any printing from the ballot
- intentional tearing / defacing of / placing any distinguishing mark on the ballot
- use of carbon paper, paraffin paper, or other means to make a copy of the ballot's contents
- use of any other means to identify the voter's vote

* Illiterate or Disabled Voters

= illiterate or physically unable to prepare the ballot by himself (Sec. 196, BP 881)

*The fact of illiteracy or physical disability must be indicated in his registration record.

→ may be assisted in the preparation of his ballot by:

- (a) a relative by affinity or consanguinity within the fourth civil degree
- (b) any person of his confidence who belongs to the same household; or
- (c) any BEI member.

* In no case shall an assistor assist more than 3 times.

→ 2 duties of the assistor:

- (1) preparation of the ballot for the illiterate or disabled voter inside the voting booth
- (2) bind himself in a formal document under oath:
 - (a) to fill out the ballot strictly in accordance with the instructions of the voter; and
 - (b) not to reveal the contents of the ballot.

2. Folding the ballot. The voter shall fold his filled-up ballot in the same manner as when he received it and return it to the chairman.

3. *Voter's thumbmark in ballot coupon.*
The voter shall affix his thumbmark on the corresponding space in the coupon, and deliver the folded ballot to the chairman, in the presence of all the members of the BEI.
4. *Verification of ballot.*
The chairman, in the presence and view of the voter and all the members of the BEI, without unfolding the ballot or seeing its contents, shall verify its number from the voting record where it was previously entered.
5. *Voter's thumbmark in the voting record.*
The voter shall affix his thumbmark by the side of his signature in the space provided in the voting record.
6. *Finger-painting*
The chairman shall apply silver nitrate and commassie blue on the right forefinger nail (*or if there be no forefinger nail, on any other available finger nail*).
7. *Signature of Chairman.* The chairman shall sign in the proper space beside the thumbmark of the voter in the voting record.
8. *Duties of the Chairman.* The chairman shall determine whether everything is in order. *If yes, then he shall detach the coupon in the presence of the board of election inspectors and of the voter and shall deposit:*
 - a. the folded ballot in the compartment for valid ballots; and
 - b. the detached coupon in the compartment for spoiled ballots.
9. *Departure of voter* (Sec. 198, BP 881)

v. Spoiled Ballots

- = ballots accidentally spoiled / defaced by a voter in such a way that they cannot lawfully be used (Sec. 197, BP 881)
- = a ballot whose number does not coincide with the number of the ballot delivered to the voter, as entered in the voting record (Sec. 198, BP 881)
- = a ballot returned to the chairman, whose detachable coupon has been removed not in the presence of the BEI and of the voter (Sec. 198, BP 881)
- Procedure for Replacement:
 1. The voter shall surrender it folded to the chairman.
 2. The chairman shall note in the voting record that said ballot is spoiled.
 3. The voter shall then be entitled to another ballot, which the chairman shall give him after announcing its serial number and recording it in the voting record.
 4. The spoiled ballot shall, without being unfolded and without removing the detachable coupon, be distinctly marked with the word "spoiled" and signed by the BEI on the endorsement fold thereof, and immediately placed in the compartment for spoiled ballots (Sec. 197, BP 881).

* After spoiling a ballot, a voter may change his ballot only once. (Sec. 14, RA 8436)

vi. Challenging Illegal Voters

- by any voter or watcher

a. Grounds and Procedure

- (a) *not being registered*
 - (b) *using the name of another*
 - (c) *disqualification* (Sec. 199, BP 881)
- The BEI shall satisfy itself as to whether or not the ground for the challenge is true by requiring proof of registration or identity of the voter.
- presentation of voter's affidavit
- * *But even if he fails or is unable to produce his voter's affidavit, he may still vote if:*
- (a) his identity be shown from the photograph, fingerprints, or specimen signatures in his approved application in the book of voters; *or*
 - (b) he is identified under oath by a member of the BEI.
- Such identification shall be reflected in the minutes of the board. (Sec. 199, BP 881)

- (d) *receipt, or expectation to receive; or payment / offer/promise to pay; or contribution / offer/promise to contribute money/anything of value, as consideration for his or another's vote*
- (e) *making or receiving a promise to influence the giving or withholding of any such vote*
- (f) *making a bet, or being interested, directly or indirectly, in a bet which depends upon the result of the election* (Sec. 200, BP 881)

→ The challenged person shall take a prescribed oath before the BEI that he has not committed any of the acts alleged in the challenge.

- (a) *If he takes the oath:*

The challenge shall be dismissed.

The challenged voter shall be allowed to vote.

- (b) *If he refuses:*

The challenge shall be sustained and he shall not be allowed to vote.

- * The admission of the challenged vote *shall not* be conclusive upon any court, as to the legality of the registration of the voter challenged *or his vote*, in a criminal action against such person for illegal registration or voting. (Sec. 201, BP 881)

e. Records and Statements

i. Record of Challenges and Oaths

Sec. 202 , BP 881. Record of challenges and oaths. - The poll clerk shall keep a prescribed record of challenges and oaths taken in connection therewith and the resolution of the board of election inspectors in each case and, upon the termination of the voting, shall certify that it contains all the challenges made. The original of this record shall be attached to the original copy of the minutes of the voting as provided in the succeeding section.

ii. Minutes of Voting and Counting of Votes

Sec. 203, BP 881. Minutes of voting and counting of votes. - The board of election inspectors shall prepare and sign a statement in four copies setting forth the following:

1. The time the voting commenced and ended;
2. The serial numbers of the official ballots and election returns, special envelopes and seals received;
3. The number of official ballots used and the number left unused;
4. The number of voters who cast their votes;
5. The number of voters challenged during the voting;
6. The names of the watchers present;
7. The time the counting of votes commenced and ended;
8. The number of official ballots found inside the compartment for valid ballots;
9. The number of valid ballots, if any, retrieved from the compartment for spoiled ballots;
10. The number of ballots, if any, found folded together;
11. The number of spoiled ballots withdrawn from the compartment for valid ballots;
12. The number of excess ballots;
13. The number of marked ballots;
14. The number of ballots read and counted;
15. The time the election returns were signed and sealed in their respective special envelopes;
16. The number and nature of protests made by watchers; and

17. Such other matters that the Commission may require.

Copies of this statement after being duly accomplished shall be sealed in separate envelopes and shall be distributed as follows: (a) the original to the city or municipal election registrar; (b) the second copy to be deposited inside the compartment for valid ballots of the ballot box; and (c) the third and fourth copies to the representatives of the accredited political parties.

iii. List of Unused Ballots

Sec. 204, BP 881. Disposition of unused ballots at the close of the voting hours. - The chairman of the board of election inspectors shall prepare a list showing the number of unused ballots together with the serial numbers. This list shall be signed by all the members of the board of election inspectors, after which all the unused ballots shall be torn halfway in the presence of the members of the board of election inspectors.

VII. COUNTING AND CANVASSING VOTES

A. Procedure in Counting Votes

- Where: the polling place
 - * or in any other place within a public building in the same municipality or city (but not within the perimeter of or inside:
 - (a) a military or police camp or reservation; or
 - (b) a prison compound)
 as the COMELEC may order the BEI in the interest of free, orderly, and honest elections (Sec. 206, BP 881).
 - * or a safer place, upon transfer effected by unanimous approval by the Board and concurrence by the majority of the watchers present, on account of imminent danger of:
 - (a) violence
 - (b) terrorism
 - (c) disorder or
 - (d) similar causes. (Sec. 18, RA 6646)

When: as soon as the voting is finished

By whom: the BEI

How: publicly and without interruption

- * The BEI shall not adjourn or postpone or delay the count until it has been completed, *unless* otherwise ordered by COMELEC (Sec. 206, BP 881).
- Procedure: (Sec. 210, BP 881)
 1. The BEI shall unfold the ballots and form separate piles of one hundred ballots each, which shall be held together with rubber bands, with cardboard of the size of the ballots to serve as folders.
 - * Any *marked ballots* shall be placed in an envelope labelled "marked ballots" which shall be sealed and signed by the members of the BEI and placed in the compartment for valid ballots and shall not be counted.
 - * A majority vote of the BEI shall be sufficient to determine whether any ballot is marked or not. (Sec. 208, BP 881)
 2. The chairman of the BEI shall take the ballots of the first pile one by one and read the names of candidates voted for and the offices for which they were voted in the order in which they appear thereon.
 - * The chairman, the poll clerk and the third member shall assume such positions as to provide the watchers and the members of the public (as may be conveniently accommodated) an unimpeded view, without touching, of:
 - (a) the ballot being read;
 - (b) the election return, being simultaneously accomplished by the poll clerk; and
 - (c) the tally board being simultaneously accomplished by the third member.
 - * The table shall be cleared of all unnecessary writing paraphernalia. (Sec. 25, RA 7166)
 3. The chairman shall sign and affix his right hand thumbmark at the back of the ballot immediately after it is counted.
 4. The poll clerk, and the third member, respectively, shall record on the election returns and the tally board or sheet each vote as the names voted for each office are read. (The election

returns are mandated by law to be prepared simultaneously with the counting of the votes.)

5. After finishing the first pile of ballots, the board of election inspectors shall determine the total number of votes recorded for each candidate, the sum being noted on the tally board or sheet and on the election returns. In case of discrepancy such recount as may be necessary shall be made. The ballots shall then be grouped together again as before the reading. Thereafter, the same procedure shall be followed with the second pile of ballots and so on successively.
 6. After all the ballots have been read, the board of election inspectors shall sum up the totals recorded for each candidate, and the aggregate sum shall be recorded both on the tally board or sheet and on the election returns.
 7. It shall then place the counted ballots in an envelope provided for the purpose, which shall be closed signed and deposited in the compartment for valid ballots.
 8. The tally board or sheet as accomplished and certified by the board of election inspectors shall not be changed or destroyed but shall be kept in the compartment for valid ballots.
- * Counting should be liberal to effectuate the will of the electorate (Sec. 211, BP 881).
Voters should not be disenfranchised for technical causes.

1. Rules for Appreciation of Ballots

a. Marked Ballots

- = ballots containing a distinguishing mark which would tend to identify the voter who cast such ballot
 - * The mark may be required of voters by unscrupulous persons in consideration of some promise, reward or other valuable consideration. This threatens the independence of the voters in the exercise of their right to vote.
- = non-official ballots used in voting, *except* those which have been used as emergency ballots (Sec. 208, BP 881)
- invalidated in their entirety.
None of the votes therein are counted.
- * **Presumption.** Every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection (Sec. 211, BP 881).
Only in an unmistakable case where the ballot appeared to be marked, should it be rejected.
 - *Determinative factor:* the existence of evidence aliunde clearly showing an intent or plan for purposes of identification.
Otherwise, signs and minor blemishes on ballots are presumed accidental.
- * **Examples of marked ballots:** (Sec. 211, BP 881)
 - = the name of 1 candidate clearly and markedly indented to the right
 - = deliberate use of two or more kinds of writing
 - = the name of a person who is not a candidate written 3 times on 3 spaces provided for different offices
 - = expressions opposite the space for candidates; inclusion of impertinent, irrelevant and unnecessary expression
 - = inclusion of the names of 2 well-known movie stars not candidates
 - = writing the name of a registered voter who is not a candidate
 - = unexplained placing of initials after the corrected names of candidates
 - = placing a big letter "X" or "N" immediately after or opposite the name of a candidate
 - = the word "sinador" written in a place far and separate from the proper spaces for candidates
 - = voter's fingerprint placed without reason
 - = an arrow, together with the words "and party"
 - ≠ the word "sorry" written after the name of a candidate, as an expression of regret for committing a mistake
 - ≠ names cancelled and re-written to conform with a sample ballot
 - ≠ candidate's name misspelled
 - ≠ illegible writings, being imprints of other names written on the ballot caused by the folding of the same
 - ≠ crosses and circles writtten to signify the desistance of the voter to write any other name

- ≠ commas, dots, lines, or hyphens between the first name and surname of a candidate, or in other parts of the ballot
- ≠ traces of the letter "T", "J", and other similar ones
- ≠ first letters or syllables of names which the voter does not continue
- ≠ a word written before the name of a candidate as an appellation of affection or friendship
- ≠ nickname of a candidate used
- ≠ innocent erasures in the spaces for the candidates
- ≠ corrected name written over canceled one in the space for a position other than that for which he is candidate
- ≠ unintentional, accidental, unintelligible marks or words
- ≠ unintentional or accidental flourishes, strokes, or stains
- ≠ names of non-candidates, in the absence of evidence that these names were used as identifying marks
- ≠ ballots which contain prefixes ("Sr.", "Mr.", "Datu", "Don", "Ginoo", "Hon.", "Gob.") or suffixes ("Hijo", "Jr.", "Segundo")
- ≠ ballot written with crayon, lead pencil, or in ink, wholly or in part
- ≠ accidental tearing or perforation
- ≠ detachable coupon not removed from ballot

b. Excess Ballots

Process for BEI: (Sec. 207, BP 881)

- Board of election inspectors:
 - Before proceeding to count the votes
 - Count the ballots in the compartment for valid ballots without unfolding them or exposing their contents
 - AND compare the number of ballots in the box with the number of voters who have voted
 - except so far as to ascertain that each ballot is single
- Excess ballots:
 - Returned in the box and thoroughly mixed therein
 - Poll clerk:
 - without seeing the ballots and with his back to the box, shall publicly draw out as may ballots as may be equal to the excess
 - without unfolding them, place them in an envelope which shall be marked "excess ballots"
 - sealed and signed by the members of the board of election inspectors.
 - Envelope:
 - Placed in the compartment for valid ballots, but its contents shall not be read in the counting of votes
 - Also those, in the course of the examination, ballots found folded together before they were deposited in the box
- Ballots with their detachable coupons be found in the box:
 - such coupons shall be removed and deposited in the compartment for spoiled ballots
 - ballots shall be included in the file of valid ballots.
- If ballots with the words "spoiled" be found in the box, such ballots shall likewise be placed in the compartment for spoiled ballots

c. Spoiled Ballots

- Presumed spoiled: Ballots deposited in the compartment for spoiled ballots whether or not they contain such notation (Sec. 209, BP 881)
- But if the board of election inspectors can open compartment

- After the voting and before the counting of votes for the sole purpose of drawing out the ballots erroneously deposited
- Then prepare and sign a statement of such fact
- And lock the box with its 3 keys immediately thereafter
- The valid ballots withdrawn shall be mixed with the other valid ballots
- Excess or marked ballots shall be placed in their proper envelopes which shall for such purposes be opened and again labelled, sealed, signed and kept
- Reasons for opening of compartment:
 - During the voting any valid ballot was erroneously deposited in this compartment OR
 - Any ballot separated as excess or marked had been erroneously deposited

* *Stray votes* = votes cast for an ineligible or disqualified candidate

* *only* 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 (**Labo v COMELEC, 2002**)

d. Rules for Appreciation

- * Errors in spelling and honest mistakes due to ignorance or illiteracy should not defeat the intention of the voter. However, if the ballot is so defective as to fail to show any intention, it must be disregarded. (Sec. 211, BP 881)
- (**Alfonso v COMELEC**)

<i>IF...</i>	<i>THEN...</i>
<ul style="list-style-type: none"> • Only the first or last name of a candidate is written; <i>and</i> • there is no other candidate with the same first name or surname for the same office 	valid
<ul style="list-style-type: none"> • Only the first name of a candidate is written on the ballot; <i>and</i> • it sounds similar to the surname of another candidate 	counted in favor of the candidate with such surname
<ul style="list-style-type: none"> • There are two or more candidates with the same full name, first name or surname; • one of them is the incumbent; <i>and</i> • only such full name, first name or surname is written 	counted in favor of the incumbent
<ul style="list-style-type: none"> • The candidate is a woman who uses her maiden or married surname or both; • there is another candidate with the same surname; <i>and</i> • only such surname is written 	counted in favor of the candidate who is an incumbent [<i>sic?</i>]
<ul style="list-style-type: none"> • Two or more words are written <u>on the same line</u> on the ballot, <i>and</i> • all of them are the surnames of 2 or more candidates 	not counted for any of them, <i>unless</i> one is a surname of an incumbent who has served for at least one year, in which case it shall be counted in favor of the latter
<ul style="list-style-type: none"> • Two or more words are written on different lines on the ballot; • all of them are the surnames of two or more candidates; • for an office for which the law authorizes the election of more than one; <i>and</i> • there are the same number of such surnames written as there are candidates with that surname 	counted in favor of all the candidates bearing the surname
<ul style="list-style-type: none"> • Only a single word is written, <i>and</i> • it is the first name of a candidate and, at the same time, the surname of his opponent 	counted in favor of the opponent

<ul style="list-style-type: none"> Two words are written on the ballot; <i>and</i> one is the first name of the candidate, the other the surname of his opponent 	not counted for either
<ul style="list-style-type: none"> A name or surname is incorrectly written; <i>but</i> sounds similar to the name or surname of a candidate 	counted in his favor
<ul style="list-style-type: none"> The name of a candidate appears in a space of the ballot for an office for which he is a candidate; <i>and</i> it also appears in another space for which he is not a candidate 	(a) counted in his favor for the office for which he is a candidate (the vote for the office for which he is <i>not</i> a candidate shall be considered <u>stray</u>); <i>or</i>
	(b) may be considered a <u>marked</u> ballot, therefore void
<ul style="list-style-type: none"> The word/s written on the appropriate blank is the identical name or surname or full name of 2 or more candidates for the same office; <i>and</i> none of them is an incumbent 	counted in favor of that candidate to whose ticket belong all the other candidates voted for in the same ballot for the same constituency
<ul style="list-style-type: none"> The name of a candidate is erased; <i>and</i> another clearly written 	counted in favor of the latter
<ul style="list-style-type: none"> Erroneous initial of the first name <i>or</i> middle initial; <i>and</i> correct surname 	valid
<ul style="list-style-type: none"> Correct first name; <i>and</i> erroneous initial of surname 	valid
<ul style="list-style-type: none"> Erroneous middle initial 	valid
<ul style="list-style-type: none"> Correct first name; <i>and</i> different surname 	not counted in favor of any candidate having such first name and/or surname, <i>but</i> the ballot shall be considered valid for other candidates.
<ul style="list-style-type: none"> Correct surname; <i>and</i> different first name 	
There exists another person, not a candidate, with the first name or surname of a candidate	shall not prevent the adjudication of the vote of the latter
<ul style="list-style-type: none"> Use of the nickname or appellation of affection and friendship, unaccompanied by the name or surname of a candidate; it is the one by which he is generally or popularly known in the locality; <i>and</i> there is no other candidate for the same office with the same nickname 	counted in favor of said candidate
The vote contains initials only	shall be considered as a stray vote, <i>but</i> shall not invalidate the whole ballot
The vote does not sufficiently identify the intended candidate	not counted in favor of any of them, <i>but</i> other votes therein still valid
<ul style="list-style-type: none"> Two or more candidates are voted for; <i>but</i> in an office for which the law authorizes the election of only one 	counted only in favor of the candidates whose names were firstly written within the spaces provided for said office, <i>until</i> the authorized number is covered
Candidates voted for exceed the number of those to be elected	
The vote is in favor of:	considered as a stray vote, <i>but</i> shall not invalidate the whole ballot
(a) a person who has not filed a certificate of candidacy <i>or</i>	
(b) a candidate for an office for which he did	

not present himself	
Ballot contains the name of a candidate, printed and pasted on a blank space or affixed thereto through any mechanical process	totally null and void
Ballot clearly appears to have been filled by two distinct persons before it was deposited in the ballot box during the voting	totally null and void
Vote cast in favor of a candidate who has been disqualified by final judgment	considered stray, <i>but</i> ballot not invalidated
<ul style="list-style-type: none"> Ballot wholly written in Arabic; <i>and</i> in a locality where it is of general use 	valid. The BEI may employ an interpreter who shall take an oath that he shall read the votes correctly.
<ul style="list-style-type: none"> Vote for the President <i>and</i> no vote for Vice-President 	<i>not</i> counted also as a vote for the Vice-President running under the same ticket

2. Certificate of Votes

- = a document signed and thumbmarked by each member of the BEI, containing:
 - (a) the number of votes obtained by each candidate, written in words and figures
 - (b) the number of the precinct
 - (c) the name of the city or municipality and province
 - (d) the total number of voters who voted in the precinct, and
 - (e) the date and time issued. (Sec. 16, RA 6646)
- = evidence not only to prove tampering, alteration, falsification or any anomaly committed in the election returns concerned (Sec. 17, RA 6646), but also of the votes obtained by candidates (**Balindong v COMELEC**)
- ≠ valid basis for canvass *or* sufficient evidence of the true and genuine results of the elections (**Recabo v COMELEC**)
- * To be issued upon request of watchers (Sec. 16, RA 6646)
- * Where the Certificate of Votes was signed only by the BEI Chairman, it cannot be used for canvassing (**Patoray v COMELEC**).

3. Election Return

- = the official document containing the date of the election, the province, municipality and the precinct in which it is held, and the votes received by each candidate written in figures and in words
- = the document on which the Certificates of Canvass are based
- = the only document that constitutes sufficient evidence of the true and genuine results of the elections (**Garay v COMELEC**)
- prepared in handwriting by BEI (Sec. 27, RA 7166)
- * Where COMELEC has determined that actual voting and election by registered voters took place, the election returns cannot be disregarded and excluded – with the corresponding disenfranchisement of voters – but must be accorded, for canvassing and proclamation purposes, *prima facie* status as *bona fide* reports of the result of the voting. (**Grand Alliance for Democracy v COMELEC**)
- * The complete election returns whose authenticity is not in question must be *prima facie* considered valid for the purpose of canvass and proclamation. (**Sanchez v COMELEC**)
- * An election return is “incomplete” if there is an omission in the election return of the name of any candidate and/or his corresponding votes, or in case the number of votes for a candidate had been omitted. (**Sanchez v COMELEC**)

* Distribution:

<i>election of</i>	<i>1st copy</i>	<i>2nd copy</i>	<i>3rd copy</i>	<i>4th copy</i>	<i>5th copy</i>	<i>6th copy</i>	<i>7th copy</i>
<i>President, VP, Senators, Congress</i>	City or Municipal Board of Canvassers	Congress, directed to the Senate President	COMELEC	dominant majority party*	dominant minority party*	citizens' arm, authorized by COMELEC to conduct an unofficial count	deposited inside the compartment of the ballot box for valid ballots
<i>local officials</i>		COMELEC	Provincial Board of Canvassers				

as determined by the COMELEC (Sec. 27, RA 7166, as amended)

Sec. 212, BP 881. Election returns. - The board of election inspectors shall prepare the election returns simultaneously with the counting of the votes in the polling place as prescribed in Section 210 hereof. X x x The recording of votes shall be made as prescribed in said section. The entry of votes in words and figures for each candidate shall be closed with the signature and the clear imprint of the thumbmark of the right hand of all the members, likewise to be affixed in full view of the public, immediately after the last vote recorded or immediately after the name of the candidate who did not receive any vote.

The returns shall also show the date of the election, the polling place, the barangay and the city of municipality in which it was held, the total number of ballots found in the compartment for valid ballots, the total number of valid ballots withdrawn from the compartment for spoiled ballots because they were erroneously placed therein, the total number of excess ballots, the total number of marked or void ballots, and the total number of votes obtained by each candidate, writing out the said number in words and figures and, at the end thereof, the board of election inspectors shall certify that the contents are correct. The returns shall be accomplished in a single sheet of paper, but if this is not possible, additional sheets may be used which shall be prepared in the same manner as the first sheet and likewise certified by the board of election inspectors.

The Commission shall take steps so that the entries on the first copy of the election returns are clearly reproduced on the x x x copies thereof, and for this purpose the Commission shall use a special kind of paper.

Immediately upon the accomplishment of the election returns, each copy thereof shall be sealed in the presence of the watchers and the public, and placed in the proper envelope, which shall likewise be sealed and distributed as herein provided.

Any election return with a separately printed serial number or which bears a different serial number from that assigned to the particular polling place concerned shall not be canvassed. This is to be determined by the board of canvassers prior to its canvassing on the basis of the certification of the provincial, city or municipal treasurer as to the serial number of the election return assigned to the said voting precinct, unless the Commission shall order in writing for its canvassing, stating the reason for the variance in serial numbers.

If the signatures and/or thumbmarks of the members of the board of election inspectors or some of them as required in this provision are missing in the election returns, the board of canvassers may summon the members of the board of election inspectors concerned to complete the returns.

4. Proclamation of the Result in the Polling Place

Sec. 213, BP 881. Proclamation of the result of the election in the polling place. - Upon the completion of the election returns, the chairman of the board of election inspectors shall orally and publicly announce the total number of votes received in the election in the polling place by each and every one of the candidates, stating their corresponding office.

B. Canvassing the Votes

- *canvassing* = the process by which the results in the election returns are tallied and totaled
- * Canvass proceedings are administrative and summary in nature and shall be open and public (Sec. 20, RA 6646).
- * The summary nature of the proceedings require that written objections [to the returns] be filed only during this stage, because it is only at this time that the inclusion or exclusion of

	Municipal	City	Provincial
Chairman	election registrar, or a COMELEC representative	the city election registrar (if more than 1, then that designated by COMELEC), or a lawyer of COMELEC	the provincial election supervisor, or a lawyer in the COMELEC regional office
<i>subs</i> ¹	ranking lawyer of the COMELEC	ranking lawyer of the COMELEC	ranking lawyer of the COMELEC
Vice Chairman	municipal treasurer	city fiscal	provincial fiscal
Member	the most senior district school supervisor, or, in his absence, a principal of the school district or the elementary school	city superintendent of schools	provincial superintendent of schools
<i>subs (same for VCs and Members)</i>	(1) Municipal Administrator; (2) Municipal Assessor; (3) Clerk of Court nominated by the Executive Judge of the MTC (4) any other available appointive municipal official	(1) City auditor or equivalent; (2) Registrar of Deeds; (3) Clerk of Court nominated by the Executive Judge of the RTC (4) any other available appointive city official	(1) Provincial auditor (2) Registrar of Deeds (3) Clerk of Court nominated by the Executive Judge of the RTC (4) any other available appointive provincial official

Sec. 22. Canvassing Committees. - The board of canvassers may constitute such number of canvassing committees as may be necessary to enable the board to complete the canvass within the period prescribed under Section 231 of Batas Pambansa Blg. 881: Provided, That each committee shall be composed of three members, each member to be designated by the chairman and members of the board and that all candidates shall be notified in writing, before the election, of the number of committees to be constituted so that they can designate their watchers in each committee. The committees shall be under the direct supervision and control of the board.

Sec. 23. Notice of Meetings of the Board. - At least five (5) days before the initial meeting of the board of canvassers, the chairman of the board shall give written notice to all members thereof and to each candidate and political party presenting candidates for election in the political subdivision concerned of the date, time and place of the meeting. Similar notice shall also be given for subsequent meetings unless notice has been given in open session of the board. Proof of service of notice to each member, candidate and political party shall be attached to and shall form part of the records of the proceedings. If notice is given in open session, such fact shall be recorded in the minutes of the proceedings.

Sec. 24. Proceedings of the Board. - The board of canvassers shall have full authority to keep order within the canvassing room or hall and its premises and enforce obedience to its lawful orders. If any person shall refuse to obey any lawful order of the board or shall so conduct himself in such disorder manner as to disturb or interrupt its

any return is in issue. Mere allegations of duress, coercion, fraud, cannot invalidate the election returns which are otherwise clean on their face. (**Grand Alliance for Democracy v COMELEC**)

1. Canvassing Bodies and their Functions and Powers

a. Board of Canvassers

i. Composition (Sec. 20, RA 6646)

proceedings, the board may order any peace officer to take such person into custody until the adjournment of the meeting.

ii. Functions and Duties

- **Preparation of Certificates of Canvass**
 - * The certificates of canvass for President and VP shall be duly certified by the BOC of each province or city.
- **Proclamation of Candidate as Winner**
 - * if authorized by COMELEC, after the latter has ruled on any objections brought to it on appeal by a losing party
 - * Any proclamation made in violation hereof shall be void *ab initio*, unless the contested returns will not adversely affect the results of the election.
 - * Once the Board of Canvassers has completed its duty, the board cannot meet again and re-canvass the votes or reverse their prior decision and announce different results.
- **When Ministerial:**

No irregularities in the election returns. The COMELEC or the BOC is satisfied in the authenticity of the returns.

 - The duty of the Board in canvassing the votes consists in the simple matter of arithmetic.
 - The BOC has no power to look beyond the face of the returns.
 - * If after proclamation, an error is discovered in the computation:
 - The BOC can simply correct the error; the remedy being purely administrative.
- **When Quasi-Judicial:**

Determination of genuineness and authenticity of election returns submitted to it.

 - The BOC will not be compelled to canvass the returns if they are found to be:
 - obviously manufactured;
 - contrary to probabilities;
 - clearly falsified; or
 - not legible.

¹ Substitutes to be appointed, in this order, by the COMELEC, in case of (a) non-availability (b) absence (c) disqualification due to relationship, or (d) incapacity for any cause (Sec. 21, BP 881).

<u>Board of Canvassers</u>	<u>Positions Canvassed</u>	<u>Certificates of Canvass Prepared</u>	<u>Proclamations</u>	<u>Support for Certificate of Canvass</u>
Municipal	<ul style="list-style-type: none"> President, VP, Senators, Congressmen elective provincial officials elective municipal officials 	<ul style="list-style-type: none"> President, VP, Senators Congressmen elective provincial officials 	municipal officials	Statement of Votes by precinct, signed and thumbmarked by the chairman and members of the Board, and the principal watchers if available
Municipal (per component municipality in a Metro Manila legislative district)	<ul style="list-style-type: none"> President, VP, Senators, Congressmen elective municipal officials 	<ul style="list-style-type: none"> President, VP, Senators Congressmen 		
City (not comprising at least 1 legislative district)	<ul style="list-style-type: none"> President, VP, Senators, Congressmen elective provincial officials elective city officials 	<ul style="list-style-type: none"> President, VP, Senators Congressmen elective provincial officials 	city officials	
City (comprising at least 1 legislative district)	<ul style="list-style-type: none"> President, VP, Senators, Congressmen elective city officials 	<ul style="list-style-type: none"> President, VP, Senators 	<ul style="list-style-type: none"> Congressmen city officials 	
District (per Metro Manila municipality comprising a legislative district)	<ul style="list-style-type: none"> President, VP, Senators, Congressmen elective municipal officials 		<ul style="list-style-type: none"> Congressmen municipal officials 	Statement of Votes by precinct
District (per legislative district comprising 2 Metro Manila municipalities)	<ul style="list-style-type: none"> President, VP, Senators, Congressmen 		Congressmen	Statement of Votes by municipality
Provincial	<ul style="list-style-type: none"> President, VP, Senators, Congressmen elective provincial officials plebiscites 		<ul style="list-style-type: none"> Congressmen provincial officials plebiscite results 	* The original copy thereof for Congress shall also be supported by Statements of Votes by precinct, as submitted by the City or Municipal BOCs

* **Statement of Votes**

= a tabulation per precinct of votes garnered by candidates as reflected in the election returns

→ prepared as an administrative function of the board, purely a mechanical act over which COMELEC has direct control and supervision

= supports the certificate of canvass; the basis of proclamation

* Failure to object to the Statement of Votes before the BOC is not a bar to raising the issue before the COMELEC for the first time; the law is silent as to when they may be raised (**Duremdes v COMELEC**).

iii. Prohibitions

- Relation within the 4th civil degree of consanguinity or affinity between any chairman or member of the BOC and any of the candidates whose votes will be canvassed by said board (Sec. 222, BP 881).
- Transfer, assignment, or detail outside of his official station of any member or substitute member of a BOC, or departure therefrom without prior authority of the COMELEC from election day until the proclamation of the winning candidates (Sec. 223, BP 881).
- Feigning of illness by any member of the BOC in order to be substituted on election day until the proclamation of the winning candidates (Sec. 224, BP 881).

iv. Supervision by COMELEC

COMELEC has direct control and supervision over the BOCs.

- power to investigate and act on the propriety or legality of the canvass of election returns
- Any member of the Board may, at any time, be relieved for cause and substituted *motu proprio* by the COMELEC. (Sec. 227, BP 881)

v. BOC Findings as Conclusive

- findings and certificate of election
 - merely *prima facie* evidence of the result and title to the office of those declared elected
- as to all other collateral matters
 - * However, such findings are not conclusive in a direct proceeding to try title to the office.

b. Congress as the National Board of Canvassers

→ The certificates of canvass for President and Vice-President shall be transmitted to Congress, directed to the Senate President.

→ Upon receipt of the certificates of canvass, not later than 30 days after the day of the election, in joint public session, the Senate President shall open all the certificates in the presence of both Houses.

→ Congress shall determine the **authenticity and due execution** of the certificate of canvass for President and Vice President, on a showing that:

- Each certificate was executed, signed and thumbmarked, then transmitted to Congress, by the chairman and members of the BOC;
- Each certificate contains the names of all the candidates for President, Vice-President, and their corresponding votes in words and in figures; and
- There exists no discrepancy in other authentic copies of the certificate or in the votes, both in words and figures, in the same certificate. (Sec. 30, RA 7166)

* **Deficiencies in the Certificate of Canvass**

- Appears to be incomplete:**
The Senate President shall require the BOC concerned to transmit (by personal delivery within 2 days from notice) the election returns from the polling places that were not included in the certificate of canvass and supporting statements.
- Erasures or alterations which may cast doubt as to the veracity of the number of votes stated therein, and may affect the result of the election:**
For the sole purpose of verifying the actual number of votes, upon request of a presidential or vice-presidential candidate or their party, Congress shall count the votes as they appear in the copies of the election returns submitted to it (Sec. 30, RA 7166).

* **Overseas Absentee Voting Act partially unconstitutional**, insofar as it grants sweeping authority to the Comelec to proclaim all winning candidates. Sec. 4, Art. VII of the Constitution expressly vests in Congress the authority to proclaim the winning Presidential and Vice Presidential candidates (**Makalintal v COMELEC**).

* **Valid, limited delegation to Joint Congressional Committee.** Congress may validly delegate the preliminary

determination of the authenticity and due execution of the certificates of canvass to such a Committee, constituted under the Rules adopted by the Joint Session of Congress (**Lopez v Senate**).

- * **Even after Congress had adjourned its regular session**, it may continue to perform the constitutional duty of canvassing the presidential and vice-presidential election results without need of any call by the President for a special session (**Pimentel Jr. v Joint Committee of Congress**)

2. Certificates of Canvass

= official tabulations of votes accomplished by district, municipal, city and provincial canvassers based on the *election returns*, which are the results of the ballot count at the precinct level
 → **7 copies** (Sec. 29, RA 7166)

<u>prepared by</u>	<u>positions for which prepared</u>	<u>1st copy</u>	<u>2nd copy</u>	<u>3rd copy</u>	<u>4th copy</u>	<u>5th-7th copies</u>
City / Municipal BOC	<ul style="list-style-type: none"> • President, VP, Senators • Congressmen • elective provincial officials 	<u>Provincial BOC</u> (to canvass election results for President, VP, Senators, Congressmen, and elective provincial officials)	COM ELEC	kept by the BOC Chairman	COMELEC-designated citizen's arm (to conduct media-based unofficial count)	representatives of any 3 of 6 major political parties, according to their voluntary agreement (if none, COMELEC decides which (criteria: Sec. 26, RA 7166))

- * All the 7 copies of the election returns are all original copies, although the copy for the Municipal Board of Canvassers is designated as the first copy. This designation is only for the purpose of distribution and does not in any way accord said copy the status of being the only original copy (**Mastura v COMELEC**, 1998).

Section 229. Manner of delivery and transmittal of election returns.
 - x x x It shall be unlawful for any person to delay, obstruct, impede or prevent through force, violence, coercion, intimidation or by any means which vitiates consent, the transmittal of the election returns or to take away, abscond with, destroy, deface or mutilate or substitute the election returns or the envelope or the ballot box containing the election returns or to violate the right of the watchers. X x x

- a. **Canvass Procedure** (Sec. 231, BP 881)
 1. Not later than 6 PM of election day, at the place designated by COMELEC, the BOC shall meet to:
 - (a) receive the election returns and
 - (b) immediately canvass those that may have already been received.
 - * *Character of proceedings.* The canvass proceedings must be open and in public.
 - * *Continuity of canvassing.* The BOC shall meet continuously from day to day until the canvass is completed. It may adjourn only for the purpose of awaiting the other election returns from other polling places within its jurisdiction. As soon as the other election returns are delivered, the board shall immediately resume canvassing until all the returns have been canvassed.

- * **Limited time period.** Subject to reasonable exceptions, the BOC must complete their canvass within:
 - (a) 36 hours in municipalities;
 - (b) 48 hours in cities; and
 - (c) 72 hours in provinces.
- 2. Each time the board adjourns, it shall make a total of all the votes canvassed so far for each candidate for each office, furnishing the Commission in Manila by the fastest means of communication a certified copy thereof, and making available the data contained therein to the mass media and other interested parties.
- 3. The BOC shall prepare a **certificate of canvass** duly signed and affixed with the right thumbprint of each member, supported by a **statement of the votes** received by each candidate in each polling place.
 - * *Election for President and VP.* The Provincial and CityBOCs shall prepare certificates of canvass supported by a statement of votes received by each candidate in each polling place. [For distribution of these Certificates of Canvass, see chart above.]
- 4. On the basis of the Certificate of Canvass, in the absence of a perfected appeal to the COMELEC, the BOC shall proclaim the candidates who obtained the highest number of votes cast in the province, city, municipality or barangay.
- * **Rights of Candidates and Registered Parties during the Canvass:**
 - a. To be present
 - b. To have counsel (only one arguing for each candidate or political party)
 - c. To examine the returns being canvassed without touching them, make their observations thereon, and file their challenges (Sec. 25, RA 6646)

b. Problem Areas

- * to be brought in the first instance in pre-proclamation controversies before the BOC only (Sec. 17, RA 7166)
- **Delay of or Missing Election Returns**
 → By messenger or otherwise, the BOC shall obtain such missing election returns from the BEI concerned (Sec. 233, BP 881).
- **Loss or Destruction of Election Returns**
 → Upon prior authority of the COMELEC:
 - (1) the BOC may use
 - (a) any of the authentic copies of said election returns or
 - (b) a certified copy of said election returns issued by the Commission; and
 - (2) forthwith direct its representative to investigate the case and immediately report the matter to COMELEC (Sec. 233, BP 881)
- * *But if* the missing election returns will not affect the results of the election, then the BOC may terminate the canvass and proclaim the candidates elected on the basis of the available election returns.
- **Material Defects in Election Returns**
 = omission of some requisites in form or data
 → The BOC shall call for all the members of the BEI concerned by the most expeditious means, for the same BEI to effect the correction.

- If name of any candidate and/or his corresponding votes is omitted:
The BOC shall require the BEI concerned to complete the necessary data in the election returns, and affix therein their initials.
* *But if* the votes thus omitted cannot be ascertained by other means *except* by recounting the ballots, *then*:
1. *After* satisfying itself that the identity and integrity of the ballot box have not been violated, the COMELEC shall order the BEI to open the ballot box, *and*
 2. order the BEI to count the votes for the candidate whose votes have been omitted, with notice thereof to all candidates for the position involved, and thereafter complete the returns.
* The right of a candidate to avail of this provision shall not be lost or affected by the fact that an election protest is subsequently filed by any of the candidates. (Sec. 234, BP 881)

• **Tampered or Falsified Election Returns**

The election returns:

- (a) appear to be tampered with, altered, or falsified after they have left the hands of the BEI; or
- (b) were prepared by the BEI under duress, force, or intimidation; or
- (c) were prepared by persons other than the member of the BEI.

→ The BOC shall use the other copies of said election returns and, if necessary, the copy inside the ballot box, which, upon previous authority given by the Commission, may be retrieved. (Sec. 235, BP 881)

* *If the other copies of the returns are [as above]:*

- The BOC or any affected candidate shall bring the matter to the attention of COMELEC.
→ *After* giving notice to all candidates concerned *and* satisfying itself that nothing in the ballot box indicate that its identity and integrity have been violated, COMELEC shall then order the opening of the ballot box and order the board of election inspectors to recount the votes of the candidates affected and prepare a new return, which shall then be used by the BOC. (Sec. 235, BP 881)

• **Discrepancies in Election Returns**

= discrepancies in the other authentic copies of the election returns from a polling place or in the votes of any candidate in words and figures in the same return, which difference affects the results of the election

→ Upon motion by the BOC or any affected candidate *and after* due notice to all candidates concerned, *and after* satisfying itself whether the integrity of the ballot box had been preserved, COMELEC shall order the opening of the ballot box to recount the votes cast in the polling place solely for the purpose of determining the true result of the count of votes of the candidates concerned. (Sec. 236, BP 881)

c. Tie

i. **President and Vice-President**

→ *Vote by Congress.* One candidate shall be chosen by the vote of a majority of all the Members of both Houses of the Congress, voting separately. (Sec. 4, Art. VII, Constitution; (Sec. 24, RA 8436)

ii. **Other Positions**

→ *Drawing of Lots.* After recording the fact of the tie in its minutes, upon 5 days notice to all the tied candidates, the BOC shall, by resolution, hold a special public meeting. There the BOC shall draw lots of the tied candidates and shall proclaim as elected the candidates who may be favored by luck. The candidates so proclaimed shall have the right to assume office in the same manner as if he had been elected by plurality of vote.
The board of canvassers shall forthwith make a certificate, stating the name of the candidate who

had been favored by luck and his proclamation on the basis thereof. (Sec. 240, BP 881)

d. **Failure to Assume Office**

Failure to assume office *or* refusal to take one's oath of office within 6 months from proclamation = Office shall be considered vacant, *unless* such failure / refusal due to cause/s beyond his control. (Sec. 11, BP 881)

C. Proclamation

- * After the canvass of election returns, in the absence of a perfected appeal to the COMELEC, the BOC shall proclaim the candidates who obtained the highest number of votes cast in the province, city, municipality or barangay, on the basis of the certificates of canvass. (Sec. 231, BP 881)
- * The fact of having a plurality of votes lawfully cast is what confers title to the office, *unless* one is allowed to go behind the certificate or returns to establish title to the office before the appropriate tribunal.

(Lorenzo v COMELEC, 2003)

(Alauya v COMELEC)

1. **Void Proclamation**

- based on incomplete returns (**Castromayor v. COMELEC**); there is yet no complete canvass (**Jamil v. COMELEC**, 1997)
A canvass cannot be reflective of the true vote of the electorate unless all returns are considered and none is omitted (**Utto v COMELEC**, 2002).
- no proclamation at all.
The proclaimed candidate's assumption into office cannot deprive the COMELEC of its power to annul the proclamation (**Utto v COMELEC**, 2002).

2. **Partial Proclamation**

Notwithstanding the pendency of any *pre-proclamation controversy*, the COMELEC may summarily order the proclamation of other winning candidates whose election will not be affected by the outcome of the controversy. (Sec. 21, RA 7166)

3. **Lone Candidate in a Special Election**

- In a special election called to fill an elective position besides President and VP, when there is only 1 qualified candidate, the lone candidate shall be proclaimed elected to the position without holding the special election. (Sec. 2, RA 8295)
- *Reckoning point:* expiration of the deadline for the filing of certificates of candidacy
 - *upon certification by the COMELEC that he is the only candidate for the office and is therefore deemed elected
 - *assumption of office: not earlier than the scheduled election day, in the absence of any lawful ground to deny due course to or cancel the certificate of candidacy (Sec. 3)
 - *For this purpose, COMELEC shall decide petitions for disqualification not later than election day. Otherwise, they shall be deemed dismissed.

D. Party-List Formula

- for determining the number of *additional* seats that a *qualified* party is entitled to (**Veterans Federation Party v COMELEC**, 2000; **Partido ng Manggagawa v COMELEC**, 2006)
- Parameters:
1. The 20% allocation. The combined number of all party-list congressmen shall not exceed 20% of the total membership of the HoR, *including* those elected under the party list.
 2. The 2% threshold. Only those parties garnering at least 2% of the total valid votes cast for the party-list system are qualified to have a seat in the House of Representatives.
 3. The 3-seat limit. Each qualified party, regardless of the number of votes it actually obtained, is entitled to a maximum of 3 seats; i.e. 1 "qualifying" and 2 additional seats.

4. Proportional representation. The additional seats to which a qualified party is entitled shall be computed "in proportion to their total number of votes."

* proportional representation:

1st. To rank all the participating parties, organizations and coalitions from the highest to the lowest, based on the number of votes they each received. Then the ratio for each party is computed by dividing its votes by the total votes cast for all the parties participating in the system.

* All parties with at least 2% of the total votes are guaranteed 1 seat each. Only these parties shall be considered in the computation of additional seats.

* The party receiving the highest number of votes shall thenceforth be referred to as the "first" party.

2nd. To determine the number of seats the first party is entitled to, in order to be able to compute that for the other parties.

(a) Number of votes of first party

 Total votes for party-list system
 = Proportion of votes of first party relative to total votes for party-list system

(b)

Proportion of Votes Received by 1 st Party	No. of <u>Additional</u> Seats Entitled to
total valid votes cast for all the party-list groups ≥ 6%	2
4% ≤ total valid votes < 6%	1
< 4%	0

* Applicable only in determining the number of additional seats the first party is entitled to. The use of the same formula for all would contravene the proportional representation parameter.

→ The 6% benchmark is because the first party is not always entitled to the maximum number of additional seats. Likewise, it would prevent the allotment of more than the total number of available seats, such as in an extreme case wherein 18 or more parties tie for the highest rank and are thus entitled to 3 seats each. In such scenario, the number of seats to which all the parties are entitled may exceed the maximum number of party-list seats reserved in the HoR.

Since the distribution is based on proportional representation, the number of seats to be allotted to the other parties cannot possibly exceed that to which the first party is entitled by virtue of its obtaining the most number of votes, depending on the proportion of its votes relative to that of the first party whose number of seats has already been determined.

* The other qualified parties will always be allotted fewer additional seats than the first party for 2 reasons: (1) the ratio between said parties and the first party will always be less than 1:1, and (2) the formula does not admit of mathematical rounding off, because there is no provision for fractions of a seat.

3rd. To solve for the number of additional seats that the other qualified parties are entitled to.

= No. of votes of other party / No. of add'l seats allocated to 1st party x No. of votes of 1st party

VIII. CONTESTED ELECTIONS

A. Pre-Proclamation Controversies

= any question or matter pertaining to or affecting the proceedings of the board of canvassers, or any matter raised under Sec. 233-236 of BP 881 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns. (Sec. 241, BP 881)

= instituted to prevent the nefarious practice known as "grab-the-proclamation, prolong-the-protest"

* There must be a strong *prima facie* case backed up by a specific offer of evidence. An indication of its nature and importance has to be made out to warrant the reception of evidence *aliunde*, for the presentation of witnesses and the delays necessarily entailed thereby.

* COMELEC should guard against "proclamation grabbing" and against attempts to paralyze the canvassing and proclamation.

1. Nature of Proceedings

→ summary (Sec. 18, RA 7166)

• Subject: pre-proclamation controversies on election returns *or* certificates of canvass

• Period for Disposition: 7 days from receipt of records and evidence elevated by the BOC

→ Decisions shall be executory after the lapse of 7 days from receipt thereof by the losing party.

* Canvass and proclamation should be delayed as little as possible. Questions which require more deliberate and necessarily longer consideration are left for examination in the corresponding election protest (**Sison v COMELEC, 1999**)

* Complete election returns whose authenticity is not questioned must be *prima facie* considered valid for purposes of canvass and proclamation. To allow a re-count or a re-appreciation of the votes in every instance would paralyze canvass and proclamation.

* The right of the prevailing party in the pre-proclamation contest to the execution of COMELEC's decision does not bar the losing party from filing an election contest.

Purpose

<u>Pre-Proclamation Controversy</u>	<u>Disqualification Case</u>
to ascertain the winners in the elections on the basis of election returns duly authenticated by the BEI and admitted by the BOC	to prevent the candidate from running, or, if elected, from serving, or to prosecute him for violation of election laws

* The dismissal of a pre-proclamation controversy does not mean that the disqualification case is moot and academic. The two are independent of each other. The mere fact that a candidate has been proclaimed does not signify that his disqualification is deemed condoned and may no longer be the subject of a separate investigation. (**Abella v Larrazabal**)

Method of Disposition

<u>Pre-Proclamation Controversy</u>	<u>Action for Annulment of Election Results / to Declare Failure of Elections</u>
Restricted to an examination of the election returns on their face.	COMELEC may conduct technical examination of election documents and compare and analyze voters' signatures and fingerprints in order to determine whether or not the elections had indeed been free, honest and clean

(But where there is a *prima facie* showing that the return is not genuine, the above does not apply. (**Lee v COMELEC**))

2. Effect of Filing

= suspension of period to file an *election contest*, during the pendency of the pre-proclamation contest in the COMELEC or the Supreme Court (**Alangde v COMELEC**, 1989)

3. Effect of Proclamation and Assumption of Office

= *pre-proclamation controversy* no longer viable.

- The remedy is an election protest before the proper forum (**Mayor v COMELEC**, 1989);
or a declaration of ineligibility or disqualification in a quo warranto action;
or removal from office for cause.
- * Where it is claimed that there was an incomplete canvass, or that certain returns should have been omitted because they were manufactured, and other returns cannot be included because they have been irretrievably lost, the pre-proclamation controversy should be continued despite the proclamation of the supposed winner. COMELEC may, in such a pre-proclamation controversy, determine if the proclamation should be annulled (**Agbayani v COMELEC**).
- * All pre-proclamation cases pending before COMELEC shall be deemed terminated at the beginning of the term of the office involved, and the rulings of the BOCs concerned shall be deemed affirmed (Sec. 16, RA 7166).
 - * without prejudice to the filing of a regular election protest
 - * Unless COMELEC determines, on the basis of the evidence thus far presented, that the petition appears meritorious and accordingly issues an order for the proceeding to continue;
or the SC orders continuation in a petition for certiorari.

4. Jurisdiction and Judicial Review

- **Exclusive Jurisdiction:** COMELEC
 - In first instance: (Sec. 17, RA 7166)
 - (a) *If questions affecting the composition or proceedings of the BOC:*
 - before the BOC or directly with COMELEC
 - (b) *If matters in relation to the preparation, transmission, receipt, custody and appreciation of the election returns or Certificates of Canvass:* [see Problem Areas *supra*]
 - before the BOC only
 - * Parties adversely affected by a ruling on such questions may appeal to the COMELEC within 3 days therefrom. The COMELEC shall summarily decide the case within 5 days of filing. (Sec. 19, RA 7166)
 - * Not allowed in elections for President, VP, Senator, and Congressman.
However, this does not preclude the appropriate canvassing body, *motu proprio* or upon written complaint of an interested person, from correcting manifest errors in the certificate of canvass or election returns before it. (Sec. 19, RA 7166)
 - COMELEC may order, *motu proprio* or upon written petition, the partial or total suspension of the proclamation of any candidate-elect or annul partially or totally any proclamation, if one has been made. (Sec. 242, BP 881)
 - * *Even if* some of the grounds adduced in a so-called pre-proclamation controversy are grounds instead for an election contest, COMELEC still has jurisdiction (**Olfato v COMELEC**).
- **Judicial Review:** Supreme Court
 - * *only in cases of* grave abuse of discretion in the discharge of quasi-judicial powers, *not* in the exercise of its administrative duties.

5. Issues in Pre-Proclamation Cases

- * The policy behind limiting the issues of the pre-proclamation controversy is to determine as quickly as possible the results of the elections on the basis of the

canvass. Hence the mandatory requirement to comply with the procedure for a pre-proclamation controversy. It may well be true that the public policy may occasionally permit the occurrence of grab the proclamation and prolong the protest situations; that public policy however, balances the possibility of such situations against the shortening of the period during which no winners are proclaimed, a period commonly fraught with tension and danger for the public. (**Dimaporo v COMELEC**)

a. Proper Issues

- * The enumeration of proper issues under Sec. 243, BP 881 is restrictive and exclusive (**Sanchez v COMELEC**). Other issues should be taken up in an election protest.
 - errors in appreciation of ballots by the BEI (**Chavez v COMELEC**)
 - * Appreciation of ballots is performed by the BEI at the precinct level, and is not part of the proceedings of the BOC (**Sanchez v COMELEC**).
 - technical examination of signatures and thumb marks of voters (**Balindong v COMELEC**)
 - prayer for re-opening of ballot boxes (**Alfonso v COMELEC**, 1994)
 - padding of Registry of Voters of a municipality (**Ututalum v COMELEC**)
 - fraud and terrorism, and other illegal electoral practices (**Loong v COMELEC**)
 - challenges directed against the BEI (**Ututalum v COMELEC**)
 - validity of proclamation and irregularities connected therewith (**Lazatin v COMELEC**)
 - correction by the BOC of a clerical error in the Statement of Votes to correspond to the figures reflected in the election returns—even if the candidate failed to file the timely protest during canvassing, as the error in the Statement of Votes was not apparent on its face (**Villaroya v COMELEC**)
 - correction of the computation of the total number of votes obtained by candidates in the Statement of Votes (**Castromayor v COMELEC**)
 - qualifications of BOC members; WON an election had been held in a precinct, in order to determine the integrity of the election returns (**Darantinao v COMELEC**, 1989)

i. Illegal composition or proceedings of the board of canvassers

- * The petition must be filed immediately when the board begins to act illegally, *or* at the time of the appointment of the member whose capacity to sit as such is objected to if it comes after the canvassing of the board, *or* immediately at the point where the proceedings are or begin to be illegal. Participation in the proceedings = acquiescence in the composition of the BOC (**Laodeno v COMELEC**).

ii. Election returns incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies

- * Where the defect in the return refers only to some incomplete data, the return should still be included in the canvass (**Patoray v COMELEC**).
- * Where the Certificate of Votes shows tampering, alteration and falsification, or any other anomaly in the preparation of the election return, the COMELEC should order a recount of the votes cast in the precinct, after determining that the ballot box has not been tampered with. Otherwise, merely excluding the return will result in the disenfranchisement of the voters in the particular precinct (**Patoray v COMELEC**).

iii. Election returns prepared under duress, threats, coercion, or intimidation, or obviously manufactured or not authentic

- * The COMELEC may nullify certain contested returns on the ground of *statistical*

improbabilities: When the returns are obviously false or fabricated, they shall not be accorded *prima facie* validity. COMELEC may examine voting records, the number of ballots and the number of votes reportedly cast and tallied for each and every candidate (**Lagumbay v COMELEC**).

iv. Canvassing of substitute or fraudulent returns, resultantly materially affecting the standing of the aggrieved candidate/s

*** Manifest errors in the Certificates of Canvass or Election Returns**

= Errors appearing on the face of the Certificates of Canvass or election returns sought to be corrected.

= visible to the eye or obvious to the understanding; open, palpable, incontrovertible, needing no evidence to make it more clear (**O'Hara v COMELEC, 2002**).

* Objections thereto must have been made before the BOC and specifically noted in the minutes of

their respective proceedings (**Chavez v COMELEC**).

* *Also applicable to Statements of Votes*. Since the Statement of Votes is the basis of the Certificate of Canvass and of the proclamation, any error in the Statement affects the validity of the proclamation (**Ong v COMELEC**). Corrections should be made by inserting the corrections in the Statement of Votes or by preparing a new Statement of Votes incorporating the corrections (**Ramirez v COMELEC, 1997**).

b. Procedure

	<i>Illegal composition or proceedings of the BOCs</i>	<i>Correction of manifest errors in the Certificate of Canvass or Election Return</i>	<i>Matters relating to the preparation, transmission, receipt, custody and appreciation of the election returns and certificates of canvass</i>
<i>Where to File</i>	either in the BOC or with COMELEC		only with the BOC
<i>When to File</i>	immediately when the board begins to act illegally or when the member is appointed after the canvassing	anytime before proclamation; ² not later than 5 days following the date of proclamation ³	at the time the questioned return is presented for inclusion in the canvass
<i>Whom to Implead</i>		all candidates who may be adversely affected	
<i>Procedure</i>	<i>(Mandatory. Non-compliance with procedure shall be fatal to the petition.)</i>		
→ <i>If filed with the BOC first:</i>	1. submission of objection to the BOC Chairman 2. BOC ruling (3. appeal to COMELEC within 3 days from ruling 4. summary decision by COMELEC within 5 days from filing) ⁴		1. oral and written objections made to BOC Chairman, to be recorded in the minutes of canvass ⁵ 2. upon receipt, automatic deferment by BOC of canvass of contested returns; canvass of uncontested returns 3. submission of evidence in support of the objection within 24 hours; filing of written and verified opposition, if any 4. formal admission of evidence attached to objection and/or opposition by BOC Chairman, by affixing his signature on the back of every page 5. summary ruling by BOC Chairman and authentication thereof by signatures of all BOC members 6. upon notice of intended appeal, suspension by BOC of canvass of contested returns 7. notice of appeal filed with BOC within 48 hours from ruling; filing of appeal with COMELEC within 5 days thereafter 8. report made by BOC to COMELEC; elevation of records and evidence 9. summary decision by COMELEC within 7 days from receipt of elevated record and evidence * The COMELEC's decision becomes executory after the lapse of 7 days from receipt thereof by the losing party. 10. COMELEC authorization of proclamation by BOC * Any proclamation made without COMELEC authorization is void <i>ab initio</i> , unless the contested returns do not adversely affect the results of the election. ⁶

² Bince v COMELEC

³ Sec. 5(b), Rule 27, COMELEC Rules of Procedure

⁴ Sec. 19, RA 7166

⁵ Sec. 20, RA 7166

⁶ Sec. 20, RA 7166

6. Petition to Annul or Suspend Proclamation

- * The filing with the COMELEC of a petition to annul or to suspend proclamation suspends the running of the 10-day period to file an election contest (**Alangdeo v COMELEC, 1989**), *provided that* the allegations, which when proved, will render the proclamation null and void (**Mentang v COMELEC, 1994**).
- * Such petition may be filed directly with the COMELEC even as a pre-proclamation controversy, provided it is done within 10 days after proclamation (**Mentang v COMELEC, 1994**).
- * There is no fixed time frame within which to file a petition to annul a proclamation, the same being limited only by the standard of reasonableness.

No law provides for a reglementary period within which to file a petition for the annulment of an election if there is as yet no proclamation. (**Loong v COMELEC**)

B. Petition to Declare a Failure of Election

- * neither an election protest nor a pre-proclamation controversy. (**Borja v COMELEC**)
- **Requisites for Action by COMELEC on Petition:**
 1. No voting has taken place on the date fixed by law in the precincts concerned, *or even if* there was voting, the election nonetheless resulted in a failure to elect; and
 2. The votes cast would affect the results of the election. (**Mitmug v COMELEC**)
- * The election is only to be set aside when it is impossible from any evidence within reach to ascertain the true result – when neither from the returns nor from other proof can the truth be determined: *i.e.* where the illegality affects more than 50% of the total number of votes cast and the remainder does not constitute a valid constituency.
- **Procedure:**
 - (1) filing of verified petition with the COMELEC Law Department
 - (2) within 24 hours (*unless* a shorter period is deemed necessary by circumstances), issuance by Clerk of Court of notices of hearing to all interested parties
 - (3) within 2 days from receipt of such notice (*unless* a shorter period is deemed necessary by circumstances), filing of opposition, if any, by any interested party
 - (4) COMELEC hearing and decision
 - * Reception of evidence may be delegated to any COMELEC official who is a member of the Bar.
 - * WON to grant or deny the petition is the exclusive prerogative of COMELEC.

C. Election Contests

= adversarial proceedings by which matters involving the title or claim to an elective office, made before or after proclamation of the winner, are settled, whether or not the contestant is claiming the office in dispute.

e.g. questions as to the appreciation of ballots and the conduct of the campaign and balloting, which require more deliberate and necessarily longer consideration (**Abella v Larrazabal**)

→ **Purpose:** to ascertain the candidate lawfully elected to office

- * Until and unless the election protest is decided against him, a person who has been proclaimed as duly elected has the lawful right to assume and perform the duties and functions of the office.

1. Nature

- An election protest is imbued with public interest which raises it onto a plane over and above ordinary civil actions, because it involves not only the adjudication of the private interest of the rival

candidates, but also the paramount need of dispelling once and for all the uncertainty that beclouds the real choice of the electorate with respect to who shall discharge the prerogatives of the office within their gift. (**De Castro v COMELEC**)

- liberally construed to favor the will of the people
 - * An election contest may not be defeated by mere technical objections.

Jurisdiction

<i>Pre-Proclamation Controversy</i>	<i>Election Contest</i>
COMELEC administrative / quasi-judicial jurisdiction	COMELEC judicial jurisdiction

Governed by requirements of administrative due process

Governed by requirements of judicial process

- * In some cases, even if the case (involving municipal officials) began with the COMELEC before proclamation but a proclamation is made before the controversy is resolved, it ceases to be a pre-proclamation controversy and becomes an election contest cognizable by the RTC.

- * However, in some cases, the SC has recognized the jurisdiction of COMELEC over municipal cases even after proclamation.

2. Issues

- * Failure of protestant to raise the question of identical handwriting or of impugning the validity of the ballots on that ground does not preclude the COMELEC from rejecting the ballots. In view of the interest of the citizens in upholding the sanctity of the ballot, the Comelec cannot simply close its eyes to the illegality of the ballots, even if the protestant omitted to raise the ground in his protest (**Arao v COMELEC**).
- * COMELEC has authority to make factual determinations as to handwriting in ballots without need of calling for the services of handwriting experts, this investigation being more in the nature of an internal process (**Emi v COMELEC**).

3. Jurisdiction

a. Supreme Court

→ the sole judge of all contests relating to the election, returns, and disqualifications of the President and Vice-President (Sec. 4, Art. VII, Constitution)

b. Electoral Tribunals of the Senate and HoR

→ Each electoral tribunal has 9 members: 3 Supreme Court Justices, and 6 members of the Senate or House, chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. (Sec. 17, Art. VI, Constitution)

- * The rules of procedure of such tribunals shall prevail over the provisions of the Omnibus Election Code (**Lazatin v HRET**)
- * Judicial review of a decision of the Electoral Tribunal is possible *only in* the exercise of supervisory or extraordinary jurisdiction, *and only upon* showing that the Tribunal's error results from a whimsical, capricious, unwarranted, arbitrary or despotic exercise of power (**Puzon v HRET, 1989**).

c. RTCs and MTCs

→ *exclusive original jurisdiction* over municipal and barangay officials, respectively

* MTCs have jurisdiction over cases involving qualifications of candidates for the Sangguniang Kabataan filed *after* the election. Where filed *before* the election, these are decided by the Election Officer. (Nachura)

d. **COMELEC**

→ *exclusive original jurisdiction* over all election contests relating to the elections, returns, and qualifications of all elective (1) regional, (2) provincial, and (3) city officials.

* appealable to the SC

→ *appellate jurisdiction* over all contests decided by trial courts of general jurisdiction (*i.e.* RTCs) involving elective municipal officials, or decided by trial courts of limited jurisdiction (*i.e.* MTCs) involving elective barangay officials.

* Final, executory, and not appealable.

* *However*, this does not preclude a recourse to the Supreme Court by way of a special civil action for certiorari (**Galido v COMELEC**) where COMELEC's factual determination is marred by grave abuse of discretion (**Alvarez v COMELEC**).

* An order regarding the revision of ballots is an interlocutory order because it still requires a party to perform certain acts leading to the final adjudication of the case (**Bulaong v COMELEC**).

* **Powers of the COMELEC in Relation to Election Contests**

- to determine the validity or nullity of votes
- to issue writs of certiorari, prohibition, and mandamus, *but only* in aid of its appellate jurisdiction. (**Relampagos v Cumba**)

4. **2 Kinds of Election Contests**

a. **Election Protest**

- Who May File: Any candidate who:
 - (1) has filed a certificate of candidacy and has been voted upon for the same office; *and*
 - (2) has not himself caused or contributed to the irregularities or frauds of which he complains.
- Grounds:
 - fraud
 - terrorism
 - irregularities
 - illegal acts
 → committed before, during *or* after the casting and counting of votes
- When to File: within 10 days from proclamation of the results of the election (BP 881)
 - * *Where* proclamation takes place while a per-proclamation controversy is pending, the filing therein of an MFR by the losing candidate does not toll the period for filing an election protest (**Roquero v COMELEC**)
 - * Abandonment. The election protest was rendered moot and academic by the election of the protestant and her assumption of office. Thus she is considered to have abandoned or withdrawn her protest, or, at the very least, abandoned her "determination to protect and pursue the public interest involved on who is the real choice of the electorate." (**Defensor-Santiago v Ramos**)
- Procedure
 - (a) **when filed with COMELEC** (Rule 20 vis-à-vis Rules 10-19, COMELEC Rules of Procedure)
 1. filing of a verified petition and payment of docket fees

* Failure to pay the basic docket fee will result in the dismissal of the protest (**Gatchalian v COMELEC**).

2. within 3 days from filing of the petition, issuance of summons by Clerk of Court of the COMELEC or its division
3. filing of Answer, including counter-protest or counterclaim if any, within 5 days from service of summons
 - * A counter-protest filed beyond the reglementary period shall not be entertained (**Kho v COMELEC**, 1997)
4. filing of Reply or Answer to the Counter-Protest or Counterclaim within 5 days from receipt of Answer
 - * Otherwise, a general denial is deemed to have been entered.
5. hearing and reception of evidence
6. decision by COMELEC
 - * *If* by a Division, within 10 days; becomes final and executory after 15 days from promulgation. The aggrieved party may file a timely MFR within 5 days from promulgation, on the grounds that the evidence is insufficient to justify the decision, or that the said decision is contrary to law.
 - * *If* by the COMELEC *en banc*, within 30 days; becomes final and executory after 30 days from promulgation.

(b) **when filed with the RTC**

(Rule 35, COMELEC Rules of Procedure)

1. filing of verified petition
2. filing of Answer within 5 days from receipt of notice of filing of petition
 - * Should the protestee desire to impugn the votes received by the protestant in other precincts, he may file a verified counter-protest within the same period. The protestant has 5 days from receipt of the counter-protest to file his answer thereto.
 - * Any other candidate for the same office may intervene in the case within 5 days from filing of the protest by filing a verified petition-in-intervention. The protestant *or* protestee shall answer the protest-in-intervention within 5 days after notice.
 - * If no answer is filed to the protest, counter-protest or protest-in-intervention within the specified time limits, a general denial is deemed to have been entered.
3. hearing; reception of evidence to be completed within 30 days from its commencement
4. decision
 - as to who among the parties has been elected, *or*, in a proper case, that none of them has been legally elected
 - * within 30 days from date of submission for decision *and* within 60 months after filing of protest
 - * becomes final 5 days from promulgation. No MFRs! (**Veloria v COMELEC**)
 - * appealable to COMELEC
 - filing of a notice of appeal within 5 days from promulgation of the decision

* Death of Protestant

≠ extinguishment of election protest
 → It is not the heirs of the deceased who shall be the successors-in-interest to the suit, but the succeeding candidate-elect. For example, if

the deceased was a candidate for governor, the real party in interest in the continuation of the proceedings is the Vice-Governor-elect, as he will succeed in the event that the protestant is declared to be the person lawfully elected to the office (**De Castro v COMELEC**).

- * If persons not real parties in the action could be allowed to intervene, proceedings will be unnecessarily complicated, expensive and interminable—and this is not the policy of the law. Inasmuch as no real parties such as the vice-presidential aspirants in the 2004 elections have come forward to intervene, or to be substituted for the deceased protestant, it is far more prudent to abide by the existing and strict limitations on intervention and substitution under the law and the rules (**Poe v Macapagal-Arroyo**, 2005).

b. Quo Warranto

- **Who may File:** any registered voter in the constituency
- **Grounds:**
 - (a) ineligibility, or
 - (b) disloyalty to the Republic of the Philippines
- **When to File:** within 10 days from proclamation of the results of the election
- * Made moot and academic by expiration of term of elected official against whom the petition is filed (**Sampayan v Daza**).

D. Evidence in Contesting Election Results

<i>Admissible Evidence</i>	<i>Purpose</i>
<ul style="list-style-type: none"> • Election returns • Ballots 	to determine correctness of the number of votes of each candidate, <i>where</i> the other cannot be produced or are not available
<ul style="list-style-type: none"> • Poll-books and tally sheets • Testimony of election officials • Testimony of voters 	<i>where</i> by law, these are required to be kept <i>in</i> the absence of ballots, tally sheets or poll-books <i>where</i> the illegality consists in the casting of votes by persons unqualified, <i>unless</i> it can be shown for whom they voted.
<ul style="list-style-type: none"> • Certificate of Votes 	It cannot be allowed to change the result. to prove tampering, alteration, falsification or any anomaly committed in the election returns concerned, <i>when</i> duly authenticated by testimonial or documentary evidence presented to the to the BOC by at least 2 members of the BEI who issued the certificate * Failure to present this shall <u>not</u> bar the presentation of other evidence to impugn the authenticity of the election returns.

E. Award of Damages

- *Actual or compensatory damages* may be granted in all election contests in accordance with law. (Sec. 259, BP 881)
- * The victorious party in an election case cannot be indemnified for expenses which he has incurred in an electoral contest, in the absence of a wrongful act or omission or breach of obligation clearly attributable to the losing party. Evidently, if any damage had been suffered due to the execution of judgment pending appeal, that damage may be said to be *damnum absque injuria* (**Malaluan v COMELEC**, 1996).

IX. ELECTION OFFENSES

A. Election Offenses⁷

1. Registration

- * Failure to register and vote may be said to be no longer an offense. Art. V, Sec. 1 of the 1987 Constitution states that suffrage "may" be exercised by qualified citizens of the Philippines; he 1935 and 1973 Constitutions used "shall."
- Failure of the BEI to post the list of voters in each precinct (Sec. 9, RA 7166)
- Change or alteration or transfer of a voter's precinct assignment in the permanent list of voters without his express written consent (Sec. 4, RA 8189)
- Acceptance of appointment, assumption of office, and/or actual service as member of the Election REGistration Board although ineligible thereto (Sec. 45d, RA 8189)
 - * also, knowingly appointing such ineligible person

2. Certificate of Candidacy

- Continued misrepresentation or holding out as a candidate of a disqualified candidate or a nuisance candidate, declared so by final and executory judgment (Sec. 27(f), RA 6646)
 - * Knowingly inducing or abetting such misrepresentation
- In a special election, in order to discourage any other person or persons from filing a certificate of candidacy in order to eliminate all other potential candidates: (Sec. 5, RA 8295)
 - (a) coercion
 - (b) bribery
 - (c) threats
 - (d) harassment
 - (e) intimidation
 - (f) terrorism
 - (g) actually causing / inflicting / producing:
 - (i) violence
 - (ii) injury
 - (iii) punishment
 - (iv) torture
 - (v) damage
 - (vi) loss
 - (vii) disadvantage

3. Election Period

- = from 90 days before until 30 days after election day (Sec. 3, BP 881)
- Transfer by any public official of officers and employees in the civil service without the prior approval or sanction by COMELEC (Sec. 261h, BP 881)
 - * *unless* done to promote efficiency in the government service (**People v Reyes**)
- Suspension by any public official of an elective local official without prior approval of the COMELEC (Sec. 261x, B.P. 881)

⁷ Not an exhaustive enumeration of Election Offenses.

- * *unless* for purposes of applying the Anti-Graft and Corrupt Practices Act
 - Organization or maintenance of reaction forces, strike forces, or similar forces (Sec. 261u, B.P. 881)
 - Refusal by a public utility or transportation company operating under a certificate of public convenience to carry official election mail matters free of charge (Sec. 261dd (4), B.P. 881)
 - Within 45 days before a regular election and 30 days before a special election, appointment of new employees, creation of new positions, promotion, or giving salary increases (Sec. 261g, B.P. 881)
 - Within 45 days before a regular election and 30 days before a special election, release, disbursement or expenditure of public funds for most kinds of public works (Sec. 261v, B.P. 881)
 - Within 45 days before a regular election and 30 days before a special election, undertaking the construction of public works or issuance or use of treasury warrants (Sec. 261w, B.P. 881)
 - Within 60 days before and 30 days after election day, illegal release of prisoners by person/s required by law to keep them in their custody (Sec. 261n, B.P. 881)
- 4. Campaign Period**
- Engaging in an election campaign or partisan political activity outside the campaign period (Sec. 80, BP 881)
 - Appointment or use of special policemen, special agents or the like (Sec. 261(m), BP 881)
 - Use of armored land, water or aircraft (Sec. 261r, B.P. 881)
 - Unlawful electioneering: solicitation of votes or undertaking any propaganda on the day of registration before the BEI and on the day of election, for or against any candidate or any political party within the polling place and a radius of 30 meters thereof (Sec. 261k, B.P. 881)
 - Policemen and provincial guards acting as private bodyguards or security (Sec. 261t, B.P. 881)
 - Unjustified discrimination against any political party, coalition or aggroupment of parties or any candidate in the sale of air time by any operator of a radio or TV station (Sec. 261dd (5), B.P. 881)
 - Removal, destruction, obliteration, or tampering of lawful election propaganda, or preventing the distribution thereof (Sec. 83, BP 881)
 - Intervention by public officers and employees in the civil service in any partisan political activity except to vote or, if he is a peace officer, to preserve public order (Sec. 261i, B.P. 881)
 - Use for an election campaign or any partisan political activity of:
 - (a) public funds or money deposited with, or held in trust by, public financing institutions or by government offices, banks, or agencies
 - (b) facilities owned or controlled by the government, incl. GOCCs and the AFP
 - (c) equipment owned or controlled by the government (Sec. 261o, B.P. 881)
 - Use of prohibited forms of election propaganda (Sec. 27, RA 6646)
- 5. Election Day**
- Vote-buying and vote-selling (Sec. 261a, B.P. 881)
 - Failure by the BEI Chairman to affix his signature on the back of the ballot before delivering it to the voter (Sec. 24, RA 7166)
 - Violation by assistor of any or both of duties to prepare the voter's ballot and to take formal oath to do so in accordance with the instructions of the voter without revealing the contents of such ballot (Sec. 196, BP 881)
 - Conspiracy to bribe voters (Sec. 261b, B.P. 881)
 - * Disputable presumption of such conspiracy = proof that at least 1 voter in different precincts representing at least 20% of the total precincts in any municipality, city or province has been offered, promised or given money, valuable consideration or other expenditure by a candidate's relatives, leaders and/or sympathizers for the purpose of promoting the election of such candidate (Sec. 28, RA 6646)
- Coercion of subordinates to vote for or against any candidate (Sec. 261d, B.P. 881)
 - Dismissal of employees, laborers, or tenants for refusing or failing to vote for any candidate (Sec. 261d(2), B.P. 881)
 - Being a "flying voter": voting more than once in the same election, or, not being a registered voter, voting at all (Sec. 261z (2), B.P. 881)
 - Holding fairs, cockfights, jai-alai, etc. (Sec. 261dd (3), B.P. 881)
 - Feigning of illness by any member of the BOC in order to be substituted on election day until proclamation (Sec. 224, BP 881)
- 6. Counting and Canvassing of Votes**
- Failure to complete canvass within the required period (Sec. 231, BP 881)
 - Tampering, increasing, decreasing votes, or refusal to correct tampered votes after proper verification and hearing by any member of the BEI (Sec. 27b, R.A. 6646)
 - Refusal by any member of the BEI to issue to duly accredited watchers the Certificate of Votes cast and the announcement of the election (Sec. 27c, R.A. 6646)
 - Failure by BOC Chairman to give notice of meeting to other members of the BOC or to a candidate or political party as required (Sec. 27e, R.A. 6646)
 - Until proclamation, failure to preserve and secure ballot boxes by BOCs and local treasurers (Sec. 18, BP 881)
- 7. Other Offenses**
- Threats, intimidation, terrorism, use of fraudulent devices or other forms of coercion to compel or induce:
 - (a) registration or refraining from registration of any voter
 - (b) participation in a campaign or refraining or desistance from any campaign
 - (c) the casting of any vote or omission to vote
 - (d) any promise of such registration, campaign, vote, or omission (Sec. 261e, B.P. 881)
 - Coercion of election officials and employees
 - Undue influence which may induce one:
 - (a) to vote or withhold his vote, or
 - (b) to vote for or against any candidate in any election, or any aspirant for the nomination or selection of an official candidate in a convention of a political party (Sec. 261j, B.P. 881)
 - Carrying deadly weapons in the polling place and within a radius of 100 meters thereof (Sec. 261p, B.P. 881)
 - * *unless* peace officer or public officer authorized by COMELEC to supervise the election, in cases of affray, turmoil, or disorder
 - Carrying firearms outside residence or place of business, although possessing a permit therefor (Sec. 261q, B.P. 881)
 - * *unless* cashier or disbursing officer, while in the performance of their duties, or person who by nature of his official duties, profession, business or occupation habitually carries large sums of money or valuables
 - * *not applicable* to motor vehicle, water or air craft
 - Unauthorized printing of official ballots and election returns with printing establishments not under contract with the COMELEC (Sec. 27a, R.A. 6646)

- Wagering upon the results of elections (Sec. 261c, B.P. 881)
- Sale, etc. of intoxicating liquor on the day for voter registration, or the day before or on election day (Sec. 261dd (1), B.P. 881)
- Opening booths or stalls for the sale, dispensing or display of wares, merchandise or refreshments in any polling place or within 30 meters thereof (Sec. 261dd (2), B.P. 881)

B. Principles Underlying Election Offenses

1. *Mala Prohibita*

→ In general, proof of criminal intent is not necessary in election offenses. Nor is good faith, ignorance, or lack of malice a defense (**People v Bayona**).

2. Penalties

a. For an Individual

- (1) Imprisonment 1-6 years, without probation (Sec. 264, BP 881)
- (2) Disqualification to hold public office
- (3) Deprivation of the right of suffrage
- (4) *Where stated*, cancellation or revocation of certificate of public convenience or franchise
- (5) *Where stated*, other penalties

b. For a Foreigner

- (1) Imprisonment 1-6 years, without probation (Sec. 264, BP 881)
- (2) Deportation after service of sentence

c. For a Political Party

→ Fine not less than P10,000 after a criminal conviction

3. Prescription

= 5 years from date of commission

* If the offense be discovered in an election contest proceeding, the period of prescription shall commence on the date on which the judgment in such proceedings becomes final and executory. (Sec. 267, B.P. 881)

C. Investigation and Prosecution

- COMELEC has exclusive power to investigate and prosecute cases involving violations of election laws. (Sec. 2(6), Art. IX-C, Constitution; Sec. 268, BP 881; **De Jesus v People**).

* *However:*

- This power may be validly delegated to the Provincial Prosecutor or to the Ombudsman.
- It is not the duty of the COMELEC to gather proof in support of a complaint filed before it (**Kilosbayan v COMELEC**, 1997).
- Should COMELEC fail to act on any complaint within 4 months from its filing, the complainant may instead file the complaint with the fiscal or the Department of Justice, if warranted (Sec. 265, B.P. 881).

- Investigation and prosecution of election offenses shall be given priority by the COMELEC. The investigating officer shall resolve the case within 5 days from submission.

D. Jurisdiction of the Courts

→ RTCs have exclusive original jurisdiction to try and decide any criminal actions or proceedings for violation of election laws (Sec. 268, BP 881; **Juan v People**, 2000).

* The courts shall give preference to election cases over all other cases, *except* petitions for writ of *habeas corpus*. Their trial shall be commenced without delay and shall be conducted continuously until terminated. The case shall be decided within 30 days from its submission for decision (Sec. 269, BP 881).

PUBLIC INTERNATIONAL LAW

I. CONCEPT, NATURE, DEFINITION OF INTERNATIONAL LAW

- A. A body of principles, norms and processes
- B. Which regulates the relations of States and other international persons,
- C. And governs their conduct
- D. Affecting the interests of States as a whole

II. RELATION OF INTERNATIONAL LAW & MUNICIPAL LAW

A. Public International Law vs. Municipal Law vs. Private International Law

- 1. International law - prescribes rules and processes that govern the relations of sovereign states with each other, and the rights of other entities insofar as they implicate the community of states
- 2. Municipal law deals with the conduct or status of individuals, corporations, and other "private" entities within particular states.
- 3. Private international law – part of the laws of each State, which determines whether in dealing with a factual situation involving a foreign element, the law or judgment of some other State will be recognized or applied in the forum.

B. Dualism vs. Monism

	Monism	Dualism
International and domestic law as legal orders	2 separate systems, with only those problems affecting international relations being within the scope of international law	International and the municipal legal systems are fundamentally part of one legal order
On which legal order is superior	Neither legal order has the power to create or alter rules of the other	Assertion of supremacy of international law even in the municipal sphere, with domestic law as a mere subset of international law
How one legal order operates or acts within the other	Before an international norm can have an effect in municipal law, such must be transformed, or adopted into the municipal system through a positive act by the domestic legislature.	International norms are applicable within municipal systems even without some positive act of the state or its bodies
On what each legal order regulates	They regulate different subject matter: International law for states; Domestic law for individuals	International law, like municipal law, is concerned with the conduct and welfare of individuals

- 1. Monist-naturalist
 - a. That international law is superior
 - b. That both systems are but part of a higher system of natural law
- 2. Theory of Coordination
 - a. The two systems do not conflict as they work in separate fields
 - b. But municipal law is generally obliged to be in conformity with international law
 - c. There may, however, be a conflict in obligations, an

- inability of the state to act in the domestic plane in a manner required by international law
- d. The consequence is not invalidity of the internal law but responsibility of the state in the international plane

C. Obligations of States and Municipal Law

- 1. A state cannot plead the provisions of its own law or deficiencies in that law in answer to a claim against it for an alleged breach of its obligations under international law (Art. 27, Vienna Convention on the Law of Treaties [VCLOT])
- 2. From the nature of treaty obligations and from customary law, there is a general duty to bring internal law in conformity with obligations under international law
- 3. A breach of international law arises only when the state fails to observe its obligations on a specific occasion and not upon mere failure to establish conformity in #2

D. Position of the Individual

- 1. International law imposes certain duties on individuals (i.e. that they not commit certain international crimes)
- 2. Individuals or corporations may at times plead that a treaty has legal consequences on them

E. Municipal Law as Facts before International Tribunals

- 1. Municipal law as evidence of conduct attributable to the State concerned which creates international responsibility, like legislative measures or court decisions (*Certain German Interests in Polish Upper Silesia*)
- 2. Treatment of municipal law as mere facts in certain international tribunals' decisions
 - a. As evidence of conduct in violation of a rule of treaty or customary law
 - b. No judicial notice of municipal law, proof is necessary
 - c. Interpretation of their own laws by national courts is binding on an international tribunal (part of concept of reserved domain of domestic jurisdiction)
 - d. Assumption that for any domestic issue of which a tribunal is seized, there is an applicable rule of domestic law, ascertainable as other facts of the case
 - e. Tribunals cannot declare the internal invalidity of national law
 - f. It is debatable whether municipal law is to be treated merely as facts with the international court not interpreting such laws.

F. Doctrine of Incorporation

- 1. Customary rules: considered part of the law of the land and enforced where not inconsistent with domestic law
- 2. Philippine doctrine in Incorporation: "adopts the generally accepted principles of international law as part of the law of the land" (Sec. 2, Art. II, 1987 Const.)

G. Res Judicata and the Two Legal Orders

- 1. No *res judicata* from the decision of a municipal court so far as international jurisdiction is concerned (parties and issues are different)
- 2. Decisions by organs of international organizations: not binding in national courts without the domestic legal system adopting some broad provision for automatic incorporation of treaty norms or require specific acts of incorporation at least for certain categories of treaties
 - Doctrine of Transformation – requires the enactment by the legislature of such international law principles as are sought to be part of municipal law.

III. SOURCES OF INTERNATIONAL LAW

A. Sources -In General

1. BROWNLIE

a. Formal

- Legal procedures and methods for the creating rules of general application which are legally binding on addressees
- Equivalent in international law is principle that general consent of states creates rules of general application

b. Material

- provide evidence of the existence of consensus among states concerning particular rules or practices which, when proved, are legally binding rules of general application

2. Art. 38, ICJ Statute

a. Primary Sources:

- International treaties & conventions: whether general or particular, establishing rules expressly recognized by the contesting parties
- International custom: as evidence of a general practice accepted as binding law through persistent usage over a long period of time
- General principles of law recognized by civilized nations: *res judicata*, *pacta sunt servanda* and *estoppel*

b. Secondary Sources

- Judicial decisions of international tribunals
- Writings of publicists which must be fair and unbiased representation of international law by acknowledged authorities in the field

B. International Custom

1. Definition

- Evidence of a general practice accepted as law (Art. 38, ICJ)
- General recognition among states of a certain practice as obligatory (Brierly)
- Distinguished from mere usage, involves practice that reflects a legal obligation; Requires concurrence of 3 elements:
 - Objective element (prevailing practice by a number of states)—state practice
 - Repeated over a considerable period of time
 - Subjective element: *opinio juris*

2. Kinds of Custom

- General (binding on almost all states)
- Particular and Local
 - Custom need not always be binding on all or most states
 - Court conceded that local custom existed. (*Asylum Case*)
 - Same standards for establishing existence of general custom is applicable
 - Recognized existence of a bilateral custom (*Right of Passage Case*)
- Instant Custom – emerges even within a relatively short period of time, if within that period, State Practice has been uniform and extensive.

3. Evidence

- Diplomatic correspondence
- Policy statements
- Press releases
- Opinions of official legal advisers
- Official manuals on legal decisions (executive decisions and practices; government comments on drafts by the ILC)
- International and national judicial decisions
- Recitals in treaties and international instruments
- Practice of international organs

4. Elements

- Duration: no particular duration or passage of time is required provided the consistency or generality of practice are proved (*North Sea case*)
- Uniformity, consistency of the practice
 - Subject to court appreciation
 - Mere substantial uniformity and not complete uniformity is essential
- Generality of the practice – universality is not required
- Opinio juris sive et necessitates*
 - Recognition of the validity of the rules in question as a form of legal obligation in the practice of states
 - Belief on the part of States that a particular practice is required by law
 - Two approaches for determining *opinio juris* in the practice of courts
 - Assumption of *opinio juris* on the bases of evidence of a general practice, or a consensus in the literature/ previous determinations of international tribunals
 - Need for more positive evidence of the recognition of the validity of the rules in question in the practice of states. (i.e proof of custom in the *Lotus Case* and *North Sea Case*)

5. Other Issues

- Persistent objector – Rule that a state may contract out of a custom in the process of its formation
 - Evidence of objection must be clear
 - Presumption of acceptance of a custom must be rebutted
 - Principle was recognized in the *Anglo-Norwegian Fisheries Case* and the *North Sea Continental Shelf Case*
- Subsequent objector – presumably, if a substantial number of states assert a new rule, the subsequent contracting out of old rules, followed by acquiescence by other states may result in a new rule
- Proof of custom – burden, which varies according to case, is on proponent of a custom (*Asylum case*)
- Absence of protest as a measure of generality of practice (Brownlie)
 - Where several states do not object, whether the practice is deemed sufficiently general to constitute custom among them
 - The absence of protest could be considered evidence of the binding nature of the customary practice

6. Cases

- North Sea Continental Shelf Case* (1969)
 - On proof of *opinio juris*
 - Passage of only a short period of time is not necessarily a bar to the formation of new customary law
 - Within that period, State practice should be both extensive and virtually uniform in the sense of the provision invoked
 - State practice must occur in a way to show a general recognition that a rule of law or legal obligation is involved
- Case Concerning Military and Paramilitary Against Nicaragua (Nicaragua vs. US)*
 - Proof of custom (*North Sea Case*)
 - The acts concerned must amount to a settled practice
 - Settled practice must be accompanied by *opinio juris sive necessitates* (belief that the practice is rendered obligatory by the existence of a rule of law requiring it)
- Asylum Case* (1950)
 - Exercise of diplomatic asylum by states
 - Party relying on custom must prove that this custom is established in such a manner:
 - It has become binding on the other party

- o Rule invoked is in accordance with a constant and uniform usage practiced by the States in question
- o Usage is an expression of a right appertaining to the State invoking and a duty incumbent on the State against whom invoked

C. Treaties

1. Definition (Art. 2, VCLOT)

- a. An international agreement concluded between States
- b. In written form
- c. Governed by international law
- d. Whether embodied in a single instrument or in two or more related instruments
- e. Whatever its particular designation.

2. Nature

- a. Constitutes law between the parties, who, under *pacta sunt servanda*, are required to fulfill their obligations. (Art. 26, VCLOT)
- b. Every treaty in force is binding upon the parties to it and must be performed by them in good faith. (Art. 26)
- c. Creates general norms for the future conduct
- d. Those where the obligations are basically the same for all parties
- e. In principle, binding only on parties to the treaty
- f. Oral agreements between States are recognized as treaties under customary international law

3. Requisites for Validity

- Treaty Making Capacity
 - o Possessed by all States as an attribute of sovereignty
 - o Customary international law: international organizations possess treaty-making capacity, though limited by the organizations' purpose and constitution
- Competence of the representative/organ making the treaty
 - o Generally exercised by head of state
- Parties must freely give consent
 - o Ways of expressing consent: by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession or by other means manifesting consent
 - o Consent given in error/ induced by fraud by another party: the treaty is *voidable*
- Object and subject matter must be lawful
- Ratification in accordance with the constitutional process of the parties concerned

4. Examples of what are regarded as treaties

- a. Treaties
- b. Executive agreements (Philippine law: both treaties and executive agreements are equally binding, but only treaties require Senate concurrence for effectivity)
- c. Exchanges of notes

	Treaty	Executive Agreements
Subject Matter	1. Political Issues 2. Changes in national policy 3. Involves international agreements of a permanent character	1. Transitory effectivity 2. Adjusts details to carry out well-established national policies and traditions 3. Temporary 4. Implements treaties, statutes, policies
Ratification	Requires ratification by the 2/3 of the Senate to become	No ratification by the

i f i - c a t i o n	valid and effective (Art. VII, Sec. 21)	Senate
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5. Stages for Execution of Treaties

- a. Negotiation
- b. Adoption of the text by the parties
 - Involves giving of consent
 - Multilateral treaties: consent of 2/3 of the parties is needed
 - Adoption merely fixes the treaty's text; no binding obligation yet
- c. Subsequent consent to be bound by the treaty through:
 - *Signature*, when the negotiator is authorized to sign the treaty
 - *Ratification*, formal consent to the treaty given by the Head of State, sometimes in conjunction with the legislature
 - *Accession* or adhesion; acceptance of treaty by a state that did not participate in its negotiation
 - When signature without ratification is sufficient [Art. 12(1)]:
 - o Treaty provides that signature shall have that effect;
 - o The negotiating States agreed that signature should have that effect
 - appears from the full powers of its representative or was expressed during the negotiation
 - Ratification when imperative [Art. 14(1)]:
 - o Treaty provides that consent to be expressed by ratification
 - o Negotiating States agreed that ratification should be required
 - o State representative has signed the treaty subject to ratification
- d. Exchange of instruments of ratification
- e. Registration with the UN
 - Full Powers - authority of a person to sign a treaty or convention on behalf of a state. Persons other than the head of state, head of government or foreign minister must produce such in order to sign a treaty binding their government. Such a person is called a plenipotentiary
 - Practice of *Alternat* – arrangement under which each negotiator is allowed to sign first on the copy of the treaty which he will bring home to his country, to preserve the formal appearance of equality among the contracting states and avoid delicate questions of precedence among signatories
 - Reservations
 - A unilateral statement, made by a state when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or modify the legal effect of certain provisions of the treaty in their application to the state
 - Basis: a State as a sovereign is free to consent or not to consent to treaties, and thus is free to withhold certain matters from the operation of the treaty via a reservation
 - Effect: state making the reservation remains a party, provided that the reservation is compatible with the treaty's object and purpose
 - Exceptions
 - treaty expressly prohibits reservations in general, or that specific reservation;
 - reservation is incompatible with treaty's object and purpose (*Reservation to the Genocide Conventions case*)

- Doctrine of Unequal Treaties – treaties imposed through coercion or duress by a State of unequal character: Void
- Concordant – treaty or agreement between ecclesiastical and civil powers to regulate relations between church and state in matters which are under the jurisdiction of both
- Most Favored Nation Clause – pledge made by a contracting party to grant to other party treatment not less favorable than that which had been given or may be granted to the most favored among parties
- *Protocol de cloture* – instrument recording the winding up of the proceedings of a diplomatic conference and usually includes a reproduction of the treaties, conventions, recommendations and other acts agreed upon and signed by the plenipotentiaries attending the conference. It is not the treaty itself and concurrence of the Senate is not required. (*Tañada vs. Angara*)

6. Amendment or Modification of Treaty

- **General Rule:** Consent of all parties is required
- **Exception:** If allowed by the treaty itself, two States may modify a provision only insofar as they are concerned

7. Judicial Review

- Even after ratification, the Supreme Court has the power of judicial review over the constitutionality of any treaty, international or executive agreement (Const. Art. VIII Sec. 5.2.a), and must hear such cases en banc (Sec. 4.2)
- *Tanada vs. Angara*: challenging validity of the Senate ratification of the WTO, on the ground that trade liberalization violates economic protectionist clauses of Philippine constitution. WTO upheld by the Court as a valid limitation to state sovereignty.

8. Direct Incorporation

- Prevailing theory: a treaty is automatically incorporated as part of Philippine law by virtue of the Incorporation Clause (Art. II Sec. 2). Therefore, it can be invoked by or against citizens directly.
- Cases
 - *Secretary of Justice vs. Lantion*: First Jimenez decision, the Court said: “Under the doctrine of incorporation, rules of international law form part of the law of the land, and no further legislative action is needed to make such rules applicable in the domestic sphere.”
 - *La Chemise Lacoste*: Lacoste, a French corporation, sued local counterfeiters before Philippine courts. When the counterfeiters challenged its legal personality to sue before Philippine courts, the Court held that the Philippines has ratified international conventions for the protection of intellectual property, and it would frustrate the object of these conventions if Lacoste is barred from filing its claims directly in Philippine courts.
 - *Reyes vs. Bagatsin*: JBL Reyes, chair of Anti-Bases Coalition, was denied a permit to hold a rally in front of US embassy. Manila Mayor Bagatsin cited threats of violence and a City Ordinance prohibiting rallies within a certain radius around foreign embassies. It purported to carry out the obligation of the Philippines under an international convention for the protection of diplomatic agents. Court made a finding of fact that there lay no actual threat to safety of the embassy. It did not strike down the Ordinance as a violation of the freedom of speech and of assembly.
 - *Marcos vs. Manglapus*: Former president wishes to return to the Philippines from exile in Honolulu, was barred by the Philippine government. International Covenant on Civil and Political Rights provides a “right to leave and to return”, while the Philippine Constitution says

“right to travel.” Court rejected the Marcos plea, but stated that the right to return, though not expressly adopted in Philippine law, is a generally accepted principle of international law and is thus incorporated as part of municipal law.

- But it matters which agency of the government purports to implement the treaty directly:
 - *Mayor Simon vs. Commission on Human Rights*: CHR issues cease-and-desist order stopping Mayor Simon from demolition of squatters in North EDSA. CHR invokes right to livelihood and decent housing. SC held that the Constitution limits the CHR to the protection of civil and political rights but not economic, social and cultural rights.

9. Other issues

- a. Contract Treaties vs. law-making treaties
 - Contract Treaties: bilateral arrangements [2 or a few States] concerning matters of particular or special interest to the contracting parties
 - Law-making treaties: executed by a large number of States (*Salonga*)
 - To declare the law on a particular subject
 - To stipulate general rules for future conduct
 - To create an international institution
 - Distinction: important in deciding whether particular treaty obligations have crystallized into customary norms
 - Basis for classification of a treaty as falling into either category: Nature and effect of the norms they contain
 - It is lawmaking or legislative where there is an inherent or juridical element in those treaties (i.e. 'dispositive' or 'real' character of the transaction effected by the treaty, and the permanent nature created by or in pursuance of the treaty)
- b. Treaty vis-à-vis Custom
 - The same norm can exist both as a customary norm and as conventional norm (i.e. the prohibition of aggressive war)
 - Customary norm, even identical with a treaty norm, retains a separate identity (*Brownlie*)
 - Modes by which a norm acquires such dual character (*Akehurst*)
 - Treaty provision may simply restate a customary norm
 - Treaty provision may crystallize into a customary norm
 - Treaty provision may constitute evidence of custom.
- c. How treaties crystallize into custom:
 - Provision must be norm-creating
 - Treaty must be lawmaking, creating legal obligations, which are not dissolved by their fulfillment.
 - Number of parties, explicit acceptance of rules of law, and, in some cases, declaratory nature of the provisions produce a strong law-creating effect at least as great as the general practice sufficient to support a customary rule (*Brownlie; North Sea case*)
- d. Treatment of Resolutions by International Organizations (i.e. GA or SC Resolutions of the UN)
 - UN GA resolutions
 - No binding effect under the UN Charter, save in limited fields like budgetary matters (Art. 17)
 - Generally just regarded as recommendations
 - May constitute a kind of state practice
 - Factors to consider in determining the legal significance of UN GA resolutions (*Higgins*)
 - Whether they are binding or recommendatory
 - Majorities supporting them
 - Repeated practice in relation to them

- Evidence of *opinio juris*

10. Fundamental Principles Concerning Treaties

a. *Pacta sunt servanda*

Treaties must be observed in good faith. If necessary, the State concerned must even modify its national legislation and constitution to make them conform to the treaty to avoid international embarrassment

b. *Rebus sic stantibus*

A contracting state's obligations under a treaty terminates when a vital or fundamental change or circumstance occurs, thus allowing a state to unilaterally withdraw from a treaty, because of the disappearance of the foundation upon which it rests

- Requisites:
 - i. Change is so substantial that the foundation of the treaty has altogether disappeared
 - ii. Change was unforeseen or unforeseeable at the time of the treaty's perfection
 - iii. Change was not caused by the party invoking the doctrine
 - iv. Doctrine was invoked within a reasonable time
 - v. Treaty's duration is indefinite
 - vi. Doctrine cannot operate retroactively (it must not adversely affect provisions which have already been complied with prior to the vital change)

c. *Jus Cogens*

A rule which has the status of a peremptory (i.e. absolute, uncompromising) norm of international law from which no derogation is allowed

11. Invalidity of Treaties

- a. Error of fact
- b. Fraud
- c. Corruption
- d. Duress
- e. *Jus Cogens*

12. Grounds for Termination of Treaties

- Expiration of the term, or withdrawal of a party in accordance with the treaty
- Extinction of a party to the treaty, when the treaty rights and obligations would not devolve upon the successor-state
- Mutual agreement of parties
- Denunciation or desistance by a party
- Supervening impossibility of performance
- Conclusion of a subsequent inconsistent treaty
- Loss of subject matter
- Material breach or violation of treaty
- *Rebus sic stantibus*
- Outbreak of war between the parties, unless the treaty relates to the conduct of war
- Severance of diplomatic relations (if such relationship is indispensable for the treaty's application)
- *Jus Cogens Application*: Emergence of a new peremptory norm of general international law which renders void any existing, conflicting treaty

13. Case Concerning Military and Paramilitary Against Nicaragua (*Nicaragua vs. US*)

- Termination of the treaty obligation will not itself bring about dissolution of the customary norm; a state that cannot invoke another state's liability for violating a treaty can still invoke the liability for the breach of custom, even if they involve the same obligation.

D. General Principles of Law

1. Nature

- a. Rules accepted in the domestic law of all civilized states
- b. General principles of municipal jurisprudence, particularly private law, insofar as they are applicable to relations of states. (Brownlie citing Oppenheim)

2. Examples

- a. Roman Law principles
 - Principle of consent
 - Principle of prescription
 - Principle of *res inter alios acta*
 - Principle of *res judicata*
- b. Procedural rules
 - Use of circumstantial evidence
- c. Substantive obligations
 - Principle of reciprocity
 - *Pacta sunt servanda*
 - Duty to observe good faith
 - Duty to make restitution
- d. Others
 - Principle of equality of states
 - Principle of finality of awards and settlements
 - Principle of legal validity of agreements
 - Principle of domestic jurisdiction
 - Principle of freedom of the seas

3. Cases

- a. *Corfu Channel Case* (1949)
 - Circumstantial evidence as indirect evidence is admitted in all systems of law and its use is recognized by international decisions
- b. *Chorzow Factory Case*, 1928
 - In international law, any breach of an engagement involves an obligation to make reparation
- c. *Barcelona Traction, Light and Power Company Case* (1970)
 - General conception of the limited liability company found in systems of municipal law

E. Judicial Decisions and Writings of Publicists

1. Judicial Decisions

- a. Nature
 - While not constituting a formal source of the law, is regarded as authoritative evidence of the state of the law (Brownlie)
 - Exercise considerable influence as an impartial and well-considered statements of the law by jurists made in the light of actual problems
- b. Examples of International Tribunals (Brownlie)
 - International Court of Justice and its predecessor, the Permanent Court on International Justice
 - Permanent regional courts
 - European Court of Justice
 - European and Inter-American Courts on Human Rights
 - Ad hoc and permanent arbitral tribunals
 - US-Mexico Claims Commission
 - Permanent Court of Arbitration
 - Ad hoc tribunals
 - International Military Tribunal at Nuremberg
 - International Military Tribunal in the Far East
 - Organizational tribunals
 - Panels and appellate body of the World Trade Organization
 - Arbitration facilities: World Bank's International Center for the Settlement of International Disputes (ICSID)
 - International Labor Organization
 - Commission on Human Rights
 - Ad hoc and permanent criminal courts
 - International Criminal Tribunal for Rwanda
 - International Criminal Tribunal for Yugoslavia
 - International Criminal Court
- c. Issues
 - Judicial precedent
 - Art. 59, ICJ Statute: That decisions of the Court has no binding force except as between the parties and in respect of that particular case
 - Though without strictly a doctrine of

precedent, the Court strives to maintain judicial consistency

- Sources of judicial decisions
 - Decisions of arbitral tribunals
 - Decisions of the ICJ and its predecessors
 - Decisions of Courts of Justice of the European Communities
 - Decisions of national courts
 - Ad hoc international tribunals
 - Pleadings in cases before international tribunals

2. Writings of Publicists

- a. Nature:
 - Constitute mere evidence of law
 - Issues (Brownlie)
 - Some publicists may be expressing not what the law is (*lex lata*) but what they think the law should be or will become (*lex ferenda*)
 - Any appraisal of publicists will tend to be colored by subjective factors
- b. Sources analogous to writings of publicists
 - Draft articles of the International Law Commission
 - Harvard Research drafts
 - Separate and dissenting opinions of judges of the World Court

F. Other Sources of Law

1. **Ex Aequo et Bono [Art. 38(2), ICJ Statute]**
 - 'From what is equitable and good'
 - Possible application
 - a. The equivalent of equity
 - b. Implying the use of compromise, conciliation and friendly settlement
2. **Equity**
 - The application of standards of justice not contained in the letter of the existing law
 - Usually applied in maritime delimitation cases and territorial disputes
3. **Unilateral Declarations**
 - *Eastern Greenland case*
 - The statement of Norway's Foreign Minister on Denmark's territorial claim led ICJ to resolve that Denmark not only had a superior claim, but that Norway was bound by the Ihlen Declaration not to oppose such claim.
 - *Nuclear Test cases*
 - France stated that it would cease atmospheric nuclear tests. This signaled that there had ceased to be a dispute, since it had bound itself to do what Australia and New Zealand wanted.
 - Declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations.
 - No *quid pro quo*, nor any subsequent acceptance, nor even any reaction from other States is required for such declaration to take effect.
4. **Estoppel**
 - *Preah Vihear Temple case*
 - Thailand had accepted the Annex I map. It is precluded from asserting otherwise since France and Cambodia had relied upon her acceptance and she had for 50 years enjoyed benefits as the Treaty of 1904 has conferred on her. The acceptance of the map caused it to enter the treaty settlement; parties had at that time adopted an interpretation of that settlement which caused the map line to prevail over the provisions of the Treaty. ICJ considered that the interpretation to be given now would be the same.

G. The Status of Norms

1. Jus Cogens

- Norms deemed to have a superior status in international law, admitting of no derogation
- Peremptory or non-derogable norms
- Distinguished from *jus dispositivium*, which states may derogate from or limit through their agreements (Magallona)
 - Elements
 - a. A norm accepted and recognized
 - b. By the international community of States as a whole
 - c. As a norm from which no derogation is permitted
 - d. It can only be modified by a subsequent norm having the same character
- Effect where a norm is *jus cogens* in character:
 - A treaty provision violating *jus cogens* norms would be void (Art. 53, VCLT)
 - A subsisting treaty provision would be voided by the creation of a new peremptory norm (Art. 64)

2. Erga Omnes

- International obligations of such a nature that their violation by any state allows any other state to invoke the violator's liability, even if only one state or only a few incurred direct material damage.
- *Barcelona Traction Light and Power Co.*
 - The grant of standing to sue because of violations of an *erga omnes* obligation is premised on the idea that the maintenance of some norms are of interest to the entire world community, their violation being an injury to the interest, not only of the state directly offended, but of all states. (i.e. outlawing acts of genocide or aggression)

H. Problems

1. The Question of UN GA Resolutions

- *Western Sahara Case*
 - On GA Resolutions on self-determination: The repetition of certain rules or provisions in later GA resolutions goes to the question of uniformity or constancy of practice
- *Texaco vs. Libya*
 - Reliance by arbitral tribunals on GA Resolutions regarding the rules on expropriation

IV. ACTORS/SUBJECTS IN INTERNATIONAL LAW

A. In General

1. **Subject:**
 - a. Entity capable of possessing international rights and duties and
 - b. having the capacity to maintain its rights by bringing international claims (*Reparations for Injuries Case*); * it can be the proper party in transactions involving the application of the law of nations among members of the international community
2. **Object:** The person or thing in respect of which rights are held and obligations assumed by the subject
3. **Contexts in which question of personality arises**
 - a. Capacity to make claims in respect of breaches of international law
 - b. Capacity to make treaties and agreements valid on the international plane
 - c. Enjoyment of privileges and immunities from national jurisdictions
4. **Established Legal Persons in International Law**
 - a. States
 - b. Political entities legally proximate to states (i.e. political settlements both in multilateral and bilateral treaties which have produced political entities)

- c. Condominium as a joint exercise of state power within a particular territory by means of an autonomous local administration
- d. Internationalized territories – special status as created by a multilateral treaty and protected by an international organizations
- e. International Organizations (i.e. UN)
- f. Agencies of States
- g. Agencies of Organizations

B. States

1. Definition

- a. A group of people, more or less numerous, permanently living in a definite territory, under an independent government organized for political ends and capable of entering into legal relations with other states.
- b. That which possesses the following qualifications under the Montevideo Convention on Rights and Duties of States
 - A permanent population
 - People defined:
 - i An aggregate of individuals of both sexes
 - ii Living together as a community despite racial or cultural differences
 - iii Sufficient in number to maintain and perpetuate themselves
 - Must live in a stable, political community
 - A defined territory
 - Must have control over a certain area
 - Need not be exactly defined by metes and bounds, so long as there exists a reasonable certainty of identifying it
 - Need not exactly be large in area
 - Government
 - Organized, exercising control over and capable of maintaining law and order within the territory
 - It can be held internationally responsible for the acts of its inhabitants
 - Identity of the state is unaffected by changes in government.
 - Independence or Sovereignty
 - Capacity to enter into relations with other states
 - Freedom from outside control in conducting foreign and internal affairs

2. Recognition of state

- Act by which a state acknowledges the existence of another state, government or belligerent community and indicates willingness to deal with the entity as such under international law; may or may not affect the legal rights or political interests of other states
- Theories (2004 Bar)
 1. Declaratory (Majority View) – merely affirms an existing state of law and fact, like the possession by the state of the essential elements, legal personality having been conferred previously by operation of law. Recognition is discretionary and political
 2. Constitutive (Minority View) – political act of recognition is a precondition of the existence of legal rights; needed to constitute the entity into an international person. Recognition is compulsory and legal, thus, it may be compelled once the elements of a state are established
- Basic Rule: A political act and mainly a matter of policy. It is discretionary; thus wisdom of recognition is not subject to judicial review
- Objects
 1. State – generally held to be irrevocable and imports the recognition of its government
 2. Government – may be withdrawn and does not necessarily signify the existence of a state (eg: colonies)

- 3. Belligerent community – rebels are accorded international personality ONLY in connection with the hostilities they are waging
- Effects of Recognition (State/ Government)
 1. Diplomatic relations
 2. Right to sue in courts of recognizing state
 3. Right to possession of properties of predecessor in the recognizing state
 4. All acts of the recognized state or government are validated retroactively, preventing the recognizing state from passing upon their legality in its own court
- Recognition of Belligerency – formal acknowledgement by a third party of the existence of a state of war between the central government and a portion of that state (ex. Great Britain recognized a state of belligerency in the US during the Civil War) [1991 Bar]
- Belligerency exists:
 - when a sizeable portion of the territory is under the effective control of an insurgent community seeking to establish a separate government and
 - the insurgents are in *de facto* control of a portion of a territory and population, have a political organization, are able to maintain such control, and conduct themselves according to the laws of war
- Conditions for Recognition of Belligerency (absence of one element makes it a state of insurgency)
 1. Organized civil government
 2. Rebels occupy a substantial portion of the territory
 3. Conflict is serious and outcome is uncertain
 4. Rebels are willing to observe the laws of war
- Effects of recognition of belligerency (recognition is only provisional and only for the purpose of hostilities)
 1. Shifting of Responsibility: acts of rebels resulting to injury to nationals of recognizing state shall be shifted to rebel government
 2. Legitimate government recognizing the rebels as belligerents shall observe laws or customs of war in conducting hostilities
 3. Third states recognizing belligerency should maintain neutrality

Important Doctrines:

- Wilson/Tobar Doctrine – precludes recognition of government established by revolution, civil war, *coup d'etat* or other forms of internal violence until freely elected representatives of the people have organized a constitutional government (US President Woodrow Wilson and Ecuadorian FM) [2004 Bar]
- Stimson Doctrine – precludes recognition of any government established as a result of external aggression (US Sec. of State Henry Stimson)
- Estrada Doctrine – dealing or not dealing with the government established through a political upheaval is not a judgment on the legitimacy of the said government (Mexican Minister Genaro Estrada) [2004 Bar]

Requisites for recognition *de jure*: (absence of one means recognition *de facto*) [1998 Bar]

1. Government is stable and effective
2. No substantial resistance to its authority
3. Government must show willingness and ability to discharge its international obligations
4. Government must employ popular consent or approval of the people

Recognition De Jure	Recognition De Facto
Relatively permanent	Provisional (ex.duration of armed struggle)
Vests title to properties of government abroad	Does not vest title to properties of government abroad
Brings about full diplomatic relations	Limited to certain juridical relations

3. Sovereignty

- The supreme and uncontrollable power inherent in a State by which that State is governed (Cruz)
- The general legal competence of states, including 1) power to exercise legislative jurisdiction, and 2) the power to acquire title to territory (Brownlie)
- Sovereignty vis-a-vis Equality of states principle (Brownlie)
 - Principle of Fundamental Equality of States [Art. 2(1), UN Charter]
 - Principal corollaries of the sovereignty and equality of states
 - Jurisdiction over a territory and the people on it
 - Duty of non-intervention in areas of exclusive jurisdiction of other states
 - Dependence of international obligations of a State on its consent
- Varied Notions of Sovereignty (Cruz)
 - Legal vs. Political
 - Legal sovereignty: authority to issue final commands
 - Political sovereignty: power behind the legal sovereign or the sum of influences operating upon it
 - Internal vs. External
 - Internal sovereignty: power to control state's own internal affairs
 - External sovereignty: power "to direct its relations with other States (independence)
- Issues
 - Sovereignty and International Obligations (Brownlie)
 - Binding effect of international obligation: dependent on State consent
 - Act of entering into the treaty, and other binding international agreements: not a violation of but an exercise of sovereignty (*Aramco Case*)
 - Doctrine of Reserved Domain Jurisdiction (Brownlie)
 - Nothing in the Charter authorizes the UN to intervene in what is essentially within the reserved domain or requires members to submit such matters to settlement under the Charter [Art. 2(7)]
 - Reserved domain: the domain of state activities where the jurisdiction of states is not bound by international law
 - Limitation: Use of enforcement measures under Chapter VII [Art. 2(7)]

Territorial Sovereignty/State Territory in General

- **Territorial Sovereignty, Basic Points**
 - The right to exercise in one's territory to the exclusion of any other state, the functions of a state
 - Not absolute; some prohibitions:
 - States may not cause injury to aliens within its borders
 - May not allow acts within its borders that may harm the environment in other states (*US vs. Canada; Nuclear Test Cases*)
- **Types of jurisdictional regimes over territory**
 - 1) Territorial sovereignty
 - 2) Regime of territories not subject to any state but have a regime of their own (e.g., trust territories)
 - 3) *Res nullius*: legally susceptible to state acquisition but not yet placed under territorial sovereignty
 - 4) *Res communis*: territories incapable of being placed under state sovereignty (e.g., outer space) [Brownlie]
- **Methods of acquiring territory**
 - 1) Discovery

- Gives the State an inchoate title that entitles it to perfect its claim by exercising effective control over the area within a reasonable time (*Island of Palmas case*)

2) Occupation

- Acquisition by a state of *terra nullus*, (unoccupied land, or land not possessed by any other state), whether that land was never occupied or was abandoned (August)
- Requisites
 - a. State makes a claim, usually through discovery
 - b. Subsequent exercise of effective control over the territory (occupation or other activity)
 - c. *Animus occupandi*, the intent to acts as sovereign

3) Accretion

- Based on *accession cedat principali*,
- Accomplished through both natural or artificial processes, as by gradual and imperceptible deposit of soil by a river (natural) or by reclamation (artificial).
- Follows the principle that what is added follows the principal thing (i.e. A riparian State as acquiring title to the accretion to its coasts)

4) Prescription

- Continually occupation and acquisition of title to land that formerly belonged to another state
- Abandonment: retreat from territory
- Requisites (Von Glahn)
 - a. State occupies territory that is claimed by another state
 - b. Occupying state exercises sovereignty over it
 - c. Owner makes no protest
 - d. Eventually, original title lapses
 - e. Occupying state acquires lawful title

5) Cession

- Voluntary cession: a State relinquishes title over territory to another, usually through a treaty

6) Conquest

- Acquisition of territory through the use of force (August)
- Requisites
 - a. Intent to appropriate
 - b. Ability to maintain control of, the subjugated territory, demonstrated by undisputed *de facto* possession over a sufficient period of time.
- No longer a valid means of acquiring title, aggressive war having been presently condemned by the UN Charter and by customary law

Modes of Acquiring Territory	Modes of Losing Territory
Discovery and Occupation	Dereliction
Cession	Cession
Prescription	Erosion or other natural causes
Conquest and subjugation	Prescription

● **Intertemporal Law**

- Rights derived from a legally significant act depend on norms in force at the time the act was concluded
- State acquisition of title to a particular area of territory depends on the law at the time the act of acquisition was done
- Continued existence of a right acquired under the old law depends on the law's evolution (*Island of Palmas Case*)

- **Air and Space**
 - A State has complete sovereignty over the airspace over its territory and its territorial sea, and has jurisdiction over an aircraft from the moment it enters the said airspace
 - A State has no rights of sovereignty in outer space which (moon and other bodies included) constitutes "the province of all mankind"
 - The question is where airspace and sovereignty ends, and outer space and *res communis* begins.

5. Fundamental Rights of States

a. Existence and Self Preservation

- Art 51, UN Charter recognizes the right of the state to individual and collective self defense if an armed attack occurs against such state, until the Security Council has taken measures necessary to maintain international peace and security
 - Most comprehensive as all other rights of state flow from it
 - State may take measures including the use of force as may be necessary to counteract any danger to its existence
- Aggression – the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state or in any other manner inconsistent with the UN Charter
- Doctrine of Anticipatory Self-defense [2003 Bar, on the Invasion of Iraq] – basis: customary international law
 - General Rule: UN Charter prohibits the threat or use of force between members against their territorial integrity or political independence (Art. 2[4])
 - Exception:
 - inherent right to individual or collective self defense (Art. 51)
 - when allowed by the Security Council (Art. 42)
 - If there's already armed conflict, apply IHL; in general, use UN Charter
 - Until when can you allege self-defense: until the SC has taken cognizance of the matter (self defense not indefinite)
 - *Caroline Case, 1842*: SS Caroline was set on fire by British forces while moored in New York, claiming that the destruction was an act of self defense. The Caroline was used by US sympathizers of Canadian rebels against the British to provide arms and ammunitions. US forces retaliated by burning a British steamer while in US waters. US Secretary of State Daniel Webster wrote to Lord Ashburton: "[I]t will be for Her Majesty's Government to show, upon what state of facts, and what rules of national law, the destruction of the "Caroline" is to be defended. It will be for that Government to show a necessity of self defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation. It will be for it to show, also, that the local authorities of Canada, even supposing the necessity of the moment authorized them to enter the territories of the United States at all, did nothing unreasonable or excessive; since the act justified by the necessity of self defense, must be limited by that necessity, and kept clearly within it."
 - On the US invasion of Iraq in 1993: unjustified whether under self-defense (Art. 51), doctrine of anticipatory self-defense (customary international law) or Security Council-sanctioned use of force (Art. 42). UN Resolution 1441 gave Iraq a final opportunity to disarm or face serious consequences but did not authorize the use of armed force

- No consideration of whatever nature can justify aggression without prejudice to the right to self determination, freedom and independence of peoples
- Requisites for Proper Exercise of Right of Self-Defense
 - i. Armed attack
 - ii. Self-defensive action taken by the attacked state must be reported immediately to the SC
 - iii. Action shall not in any way impede the SC's right to take necessary action to maintain or restore international peace and security

• Examples of Use of Force:

- In *Yugoslavia vs. UK*: showed that use of force through Chapter VII is legal, while use of force unilaterally, as in this case, is illegal. But the cases were still thrown out for lack of jurisdiction.
- In the UN Security Council Resolutions of 2001 (post 9/11), SC was all set to fight the terrorists (self-defense). In Resolution 1368, they had no idea who to attack so they remained seized of the matter. In Resolution 1367, they came out with a decision and concrete things to do or not to do.
- Operation Desert Storm in 1991 and Enduring Freedom 2003: When US attacked in 2003, they had to have an excuse so they won't be violating the charter. Their first excuse was pre-emptive self-defense (weapons of mass destruction theory) and their second was that they had residual authority under Chapter 7 from Desert Storm.

b. Right to Sovereignty and Independence

- Sovereignty: totality of the powers, legal competence and privileges of a state arising from customary international law. It is not dependent on another state's consent
- Independence: freedom to conduct foreign relations without outside control
- Intervention – act by which a state interferes in the domestic or foreign affairs of another state through the use of force or threat of force (physical, political or economic)
 - Used to be justified by various reasons but under contemporary international law, as a rule, it is not allowed and disputes must be settled through peaceful means. It is allowed only as an act of self-defense in response to an armed attack; pursuant to treaty stipulations or with prior UN authorization

c. The Right to Equality

- Legal or Sovereign Equality - equal in law, rights of sovereignty, personality, territorial integrity and political independence respected by others
- Act of State Doctrine - a State should not inquire into the validity of the public acts of another state done within the territory of the latter. Motive is immaterial.
- Doctrine of State Immunity – due to independence, territorial supremacy and equality, a state enjoys immunity from the exercise of jurisdiction (suit) by another state unless:
 - a. it gives its consent,
 - b. waived its immunity, or
 - c. voluntarily submitted to the jurisdiction of the court concerned (1998 and 1999 Bar)
- d. Immunity extends to the Head of State, the personification of the State
- e. Waiver of Immunity (consent to suit):
 - By specific and express provision of law (CA 327, amended by PD 1445)
 - Implied: State engages in proprietary

functions (*US vs. Ruiz*; *US vs. Guinto*), or State sues (adverse party may file a counterclaim) [*Froilan vs. Pan Oriental Shipping*]

- When the doctrine is used to perpetuate an injustice (*Amigable vs. Cuenca*)
- Schools of thought: [1998 Bar]
 - Absolute immunity – all acts of State are covered or protected by immunity (only one covered by sovereign immunity)
 - Restrictive immunity – distinction between sovereign acts (*acta jure imperii*) and proprietary acts (*acta jure gestionis*) [Philippines adheres to this theory] [*US vs. Ruiz*]
- d. The Right to Territorial Integrity and Jurisdiction
 - Territory – the fixed portion on the surface of the earth on which the State settles and over which it has supreme authority
- e. Right of Legation/ Diplomatic Intercourse
 - The right of the state to send and receive diplomatic missions, which enables the State to carry on friendly intercourse.
 - Not a natural or inherent right, but exists only by common consent. No legal liability for refusing to send or receive diplomatic representatives.
 - Governed by the Vienna Convention on Diplomatic Relations (VCDR)
 - Types:
 - a. Active – right to send diplomatic representative
 - b. Passive – right to receive diplomatic representative

C. Peoples

- Relevant in right to self-determination:
The 2 main human rights covenants (ICCPR and ICESCR) share a common Art. 1: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural, development"
- Note that the right is vested in "peoples." Who can assert the right? Not just the "people" whose self-determination is denied, but other states. Why? Because the right to self-determination is a right *erga omnes*: (owed to the world), and third-parties have standing to assert the claim.
- *Timor Gap case (Portugal vs. Australia)*: East Timor was a colony of Portugal. In the 1970s, Portugal withdrew from East Timor and a civil war ensued, which neighboring Indonesia used as an excuse to invade East Timor and annex it as a province. Since then, there has been a struggle by the people of East Timor for independence, asserting their right to self-determination.
Australia then signed a treaty with Indonesia for exploitation of natural resources in the Timor Gap, the maritime area between Australia and East Timor. Portugal sued Australia for in effect recognizing Indonesia's illegal occupation of East Timor, thus being party to the denial of East Timorese self-determination.
ICJ dismissed, because it raised issues involving a party. i.e. Indonesia, over which the ICJ had no personal jurisdiction. But, ICJ declared that Portugal had the *locus standi* to assert the claim in behalf of the people of East Timor.

D. International Organizations

1. General Points

- Considered subjects of international law "if their legal personality is established by their charter
- Criteria of legal personality (Magallona quoting Brownlie)
 - It must constitute "a permanent association of states, with lawful objects, equipped with organs"
 - There must be "a distinction, in terms of legal powers and purposes, between the organization [and] its member states"
 - It must have legal powers that it may exercise "on

the international plane and not solely within the national systems of one or more states"

- Cases:
 - *Reparations for Injuries* Case: Though the UN Charter did not expressly clothe the UN with the capacity to bring an international claim for reparations, the UN nevertheless possessed this power. Such power is conferred by necessary implication, essential in performance of duties.
 - *WHO vs. Aquino*: Note: 1) the diplomatic immunity of ambassadors, since they represent states, is established, in both customary law and the Convention for the Protection of Diplomatic Agents; 2) the diplomatic immunity of international organization is not established by custom, but rather by treaty alone in this case (Host Country Agreement) 3) another is whether you can properly call the Host Country Agreement a "treaty", when it is between a state (RP) and a non-state (WHO). Dr. Verstuyft enjoys diplomatic immunity. When the Executive Branch, through the DFA, certifies that a person is a diplomatic agent has immunity, that determination is final, conclusive and binding upon the courts, and constitutes a political question.
 - *ICMC vs. Calleja*: ICMC enjoys immunity, on the basis of an executive issuance granting it sovereign immunity

2. The UN Charter and the Use of Force

- Pertinent Rules on Use of Force under the UN Charter
 - Members are to refrain from the threat or use of force inconsistent with UN provisions in their international relations any state
- Cases
 - *Military and Paramilitary Activities In and Against Nicaragua*
 - Prohibition against the use of armed force: part of customary international law
 - EXCEPTION: the right to self-defense:
 - Observe the twin conditions of necessity and proportionality (a rule of customary international law; self-defense warrants only measures which are proportional to the armed attack and necessary to respond to it)
 - Individual self-defense: the exercise of the right is subject to the State having been the victim of an armed attack
 - An armed attack: not only action by regular forces across an international border but also the "sending by or on behalf of a state of armed bands, groups, irregulars, mercenaries etc, which carry out acts of armed force against another State.
 - *Legality of the Use By a State of Nuclear Weapons*
 - The prohibition on the use of armed force in Art. 2(4) does not refer to specific weapons
 - While the proportionality principle may not exclude in all case the use of nuclear weapons, such use to be lawful, must still meet the requirements applicable in an armed conflict (rules on humanitarian law)
 - IF the use of force in itself would be illegal, the threat to use such force would also be illegal
 - Mere possession of nuclear weapons is not an illegal threat to use force per se. It depends on whether the particular use of force envisioned is directed against the territorial integrity, political independence or against the UN purposes

3. International Court of Justice

- Under the UN Charter
 - Designated the principal judicial organ of the UN (Art. 92)
 - All UN members are deemed *ipso facto* parties to the Statute of the Court (Art. 93 94, 96)

- Jurisdiction of the Court
 - Scope
 - Contentious cases between states, based on parties' consent [Art. 34(1)]
 - Jurisdiction to hear and decide the merits of the case depends on the will of the parties (*Anglo-Iranian Oil Case*)
 - Who determines existence of jurisdiction
 - The Court itself. (*competence de la competence*)
 - In the event of a dispute, the matter shall be settled by the decision of the Court (*Nottebohm Case*)
 - Over what subject matter
 - Over all matters specially provided for in the Charter [Art. 36(1)]
 - Over all legal disputes referred to the Court on recommendation of the UN [Art. 36(3)]
 - Compulsory jurisdiction -where the legal dispute concerns [Art. 36 (2)]:
 - a. Interpretation of a treaty
 - b. Question of international law
 - c. Existence of facts, which if established, constitutes a breach of an international obligation
 - d. Nature or extent of reparation to be made for the breach of an international obligation
- Applicable Law: International law (Art. 8)
- Advisory Opinions
 - May be given on any legal question at the request of whatever body may be authorized by or in accordance with the Charter to make the request [Art. 65(1)]
 - May be requested by both the GA and the SC (Art. 96)
 - Uses:
 - a. Assist political organs in settling disputes
 - b. Provide authoritative guidance on points of law arising from the functions of organs and specialized agencies

E. The Individual

1. Human Rights

- States can agree to confer certain rights to individuals, due to recognition of the need to protect individual human rights in the realm of international law

2. Nationality

- In general
 - Membership in a political community, one that is personal and more or less permanent (*Salonga*)
 - The bond that unites individuals with a given state that identifies them as members of that entity that enables them to claim its protection, and that also subjects them to the performance of such duties as their state may impose on them (*Von Glahn*)
- Citizenship: more exclusive meaning; it applies only to certain members of the state accorded more privileges than the rest of the people who owe it allegiance. The significance is municipal.
- Citizens vs. Nationals
 - *Citizens* - limited to those who are endowed with political and civil rights in the body politic of a State
 - *Nationals* - includes citizens as well as persons who, not being citizens, owe *permanent allegiance* to the State and are entitled to its protection
- Importance of Nationality in International Law
 - Determines whether a State can undertake diplomatic protection (to demand reparations from another State for the harm done to an individual) [*Nottebohm*]
 - May allow a State to claim legislative and judicial jurisdiction over an individual outside its territory (Extraterritorial sovereignty)

- Doctrine of Indelible Allegiance – an individual may be compelled to retain his original nationality although he has already renounced it under the laws of another state whose nationality he has acquired
- Doctrine of Effective Nationality (Art. 5, Hague Convention of 1930 on the Conflict of Nationality Laws) – a person having more than one nationality shall be treated as if he had only one—either the nationality of the country in which he is habitually and principally resident or the nationality of the country with which, in the circumstances, he appears to be most closely connected (*Frivaldo vs. Comelec*)
- Determining Nationality
 - State rights vis-à-vis determination of nationality (*Von Glahn*)
 - State: has liberty to determine who are and who are not its nationals
 - Liberty to set conditions for the conferment of nationality
 - Liberty to set conditions and means for its deprivation

Limitations on the State's power over its nationals (*Nationality Decrees Issued in Tunis and Morocco*, Advisory Opinion):

- Universal Declaration of Human Rights: That "[n]o one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality
- International Covenant on Civil and Political Rights: That every child shall have the right to acquire nationality
- *Nottebohm Case*
 - A grant of nationality may be recognized as valid yet be deemed to be ineffective in an international forum
 - The Court acknowledged Liechtenstein's power to decide *Nottebohm's* nationality under its domestic law, but noted that not all acts in domestic law are binding against other States, particularly in an international tribunal
- Multiple Nationality – possession by an individual of more than one nationality, as the result of the concurrent application to him of the conflicting municipal laws of two or more states claiming him as their national
- Statelessness
 - The status of having no nationality as a consequence of being born without any nationality, or as a result of deprivation or loss of nationality
 - Consequence: a wrong suffered by him through the act or omission of a state would be *damnum absque injuria* for, in theory, no state has been offended and no international *delict* was committed
 - Convention Relating to Status of Stateless Persons - agreement to grant to stateless persons within territories treatment at least as favorable as that according to their nationals with respect to:
 - Freedom of religion
 - Access to courts
 - Rationing of products in short supply
 - Elementary education
 - Public relief and assistance
 - Labor legislation and social security
- Refugees
 - A person outside the country of his nationality, or if he has no nationality, the country of his former habitual residence because he has or had well founded fear of prosecution by reason of his race, religion,

nationality or political opinion and is unable or because of such fear, unwilling to avail himself of the protection of the government of the country if his nationality, or if he has no nationality, to return to the country of his former habitual residence

- Essential Elements:
 - Outside the country of his nationality or if stateless, outside the country of his origin
 - Lacks national protection
 - Fears prosecution
- Treated as a stateless
- The Refugee Convention of 1951 does not deal with admission but with *non-refoulement*, i.e. non-expulsion/ non-return of a refugee to the frontiers of territories where his life or freedom is threatened
- Reintegration – recovery of nationality by individuals who are natural citizens of a state
- 3. **Treatment of Aliens** – no State is under obligation to admit alien. The State can determine in what cases and under what conditions it may admit aliens. (due to Sovereignty)
 - Deportation – expulsion of an alien considered undesirable by local state, usually but not necessarily to his own state
 - Reconduction – forcible conveying of aliens back to their home state without any formalities
- Protection of Aliens
 - Basic Points in International Law
 - States are obliged to undertake the protection of foreign nationals in their territory from injury or loss, particularly as a consequence of unlawful acts (*Barcelona Traction, Light and Power Co.*) and from the illegal acts of their own public officials (*Noyes Claim*)
 - Ways by which a state violates its duty to protect foreign nationals
 - When the state itself or its organs or officers, under the color of authority, violate the rights of aliens, where officers act in their official capacity, since such acts are directly imputable to the state (*Caire claim*)
 - When it fails to exercise due diligence to prevent injury or consequent damage from being inflicted on aliens by state officers and individuals
 - When it fails to undertake diligent efforts to prosecute and punish the miscreants who violated the rights of aliens and inflicted harm upon them
- Minimum Standard in the Treatment of Aliens
 - National standard: States are required to treat foreigners in the same way that it treats its citizens
 - International standard: States should treat foreigners with a minimum standard of care set by international law, independently of how it treats its own citizenry (*Neer Claim*)

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- Doctrine of Diplomatic Protection
 - The State asks relief for the violation of the rights of the State through the harm done to its citizens, and the tribunal would award damages to the State (Oppenheim)
 - Exhaustion of local remedies (*ELSI Case*)
 - Requirement of diplomatic protection
 - A general principle of international law
 - Requisites for use as a defense against a state's claim for diplomatic protection:
 - a. There must be a claim by a state before an international tribunal
 - b. The claim is for harm done to its citizen

- c. But citizen failed to exhaust the remedies available to him in his domestic state in order to obtain redress for the violation
- d. Provided there are indeed effective remedies available within its jurisdiction

4. Extradition

- The surrender of an individual accused or convicted of a crime by a State within whose territory he is found and his delivery to the state where he allegedly committed crime or was convicted of a crime (Magallona)
- Nature
 - *A sui generis* process
 - Not a criminal proceeding – not all rights of accused are available
 - *Wright vs. CA*: The prohibition in Sec. 22, Art. III, Const. refers to *ex post facto* laws. An extradition treaty is not a criminal law; the treaty may apply retrospectively.
 - Not purely an exercise of ministerial functions
- Extradition as practiced
 - Under Philippine law (Magallona)
 - Done only pursuant to a treaty and convention
 - With a view to criminal investigation or execution of a prison sentence
 - Under international law
 - No duty to extradite except pursuant to treaty
 - In the absence of a treaty, extradition is subject to negotiation and consent of the extraditing state
- Principles – based on consent expressed through treaties
 - Specialty – a fugitive who is extradited may be tried only for the time specified on the request for extradition and included in the list of offenses in the treaty
 - Non-List Type of Treaty – offenses punishable under the laws of both states by imprisonment of 1 year or more are included among the extraditable offense
 - Any person may be extradited
 - Offense was committed within the territory or against the interest of the demanding state
 - Due process requirement complied at the RTC level upon filing of the petition. No need to notify the extraditee when the application is still with the Dept. of Foreign Affairs (DFA) or Justice (DOJ)
 - Provisional arrest to continue – formal request for extradition is not required to be filed in court; must only be received by the requested state in accordance with PD 1069
- Procedure for Extradition (Judicial and diplomatic process of request and surrender) PD 1069
 - a. Request through diplomatic representative, with:
 - i. Decision of conviction
 - ii. Criminal charge and warrant of arrest
 - iii. Recital of facts
 - iv. Text of applicable law designating the offense
 - v. Pertinent papers
 - b. DFA forwards request to DOJ
 - c. DOJ files petition for extradition with the RTC
 - Judge reviews the petition for extradition and supporting documents and make, as soon as possible, a *prima facie* finding whether:
 - i. Sufficient in form and substance
 - ii. Complies with the Extradition Treaty and Law
 - iii. Person is extraditable.
 - Judge may require additional documents or personally examine petitioner's affiants and witnesses
 - Judge may dismiss if no *prima facie* finding
 - If there is *prima facie* finding, judge

- immediately issues a warrant of arrest, who is also summoned to answer the petition and appear at summary hearings
- o *US Government vs. Purganan, Jimenez*, 2002: Prior to the issuance of the warrant, the judge must not inform or notify the potential extraditee of the pendency of the petition, lest the latter be given the opportunity to escape and frustrate the proceedings. The foregoing procedure will “vest serve the ends of justice” in extradition cases.
- d. Hearing (*counsel de officio* may be provided if necessary)
 - e. Appeal to Court of Appeals within 10 days, if not, decision shall be final and executory
 - f. Decision forwarded to DFA through the DOJ
 - g. Individual placed at the disposal of the authorities of requesting state, which shall also bear costs and expenses;
 - o *US Government vs. Purganan, Jimenez*, 2002: The constitutional provision on bail and Sec. 4, Rule 114 of the Rules of Court, applies only when a person has been arrested and detained for violation of Philippine criminal laws. It does not apply to extradition proceedings because extradition courts do not render judgments of conviction or acquittal. Exception: after a potential extraditee has been arrested or placed under the custody of the law, bail may be applied for and granted only upon a clear and convincing showing that:
 1. once granted bail, applicant will not be a flight risk or a danger to the community, and
 2. special, humanitarian and compelling circumstances including, as a matter of reciprocity, those cited by the highest court in the requesting state when it grants provisional liberty in extradition cases.
 - **Requirements for Extradition**
 - a. **Requesting State must specify the crime under the extradition treaty for which the fugitive or accused is sought (specialty principle)**
 - b. **The fugitive is to be tried only for the offense specified in the treaty**
 - c. **Double criminality – for a request to be honored, the crime for which one is to be extradited must be a crime in both the requesting state and the state to which the fugitive has fled**
 - Exceptions to Extradition (When a State may refuse to extradite)
 - a. The Political Offense Exception
 - o Person is charged with a political offense that is, an act directed against a security of a state
 - o Requisites of a political offense:
 - i An overt act
 - ii Done in support of a political rising
 - iii which is connected with a dispute or struggle between 2 groups in a state as to who would control the government
 - o When the Political Offense Exception is not applicable:
 - i Persons accused of offenses considered to be crimes against international law must be extradited, unless they can be effectively prosecuted in the state with custody (Bassiouni)
 - ii *Attentat* clause - extradition treaty provision stipulating that an attempt against or taking of the life of a head of state or a member of his/her family is not a political offense and is extraditable; also for genocide

- b. The Nationality Exception
 - o States may refuse to extradite persons when they are nationals of the requested state
 - o Doctrine of reciprocity: If a requesting State has, in the past, shown willingness to surrender its own citizens, the detaining state is normally willing to extradite its own citizens, except when its Constitution forbids the surrender of its citizens.

5. International Criminal Law

- a. Nuremberg Tribunal: On the question of individual responsibility
 - International law imposes liabilities and duties upon individuals as upon states
 - Crimes within the jurisdiction of the tribunal:
 - o Crimes against peace
 - o War crimes
 - o Crimes against humanity
- b. 1949 Geneva Convention
 - Provided for individual responsibility for serious breaches of obligations therein provided
 - Provided for a duty by a Contracting State to search for persons alleged to have committed the grave breach and prosecute them before their own courts, or to hand them over to another State for prosecution (*aut dedere, aut judicare*)

V. JURISDICTION & IMMUNITIES

A. Definition

- Particular aspects of the general legal competence of states called sovereignty
- Refers to legislative, judicial, and administrative competence (Brownlie)
- Power of a state under international law to govern persons and property by municipal law (Harris)

B. Kinds:

- Legislative: jurisdiction to prescribe norms of conduct (legislative)
- Executive: jurisdiction to enforce the norms prescribed
- Juridical: jurisdiction to adjudicate

C. Forms of Jurisdiction

- Criminal or civil
- Exclusive or concurrent with other states
- Prescriptive (the power to prescribe rules) vs. Enforcement jurisdiction (the power to enforce them) [Harris]

D. Function: To identify the persons and property within the permissible range of a state's law and its procedures for enforcing that law

E. Bases of Jurisdiction (usually applicable for criminal jurisdiction) [Brownlie]

1. **Territoriality principle** - determined by reference to the place where the crime is committed
 - General Rule: A State may exercise jurisdiction only within its territory (Art. 14, Civil Code)
 - Exceptions:
 - a. Continuing offenses
 - b. Acts prejudicial to the national security or vital interests of the State
 - c. Universal crimes
 - d. Offenses covered by special agreement
2. **Nationality principle:** if offender is a national of the forum state (Art. 15, Civil Code, tax law); a state has jurisdiction over its nationals anywhere in the world
3. **Protective personality principle** -state exercises jurisdiction over acts of the alien even of committed abroad, if national interest is injured
4. **Universality principle** - jurisdiction is established if the accused is in the custody of the forum state (piracy, hijacking, genocide); state has jurisdiction over offenses considered as universal crimes, regardless of offender or *situs*

5. Passive personality principle - by which a court has jurisdiction if the victim is of the forum state; state has jurisdiction over crimes against its own nationals even if committed outside the territory
- F. The Limits of Competence: Areas of Exception to a State's Exercise of Jurisdiction
 1. Doctrine of State Immunity
 - a. Definition/Nature
 - That "domestic courts must decline to hear cases against foreign sovereigns out of deference to their roles as sovereigns" (sovereign equality)
 - b. Two ways of applying the doctrine
 - Absolute sovereign immunity: A state is absolutely immune and cannot be sued in a foreign court
 - Restrictive sovereign immunity: A State is immune from suits involving governmental actions (*jure imperii*), but not for those arising from purely commercial or non-governmental activity (*jure gestionis*)
 - c. Philippine rules on state immunity
 - Contracts may be covered by the immunity if they were entered into pursuant to a governmental purpose such as the establishment of an embassy (*Holy See vs. Rosario*)
 - State officers may be immune if they are sued as State officers provided they acted within their authority (*Festejo vs. Fernando*)
 - Test for applicability:
Whether, assuming the public officer is liable, enforcement of the decision will require an affirmative act/liability on the part of the State
 - If yes, the act in question would be covered by State immunity
 2. Diplomatic immunities and privileges
 - Part of customary international law to grant immunity to diplomatic representatives
 - to uphold their dignity as representatives of their respective states and
 - allow free and unhampered exercise of their functions
 - Procedure starts with a request by the foreign state for an Executive endorsement by the DFA
 - Determination: a political question, conclusive on courts
 3. Immunity of the UN, its Organs, Specialized Agencies, Other International Organizations and their Officers
 - Art 105, UN Charter: "organizations, officers, and their representatives shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions"
 - Convention on the Privileges and Immunities of the UN Immunities:
 - from legal processes relative to words spoken or written and acts in their official capacity
 - Taxation on salaries and emoluments
 - National service obligations
 - Immigration, restriction and alien registration
 4. Foreign merchant vessels exercising the right of innocent passage or arrival under stress
 - Innocent passage: the right of continuous and expeditious navigation through the another state's territorial sea for the purpose of traversing the sea without entering internal waters, or of proceeding to internal waters, or making for the high seas from internal waters, for as long as it is not prejudicial to the peace, good order or security of the coastal state.
 - Arrival under stress or involuntary entrance may be due to lack of provisions, unseaworthiness of the vessel, inclement weather, or other case of *force majeure*, such as pursuit by pirates
 5. Foreign armies passing through or stationed with permission of the State
 6. Warships and other public vessels of another State

operated for non-commercial purposes

- Generally immune from local jurisdiction as floating territory of the flag state.
- Crew members are immune from local jurisdiction when on shore duty; but they're not immune if they violate local laws while on furlough or off-duty

G. Cases:

- *Filartiga vs. Pena-Irala (universal jurisdiction case)*: victim, accused, and situs of the crime was in Paraguay. But when the perpetrator was in the US, he was apprehended and sued under the Alien Torts Claims Act, an ancient American law. US courts had jurisdiction because a human right was violated. There was jurisdiction when an internationally protected right was violated. Notice that what the family was after was that a legal record be made that a moral wrong was committed. So it was okay that they sued under a torts claim.
- The courts applied *Filartiga* in the *Estate of Marcos* cases, which were technically straightforward tort claims for injuries caused to another human being.
- US courts took *Filartiga* further with *Tel Oren vs. Libyan Arab Republic*, which held a sovereign (Libya), liable for bombing a tourist bus. Even if Libya was immune as a sovereign, this was made possible because of politics. At that time, Jimmy Carter was president and he was a big human rights activist.
- *People vs. Lol-lo*: accused were Indonesian pirates who victimized Dutch people in the high seas. Both boats drifted to the Philippines. Piracy is the quintessential international crime. Even if the act was in international territory, the courts will still punish it as a crime. They claimed universal criminal jurisdiction
- *Minucher vs. CA*: No functional immunity with regard to personal acts. There can be no question that private respondent was sued in his personal capacity for acts committed outside official functions duties. CA gravely abused its discretion in dismissing the civil case because of an erroneous assumption that simply-because of the [self-serving] Diplomatic Note, the private respondent is diplomatically immune. Even if Calzo enjoys diplomatic immunity, the case cannot be dismissed on the ground of lack of jurisdiction over his person, but rather for lack of a cause of action because even if he committed the act and could have been made liable, his immunity would bar any suit against him and would prevent recovery of damages.
- *Shauf vs. CA*: "Authorities state that the doctrine of immunity from suit will not apply and may not be invoked where the public official is being sued in his private and personal capacity as an ordinary citizen. The cloak of protection afforded the officers and agents of the government is removed the moment they are sued in their individual capacity. This situation usually arises where the public official acts without authority or in excess of the powers vested in him. A public official may be liable in his personal private capacity for whatever damage he may have caused by his act done with malice and in bad faith, or beyond the scope of his authority or jurisdiction."
- DEA agent: not a diplomatic agent under the Vienna Convention; also, diplomatic notes presented are insufficient to establish diplomatic status [twice asked in last 5 Bar exams]

H. Jurisdiction over Maritime Territory

- UN Convention on the Law of the Sea (UNCLOS) - a compromise deal only and not *opinio juris*, therefore no custom. Deals with the outer continental margin.
- Also famous for the Concept of Common Heritage: there are resources which are common to all mankind and not subject to alienation (the moon, Antarctica, the subsoil, etc.)

1. Over Internal Waters

- Same jurisdiction as over the land; internal waters are deemed assimilated in the land mass
- In case of foreign merchant vessels docked in a local port or bay, the coastal state exercises jurisdiction over

civil matters, but criminal jurisdiction is determined according to:

- English Rule: coastal state shall have jurisdiction over all offenses committed on board except those which do not compromise the peace of the port (Philippine rule)
- French Rule: flag State has jurisdiction over all offenses committed on board except those which compromise the peace of the port

2. Archipelagic Water

- Same rule as internal waters save for innocent passage of merchant vessels through archipelagic sea lanes

3. Over the territorial Sea

- Criminal jurisdiction determined by English/French Rule. Exceptions: Innocent passage and involuntary entrance (in this case distress must be real)

4. Over the contiguous zone

- Coastal state may exercise the control necessary to prevent infringement of its customs, fiscal, immigration and sanitary regulations, and punish such infringement

5. Over the exclusive economic zone

- The coastal state has sovereign rights for exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the sea bed, the sub-soil and the superjacent water as well as the production of energy from the water, currents and wind
- Other states: freedom of navigation and over-flight, to lay submarine cables and pipes and other lawful purposes.

6. Over the continental shelf

- Coastal State: right of exploitation of oil deposits and other resources in the continental shelf. This extends to the shores of another state or is shared with another state, the boundary shall be determined in accordance with equitable principles.

7. Over the high seas

- Jurisdiction may be exercised by the State on high seas over the following:
 - Its vessels
 - Pirates
 - Those engaged in illicit traffic in drugs and slave trade
 - In the exercise of the right to visit and search
 - Under the doctrine of hot pursuit
 - Doctrine of Hot Pursuit – Requisites:
 - a. Pursuit commences from internal waters, territorial sea or contiguous zone of pursuing state
 - b. Continuous and unabated
 - c. Conducted by warship, military aircraft or government ships, authorized for the purpose
 - d. Ceases as soon as the ship being pursued enters the territorial sea of its own, or of a third state
 - Flag State – a ship has the nationality of the flag of the state it flies, but there must be a genuine link between the state and the ship (Art. 9, UNCLOS)
 - Flag of Convenience – state with which a vessel is registered for various reasons, like reducing operating costs or avoiding government regulations, although the ship has no genuine link with that state
 - UNCLOS concedes that a vessel shall have the nationality of the flag it flies, provided there is a “genuine link” between the state whose flag is flown and the vessel; in particular, the flag state must effectively

exercise jurisdiction and control in administrative, technical and social matters

I. Jurisdiction over other territories

- A State may, by virtue of customary or conventional law extend its jurisdiction to territory not within its sovereignty in these cases:
 1. Assertion of personal jurisdiction over its nationals abroad
 2. By virtue of its relations with other state, (establishing a protectorate or a condominium or administers trust territory or occupies enemy territory in the course of war)
 3. As a consequence of waiver of jurisdiction by the local state over persons and things within the latter's territory
 4. Though the principle of extraterritoriality, exemptions of persons and things within from the local jurisdiction on the basis of international custom. Distinguish this from the principle of extraterritoriality wherein exemption from jurisdiction is based on treaty or convention. The latter principle is discredited
 5. Through *the enjoyment of easements and servitudes*

J. Rules on Jurisdiction under the Visiting Forces Agreement

1. Exclusive jurisdiction over US personnel

- a. Offenses punishable under Philippine laws but not under US laws – Philippine law
- b. Offenses punishable under US laws but not under Philippine laws – US law

2. Concurrent jurisdiction: Philippine authorities shall have primary right to exercise jurisdiction over all offenses committed by US personnel, except:

- a. Violations of US military laws
- b. Offenses punishable under US laws but not under Philippine law
- c. Offenses solely against the property or security of the US or against the property or person of US personnel
- d. Offenses arising out of any act or omission done in the performance of official duty

*in these cases the US has primary jurisdiction

3. Authorities of one government may request the authorities of another government to waive the primary right to exercise jurisdiction in a particular case

4. Upon US request, Philippine authorities may waive primary jurisdiction over offenses committed by US personnel except cases of particular importance such as violations of the Heinous Crimes Act, Anti-Drugs Law and Anti-Child Abuse Law

V. INTERNATIONAL RESPONSIBILITY

A. State Responsibility as a Principle of Law

- When a state breaches its obligation to another state, international responsibility is established between them
- Every internationally wrongful act of a State entails the international responsibility of that State, whether it is wrongful or not depends on international law, and its wrongfulness is not affected by a contrary characterization in domestic law. (Article on State Responsibility, Art. 3)
- International Standard of Justice – standard of the reasonable state, referring to ordinary norms of official conduct observed in civilized jurisdiction; thus, to constitute an international delinquency, the treatment of an alien should amount to an outrage, bad faith, willful neglect of duty and insufficiency of governmental action that every reasonable and impartial man would readily recognize as insufficient
- Calvo Clause – provision frequently inserted in contracts where nationals of another state renounce any claim upon its national state for protection; such waiver can be legally made only by the alien's state
- Martens Clause – In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles

of international law derived from established custom, from the principles of humanity and from the dictates of public conscience (Art. 1, par. 2, of Additional Protocol I of 1977, Hague Convention II with respect to the Laws and Customs of War on Land of 1899)

B. State responsibility vs. breach vs. liability to make reparations

- Breach: gives rise to state responsibility
- Liability: to make reparation is the consequence of the state responsibility

C. Requisites of State Responsibility: Breach (Art. 2)

1. Conduct (action or omission)
2. Conduct is attributable to the State under international law
3. Constitutes a breach of an international obligation of the State
 - a. State must have been bound by an obligation at the time of the breach
 - b. Breach need not constitute an illegal act so long as the act not be in conformity with its international obligations (Art. 12)
 - Attribution of State Responsibility:
Identify Obligation → Breach → Attribute breach to the state → Consequences

D. Conditions for the Enforcement of the Doctrine

1. Exhaustion of all local remedies by the Alien
2. Representation by own state in international claim for damages.

E. Kinds of State Responsibility

1. Direct: international delinquency was committed by superior government officials or organs; liability attaches immediately as their acts may not be effectively prevented or reversed under the laws of the State
2. Indirect: offense is committed by inferior government officials or by private individuals; state will be held liable only if, due to indifference in preventing or punishing it, it can be considered to have connived in effecting its commission
 - State responsibility in a nutshell:
 1. Art. 2-if there's a breach, new obligations arise
 2. Art. 30-to cease & desist; to guarantee non-repetition
 3. Art. 31-reparation to status quo ante
 - Who can engage state responsibility:
 1. State organs - Art. 4: always (least problematic); "Organs" under IL includes all branches & instrumentalities of the government as defined under constitutional or internal law
 2. Private individuals – most problematic; may be:
 - a. Art. 5- empowered
 - b. Art. 8- acting upon instruction or control (*Nicaragua v. US*)
 - c. Art. 9- de facto
 - d. Art.10- successful insurrectional movement
 - e. Art.11- acts ratified by the State

F. Other Issues on State Responsibility

1. The Necessity of Fault or Malice
 - a. Whether fault or malice is necessary for state responsibility to be incurred is debatable
 - b. Theory: state responsibility is based on the presence of *culpa* or *dolus malus*
 - c. *Corfu Channel Case*
 - State's knowledge is a *precondition* for the obligation to arise
 - It does not, however, mean that *Corfu Channel* espouses *culpa* as the test of state responsibility (Brownlie)
 - d. Theory of *objective (or strict) liability*
 - Fault is unnecessary for state responsibility to be incurred
 - Requisites (Brownlie)

- a. Agency
- b. Causal connection between the breach and the act or omission imputable to the State

2. Culpa, when relevant

- When breach results from acts of individuals not employed by the state, licensees or trespassers on territory
- When a state engages in lawful activities ;responsibility may result from *culpa* in executing these activities
- When determining the amount of the damages
- When due diligence or liability for *culpa* is stipulated in a treaty

3. Intent and Motive, when relevant:

- a. Proof of *dolus* on the part of leading state organs will solve the problem of imputability in particular cases.
- b. A deliberate intent to injure "may have an effect on the remoteness of the damage" and may help to establish the breach of duty.
- c. Motive and intent may be a specific element in defining permitted conduct
 - Formerly the rule was that expropriation of foreign property is unlawful if for political reprisal or retaliation
 - Action supposedly done in self defense may become unlawful if the purpose is, for instance, to use the action for conquest.

4. The Standard of Diligence

- a. Relevant where the conduct of individual State officials is concerned; state responsibility arises if the state "failed to exercise the due diligence which could reasonably have prevented such conduct" (Higgins)
- b. Due diligence standard
 - Objective view: That the State's ability to fulfill is irrelevant
 - Relativist view: That the State must possess an ability to fulfill its obligations (*Tehran Hostages Case*)

G. Cases:

- *Mavromantis* case: the primary nexus for diplomatic protection is nationality. An injury to the national is also an injury to the State
- *Nottebohm*: other states are not bound by another's claim of nationality. Determining nationality is a matter of domestic law. When a person, however, is given nationality by 2 states, the case now goes into the realm of international law. The test for the nationality of a person is the most significant link. In this case, *Nottebohm* didn't meet the test. Even though he was a national of Liechtenstein, Guatemala was not bound to recognize such citizenship because he merely had a citizenship of convenience (not a real link to Liechtenstein).
- *Amvatielos* case: Individuals are not within the jurisdiction of an international court. The state brings the individual to the international scene only on its discretion. So, WON a state wants to exert diplomatic protection over a citizen is entirely up to it.
 - Summary: State protection is granted because of nationality (*Mavromantis*). However, WON a state will protect you in the international court is discretionary (*Ambatielos*). The grant of nationality is domestic law and the test is the most significant link. BUT other states are not bound to recognize another's recognition of its national (*Nottebohm*)

VI. IMPUTABILITY: REQUISITES OF RESPONSIBILITY

A. Forms of State Liability (Oppenheim)

1. Direct liability
 - a. A state is in direct breach of its international obligations
 - b. i.e. For the acts of state organs in their official capacity
2. Vicariously liability
 - a. The state "is at one remove" from the injurious conduct: it becomes liable only for negligence in

preventing or punishing the act, and not for the act itself. (ie acts of individuals)

- Modes of attribution in some cases: Indirect in the *Corfu channel case*, both in *US vs. Tehran*, and direct for *Velazquez, Zafira*, and *Chorzow*

B. Imputability Doctrine: A State is only responsible for its own acts or omissions

- A State is generally responsible for the acts of state organs and officials because these are agents of the State
- A State is directly responsible for acts of private individuals only when they act as its agents
- When private individuals are not acting as State agents, a State is responsible not for their acts directly. It is only vicariously liable.
- When they are not agents, and the State has no negligence, the State is not responsible.

C. State organs and officers:

1. The conduct of a State organ is considered to be the act of that State [Art. 4(1), ASR]
 - a. Regardless of the organ's function
 - b. Whatever position it holds in the organization of the State, whether low or high (*Rainbow Warrior Arbitration*)
 - c. Whether it is the organ of the central government or a local unit
 - d. When done with apparent authority or in their official capacity (*Caire Claim*)
 - e. Though the acts are beyond their authority or superior orders (Art.7, ASR)
2. An organ is any person or entity that is considered an organ of the State under its domestic law [Art. 4(2), ASR]
3. Other issues
 - a. Personal acts of State officers
 - When the standard of conduct required is very high, no distinction between personal acts and acts within apparent authority, and the State will be liable
 - Example: Misconduct of soldiers, as great prudence is required for their control and discipline
 - b. Control
 - What matters is the amount of control which should have been exercised in the particular circumstances, not actual control
 - c. Particular State officers and organs
 - Legislature, when responsibility arises from their acts
 - Damage resulting from legislative act or omission
 - From the act or omission itself
 - Courts, when responsible:
 - When the decision of the court constitutes a denial of justice
 - When the court fails to enforce a treaty to which the State is bound

D. Acts of Private Individuals

- General Rule: A state is generally not responsible for the acts of individuals
- Exceptions: When there is:
 - *Adoption*
 - Rule: A State adopts the acts of individuals as its own, and thus becomes responsible for their internationally wrongful acts (ASR, Art. 11)
 - Requisites (Higgins)
 - a. The State encourages these acts
 - b. The individuals effectively act as agents in performing the offending acts
 - c. The State endorses as its own the acts of the individuals
 - *Negligence*
 - Even without adoption, a State may be indirectly liable for the acts of private individuals when it has an international obligation to exert efforts to prevent the acts, or to prosecute the miscreants,

and the State maliciously or negligently fails to do so

- Test: *Whether due diligence was exercised* to prevent harm to foreigners and foreign interests

➤ Acts of Other States

1. Dependent States
 - a. Where the dependent state is so controlled that it cannot be deemed as retaining separate international personality, the dominant state is responsible for the dependent's acts
 - b. Where the dependent state retains enough legal powers to maintain a separate personality and still conducts its own foreign relations, responsibility of the dominant state for the dependent state's actions depends on the circumstances
2. Joint Tortfeasors
 - a. When two states jointly commit an international wrong
 - b. Though solidary liability should exist in principle, there is little practice thereon.
 - c. *Nauru v. Australia*
 - Where Nauru filed a claim against Australia for exploiting the former's phosphate resources. Court held that, even though it was possible that Australia, UK, and New Zealand had solidary liability, a claim made against just one of them was admissible.

VII. CONSEQUENCES OF STATE RESPONSIBILITY

A. General Consequences of the State Responsible for an internationally wrongful act (Art. 30, ASR)

1. Cease the wrongful act, if continuing
2. Give suitable reassurances that it will not be repeated

B. Standing to Sue for State Responsibility

1. *South West Africa cases*: A State cannot sue on a particular right or interest unless that right or interest was vested in that State by some instrument, or law (legal standing)
2. *Barcelona case* and *East Timor case*: All states may have standing to invoke liability for the violation of *erga omnes* obligations
3. But *erga omnes* standing did not take away the jurisdictional requirements for the Court to act, particularly the requirement of States consent to the jurisdiction by a Court

C. Relief Available Where a State is Liable for an Internationally Wrongful Act

1. Declaratory Relief

- a. Nature: A declaration by a court that as to the illegality of an act constitutes a measure of satisfaction (or reparation in the broad sense) (Brownlie)
- b. Availability
 - When this is, or the parties deem this, the proper way to deal with a dispute
 - When the object "is not to give satisfaction for the wrong received"

2. Satisfaction

- a. Nature: A measure other than restitution or compensation which an offending state is bound to take
- b. Objects: often cumulative
 - Apology and other acknowledgment of wrongdoing
 - Punishment of individuals concerned
 - Taking of measures to prevent a recurrence
- c. Pecuniary Satisfaction vs. Compensation
 - Pecuniary satisfaction: a token of regret and acknowledgement of wrongdoing (a monetary "sorry")

- Compensation: to make up for or repair the damage done

3. Restitution

- Nature: Involves wiping out all the consequences of the breach and re-establishing the situation which would probably have existed had the act not been committed.
- Forms
 - Legal restitution: Declaration that an offending treaty, law, executive act, or other, is invalid
 - Specific Restitution: Restitution in kind or payment of a sum corresponding to the value of the restitution, and the award for losses sustained which would not be covered by the first two (*Chorzow Factory case*)
- Chorzow Factory case*
 - Any breach of an engagement involves an obligation to make reparation
 - Reparation of a wrong may be an indemnity corresponding to the damage which the nationals of the injured State have suffered as a result of the act

4. Compensation

- Nature: Payment of money as a valuation of the wrong done
- Chorzow case*: Amount of the compensation must correspond to
 - The value which a restitution in kind would bear
 - The award of damages for loss sustained which would not be covered by restitution in kind or payment in place of it

D. Circumstances precluding wrongfulness (When a state may escape liability) [Art. 20, 21, 22, 23 24, 26, ASR]

- Wronged State consented to the offender State's act
- Offender State's act was done in self-defense
- Act was a countermeasure taken against the wronged State
- Done in compliance with the offender State's obligations under a peremptory norm
- Author of the wrongful act has no other reasonable way, in a situation of distress, to save his life or the life of a person entrusted to his care, unless the State caused the distress or the act in question will cause a greater peril
- Act was done due to *force majeure*
- Act was done in due to a state of necessity (Art. 25)
 - Act was the only way to safeguard an essential interest from a grave and imminent peril (Art. 25)
 - Act must not seriously impair an essential interest of the State or States to which the obligation breached is owed, or of the international community as a whole
 - The existence and imminence of such a peril must be duly established
 - The means to avert the peril must be absolutely necessary to avert the danger.
 - The obligation violated must not exclude the possibility of excluding necessity

VIII. DIPLOMATIC & CONSULAR RELATIONS

- State Immunity

Originally, under customary international law, the doctrine of absolute state immunity applied, covering all areas of State activity and recognizing only very narrow exceptions. Normally, the rule is to adopt a doctrine of qualified immunity (only for governmental acts/ *acts jure imperii*, not commercial ones/ *acts jure questionis*).
- Diplomatic Immunity

A principle of customary international law that grants immunity to diplomatic representatives, to uphold their dignity as representatives of their respective states and to allow them free and unhampered exercise of their functions.

In the Philippines, immunity is claimed by request of the foreign state for endorsement by the DFA. The determination by the executive department is considered a political question that is conclusive upon Philippine Courts.

Diplomatic Immunities:

- Ambassadors, consuls, etc } full immunities
- Spouses and kids }
- Diplomatic staff } functional immunities
- Household staff }

Diplomatic immunity applies only:

- To the accredited state
- While in transit to & from the accredited state & the sending state/diplomatic station, in his official capacity

A. Agents of Diplomatic Intercourse

- Head of State
 - Embodiment of, and represents, the sovereignty of the State
 - Enjoys the right of special protection for his physical safety and the preservation of his honor and reputation
 - His quarters, archives, property and means of transportation are inviolable (principle of territoriality)
- Foreign secretary or minister
- Members of diplomatic service
- Special diplomatic agents appointed by heads of state
- Envoys ceremonial
- Consuls – state agents residing abroad for various purposes but mainly in the interest of commerce and navigation, such as issuance of visa (permit to visit his country) and matters designed to protect nationals of the appointing state
 - Kinds
 - Consules Missi* – consuls who are nationals of the sending state, required to devote their full time in discharge of duties
 - Consules Electi* – may or may not be nationals of the sending state and perform consular functions only in addition to their regular callings
 - Ranks
 - Consul-general – heads several consular districts, or one exceptionally large consular district
 - Consul – takes charge of a small district or town or port
 - Vice-consul – assists the consul
 - Consular agent – usually entrusted with the performance of certain functions by the consul

B. Diplomatic Corps

- A body composing of all diplomatic envoys accredited to the same local or receiving state
- The Doyen or the head of this body is the *Papal Nuncio*, if there is one, or in the absence, the Oldest Ambassador, or in the absence, the Oldest Minister Plenipotentiary
- Appointment of Envoys – in the Philippines, the President appoints (Sec. 16, Art. VII, Const.), sends, instructs and assigns the diplomatic and consular representatives; prerogative to assign cannot be questioned. (*De Perio-Santiago vs. Macaraig*, 1992)
- Agreation – process in appointment of diplomatic envoy where states resort to an informal inquiry (enquiry) as to the acceptability of a particular envoy, to which the receiving state responds with an informal conformity (agreement)
- *Letre de Creance* (Letter of Credence) – with the name, rank and general character of his mission, and a request for favorable reception and full credence

C. Functions of Diplomatic Missions

- Represent the sending state in receiving state
- Protect in receiving state interests of sending state and its nationals
- Negotiate with government of receiving state

4. Promote friendly relations between sending and receiving states and developing their economic, cultural and scientific relations
5. Ascertain by all lawful means conditions and developments in receiving state and reporting thereon to government of sending state
6. In some cases, represent friendly governments at their request

D. Functions of Consular Officials

1. Protect the interests of the sending state and its nationals in the receiving state
2. Promote the commercial, economic, cultural and scientific relations of both states
3. Observe conditions and developments in the receiving state and report such to the sending state
4. Issue passports and other travel documents to nationals of the sending state and visas or appropriate documents to persons wishing to travel to the sending state
5. Supervise and inspect vessels and aircraft of the sending state

E. Appointment of consuls

- Two documents necessary before assumption of consular functions:
 1. Letters Patent (*letter de provision*) – letter of appointment or commission transmitted by the sending state to the Secretary of Foreign Affairs of the receiving state
 2. *Exequatur* – the authorization given to the consul by the sovereign of the receiving state allowing him to exercise his functions within the territory

F. Diplomatic Immunities (functional)

1. Personal inviolability (Art. 29, UNDR)
2. Inviolability of embassy premises and legation buildings (Art. 22)
3. Exemption from local jurisdiction on the basis of international custom (extraterritoriality) (Art. 31)
 - Exceptions
 - a. a real action relating to private immovable property situated in the receiving state's territory, unless he holds it on behalf of the sending state for purposes of the mission
 - b. an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person & not on behalf of the sending state;
 - c. an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving state outside his official functions
4. Not obliged to give evidence as a witness (Art. 31)
5. Exemption from measures of enforcement, like attachment (Art. 31)
6. Exemption from inspection of baggage unless excepted (Art. 36)
7. Not liable to any form of arrest or detention (Art. 29) [2000 Bar]
8. Exemption from taxes and personal services (Art. 34)
9. Exemption from customs and duties (Art. 36)
10. Exemption from service of subpoena
11. Exemption from military obligations
12. Inviolability of means of communication (Art. 30)
13. Freedom of movement and travel in the territory
14. Use of flag and emblem of the sending state on the diplomatic premises and the residence and means of transport of the head of mission (Art. 20)

G. Consular Immunities (functional)

1. Inviolability of premises (Art. 31, UNCR)
2. Freedom of movement (Art. 34)
3. Freedom of communication (Art. 35)
4. Communication and contact with nationals of the sending state (Art. 36)
5. Personal inviolability of consular officers (Art. 40)
6. Exemption from arrest or detention pending trial (Art. 41)

7. Notification of arrest, detention or prosecution (Art. 42)
8. Immunity from jurisdiction (Art. 43)
 - Exceptions
 - a. a civil action arising out of a contract in which the consular officer/ employee did not contract expressly or impliedly as an agent of the sending State
 - b. a civil action by a third party for damage arising from an accident in the receiving state caused by a vehicle, vessel or aircraft.
9. Exemption from taxation (Art. 49)
 - Exemption
 - a. indirect taxes normally incorporated in the price of goods or services;
 - b. dues or taxes on private immovable property in the territory of the receiving state
 - c. estate, succession or inheritance duties, and duties on transfers
 - d. dues and taxes on private income, including capital gains, having its source in the receiving state and capital taxes relating to investments in commercial or financial undertakings in the receiving state
 - e. charges levied for specific services rendered
 - f. registration, court or record fees, mortgage dues and stamp duties
10. Exemption from customs and duties (Art. 50)
11. Exemption from inspection of baggage (Art. 50)
12. Use of flag and emblem of the sending state on the diplomatic premises and the residence and means of transport (Art. 29)

H. Waiver of Immunities

1. Diplomatic privileges can be waived, but waiver cannot be made by the individual concerned (immunities are not personal to him)
2. Waiver may be made only by the government of the sending state if it concerns the immunities of the head of the mission
3. In other cases, the waiver may be made either by the government or by the chief of the mission
4. Waiver does not include waiver of the immunity in respect of the execution of judgment (separately waived)

I. Duration of Immunities

- From the time envoy enters the territory of the receiving state and ceases only from the moment he leaves it
- As to official acts, immunity is indefinite
- Privileges are available even *in transitu*, when traveling through a third state on the way or from the receiving state

I. Termination of Diplomatic Mission

1. Death
2. Resignation
3. Removal
4. Extinction of the State
5. War between the receiving and sending states
6. Abolition of office
7. Recall
8. Dismissal

J. Termination of Consular Mission

1. Withdrawal of the *exequatur*
 2. Extinction of the State
 3. War
 4. Usual ways of terminating official relationship
- Extraterritoriality – exception of persons and property from local jurisdiction on basis of international customs
 - *Municher vs. CA*, 2003: If the acts giving rise to a suit are those of a foreign government done by its foreign agent, though not necessarily a diplomatic personage, but acting in his official capacity, the complaint could be barred by the immunity of the foreign sovereign from suit without its consent
 - Extraterritoriality – applies only to persons and is based on treaty or convention; discredited because of rise of nationalism and sovereign equality of states

- *Personae non gratae* – remedy available to receiving state against diplomatic agents, before or after arrival in the receiving state; declaration of unacceptability and order for immediate departure or replacement; Art. 9 of UN DR and Art. 23 of UN CR

IX. THE LAW OF THE SEA

A. Preliminary Points

1. Legal regime of the seas depends on whether the waters in question are part of the territorial waters, the contiguous waters, etc.
2. A key step is the drawing of baselines on which the extent of such waters are based
 - a. Baselines, defined
 - Normal baselines, coast is straight: The low water line along the coast as marked on large-scale charts officially recognized by the coastal state
 - When a coast is "deeply indented or cut into, or if there is a fringe of islands along the coast in its immediate vicinity: straight baselines drawn by connecting the seaward most low water points of the coastlines or of the island fringe
 - b. Limitations on use of the straight baselines (August)
 - Straight baselines must not appreciably depart from the direction of the coast
 - Sea areas within the baselines must be sufficiently close to the land to be covered by the regime of internal waters
 - Straight baselines drawn by a State must not cutoff another state's territorial sea from the high seas or an exclusive economic zone

B. Internal Waters

1. Nature
 - a. Waters on the inland side of the baselines (bodies of water within the land mass)
 - b. Include ports, harbors, rivers, lakes, canals, and navigable waterways
 - Thalweg Doctrine – for boundary rivers, absent an agreement between the riparian states, the boundary line is laid on the middle of the main navigable channel
 - Middle of the Bridge Doctrine – where there is a bridge over a boundary river, the boundary line is the middle or center of the bridge
2. Part of a State's land territory, subject to the full exercise of sovereignty
3. Limitations on sovereignty over internal waters
 - a. Ships in distress have the right to enter foreign ports to avoid danger
 - b. States may enter into Friendship, Commerce, and Navigation treaties that allow access to their ports
 - c. Internal waters may be governed by such treaties as those governing some navigable European rivers.
4. States in practice exercise no control over internal matters, except
 - a. When an offense on a ship affect the peace or good order of the coastal state
 - b. When intervention is requested
 - c. When a non crew member is involved.
5. Cases
 - a. *Military and Paramilitary Activities In and Against Nicaragua*
 - b. *Saudi Arabia vs. Arabian American Oil Company*

C. Territorial Sea

1. Waters that stretch up to 12 miles from the baseline on the seaward direction
2. Subject to the jurisdiction of the coastal state
3. Nature of jurisdiction over territorial waters: Approximately same as to land territory, except that the coastal state must respect the rights to
 - a. Innocent passage: navigation through the territorial sea without entering internal waters, going to internal

waters, or coming from internal waters and making for the high seas

- The acts must be required by navigation or distress
 - Must not prejudice the peace, security, or good order of the coastal state
- b. Transit passage (discussed under straits)
4. Baselines:
 - a. Normal Baseline Method – territorial sea is drawn from the low-water mark of the coast to the breadth claimed, following its sinuosities and curvatures, excluding the internal waters in the bays and gulls
 - b. Straight Baseline Method – straight lines are made to connect appropriate points on the coast without departing radically from its general direction

D. Straits

1. Regime of transit passage: Applies to straits used for international navigation from the high seas or EEZ to another part of the high seas or the EEZ.
2. *Transit passage*: the freedom of navigation or overflight for the purpose of expeditious or continuous passage from high seas or EEZ to high seas or EEZ; must be expeditious and continuous. During transit passage, foreign ships, including maritime scientific research and hydrographic survey ships, may not carry out any research or survey activities without the prior authorization of the bordering states.
 - Transit passage is inapplicable:
 1. If there exists through the strait a route through the high seas or an EEZ of similar convenience (freedoms of navigation and overflight apply)
 2. If the strait is formed by an island of a state bordering the strait and its mainland, and there exists seaward of the island a route to the high seas or EEZ of similar convenience (innocent passage applies)
 3. If the strait is between a part of the high seas or EEZ and the territorial sea of another state (innocent passage applies).
3. Doctrine of Non-suspendable right of innocent passage applies
4. Case: *Corfu Channel Case*
 - Albanian authorities had the obligation of notifying the existence of a minefield in Albanian territorial waters and in warning the British warships of this imminent danger.
 - Basis of such obligation:
 1. Elementary considerations of humanity, even more exacting in peace than in war
 2. The principle of freedom of maritime communication
 3. Every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States. Albania was aware of the mine-laying since the geography of the strait easily allowed Albanian lighthouse watchers to view such activities.
 - Innocent passage through straits is recognized by international law. The decisive criterion is its geographical situation as connecting two parts of the high seas and the fact of its being used for international navigation. The nature of the Channel satisfies this criterion. It has been a useful route for international maritime traffic. Passage through it therefore cannot be prohibited by a coastal State in time of peace. Combat formation determines if a passage is innocent.

E. Archipelagos/Archipelagic Waters

1. Archipelago – a group of islands, including parts of islands, interconnecting waters, and other natural features, which are closely interrelated in such islands, waters and other natural features which form an intrinsic geographical, economic and political entity, or which historically has been regarded in such
 - Kinds of Archipelago
 - a. Coastal – situated close to a mainland and may be considered a part thereof, e.g. Loften Islands, Norway
 - b. Mid-ocean – situated in the ocean at such

distance from the coasts of firm land, e.g. Indonesia

c. Other rights and duties provided for in the UNCLOS (Art. 56, UNCLOS)

2. Archipelagic states

- a. Those made up of a group of islands or archipelagos
- b. Examples: Philippines and Indonesia
- c. Allowed to draw straight baselines between the outermost points of the outermost islands, provided these points are sufficiently close to one another and that within such baselines are included the main islands and an area in which the water area to land area ratio is between 1:1 and 9:1. Some guidelines in drawing the baselines:
 - Length shall not exceed 100 nautical miles, except that up to 3% of all the baselines may reach up to 125 miles
 - Drawing of the baselines shall not depart to any appreciable extent from the archipelago's general configuration
 - Shall not be drawn to and from low-tide elevations
 - Shall not be applied in such a manner as to cut off from the high seas or EEZ the territorial sea of another State

3. Archipelagic waters

- a. Waters inside the lines drawn by archipelagic states
- b. State has full sovereignty over these waters, but it must provide for archipelagic sea lanes and air routes through them

4. Archipelagic Doctrine - defines an archipelago as the unity of land and waters either as a group of islands surrounded by waters or a body of waters studded with islands.

Drawing Baselines: Drawn by connecting the appropriate points of the outermost islands to encircle the islands within the archipelago. The waters on the landward side of the baselines, regardless of breadth or dimensions, are merely internal waters. (Sec. 1, Art. I of the Constitution) [1989 Bar]

F. The Contiguous Zone

1. Up to 24 miles from the baselines
2. Not technically part of the territory but the coastal State may exercise the control necessary to prevent or punish infringement of its fiscal, customs, immigration or sanitary laws within territorial waters

G. The Continental Shelf

1. Consists of the seabed and subsoil of the submarine areas extending beyond a coastal state's territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin
2. Extent of claimable continental shelf
 - a. If the shelf does not extend beyond 200 miles: up to 200 miles outward
 - b. If it extends beyond this: State may claim a larger area, but no more than 350 miles from its baselines
3. The State has sovereign rights to explore and exploit the natural resources of the shelf
4. Regime does not affect the regime of the waters and airspace above

H. The Exclusive Economic Zone

1. Up to 200 miles from its baselines; not part of the national territory but exclusive economic benefit is reserved for the state
2. Rights of a State within its EEZ:
 - a. Sovereign rights: exploring and exploiting, conserving and managing natural resources, whether living or non-living, of the waters super-adjacent to the seabed and subsoil
 - b. Jurisdiction with regard to:
 - i. Establishment and use of artificial islands, installations and structures
 - ii. Marine scientific research
 - iii. Protection and preservation of the marine environment and pollution control

I. Delimitation of Maritime Boundaries

- *Maritime Delimitation Between Guinea-Bissau and Senegal*

J. The High Seas

1. Not Territory any State (*res communes* or *res nullus*)
2. Customary regime of freedom of the high seas: Nearly complete freedom of action in the high seas for the vessels of all states
3. Exceptions
 - a. Hot pursuit, where a ship that violates a coastal State's laws in its territorial waters or other ocean zones is chased by the State's warships or military aircraft
 - b. Right of visit, by which a warship or military aircraft may approach and board a ship when there are reasonable grounds to suspect that the ship is engaged in piracy, slave trade, etc.

K. Aerial Domain

- Air space above the land and waters of the state
- Air Freedoms for Scheduled International Services:
 - a. Freedom to fly across foreign territory without landing
 - b. Freedom to land for non-traffic purposes
 - c. Freedom to put down traffic originating in the state of aircraft
 - d. Freedom to embark traffic destined for the state of aircraft
 - e. Freedom to embark traffic destined for, or to put down traffic coming from, third states
- Outer Space
 - The region beyond the earth's atmosphere; not subject to the jurisdiction of any state
 - The exploration and use of outer space, including the moon and other celestial bodies, shall be carried out for the benefit and in the interests of ALL countries, and shall be the province of all mankind
 - Free from exploration and use by ALL States, on a basis of equality and in accordance with international law, and there shall be free access to all areas of celestial bodies
 - NOT subject to national appropriation by claim of sovereignty, use, occupation, or by any other means
 - Astronauts are envoys of mankind in outer space, and states party to the Treaty on the Exploration and Use of Outer Space shall render to them all possible assistance in the event of accident, distress or emergency landing on the territory of another State party or on the high seas. When astronauts make such a landing, they shall be safely and promptly returned to the State of registry on their space vehicle
 - Theories on where outer space begins:
 - a. Lowest altitude for artificial earth satellites to orbit without being destroyed by friction (90 kms above earth)
 - b. Functional approach – that the rules shall not depend on the boundaries set, but on the nature of the activity undertaken (Nachura)

X. SPECIAL ISSUES

A. War

-
- Armed contention between public forces of states or other belligerent communities implying use of force between parties of force to impose respective demands upon each other
- Basic Principles of War
 1. Principle of Military Necessity: belligerents may employ any amount and kind of force to compel complete submission of enemy with least possible loss of lives, time and money
 2. Principle of Humanity: prohibits use of measure that is not absolute necessary for purposes of war

3. Principle of Chivalry: basis of such rules as those that require belligerents to give proper warning before launching a bombardment or prohibit use of perfidy (treachery) in conduct of hostilities
- Rights of Prisoners of War (1949 Geneva Convention)
 1. To be treated humanely
 2. Not subject to torture
 3. Allowed communication with families
 4. Receive food, clothing, religious articles, medicine
 5. Bare minimum of information
 6. Keep personal belongings
 7. Proper burial
 8. Group according to nationality
 9. Establishment of an informed bureau
 10. Repatriation for sick and wounded
- Termination of War
 1. Simple cessation of hostilities
 2. Conclusion of a negotiated treaty of peace
 3. Defeat of one of the belligerents
- *Utī Possidetis* – allows retention of property or territory in the belligerent’s actual possession at the time of the cessation of hostilities
- The Judgment of the Nuremberg International Military Tribunal rejected the defense of Nazi war criminals (that war was used as an instrument of self-defense and the nation itself is the sole judge of necessity): “But whether action taken under the claim of self-defense was in fact aggressive or defensive must ultimately be subject to investigation and adjudication if international law is ever to be enforced.” [1998 Bar]

B. Neutrality

- A state is neutral (or neutralized) where its independence and integrity are guaranteed by an international convention on the condition that it does not take part, directly or indirectly, in war between other states; sought by weak states either to protect itself or serve as a buffer between territories of great powers [1988 Bar]
- Duties of Neutral States
 1. Abstain from taking part in the hostilities and from giving assistance to either belligerent
 2. Prevent its territory from being used by belligerents in the conduct of hostilities
 3. Acquiesce in certain restrictions that belligerents may find necessary to impose,
- Duties of Belligerents
 1. Respect the status of the neutral state
 2. Avoid any act that will, directly or indirectly, involve it in the conflict and submitting to any lawful measure it may take to maintain or protect its neutrality
- Termination of Neutrality
 1. Neutral state joins the war
 2. Conclusion of a peace treaty
- Angary – belligerent may, upon payment of just compensation, seize, use or destroy, in case of urgent necessity for purposes of offense or defense, neutral property found in its territory, enemy territory or high seas
- Blockade – a hostile operation by which the vessel or aircraft of a belligerent prevents ALL other vessels, from entering or leaving the ports or coasts of the other belligerent.

Neutrality	Neutralization
Unilateral declaration by the neutral state	Must be recognized by other states
Depends on attitude of neutral state, which is free to join either belligerent any time it sees fit	Result of a treaty wherein duration and other conditions are agreed upon by neutralized state and other states
Governed by laws of nation/international law	Governed by neutralization agreement
Obtains only during war	Operates in times of peace and war

C. International Human Rights

- Concept: the rights recognized as the barest minimum that every human being is entitled to without further qualifications; a residual core of an entire system of rights that cannot further be reduced; the corpus of internationally and universally-recognized rights that are:
 1. Inherent in every human being - inextricably attached to every person from the time that person becomes a human being
 2. Universal – due to the absolute consensus of the international community
 3. Inalienable - cannot be disposed of or taken away voluntarily or involuntarily
 4. Imprescriptible - cannot be understood as having been waived or forgone by the mere failure to assert or vindicate them through the passage of time
 5. Inviolable - any denial or transgression of these rights constitutes a continuing violation; while there are exemptions, still, *there has been a violation*.
 6. Indivisible – under debate; being the irreducible core of a system of rights, cannot be subdivided so that one portion can be denied and the other granted
- In dealing with international human rights, you deal with two sides:
 1. Normative and substantive
 2. Enforcement Mechanisms – provided by the UN (treaty mechanisms)
 - a. Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment – who files? State Parties but under Sec. 22: an individual may file also under certain conditions
 - b. Convention on Elimination of All Forms of Racial Discrimination
 - c. Convention on Elimination of All Forms of Discrimination against Women
- Law on Human Rights
 - UN Conventions on Human Rights [1999 Bar]
 1. ICCPR
 2. CEDAW
 3. Convention on the Rights of Children
 4. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
 5. International Convention on the Elimination of All Forms of Racial Discrimination
 6. Convention on the Prevention and Punishment of the Crime of Genocide
 7. ICESCR
 - Universal Declaration of Human Rights (UDHR) - basic international statement of inalienable and inviolable rights of human beings; the first comprehensive international human rights instrument.

1503 Procedure	1235 Procedure
Quiet Procedure; Inquires and makes recommendations only; Trigger: violations' standards: Consistent pattern, gross, reliably attested violations	Shaming Procedure; Can consider individual cases; Trigger: Gross violations of human rights and fundamental matters

- Scope: civil and political rights, and economic, social and cultural rights
- Limitations - determined by law, only to secure due recognition and respect for the rights of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. Rights may not be exercised contrary to UN purposes and principles (Art. 29)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
 - Rights guaranteed
 1. Right of self-determination
 2. Right to work and accompanying rights thereto
 3. Right to social security and other social rights
 4. Adequate standard of living:
 - a. Right to adequate housing
 - b. Right to adequate food

- c. Right to adequate clothing
- 5. Right to health
- 6. Right to education
- 7. Cultural rights
- States-parties' obligations
 - 1. Specific Obligations (Art. 2)
 - a. Maximize available resources towards progressive realization of the rights in the covenant
 - b. Non-discrimination – states guarantee the exercise of rights without discrimination
 - 2. General obligations
 - a. Respect: states to refrain from interfering with enjoyment of rights. Forced eviction is a violation
 - b. Protect: states to prevent violations by third parties. Failure to ensure compliance by private employers with basic labor standards violates the right to work
 - c. Fulfill: states to take appropriate measures (legislative, judicial) towards the full realization of the rights. States' failure to provide essential primary health care to the needy is a violation
- International Covenant on Civil and Political Rights (ICCPR)
 - Rights recognized
 - 1. Right to self-determination
 - 2. Right to an effective remedy
 - 3. Non-discrimination on the basis of sex
 - 4. Right to life
 - 5. Freedom from torture or cruel, inhuman or degrading punishment
 - 6. Freedom from slavery
 - 7. Right to liberty and security of person
 - 8. Right to be treated with humanity in cases of deprivation of liberty
 - 9. Freedom from imprisonment for failure to fulfill a contractual obligation
 - 10. Freedom of movement and the right to travel
 - 11. Right to a fair, impartial and public trial
 - 12. Freedom from *ex post facto* law
 - 13. Right of recognition everywhere as a person before the law
 - 14. Right to privacy
 - 15. Freedom of thought, conscience and religion
 - 16. Freedom of expression
 - 17. Freedom of peaceful assembly
 - 18. Freedom of association
 - 19. Right to marry and found a family
 - 20. Right of a child to protection, a name and nationality
 - 21. Right to participate, suffrage and access to public service
 - 22. Right to equal protection before the law
 - 23. Right of minorities to enjoy their own culture, to profess and practice their religion and to use their own language
 - Derogation from the ICCPR by a state party: "in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, to the extent strictly required by the exigencies of the situation,
 - i. PROVIDED that measures are not inconsistent with their obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin"
 - Non-derogable Rights (ICCPR) – even in times of national emergency:
 - 1. Right to life
 - 2. Freedom from torture or cruel, inhuman or degrading punishment
 - 3. Freedom from slavery

- 4. Freedom from imprisonment for failure to fulfill a contractual obligation
- 5. Freedom from *ex post facto* laws
- 6. Right of recognition everywhere as a person before the law
- 7. Freedom of thought, conscience and religion
- ICCPR established a committee. Under Art. 40, states are required to report on the condition of civil and political rights in the country.
- Who can petition? State parties under Art. 41 and individuals, under the Optional Protocol to the ICCPR.
- Is there an opt-out clause under Art. 41? None. To avoid being a subject, make a declaration.
- ICSECR did not establish a committee, although reporting is required (minimum). The problem was how to legally enforce social, economic, and cultural rights. They can't be ordered by the court. ICESCR recognizes that obligations to observe such rights are resource contingent. Art. 2(1) provides the formula: "undertakes to take steps," "to maximum of available resources," "progressive realization," "by all applicable means" (i.e. legislative measures)," providing the "bench mark"—it pegs the starting point for the realization of the goal (giving people their rights)

Immediately Enforceable	Subject to Progressive Realization
When the obligation starts with state party shall respect, ensure, guaranty Ex: Non-discrimination	Ex: Health (non-discrimination part is immediately executory but facilities needed are progressive); Programmatic claims - state will provide a program to make the right real; Your right is to ask the government to provide for a program to deal with your problem

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
 - Art. 1. Discrimination against Women – "any distinction, exclusion, or restriction made of the basis of sex which has the effect or purpose or impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field
 - State-Parties' Obligations under CEDAW (Art. 2-16)
 - 1. Legal Measures (*de jure*)
 - a. Embody the principle of equality of men and women in the national constitution and other appropriate laws
 - b. Adopt appropriate legislative and measures prohibiting all discrimination against women, including legislation to modify or repeal discriminatory laws, regulations, customs and practices
 - c. Adopt appropriate legislation to ensure full development and advancement of women to guarantee exercise and enjoyment of Human Rights on the basis of equality with men
 - d. Adopt appropriate legislation to suppress all forms of traffic in women and exploitation and prostitution of women
 - 2. Administrative Measures (*de facto*)
 - a. Refrain from any discriminatory act or practice (includes public authorities and institutions)
 - b. Adopt temporary special measures to address *de facto* inequality
 - c. Modify the social and cultural patterns of conduct of men and women to eliminate practices based on the idea of inferiority (superiority of either men or women)

- d. Educate family as to proper social function of maternity and common responsibility in rearing children
- Unique Civil and Political Rights to Women, under CEDAW
 1. Guarantee of civil and political rights
 2. Right to acquire, change and retain nationality (not prejudiced by marriage to a foreigner)
 3. Equal rights with men as regards nationality of children
 4. Equal rights with men as regards freedom of movement and choice of domicile/residence
- Unique Economic, Social and Cultural Rights to Women, under CEDAW
 1. Guarantee of Economic, Social and Cultural Rights
 2. Equal Rights with men as regards education: elimination of stereotypes through co-education, revision of textbooks, programs and teaching methods; reduction of female student drop-outs; access to information on health and well-being of families, including advice of family planning
 3. Equal rights with men as regards employment
 4. Prohibition against dismissals due to marriage, pregnancy or maternity leave
 5. Promotion of child-care facilities; special protection to pregnant women as regards type of work
 6. Equal access with men as regards health services, rights to services in connection with pregnancy, adequate nutrition during pregnancy, lactation, confinement, post-natal period
 7. Right to enter into marriage, to freely choose a spouse and to enter into marriage only with free and full consent
 8. Equal rights and responsibilities as parents, to freely decide number of children and access to information and education to be able to exercise their rights
- Rome Statute – International Criminal Court
 - Purpose: create a permanent tribunal which would deal with grave crimes that threaten the peace, security and well-being of the world. It is complementary to national criminal jurisdictions
 - Jurisdiction (Art. 5)
 - a. Genocide
 - b. Crimes against humanity
 - c. War crimes
 - d. Crime of aggression – Court jurisdiction over this once a provision is adopted defining this crime
 - Genocide (Art. 6) - acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such:
 - (a) Killing members of the group;
 - (b) Causing serious bodily or mental harm to members of the group;
 - (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - (d) Imposing measures intended to prevent births within the group;
 - (e) Forcibly transferring children of the group to another group.
 - Crimes against humanity (Art 7) - any of these acts when committed as part of a (1) widespread or systematic attack directed against any civilian population (2) with knowledge of the attack
 - (a) Murder;
 - (b) Extermination;
 - (c) Enslavement;
 - (d) Deportation or forcible transfer of population;
 - (e) Imprisonment or other severe deprivation of physical liberty violating fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution, against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in par. 3, or other grounds, universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
- War Crimes (Art. 8) - jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes
 - (a) Grave breaches of the Geneva Conventions against protected persons or property under the provisions of the relevant Geneva Convention
 - (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law
 - (c) In the case of an armed conflict not of an international character, serious violations of Art. 3 common to the 4 Geneva Conventions committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
 - (d) Par. 2 (c) applies ONLY to armed conflicts not of an international character (does not apply to internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature)
- Geneva Conventions (Aug. 12, 1949)
 - Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
 - Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea
 - Convention (III) relative to the Treatment of Prisoners of War
 - Convention (IV) relative to the Protection of Civilian Persons in Time of War

D. International Humanitarian Law (IHL)

- Concept: IHL began with the Battle of Solferino, wherein the soldiers were left to die and rot in the freezing rain and mud. Society reacted negatively, and made rules to govern conduct in war.
- Two principles emerged regarding regulation:
 1. *Jus ad bellum* - cause of war
 2. *Jus in bello* - conduct of war
 - *Jus ad bellum* is the Just War Theory, (a war is just because one is fighting for the right cause). But by WWII, this became passé already, and there was intellectual shift from *jus ad bellum* to *jus in bello*. IHL was impossible under *jus ad bellum* because it was too hard to get into the causes of war. It was decided that the conduct of hostilities should be regulated instead. Thus, the birth of IHL. Dean Pangalangan says that with the advent of terrorism, *jus ad bellum* is back with a vengeance
- IHL is administered by the International Committee of the Red Cross (ICRC).
- Principles of IHL:
 - Discrimination – you should protect the civilians, POWs, *hors de combat*. Notice that the last two apply to only international armed conflict
 - Proportionality - the means chosen and the military objective. The solution must be proportionate to the problem.
- Only when you declare the presence of armed conflict will

IHL come into play. Otherwise, the RPC applies.

- Controlling documents for IHL:
 - 1949 Geneva Convention
 - Common Art. 2 - Geneva Convention only applies to international armed conflict
 - Common Art. 3 - limited application to non-international armed conflicts
 - However, most victims were of non-international conflicts, so 1978 Protocol was written
 - Protocol I: for international conflict
 - Protocol II: non-international conflicts; more protection but independence movements didn't want to be classified under them. As a compromise, Protocol I included independence movements

E. International Criminal Responsibility

- The *Nuremberg Tribunals*: Ad hoc court gained jurisdiction over war criminals because of the articles of surrender. The problem was that it was considered Victor's Justice, and the principles *nullum crimen*, and *ex post facto* were invoked. Then, there was no law yet that defined the crimes against humanity and war of aggression. The danger of War of Aggression (charged against high ranking officials who decided to declare war) was that it revived the just war theory
- The *Tokyo War Crimes Tribunal* was established by the instruments of surrender. The problem was that the Japanese had no concept of being under trial after a war. So how will the Americans replicate the success of Nuremberg? At first they got American lawyers but there wasn't any real justice and eventually the Japanese came in
- Cases:
 - *Yamashita vs. Styer; In Re Yamashita*: The Principle of Command Responsibility. Yamashita was charged and convicted of crimes against humanity for the rape of Manila. However, there was a strong dissenting opinion by Justice Murphy, who pointed out that there was no way Yamashita could have sent orders because the US cut off the communications from Ilog (where he was) to Manila. Also, he assumed command only when Japan was already losing. The Rome Statute addressed this and established the Test Of Effective Command. For one to be responsible, there must be effective command of troops and illegal command.
 - *Kuroda vs. Jalandoni*: IHL was directly incorporated in Philippine law. Kuroda was tried with IHL principles and without the application of *nullum crimen* and *ex post facto*. He was tried by a military tribunal. Could he have been prosecuted directly before a Philippine court? NO, as a penal law is required.

F. Tribunals

Characterization	Tribunal
International/Standing International/Ad Hoc	ICJ, ICC ICTY, ICTR
Internationalized/Hybrid/Mixed International character Created by domestic law	Khmer Rouge (emerged 3 to 5 years ago)
National	Kuroda, Yamashita

G. International Dispute

- Actual disagreement between states regarding the conduct to be taken by one for the protection or vindication of the other's interests
- Art. 33, UN Charter – parties to any dispute shall first seek a solution through pacific or amicable methods
- Classes of dispute:
 1. Legal – involves justiciable rights based on law and fact
 2. Political – cannot be decided by an international arbitral or judicial tribunal under international law rules

H. Settlement of Disputes

1. Amicable Methods
 - a. Negotiation – discussion by the parties of their claims and counterclaims for a just and orderly adjustment
 - b. Inquiry – an investigation of points in question to contribute to the solution of the problem
 - c. Good Offices – method by which a third party attempts to bring the disputing states together for them to discuss the issues in contention
 - d. Mediation – third party actively participates in the discussion to reconcile the conflicting claims. Suggestions of mediator are merely persuasive
 - e. Conciliation – third party also actively participates to settle the conflict. Suggestions of conciliator are not binding. Distinguished from mediation: the services of the conciliator were solicited by the parties in dispute
 - f. Arbitration – the solution of a dispute is entrusted to an impartial tribunal usually created by the parties themselves under a charter known as the *compromis*. The proceedings are essentially judicial and the award is, by previous agreement, binding on the parties
2. Hostile/Non-amicable methods
 - a. Retorsion – is a lawful, but deliberately unfriendly, act designed to injure or retaliate against the offending State, to compel alteration of its conduct, i.e. cutting off economic aid (lawful because there is no legal obligation to provide economic aid)
 - b. Reprisal – a coercive measure short of war, normally illegal but which is rendered legal by a prior illegal act committed by the State against which the reprisal is directed; to be used only when other means of redress (i.e. protests and warnings) have failed
 - c. Severance (of Diplomatic Relations) – cutting of off all diplomatic ties with another, in protest/hostility
 - d. Naval Blockade – blocking the ports of a country with naval forces
 - e. Embargo – preventing the ingress to and egress from of commercial/other goods to a country; refusal by a state to undertake commercial transactions with another state
3. Intervention – act by which a state interferes with domestic or foreign affairs of another state through the use of force or threat of force; Allowed:
 - a. As an act of self-defense (Art. 51)
 - b. Decreed by the Security Council as a preventive or enforcement action for the maintenance of international peace and security (Art. 42)
 - c. SC-authorized enforcement measure by regional arrangement (Art. 53)
 - d. Action is agreed upon by treaty
 - e. Requested from fellow states or from the UN by the parties to a dispute or a state beset by rebellion
 - Drago Doctrine – intervention is not allowed for the purpose of making a state pay its public debts

I. Expropriation

- Concept: home state (*situs* of investment) expropriates the rights of ownership of the investor state (introduced the investment and owner of such investment) who, as an alien, may rely on international law for the standard of treatment that should be accorded to it.
- Limitations:
 1. the investor, as subject of a foreign state, cannot be deemed to have been completely subsumed under the authority and sovereignty of the home state merely due to contractual relations
 2. relationship of home and investor states are clearly defined under an investment contract which, may or may not make reference to international law; in cases of conflict in the former, exercise of the home state's sovereignty becomes limited to a certain extent by the standards of international law
- Principles:
 1. Norm applicable: harmonization of all sources of legal obligations
 2. If harmonization is not possible, the norm is expropriability of every property

3. For every act of expropriation, the norm is compensability of every act of taking
4. In any case, the norm is enforceability of every international legal obligation, regardless of the source

- Cases

- *Amoco International Finance vs. Iran*
 - Expropriation may be done for a public purpose, and not merely for public utility
 - Compensability is the norm; the process or quantum of compensation is not. An expropriation is deemed lawful as long as provision for compensation exists, though unsatisfactory to the investor, subject to the submission of to arbitration
 - Takings may be done in successive stages; that the entire economic branch to which an enterprise belongs was not expropriated is not necessarily a badge of discriminatory intent
 - A home state is not bound by obligations contracted by private entities within its territories. For any such obligation to arise, a clear duty on the part of the home state must be embodied in the contract
- *BP vs. Libya*
 - The home state may expropriate if it wants to; when it does, even if wrongful, the investor state cannot compel the home state to continue performing the latter's obligations, but may only claim compensation (damages)
- *Liamco vs. Libya*
 - Sovereign immunity: waived if the home state consents to litigate arbitral claims anywhere in the world
 - Acts of state cannot be passed upon in judgment by any foreign tribunal
 - Contractual rights: not property, and repudiation of contractual obligations is NOT a taking by expropriation
 - Compensability, once satisfied, renders a taking lawful under international law; the unsatisfactory quantum of such compensation on the part of the investor would not render the taking unlawful
- *Starett Housing case*
 - Expropriation does not need a law to be deemed as such; any act resulting in deprivation of ownership rights, effecting an indirect or virtual taking is still expropriation
 - Expropriation does not need physical taking of property; deprivation of ownership rights closely related to the physical property would still be classified as expropriation
- *Phillips vs. Iran*
 - Expropriation: any act which would deprive the investor of his ownership rights permanently
 - Focus on the effect of the expropriatory act on the investor, NOT on the intention of the home state
 - Reckoning point of expropriation: point when deprivation of ownership rights becomes irreversible

J. Validity of the Balikatan Exercises

- Special ratification requirements for treaties allowing foreign military bases, troops or facilities in the Philippines (Const. Art. XVIII, Sec. 25):
 1. treaty duly concurred in by the Senate
 2. recognized as a treaty by the other contracting State
 3. when Congress so requires, ratified by the people (majority of all votes cast) in a national referendum held for that purpose
- *Bayan v. Zamora*: challenging validity of the Visiting Forces Agreement with the US. Court upheld VFA: (i) Art. XVIII Sec. 25 applies even if foreign military *troops* are here only temporarily; (ii) Sec. 25 requirement that VFA be "recognized as a treaty" by US applies; (iii) VFA valid even if it the US consented to it as a mere executive agreement, not as a treaty (ratified by its US Senate), since the US remained bound to the VFA as a treaty under the VCLOT

K. United Nations and its Organs

- UN - international organization created at San Francisco Conference (Apr 25-Jun 26, 1945). It succeeded the League of Nations and is governed by a charter that came into force on Oct. 24, 1945. It currently has 192 member-states, as of 2006.
- Principal Purposes of UN
 1. Maintain international peace and security
 2. Develop friendly relations among nations
 3. Achieve international cooperation
 4. Center for harmonization actions of nations for attainment of common goals
- Fundamental Principles
 1. Based on the sovereign equality of all its members
 2. All members, to insure to all rights and benefits resulting from membership, shall fulfill in good faith obligations they assumed under with the Charter
 3. All members shall settle their international disputes by peaceful means so that international peace and security, and justice are not endangered
 4. All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purposes of the UN
 5. Occasions when use of armed forces is allowed by the UN Charter: [1988 Bar]
 - a. Maintain or restore international peace and security through demonstrations, blockade and other operations by air, sea or land forces by UN members (Art. 42)
 - b. Inherent right to collective self-defense if an armed attack occurs against a member state until the Security Council has taken measures necessary to maintain international peace and security (Art. 51)
 6. All members shall give the UN every assistance in any action it takes in accordance with the Charter, and shall refrain from giving assistance to any state against which the UN is taking preventive or enforcement action
 7. UN shall insure that non-members shall act in accordance with these principles so far as may be necessary to maintain international peace and security
 8. Nothing in the Charter shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the Charter; but this principle shall not prejudice the application of enforcement measures
- Domestic Jurisdiction Clause – as long as the matter remains internal, it cannot be the subject of intervention by the UN
 - General Rule: Rebellion (internal conflict) is not under the Organization's jurisdiction
 - Exceptions:
 1. Aggravation into a threat to or an actual breach of international peace and security
 2. Parties voluntarily invoke and submit to UN jurisdiction for dispute settlement
- Qualifications for Membership (Art. 4)
 1. Statehood
 2. Peace-loving
 3. Accepts obligations of member-states
 4. Able and willing to carry out such obligations
- Admission – 2/3 vote of members present and voting in the General Assembly upon favorable recommendation of at least 9 members of the SC, including permanent members
- Suspension – may be lifted alone by the SC, also by qualified majority vote
 - Effects of Suspension
 1. Can't participate in GA meetings
 2. Can't be elected to or continue to serve in the SC, Economic and Social Council or Trusteeship Council
 3. Nationals of suspended member-states may continue serving the secretariat and ICJ as they are regarded as international officials or civil servants acting for the UN itself

- Expulsion – 2/3 of those present and voting in the GA upon recommendation of the SC by a qualified majority vote (stronger penalty than mere suspension against a member)
- Withdrawal – when UN is unable to maintain peace or could do so only at the expense of law and justice
 - a. Members' rights and obligations as such were changed by a charter amendment in which it had not concurred or which it finds itself unable to accept
 - b. Amendment duly accepted by the necessary majority either in the GA or in a general conference is not ratified
- Principal Organs
 1. General Assembly – central organ where all members are represented
 - Yalta Formula – each member shall have 1 vote but distinction is made between the Big 5 (Sec. Council) and non-permanent members in resolving substantive questions
 2. Security Council – responsible for the maintenance of peace and security; undertakes preventive and enforcement actions
 - 5 Permanent Members: US, UK, Russian Federation, China and France
 - 10 Non-permanent members – current members (year of term's end): Belgium (2008), Indonesia (2008), South Africa (2008), Panama (2008), Burkina Faso (2009), Italy (2008), Vietnam (2009), Costa Rica (2009), Libyan Arab Jamahiriya (2009) and Croatia (2009)
 - Presidency: held in turn by the Security Council members in the English alphabetical order of their names. Each President holds office for one calendar month
 3. Economic and Security Councils – exerts efforts towards higher standards of living, solutions of international economic, social, health and related problems, universal respect for and observance of human rights and fundamental freedoms
 4. Trusteeship Council
 - Administers the International Trusteeship System (idle council)
 - Mandates were the overseas possessions of defeated state of Germany and Turkey which were placed by the League of Nations under the administration of mandatories to promote development and ultimate independence; replaced by the System of Trust Territories
 - UN exercised residuary sovereignty over the Trust Territories through the Trustee Powers, who exercised the powers of sovereignty subject to supervision by and accountability to the UN (Oppenheim) [2003 Bar]
 5. International Court of Justice - principal judicial organ; World Court governed by the Statute which is annexed to and made part of the UN Charter
 - Seat - Peace Palace in The Hague (Netherlands), the only principal organ not located in New York
 - Function - to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized UN organs and specialized agencies.
 - Composition - 15 judges, elected for terms of office of 9 years by the UN GA and SC. Its current President is Rosalyn Higgins (UK)
 - Jurisdiction – decide issues referred to it (consensual) regarding:
 - a. Interpretation of treaty
 - b. Question of international law
 - c. Existence of fact constituting a breach of international obligation
 - d. Nature or extent of reparation to be made for the breach of an international obligation
 - e. Render advisory opinions
 - Limitations to Jurisdiction
 - a. Only states may be parties
 - b. Parties' consent required for acquisition of jurisdiction

6. Secretariat – chief administrative organ

- Ban Ki-moon of the Republic of Korea is the 8th Secretary-General

L. Comfort Women

- Began in 1932 with the Japanese invasion of Manchuria. In the Philippines, it occurred from 1942-1945. More than 200,000 women ages 11-20 from the Philippines, China, Vietnam, Indonesia (Dutch ladies) and Korea were victimized. The first official admission by Japan was in July 1992.
- 1995 - official apology by the prime minister but the comfort women were not satisfied.
- 1998 - local court gave award to Korean women
- Categories of brothels:
 1. Direct control of the military – State responsibility, attribution is direct
 2. Controlled by owners but exclusive for the Japanese
 3. Japanese priority customers but completely private
- Ratio for having comfort women:
 1. Avoid antagonizing the local population (so the Japanese soldiers won't go after local women)
 2. Preclude loss of troop strength through venereal diseases
 3. Prevent spying by local women
- Injuries:
 1. Civilians brought to the front lines
 2. Military Sexual Slavery
 3. Forced Recruitment
 4. Violence
- Japanese position:
 1. No state responsibility to the extent that they were private brothels
 2. Retroactive application
 3. Rape not a war crime under Hague Convention
 4. Not slavery
 5. Rules of war was only for foreigners (technically, Koreans were not foreigners since Korea was then a colony of Japan)
 6. No right to compensation
 7. If ever there was compensation, it was satisfied by the Peace Treaty
- Problems with the claims
 1. Crime against humanity – imprisonment, not damages but the women wanted damages too
 2. Prescription
- UN Dilemma: Legal Characterization of the Women

The UN first tried slavery defined under the Hague convention but the comfort women objected since slavery didn't describe their ordeal. Rape on the other hand, was not even defined under The Hague. So UN came up with military sexual slavery. Lawyers protested because coming up with a new term would dilute the power of *jus cogens*, giving Japan a defense! UN also used forced recruitment and violence.
- Rome Statute - had to change terms to accommodate Yugoslavia's atrocities
 - Forced Pregnancy – Elements:
 1. Woman is forcibly made pregnant
 2. Forcibly detained to keep the baby to term for purposes of changing the ethnic composition of the community

M. Asylum and Refugee Law

- Refugee: Convention Relating to Status of Refugees provides the Elements:
 1. Fleeing/ Outside state of nationality
 2. Unable or unwilling to avail of diplomatic protection of state of nationality
 3. Well founded fear of being persecuted based on race, nationality, religion, and social/political opinion. (most important)
- Advantage of being declared a refugee
 1. *Non-refoulement* - you can't be kicked out and returned to place of origin except under special conditions
 2. Asylum
 - a. Diplomatic – refuge in diplomatic premises

- b. Political – refuge in another state for political offense, danger to life or non assurance of due process
- But the convention's definition catered to European refugees by land who fled prior to 1951. In the Protocol, the definition was amended to include refugees who were forced to leave their homes after 1951.
- It is difficult to apply the convention to Vietnamese Boat People. Why?
 1. They are refugees from the high seas. Convention deals with land refugees.
 2. They don't want to seek refuge in the Philippines. We are merely the "First asylum" and we consider them asylum seekers.
 3. They are "economic refugees," they don't fall within the definition of refugees. The elements do not apply.

N. Migrant Workers

- Kinds:
 1. Documented/ Regular - broader rights
 2. Undocumented/ Irregular - only core human rights
- The Convention for the Protection of Rights of the Migrant Workers is considered an asymmetrical treaty. There are two parties: The countries of origin and the host countries. None of the host countries ratified yet!
- Value of ratification:
 1. Can't invoke unless ratified
 2. *Opinio Juris*

O. Spratlys Issue

- *Las Palmas Arbitration*: espoused the most controlling doctrine; the test of sovereignty is effective exercise. The rule of inter-temporal law was also stated, recognizing that there are different rules for different periods of time, and that old law must be respected but the current laws must be applied. Because of *Las Palmas*, the Philippines set up camp at Spratlys (they could lose it due to non effective exercise of sovereignty, which was what happened in Las Palmas when US lost to the Netherlands).
- Basis of Philippine claim: Effective occupation of a territory not subject to the sovereignty of another state. The Japanese forces occupied Spratlys during WWII but then Japan formally renounced all right and claim to it, under the San Francisco Treaty of 1951. No beneficiary was designated so it became *terra nullius*, until Philippine occupation. Philippine sovereignty was displayed by open and public occupation of a number of islands (stationing military forces, organizing a local government unit, awarding petroleum drilling rights, establishment of lighthouse, enforcement of laws against foreign vessels and nationals and other political and administrative acts of a sovereign nature over Scarborough Shoal) In 1978, it confirmed its sovereign title with PD 1596, which declared the Kalayaan Island Group part of Philippine territory [2001 Bar]
- "Sell-out Controversy"
 - The Senate's investigation into the Philippines-China Joint Marine Seismic Undertaking (JMSU) will seek to define the country's territorial claims that will include the disputed Kalayaan Island Group or Spratlys Islands. Apart from the issue that the deal was an alleged sellout on the part of the Philippines in exchange for supposed anomalous Chinese contracts, the Senate will address the May 2009 requirement under the UNCLOS that the country needs to define its archipelagic baselines.
 - The UNCLOS, ratified by the Philippines in 1984, required coastal or archipelagic states to define their territorial sea, contiguous zone and EEZ. Senate Bills 1467 and 2144 filed by Senators Trillanes and Pimentel sought to amend RA 3046 and RA 5446 or the baselines law. Both bills are still pending. House Bill 3216, filed by Cebu Rep. Antonio Cuenco was approved on second reading in December and is waiting final approval.
 - Senators Trillanes, Madrigal and Lacson filed Resolutions 309, 315 and 319, respectively, to probe the agreement "that seemed to be a precondition to

the bilateral loans granted by China to the government." The issue was hyped after the Far Eastern Economic Review in its Jan.-Feb. 2008 issue published an article by Barry Wain of the Institute of Southeast Asian Studies, which claimed that the area in the agreement "thrusts into the Spratlys and abuts Malampaya, a Philippine-producing gas field. About one-sixth of the entire area, closest to the Philippine coastline, is outside the claims by China and Vietnam."

- JMSU was initially signed by state-owned firms China National Offshore Oil Corp. and the Phil. National Oil Co. in 2004, but was later on objected to by Vietnam. Vietnam is among the 7 claimants of the disputed Spratly Islands off Palawan. Its complaint prompted China and the Philippines to forge a tripartite agreement for the JMSU in 2005. Brunei, Malaysia and Taiwan also claim ownership of the Spratlys, which are believed to contain significant reserves of oil and natural gas.
- New Baselines?
 - Senator Santiago cautioned against tinkering with the country's territorial limits with a new baseline bill declaring the Philippines as an archipelagic state because it would reduce, not expand, the country's territory and would require a change in the Constitution. The Philippines would be entitled to only 12 nautical miles of the territorial sea under the UNCLOS.
 - Santiago: "If the Philippines declares itself an archipelagic state, our zone of sovereignty would collapse. Our internal waters would become archipelagic waters where the ships of all states will enjoy the right of innocent passage. Foreign states would have the right of so-called archipelagic sea lane passage. Ships of all states would have the right of passage and their aircraft would have the right of over flight. This is an almost colossal reduction from the wider boundaries of the International Treaty Limits under the Treaty of Paris. The Constitution does not describe the Philippines as an archipelagic state, which is a term of art used by the UNCLOS."
 - Instead, Santiago proposed that the government make an "effective occupation" of the disputed islands.
 - Santiago is also worried of the impact of the baseline bills on our claim over Sabah and warned against the wording of the pending bills concerning Sabah, "If the pending bills abolish Sec. 2, RA 5446 which provides that the Philippines has acquired dominion and sovereignty over Sabah, North Borneo and hence, the baselines of the territorial sea include baselines of the territorial sea around Sabah, the effect is to remove from Philippine law the affirmation of sovereignty over Sabah". Santiago noted that in 2001, with Dean Magallona arguing for the Philippines, the ICJ relied on Philippine law in referring to the dispute between Malaysia and Indonesia over Pulau Ligitan and Pulau Sipadan. "The ICJ ruled that the Philippines will not in any way be affected by its decision on the merits in the case between Malaysia and Indonesia," said Santiago. This is why a congressional commission on national territory should be established because the present bills "do not fully appreciate the magnitude and depth of the country's territorial problems."

P. US-Iraq War

- March 2003: US announced that "diplomacy has failed" and that it would proceed with a "coalition of the willing" to rid Iraq of its alleged weapons of mass destruction. The 2003 Iraq war officially started a few days later, Mar. 20.
- Prior to 2002, the UN Security Council had passed 16 resolutions on Iraq. On Nov. 18, 2002, the UN SC passed Resolution 1441 on Iraq, unanimously. In 2003, the US, UK, and Spanish governments proposed another resolution on Iraq, which they called the "eighteenth resolution" and others called the "second resolution". This resolution was subsequently withdrawn when it became clear that several permanent members of the Council would veto it; if that occurred, it would have become incredibly difficult to have

argued that the Council authorized the subsequent invasion. Regardless of the threatened or likely vetoes, it seems that the coalition at no time was assured any more than 4 affirmative votes in the Council-US, UK, Spain and Bulgaria-well short of the requirement for 9 affirmative votes.

- On Sept. 16, 2004, UN Secretary-General Kofi Annan, on the invasion: "I have indicated it was not in conformity with the UN charter. From our point of view, from the charter point of view, it was illegal."
- UN Weapons inspectors returned to Iraq for the first time in 4 years. In Dec. 2002, Iraq filed a 12,000-page weapons declaration with the UN. After reviewing the document, UN weapons inspectors, US, France, UK and other countries thought that this declaration failed to account for all of Iraq's chemical and biological agents. In Dec. 19, Secretary of State Colin Powell stated that Iraq was in material breach of the SC resolution.
- On Jan. 27, 2003, UN inspectors reported that Iraq had cooperated on a practical level with monitors, but had not demonstrated a "genuine acceptance" of the need to disarm. Inspector Hans Blix said that after the empty chemical warheads were found on the 16th, Iraq produced papers documenting the destruction of many other similar warheads, which had not been disclosed before. This still left thousands of warheads unaccounted for. Inspectors also reported the discovery of over 3,000 pages of weapons program documents in the home of an Iraqi citizen, suggesting an attempt to "hide" them from inspectors and apparently contradicting Iraq's earlier claim that it had no further documents to provide. By the 28th, a total of 16 Iraqi scientists had refused to be interviewed by inspectors. US disclosed reports that Saddam has ordered the death of any scientist that speaks with inspectors in private. Iraq insists that they are not putting pressure on the scientists.
- Blix presented on Feb. 14 a report to the UN SC, stating that the Iraqis were now more proactive in their cooperation. He questioned the interpretations of the satellite images put forward by Powell, and stated that alternate interpretations of the satellite images were in fact credible. He also stated that the Iraqis have never received early warning of the inspectors visiting any sites (an allegation made by Powell). International Atomic Energy Agency Director General Mohammed ElBaradei said that he did not believe the Iraqis have a nuclear weapons program. This report of Feb. 14 and the protests of Feb. 16 appear to have created reluctance in some of the members of the SC over the war on Iraq. To date, no weapons of mass destruction have been reported found in Iraq.
- Dec. 14, 2003. Saddam Hussein is captured.
- Dec. 13, 2003, Saddam was brought to trial under the Iraqi interim government set up by US-led forces. On Nov. 5, 2006, he was convicted of charges related to the executions of 148 Iraqi Shi'ites suspected of planning an assassination attempt against him, and was sentenced to death by hanging. Saddam was executed on Dec. 30, 2006, with highly controversial mobile phone video clips of him and his captors insulting each other, being posted on the Internet within hours.

Q. Terrorism

- Defined: Violence against civilians to achieve political or ideological objectives by creating fear. Most definitions of terrorism include only the acts which are intended to create fear (terror), are perpetrated for an ideological goal (as opposed to a lone attack), and deliberately target or disregard the safety of non-combatants. The presence of non-state actors in widespread armed conflict has created controversy regarding the application of the laws of war.
- An International Round Table on Constructing Peace, Deconstructing Terror (2004) hosted by Strategic Foresight Group recommended that terrorism and acts of terror are different. While acts of terrorism are criminal acts as (UN SC Resolution 1373 and domestic jurisprudence of almost all countries), terrorism refers to a phenomenon including the actual acts, the perpetrators of acts of terrorism themselves and their motives. While there is disagreement on definitions of terrorism, there is an intellectual consensus

globally, that acts of terrorism should not be accepted under any circumstances. This is reflected in all important conventions including the UN counter terrorism strategy, the decisions of the Madrid Conference on terrorism, the Strategic Foresight Group and ALDE Round Tables at the European Parliament.

- The Global Counter-Terrorism Strategy adopted by Member States on Sept. 8, 2006 serves as the common platform that brings together the counter-terrorism efforts of the various UN system bodies into a common, coherent and more focused framework.
- The Human Security Act of 2007, passed in February and signed by President Arroyo in March, took effect on July 15, 2007. Art. 3 defines terrorism as the commission of certain crimes, including murder, piracy, kidnapping, arson, and the destruction of property, that "sow[] and creat[e] a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand." The mandatory sentence for the crime of terrorism at 40 years without parole.
- Controversial provisions
 - RTCs can declare a group of persons to be a "terrorist and outlawed organization, association, or group," seize its assets and search its financial records, among other actions (Art. 17). The organization and its members face a serious loss of rights without the benefit of a full judicial process.
 - Art. 18 doubles the period that the police can detain persons without judicial supervision (3 days of custody) before the detainees must be brought before a judge.
 - Art. 19, on "actual or imminent terrorist attack," allows detention beyond 3 days if the police obtain the written approval of a court or a "municipal, city, provincial or regional official." No express limit is set as to the allowable period of detention, which may be used to justify indefinite detention.
 - Though the law purports to ban the Rendition (unlawful transfer of a person to another country), it sets out broad exceptions. These exceptions, which allow a detainee to be handed over to another government without a formal extradition proceeding if the detainee's testimony is needed for a terrorism-related trial or police investigation, allows the handover of suspects based on official assurances of fair treatment by the receiving state.
- Positive aspect: ban on the use of torture, threats and coercion against detainees. Evidence obtained by such means is inadmissible.
- Added/Continuing dangers: Extrajudicial Killings and Enforced Disappearances
 - Extrajudicial Killings and Desaparecidos are the illegal liquidations, unlawful killings and enforced disappearance. They are forms of extrajudicial punishment, and include—extra-judicial executions, summary execution, arbitrary arrest and detention, and failed prosecutions, because of political activities.
 - In the International Convention for the Protection of All Persons from Enforced Disappearance, "Enforced disappearance" is defined (Art. 2, UN Convention Against Torture) as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."
 - Chief Justice Reynato Puno called a National Consultative Summit on extra-judicial killings on July 16 and 17, 2007. Invited representatives from the 3 branches of the government (including the AFP, PNP, CHR, media, academe, civil society and stakeholders). Malacañang-sponsored "Mindanao Peace and Security Summit" concentrated on the anti-terror law, or the HSA of 2007, to make it more acceptable to the public.
 - Because of the inefficacy and insufficiency of the Writ of Habeas Corpus, on Sept. 25, 2007, Puno signed the Writ of Amparo (RA 6981): "This rule will provide the

victims of extralegal killings and enforced disappearances the protection they need and the promise of vindication for their rights. This rule empowers our courts to issue reliefs that may be granted through judicial orders of protection, production, inspection and other relief to safeguard one's life and liberty."

- As supplement to Amparo, the *writ of habeas data* ("you should have the idea" or "you should have the data") was released. Puno explained that the *writ* denies to authorities defense of simple denial, and *habeas data* can find out what information is held by the officer, rectify or even the destroy erroneous data gathered.
- On Mar. 14, 2008, Atty. Edre Olalia (lead officer of the National Union of Peoples' Lawyers and the Counsels for the Defense of Liberties) brought the Philippine case and appealed to the UN Human Rights Council "to stop the extrajudicial killings and abductions in the Philippines". Philippines killings will be examined in the first UNHRC session, periodic review from April 7 to 18, along with those in 15 others of 192 member-countries.

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