QUESTIONS AND ANSWERS IN
POLITICAL LAW AND
PUBLIC INTERNATIONAL LAW
Atty. EDWIN REY SANDOVAL

POLITICAL LAW

1. Distinguish sovereignty from dominion.

Held: Sovereignty is the **right to exercise the functions of a State to the exclusion of any other State**. It is often referred to as the **power of *imperium***, which is defined as the government authority possessed by the State. On the other hand, **dominion**, or **dominium**, is the **capacity of the State to own or acquire property** such as lands and natural resources. (Separate Opinion, Kapunan, J., in ***Isagani Cruz v. Secretary of DENR***, G.R. No. 135385, Dec. 6, 2000, En Banc, See Footnote 86)

2. What was the basis for the early Spanish decrees embracing the theory of jura regalia? Is this also the basis of the declaration in Section 2, Article XII of the 1987 Constitution that all lands of the public domain are owned by the State? Consequently, did Spain acquire title over all lands in the Philippines in the 16th century?

Held: *Dominium* was the basis for the early Spanish decrees embracing the theory of *jura regalia.* The declaration in Section 2, Article XII of the 1987 Constitution that all lands of the public domain are owned by the State is likewise founded on *dominium.* If *dominium*, not *imperium*, is the basis of the theory of *jura regalia*, then the lands which Spain acquired in the 16th century were limited to non-private lands, because it could only acquire lands which were not yet privately-owned or occupied by the Filipinos. Hence, Spain acquired title only over lands which were unoccupied and unclaimed, *i.e.*, public lands. (Separate Opinion, Kapunan, J., in ***Isagani Cruz v. Secretary of DENR***, G.R. No. 135385, Dec. 6, 2000, En Banc, See Footnote 86)

3. What is the Doctrine of Constitutional Supremacy?

Held: Under the *doctrine of constitutional supremacy*, **if a law or contract violates any norm of the Constitution**, that law or contract, whether promulgated by the legislative or by the executive branch or entered into by private persons for private purposes, **is null and void and without any force and effect. Thus, since the Constitution is the fundamental, paramount and supreme law of the nation, it is deemed written in every statute and contract**.
(***Manila Prince Hotel v. GSIS,*** 267 SCRA 408 [1997] [Bellosillo])

4. What are self-executing and non-self executing provisions of the Constitution?

Held: Provisions which **lay down a general principle**, such as those found in Article II of the 1987 Constitution, are usually **not self-executing**. But a provision which is **complete in itself and becomes operative without the aid of supplementary or enabling legislation**, or that which **supplies sufficient rule by means of which the right it grants may be enjoyed or protected**, is **self-executing**. Thus a constitutional provision is self-executing if the nature and extent of the right conferred and the liability imposed are fixed

by the Constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action. (***Manila Prince Hotel v. GSIS,*** 267 SCRA 408 [1997] [Bellosillo])

5. Are provisions of the Constitution self-executing or non-self executing? Why?

Held: **Unless it is expressly provided that, a legislative act is necessary to enforce a constitutional mandate**, the presumption now is, that **all provisions are self-executing**. If the constitutional provisions are treated as requiring legislation instead of self-executing, the legislature would have the power to ignore and practically nullify the mandate of the fundamental law. This can be cataclysmic. (***Manila Prince Hotel v. GSIS,*** 267 SCRA 408 [1997] [Bellosillo])

6. Is the "Filipino First" Policy expressed in Section 10, Article XII of the Constitution a self-executing provision?

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Held: Yes. It is a **mandatory, positive command which is complete in itself and which needs no further guidelines or implementing laws or rules for its enforcement**. From its very words the provision does not require any legislation to put it in operation. It is ***per se*** **judicially enforceable**. When our Constitution mandates that *[i]n the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos,* it means just that – qualified Filipinos must be preferred. (***Manila Prince Hotel v. GSIS,*** G.R. No. 118295, May 2, 1997, 267 SCRA 408 [Bellosillo])

7. Give examples of non-self executing provisions of the Constitution.

Held: By its very nature, ***Article II*** of the ***Constitution*** is a "declaration of principles and state policies." These principles in Article II are not intended to be self-executing principles ready for enforcement through the courts. They are used by the judiciary as **aids or as guides in the exercise of its power of judicial review, and by the legislature in its enactment of laws**. As held in the leading case of ***Kilosbayan, Incorporated v. Morato*** (246 SCRA 540, 564, July 17, 1995), the principles and state policies enumerated in Article II and some sections of ***Article XII*** are not "self-executing provisions, the disregard of which can give rise to a cause of action in courts. They do not embody judicially enforceable constitutional rights but guidelines for legislation." (***Tanada v. Angara,*** 272 SCRA 18 [1997], En Banc [Panganiban])

8. When are acts of persons considered "State action" covered by the Constitution?

Held: In constitutional jurisprudence, the acts of persons distinct from the government are considered "state action" covered by the Constitution **(1)** when the **activity it engages in is a "public function"; (2)** when the government is so **significantly involved with the private actor as to make the government responsible for his action**; and **(3)** when the government has **approved or authorized the action**. (***Manila Prince Hotel v. GSIS,*** 267 SCRA 408 [1997] [Bellosillo])

THE DOCTRINE OF STATE IMMUNITY FROM SUIT

9. Discuss the basis of the doctrine of State immunity from suit.

Held: The basic postulate enshrined in the Constitution that "**[t]he State may not be sued without its consent**," reflects nothing less than a **recognition of the sovereign character of the State and an express affirmation of the unwritten rule effectively insulating it from the jurisdiction of courts. It is based on the very essence of sovereignty**. As has been aptly observed by Justice Holmes, a sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that **there can be no legal right as against the authority that makes the law on which the right depends**. True, the doctrine, not too infrequently, is derisively called "the royal prerogative of dishonesty" because it grants the state the prerogative to defeat any legitimate claim against it by simply invoking its non-suability. We have had occasion to explain in its defense, however, **that a continued adherence to the doctrine of non-suability cannot be deplored, for the loss of governmental efficiency and the obstacle to the performance of its multifarious functions would be far greater in severity than the inconvenience that may be caused private parties**, if such fundamental principle is to be abandoned and the availability of judicial remedy is not to be accordingly restricted. (***Department of Agriculture v. NLRC,*** 227 SCRA 693, Nov. 11, 1993 [Vitug])

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10.Is the rule absolute, i.e., that the State may not be sued at all? How may consent of the State to be sued given?

Held: The rule, in any case, is not really absolute for it does not say that the state may not be sued under any circumstances. On the contrary, as correctly phrased, the doctrine only conveys, "the state may not be sued without its consent;" its clear import then is that the State may at times be sued. The State's consent may be given either **expressly or impliedly**. *EXPRESS CONSENT* may be made through a **general law** *(i.e., **Commonwealth Act No. 327**, as amended by Presidential Decree No. 1445 [Sections 49-50], which requires that all money claims against the government must first be filed with the Commission on Audit which must act upon it within sixty days. Rejection of the claim will authorize the claimant to elevate the matter to the Supreme Court on certiorari and, in effect, sue the State thereby)* or a **special law**. In this jurisdiction, the general law waiving the immunity of the state from suit is found in ***Act No. 3083***, where **the Philippine government "consents and submits to be sued upon any money claim involving liability arising from contract, express or implied, which could serve as a basis of civil action between the private parties**." *IMPLIED CONSENT*, on the other hand, is conceded when the **State itself commences litigation, thus opening itself to a counterclaim or when it enters into a contract**. In this situation, the government is deemed to have descended to the level of the other contracting party and to have divested itself of its sovereign immunity. This rule x x x is not, however, without qualification. Not all contracts entered into by the government operate as a waiver of its non-suability; distinction must still be made between one which is executed in the exercise of its **sovereign function** and another which is done in its **proprietary capacity**.

In ***United States of America v. Ruiz*** (136 SCRA 487), where the questioned transaction dealt with the improvements on the wharves in the naval installation at Subic Bay, we held:

> "The traditional rule of immunity exempts a State from being sued in the courts of another State without its consent or waiver. This rule is a necessary consequence of the principle of independence and equality of States. However, the rules of International Law are not petrified; they are constantly developing and evolving. And because the activities of states

have multiplied, it has been necessary to distinguish them - between sovereign and governmental acts *(jure imperii)* and private, commercial and proprietary acts *(jure gestionis).* The result is that **State immunity now extends only to acts *jure imperii***. The restrictive application of State immunity is now the rule in the United States, the United Kingdom and other states in Western Europe.

X x x

The restrictive application of State immunity is proper only when the proceedings arise out of **commercial transactions** of the foreign sovereign, **its commercial activities or economic affairs**. Stated differently, **a State may be said to have descended to the level of an individual and can thus be deemed to have tacitly given its consent to be sued only when it enters into business contracts. It does not apply where the contracts relate to the exercise of its sovereign functions**. In this case the projects are an integral part of the naval base which is devoted to the defense of both the United States and the Philippines, indisputably a function of the government of the highest order; they are not utilized for nor dedicated to commercial or business purposes."

(***Department of Agriculture v. NLRC,*** 227 SCRA 693, Nov. 11, 1993 [Vitug])

11.When is a suit against a public official deemed to be a suit against the State? Discuss.

Held: 1. The doctrine of state immunity from suit applies to complaints filed against public officials for **acts done in the performance of their duties**. The rule is that the suit must be regarded as one against the State where the **satisfaction of the judgment against the public official concerned will require the State itself to perform a positive act, such as appropriation of the amount necessary to pay the damages awarded to the plaintiff**.

The rule does not apply where the public official is charged in his official capacity for acts that are unlawful and injurious to the rights of others. Public officials are not exempt, in their personal capacity, from liability arising from **acts committed in bad faith**.

Neither does it apply where the public official is clearly being **sued not in his official capacity but in his personal capacity**, although the acts complained of may have been committed while he occupied a public position. (***Amado J. Lansang v. CA,*** *G.R. No. 102667, Feb. 23, 2000, 2nd Div. [Quisumbing]*)

2. As early as 1954, this Court has pronounced that an officer cannot shelter himself by the plea that he is a public agent acting under the color of his office when his acts are wholly without authority. Until recently in 1991 (*Chavez v. Sandiganbayan*, 193 SCRA 282 [1991]), this doctrine still found application, this Court saying that immunity from suit cannot institutionalize irresponsibility and non-accountability nor grant a privileged status not claimed by any other official of the Republic. (***Republic v. Sandoval***, 220 SCRA 124, March 19, 1993, En Banc [Campos, Jr.])

12.State instances when a suit against the State is proper.

Held: Some instances when a suit against the State is proper are:

1) When the **Republic is sued by name**;

2) When the suit is **against an unincorporated government agency**;
3) When the suit is on its face against a government officer but the case is such that **ultimate liability will belong not to the officer but to the government**.

(***Republic v. Sandoval***, 220 SCRA 124, March 19, 1993, En Banc [Campos, Jr.])

13.Has the government waived its immunity from suit in the Mendiola massacre, and, therefore, should indemnify the heirs and victims of the Mendiola incident? Consequently, is the suit filed against the Republic by petitioners in said case really a suit against the State?

Held: Petitioners x x x advance the argument that the State has impliedly waived its sovereign immunity from suit. It is their considered view that by the recommendation made by the Commission for the government to indemnify the heirs and victims of the Mendiola incident and by the public addresses made by then President Aquino in the aftermath of the killings, the State has consented to be sued.

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This is not a suit against the State with its consent.

Firstly, the **recommendation** made by the Commission regarding indemnification of the heirs of the deceased and the victims of the incident by the government **does not in any way mean that liability automatically attaches to the State**. It is important to note that A.O. 11 expressly states that the purpose of creating the Commission was to have a body that will conduct an "investigation of the disorder, deaths and casualties that took place." In the exercise of its functions, A.O. 11 provides guidelines, and what is relevant to Our discussion reads:

> "1. Its conclusions regarding the existence of probable cause for the commission of any offense and of the persons probably guilty of the same shall be sufficient compliance with the rules on preliminary investigation and the charges arising therefrom may be filed directly with the proper court."

In effect, **whatever may be the findings of the Commission, the same shall only serve as the cause of action**, in the event that any party decides to litigate his/her claim. Therefore, the Commission is merely a **preliminary venue**. The Commission is not the end in itself. **Whatever recommendation it makes cannot in any way bind the State immediately, such recommendation not having become final and executory. This is precisely the essence of it being a FACT-FINDING BODY**.

Secondly, whatever acts or utterances that then President Aquino may have done or said, the same are not tantamount to the State having waived its immunity from suit. The President's act of joining the marchers, days after the incident, does not mean that there was an admission by the State of any liability. In fact to borrow the words of petitioner x x x, "it was an **act of solidarity by the government with the people**." Moreover, petitioners rely on President Aquino's speech promising that the government would address the grievances of the rallyists. By this alone, it cannot be inferred that the State has admitted any liability, much less can it be inferred that it has consented to the suit.

Although consent to be sued may be given impliedly, still it cannot be maintained that such consent was given considering the circumstances obtaining in the instant case.

Thirdly, the case does not qualify as a suit against the State.

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While the Republic in this case is sued by name, the **ultimate liability does not pertain to the government**. Although the military officers and personnel, then party defendants, were discharging their official functions when the incident occurred, **their functions ceased to be official the moment they EXCEEDED THEIR AUTHORITY**. Based on the Commission findings, **there was lack of justification by the government forces in the use of firearms**. Moreover, the members of the police and military crowd dispersal units committed a prohibited act under B.P. Blg. 880 as there was unnecessary firing by them in dispersing the marchers.

As early as 1954, this Court has pronounced that **an officer cannot shelter himself by the plea that he is a public agent acting under the color of his office when his acts are wholly without authority.** Until recently in 1991 (***Chavez v. Sandiganbayan***, 193 SCRA 282 [1991]), this doctrine still found application, this Court saying that **immunity from suit cannot institutionalize irresponsibility and non-accountability nor grant a privileged status not claimed by any other official of the Republic**. The military and police forces were deployed to ensure that the rally would be peaceful and orderly as well as to guarantee the safety of the very people that they are duty-bound to protect. However, the facts as found by the trial court showed that they fired at the unruly crowd to disperse the latter.

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While it is true that nothing is better settled than the general rule that a sovereign state and its political subdivisions cannot be sued in the courts except when it has given its consent, it cannot be invoked by both the military officers to release them from any liability, and by the heirs and victims to demand indemnification from the government. The principle of state immunity from suit does not apply, as in this case, when the relief demanded by the suit requires no affirmative official action on the part of the State nor 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.* This Court has made it quite clear that even a "*high position in the government does not confer a license to persecute or recklessly injure another*."

The inescapable conclusion is that the State cannot be held civilly liable for the deaths that followed the incident. Instead, the liability should fall on the named defendants in the lower court. In line with the ruling of this Court in *Shauf v. Court of Appeals* (191 SCRA 713 [1990]), **herein public officials, having been found to have acted beyond the scope of their authority, may be held liable for damages**. (***Republic v. Sandoval***, 220 SCRA 124, March 19, 1993, En Banc [Campos, Jr.])

CITIZENSHIP

14.To what citizenship principle does the Philippines adhere to? Explain, and give illustrative case.

Held: The Philippine law on citizenship adheres to the principle of ***jus sanguinis***. Thereunder, **a child follows the nationality or citizenship of the parents regardless of the place of his/her birth**, as opposed to the doctrine of ***jus soli*** which determines nationality or citizenship on the basis of **place of birth**.

Private respondent Rosalind Ybasco Lopez was born on May 16, 1934 in Napier Terrace, Broome, Western Australia, to the spouses, Telesforo Ybasco, a Filipino citizen and native of Daet, Camarines Norte, and Theresa Marquez, an Australian. Historically, this was a year before the 1935 Constitution took into effect and at that time, what served as the Constitution of the Philippines were the principal organic acts by which the United States governed the country. These were the Philippine Bill of July 1, 1902 and the Philippine Autonomy Act of August 29, 1916, also known as the Jones Law.

Among others, these laws defined who were deemed to be citizens of the Philippine Islands. x x x

Under both organic acts, all inhabitants of the Philippines who were Spanish subjects on April 11, 1899 and resided therein including their children are deemed to be Philippine citizens. Private respondent's father, Telesforo Ybasco, was born on January 5, 1879 in Daet, Camarines Norte, a fact duly evidenced by a certified true copy of an entry in the Registry of Births. Thus, under the Philippine Bill of 1902 and the Jones Law, Telesforo Ybasco was deemed to be a Philippine citizen. **By virtue of the same laws, which were the laws in force at the time of her birth, Telesforo's daughter, herein private respondent Rosalind Ybasco Lopez, is likewise a citizen of the Philippines**.

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The signing into law of the 1935 Philippine Constitution has established the principle of *jus sanguinis* as basis for the acquisition of Philippine citizenship x x x. So also, the principle of *jus sanguinis,* which confers citizenship by virtue of blood relationship, was subsequently retained under the 1973 and 1987 Constitutions. **Thus, the herein private respondent, Rosalind Ybasco Lopez, is a Filipino citizen, having been born to a Filipino father. The fact of her being born in Australia is not tantamount to her losing her Philippine citizenship. If Australia follows the principle of jus soli, then at most, private respondent can also claim Australian citizenship resulting to her possession of dual citizenship**. (***Valles v. COMELEC***, 337 SCRA 543, Aug. 9, 2000, En Banc [Purisima])

15.What are the ways of acquiring citizenship? Discuss.

Held: There are two ways of acquiring citizenship: (1) **by birth**, and (2) by **naturalization**. These ways of acquiring citizenship correspond to the two kinds of citizens: the natural-born citizen, and the naturalized citizen. A person, who at the time of his birth is a citizen of a particular country, is a natural-born citizen thereof.

As defined in the x x x Constitution, natural-born citizens "are those citizens of the Philippines from birth without having to perform any act to acquire or perfect his Philippine citizenship."

On the other hand, naturalized citizens are those who have become Filipino citizens through naturalization, generally under ***Commonwealth Act No. 473***, otherwise known as the ***Revised Naturalization Law***, which repealed the former Naturalization Law (Act No. 2927), and by ***Republic Act No. 530***.

(***Antonio Bengson III v. HRET***, G.R. No. 142840, May 7, 2001, En Banc [Kapunan])

16.To be naturalized, what must an applicant prove? When and what are the conditions before the decision granting Philippine citizenship becomes executory?

Held: To be naturalized, an applicant has to prove that he **possesses all the qualifications and none of the disqualifications** provided by law to become a Filipino citizen. The decision granting Philippine citizenship becomes executory only after two (2) years from its promulgation when the court is satisfied that during the intervening period, the applicant has **(1) not left the Philippines**; **(2)** has **dedicated himself to a lawful calling or profession**; **(3)** has **not been convicted of any offense or violation of government promulgated rules**; or **(4) committed any act prejudicial to the interest of the nation or contrary to any government announced policies** *(Section 1, R.A. 530).* (***Antonio Bengson III v. HRET***, G.R. No. 142840, May 7, 2001, En Banc [Kapunan])

17.What QUALIFICATIONS must be possessed by an applicant for naturalization?

Held: ***Section 2***, ***Act 473*** provides the following *QUALIFICATIONS*:

(a) He must be **not less than 21 years of age on the day of the hearing** of the petition;
(b) He must have **resided in the Philippines for a continuous period of not less than ten years**;
(c) He must be of **good moral character and believes in the principles underlying the Philippine Constitution**, and must have **conducted himself in a proper and irreproachable manner during the entire period of his residence** in the Philippines in his relation with the constituted government as well as with the community in which he is living;
(d) He must **own real estate in the Philippines worth not less than five thousand pesos**, Philippine currency, or must have some **known lucrative trade**, **profession**, or **lawful occupation**;
(e) He must be **able to speak and write English or Spanish and any of the principal languages**; and
(f) He must have **enrolled his minor children of school age, in any of the public schools or private schools recognized by the Bureau of Private Schools of the Philippines where Philippine history, government and civic are taught or prescribed as part of the school curriculum, during the entire period of the residence in the Philippines required of him prior to the hearing** of his petition for naturalization as Philippine citizen.

(***Antonio Bengson III v. HRET***, G.R. No. 142840, May 7, 2001, En Banc [Kapunan])

18.What are the DISQUALIFICATIONS under Section 4, Act 473, in an application for naturalization?

Held: ***Section 4, Act 473***, provides the following *DISQUALIFICATIONS*:

(a) He must **not be opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines** opposing all organized governments;
(b) He must **not be defending or teaching the necessity or propriety of violence, personal assault, or assassination for the success and predominance of their ideas**;
(c) He must **not be a polygamist or believer in the practice** of polygamy;
(d) He must **not have been convicted of any crime involving moral turpitude**;
(e) He must **not be suffering from mental alienation or incurable contagious diseases**;

(f) He must have, during the period of his residence in the Philippines (or **not less than six months before filing his application**), **mingled socially with the Filipinos, or who have not evinced a sincere desire to learn and embrace the customs, traditions and ideals** of the Filipinos;
(g) He must **not be a citizen or subject of a nation with whom the Philippines is at war, during the period of such war**;
(h) He must **not be a citizen or subject of a foreign country whose laws do not grant Filipinos the right to become naturalized citizens or subjects thereof**.

(***Antonio Bengson III v. HRET***, G.R. No. 142840, May 7, 2001, En Banc [Kapunan])

19.Can a legitimate child born under the 1935 Constitution of a Filipino mother and an alien father validly elect Philippine citizenship fourteen (14) years after he has reached the age of majority?

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Held: Under ***Article IV, Section 1(3)*** of the ***1935 Constitution***, the citizenship of a legitimate child, born of a Filipino mother and an alien father, followed the citizenship of the father unless, upon reaching the age of majority, the child elected Philippine citizenship. ***C.A. No. 625*** which was enacted pursuant to Section 1(3), Article IV of the 1935 Constitution, prescribes the procedure that should be followed in order to make a valid election of Philippine citizenship. However, the 1935 Constitution and C.A. No. 625 did not prescribe a time period within which the election of Philippine citizenship should be made. The 1935 Charter only provides that the election should be made "**upon reaching the age of majority**." The age of majority then commenced upon reaching twenty-one (21) years. In the opinions of the Secretary of Justice on cases involving the validity of election of Philippine citizenship, this dilemma was resolved by basing the time period on the decisions of this Court prior to the effectivity of the 1935 Constitution. In these decisions, the proper period for electing Philippine citizenship was, in turn, based on the pronouncements of the Department of State of the United States Government to the effect that the election should be made within a "**reasonable time**" after attaining the age of majority. The phrase "reasonable time" has been interpreted to mean that the **election should be made within three (3) years from reaching the age of majority**.

The span of fourteen (14) years that lapsed from the time that person reached the age of majority until he finally expressed his intention to elect Philippine citizenship *is clearly way beyond the contemplation of the requirement of electing "upon reaching the age of majority."*

Philippine citizenship can never be treated like a commodity that can be claimed when needed and suppressed when convenient. One who is privileged to elect Philippine citizenship has only an inchoate right to such citizenship. As such, he should avail of the right with fervor, enthusiasm and promptitude. (***Re: Application for Admission to the Philippine Bar, Vicente D. Ching***, Bar Matter No. 914, Oct. 1, 1999, En Banc [Kapunan])

20.How may Philippine citizenship be renounced? Is the application for an alien certificate of registration, and the possession of foreign passport, tantamount to acts of renunciation of Philippine citizenship?

Held: Petitioner also contends that even on the assumption that the private respondent is a Filipino citizen, she has nonetheless renounced her Philippine citizenship. To buttress this contention, petitioner cited private

respondent's application for an alien Certificate of Registration (ACR) and Immigrant Certificate of Residence (ICR), on September 19, 1988, and the issuance to her of an Australian passport on March 3, 1988.

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In order that citizenship may be lost by renunciation, such **renunciation must be EXPRESS**. Petitioner's contention, that the application of private respondent for an alien certificate of registration, and her Australian passport, is bereft of merit. This issue was put to rest in the case of ***Aznar v. COMELEC*** (185 SCRA 703 [1990]) and in the more recent case of ***Mercado v. Manzano and COMELEC*** (G.R. No. 135083, 307 SCRA 630, May 26, 1999).

In the case of *Aznar*, the Court ruled that the **mere fact that he is an American did not mean that he is no longer a Filipino**, and that an **application for an alien certificate of registration was not tantamount to renunciation of his Philippine citizenship**.

10 And, in ***Mercado v. Manzano and COMELEC***, it was held that the fact that respondent Manzano was registered as an American citizen in the Bureau of Immigration and Deportation and was holding an American passport on April 22, 1997, only a year before he filed a certificate of candidacy for vice-mayor of Makati, **were just assertions of his American nationality** before the termination of his American citizenship.

Thus, the mere fact that private respondent Rosalind Ybasco Lopez was a holder of an Australian passport and had an alien certificate of registration are not acts constituting an effective renunciation of citizenship and do not militate against her claim of Filipino citizenship. **For renunciation to effectively result in the loss of citizenship, the same must be express**. As held by this Court in the aforecited case of *Aznar*, an application for an alien certificate of registration does not amount to an express renunciation or repudiation of one's citizenship. The application of the herein private respondent for an alien certificate of registration, and her holding of an Australian passport, as in the case of *Mercado v. Manzano,* were **mere acts of assertion of her Australian citizenship before she effectively renounced the same**. Thus, at the most, private respondent had dual citizenship – she was an Australian and a Filipino, as well.

Moreover, under ***Commonwealth Act 63***, **the fact that a child of Filipino parent/s was born in another country has not been included as a ground for losing one's Philippine citizenship**. Since private respondent did not lose or renounce her Philippine citizenship, petitioner's claim that respondent must go through the process of repatriation does not hold water. (***Valles v. COMELEC***, 337 SCRA 543, Aug. 9, 2000, En Banc [Purisima])

21.How may Filipino citizens who lost their citizenship REACQUIRE the same?

Answer: Filipino citizens who have lost their citizenship may x x x reacquire the same in the manner provided by law. ***Commonwealth Act No. 63*** enumerates the three modes by which Philippine citizenship may be reacquired by a former citizen: **(1)** by **naturalization**, **(2)** by **repatriation**, and **(3)** by **direct act of Congress**. (***Frivaldo v. COMELEC***, 257 SCRA 727, June 28, 1996, En Banc [Panganiban]; ***Antonio Bengson III v. HRET***, G.R. No. 142840, May 7, 2001, En Banc [Kapunan])

22.Distinguish naturalization from repatriation.

Held: *NATURALIZATION* is a **mode for both acquisition and reacquisition** of Philippine citizenship. As a *mode of initially acquiring* Philippine citizenship, naturalization is governed by ***Commonwealth Act No. 473****, as amended*. On the other hand, naturalization as a *mode for reacquiring* Philippine citizenship is governed by ***Commonwealth Act No. 63*** (*An Act Providing for the Ways in Which Philippine Citizenship May Be Lost or Reacquired* [1936]). Under this law, **a former Filipino citizen who wishes to reacquire Philippine citizenship must possess certain qualifications and none of the disqualifications mentioned in Section 4 of C.A. 473**.

REPATRIATION, on the other hand, may be had under various statutes by those who lost their citizenship due to: **(1) desertion** of the armed forces (*Section 4, C.A. No. 63*); **(2) service in the armed forces of the allied forces** in World War II (*Section 1, Republic Act No. 965 [1953]*); **(3) service in the Armed Forces of the United States** at any other time (*Sec. 1, Republic Act No. 2630 [1960]*); **(4) marriage of a Filipino woman to an alien** (*Sec. 1, Republic Act No. 8171 [1995]*); and **(5) political and economic necessity** *(Ibid).*

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As distinguished from the lengthy process of naturalization, *REPATRIATION* simply consists of the **taking of an oath of allegiance to the Republic of the Philippines and registering said oath in the Local Civil Registry of the place where the person concerned resides or last resided.**

In ***Angat v. Republic*** (314 SCRA 438 [1999]), we held:

> [P]arenthetically, under these statutes (referring to RA Nos. 965 and 2630), the person desiring to reacquire Philippine citizenship would **not** even be required to file a petition in court, and all that he had to do was to **take an oath of allegiance** to the Republic of the Philippines and to **register that fact with the civil registry** in the place of his residence or where he had last resided in the Philippines.

Moreover, repatriation results in the **recovery of the original nationality**. This means that a naturalized Filipino who lost his citizenship will be restored to his prior status as a naturalized Filipino citizen. On the other hand, if he was originally a natural-born citizen before he lost his Philippine citizenship, he will be restored to his former status as a natural-born Filipino. (***Antonio Bengson III v. HRET***, G.R. No. 142840, May 7, 2001, En Banc [Kapunan])

23.Who may validly avail of repatriation under R.A. No. 8171?

Held: ***R.A. No. 8171***, which has lapsed into law on October 23, 1995, is an act providing for the repatriation **(a)** of **Filipino women who have lost their Philippine citizenship by marriage to aliens** and **(b)** of **natural-born Filipinos who have lost their Philippine citizenship on account of political or economic necessity**. (***Gerardo Angat v. Republic***, G.R. No. 132244, Sept. 14, 1999 [Vitug])

24.Before what agency should application for repatriation under R.A 8171 be filed?

Held: Under ***Section 1*** of ***P.D. No. 725***, dated June 5, 1975, amending C.A. No. 63, an application for repatriation could be filed with the **Special Committee on Naturalization**, chaired by the **Solicitor General** with the **Undersecretary of Foreign Affairs** and the **Director of the National Intelligence Coordinating Agency** as the other members. Although the

agency was deactivated by virtue of President Corazon C. Aquino's Memorandum of March 27, 1987, it was not, however, abrogated. The Committee was reactivated on June 8, 1995. Hence, **the application should be filed with said Agency, not with the Regional Trial Court**. (***Gerardo Angat v. Republic***, G.R. No. 132244, Sept. 14, 1999 [Vitug])

25.May a natural-born Filipino who became an American citizen still be considered a natural-born Filipino upon his reacquisition of Philippine citizenship and, therefore, qualified to run for Congressman?

Held: *REPATRIATION* results in the **recovery of the original nationality**. This means that a naturalized Filipino who lost his citizenship will be **restored to his prior status** as a naturalized Filipino citizen. On the other hand, if he was originally a natural-born citizen before he lost his Philippine citizenship, he will be restored to his former status as a natural-born Filipino.

In respondent Cruz's case, he lost his Filipino citizenship when he
12 rendered service in the Armed Forces of the United States. However, he subsequently reacquired Philippine citizenship under ***R.A. No. 2630***, which provides:

> **Section 1**. Any person who had lost his Philippine citizenship by rendering service to, or accepting commission in, the Armed Forces of the United States, or after separation from the Armed Forces of the United States, acquired United States citizenship, **may reacquire Philippine citizenship by taking an oath of allegiance to the Republic of the Philippines and registering the same with Local Civil Registry in the place where he resides or last resided in the Philippines. The said oath of allegiance shall contain a renunciation of any other citizenship.**

Having thus taken the required oath of allegiance to the Republic and having registered the same in the Civil Registry of Mangatarem, Pangasinan in accordance with the aforecited provision, respondent Cruz is deemed to have recovered his original status as a natural-born citizen, a status which he acquired at birth as the son of a Filipino father. It bears stressing that the act of repatriation allows him to **recover, or return to, his original status before he lost his Philippine citizenship.**

Petitioner's contention that respondent Cruz is no longer a natural-born citizen since he had to perform an act to regain his citizenship is untenable. [T]he term "natural-born citizen" was first defined in Article III, Section 4 of the 1973 Constitution as follows:

> Section 4. A natural-born citizen is one who is a citizen of the Philippines from birth without having to perform any act to acquire or perfect his Philippine citizenship.

Two requisites must concur for a person to be considered as such: **(1)** a person must be a ***Filipino citizen from birth*** and **(2) he does not have to perform any act to obtain or perfect his Philippine citizenship**.

Under the 1973 Constitution definition, there were two categories of Filipino citizens which were not considered natural-born: (1) those who were naturalized and (2) those born before January 17, 1973 *(the date of effectivity of the 1973 Constitution)*, of Filipino mothers who, upon reaching the age of majority, elected Philippine citizenship. Those "naturalized citizens" were not considered natural-born obviously because they were not Filipinos at birth and had to perform an act to acquire Philippine citizenship. Those born of Filipino

mothers before the effectivity of the 1973 Constitution were likewise not considered natural-born because they also had to perform an act to perfect their Philippine citizenship.

The present Constitution, however, now considers those born of Filipino mothers before the effectivity of the 1973 Constitution and who elected Philippine citizenship upon reaching the majority age as natural-born. **After defining who are natural-born citizens, Section 2 of Article IV adds a sentence: "Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens." Consequently, only naturalized Filipinos are considered not natural-born citizens**. It is apparent from the enumeration of who are citizens under the present Constitution that there are only two classes of citizens: (1) those who are *natural-born* and (2) those who are *naturalized* in accordance with law. **A citizen who is not a naturalized Filipino, i.e., did not have to undergo the process of naturalization to obtain Philippine citizenship, necessarily is a natural-born Filipino**. Noteworthy is the absence in the said enumeration of a separate category for persons who, after losing Philippine citizenship, subsequently reacquire it. The reason therefore is clear: **as to such persons, they would either be natural-born or naturalized depending on the reasons for the loss of their citizenship and the mode prescribed by the applicable law for the reacquisition thereof**. As respondent Cruz was not required by law to go through naturalization proceedings in order to reacquire his citizenship, he is perforce a natural-born Filipino. As such, he possessed all the necessary qualifications to be elected as member of the House of Representatives. (***Antonio Bengson III v. HRET***, G.R. No. 142840, May 7, 2001, En Banc [Kapunan])

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26.Distinguish dual citizenship from dual allegiance.

Held: *DUAL CITIZENSHIP* arises when, **as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states**. For instance, such a situation may arise when a person whose parents are citizens of a state which adheres to the principle of *jus sanguinis* is born in a state which follows the doctrine of *jus soli.* Such a person, *ipso facto* and without any voluntary act on his part, is concurrently considered a citizen of both states.

DUAL ALLEGIANCE, on the other hand, refers to a situation in which **a person simultaneously owes, by some positive act, loyalty to two or more states. While dual citizenship is involuntary, dual allegiance is the result of an individual's volition**. (***Mercado v. Manzano***, 307 SCRA 630, May 26, 1999, En Banc [Mendoza])

27.What is the main concern of Section 5, Article IV, 1987 Constitution, on citizenship? Consequently, are persons with mere dual citizenship disqualified to run for elective local positions under Section 40(d) of the Local Government Code?

Held: In including ***Section 5*** in ***Article IV*** on citizenship, **the concern of the Constitutional Commission was not with dual citizens per se but with naturalized citizens who maintain their allegiance to their countries of origin even after their naturalization**. Hence, the phrase "**dual citizenship" in R.A. No. 7160, Section 40(d) (Local Government Code) must be understood as referring to "dual allegiance**." Consequently, persons with mere dual citizenship do not fall under this disqualification. *Unlike those with dual allegiance, who must, x x x, be subject to strict process with respect to the termination of their status, for candidates with*

dual citizenship, it should suffice if, upon the filing of their certificate of candidacy, they elect Philippine citizenship to terminate their status as persons with dual citizenship considering that their condition is the unavoidable consequence of conflicting laws of different states.

By electing Philippine citizenship, such candidates at the same time forswear allegiance to the other country of which they are also citizens and thereby terminate their status as dual citizens. It may be that, from the point of view of the foreign state and of its laws, such an individual has not effectively renounced his foreign citizenship. That is of no moment. (***Mercado v. Manzano***, G.R. No. 135083, 307 SCRA 630, May 26, 1999 [Mendoza])

28.Cite instances when a citizen of the Philippines may possess dual citizenship considering the citizenship clause (Article IV) of the Constitution.

Held:

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1) Those **born of Filipino fathers and/or mothers in foreign countries which follow the principle of *jus soli***;
2) Those **born in the Philippines of Filipino mothers and alien fathers if by the laws of their father's country such children are citizens of that country**;
3) Those who ***marry aliens if by the laws of the latter's country the former are considered citizens, unless by their act or omission they are deemed to have renounced Philippine citizenship***.

(***Mercado v. Manzano***, G.R. No. 135083, 307 SCRA 630, May 26, 1999 [Mendoza])

29.Does res judicata apply in cases hinging on the issue of citizenship?

Held: Petitioner maintains further that when citizenship is raised as an issue in judicial or administrative proceedings, the resolution or decision thereon is generally not considered res judicata in any subsequent proceeding challenging the same; citing the case of ***Moy Ya Lim Yao v. Commissioner of Immigration*** (41 SCRA 292 [1971]). He insists that the same issue of citizenship may be threshed out anew.

Petitioner is correct insofar as the general rule is concerned, *i.e.,* the principle of *res judicata* generally does not apply in cases hinging on the issue of citizenship. However, in the case of ***Burca v. Republic*** (51 SCRA 248 [1973]), an **exception** to this general rule was recognized. The Court ruled in that case that in order that the doctrine of *res judicata* may be applied in cases of citizenship, the following must be present:

1) a person's **citizenship be raised as a material issue in a controversy where said person is a party**;
2) the **Solicitor General or his authorized representative took active part in the resolution** thereof, and
3) the **finding on citizenship is affirmed by this Court**.

Although the general rule was set forth in the case of *Moy Ya Lim Yao,* the case did not foreclose the weight of prior rulings on citizenship. It elucidated that reliance may somehow be placed on these antecedent official findings, though not really binding, to make the effort easier or simpler. (***Valles v. COMELEC***, 337 SCRA 543, Aug. 9, 2000, En Banc [Purisima])

CIVILIAN SUPREMACY CLAUSE

30.The President issued Letter of Instruction (LOI) ordering the deployment of members of the Philippine Marines in the metropolis to conduct joint visibility patrols with members of the Philippine National Police in various shopping malls. Will this not violate the civilian supremacy clause under Section 3, Article II of the Constitution? Does this not amount to an "insidious incursion" of the military in the task of law enforcement in violation of Section 5(4), Article XVI of the Constitution?

Held: The deployment of the Marines does not constitute a breach of the civilian supremacy clause. The calling of the marines in this case constitutes **permissible use of military assets for civilian law enforcement**. x x x The **limited participation of the Marines** is evident in the provisions of the LOI itself, which **sufficiently provides the metes and bounds of the Marines' authority**. It is noteworthy that the **local police forces are the ones in charge of the visibility patrols at all times, the real authority belonging to the PNP**. In fact, **the Metro Manila Police Chief is the overall leader of the PNP-Philippine Marines joint visibility patrols**. Under the LOI, the police forces are tasked to brief or orient the soldiers on police patrol procedures. It is their responsibility to direct and manage the deployment of the Marines. It is, likewise, their duty to provide the necessary equipment to the Marines and render logistical support to these soldiers. **In view of the foregoing, it cannot be properly argued that military authority is supreme over civilian authority.**

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Moreover, the deployment of the Marines to assist the PNP does not unmake the civilian character of the police force. Neither does it amount to an "insidious incursion" of the military in the task of law enforcement in violation of Section 5[4], Article XVI of the Constitution.

In this regard, it is not correct to say that General Angelo Reyes, Chief of Staff of the AFP, by his alleged involvement in civilian law enforcement, has been virtually appointed to a civilian post in derogation of the aforecited provision. **The real authority in these operations, as stated in the LOI, is lodged with the head of a civilian institution, the PNP, and not with the military. Such being the case, it does not matter whether the AFP Chief actually participates in the Task Force Tulungan since he does not exercise any authority or control over the same. Since none of the Marines was incorporated or enlisted as members of the PNP, there can be no appointment to a civilian position to speak of**. Hence, the deployment of the Marines in the joint visibility patrols does not destroy the civilian character of the PNP.

Considering the above circumstances, **the Marines render nothing more than assistance required in conducting the patrols**. As such, there can be no "insidious incursion" of the military in civilian affairs nor can there be a violation of the civilian supremacy clause in the Constitution.

It is worth mentioning that *military assistance to civilian authorities in various forms persists in Philippine jurisdiction*. The Philippine experience reveals that it is not averse to requesting the assistance of the military in the implementation and execution of certain traditionally "civil" functions. x x x [S]ome of the *multifarious activities wherein military aid has been rendered*, exemplifying the activities that bring both the civilian and the military together in a relationship of cooperation, are:

1. Elections;
2. Administration of the Philippine National Red Cross;
3. Relief and rescue operations during calamities and disasters;

4. Amateur sports promotion and development;
5. Development of the culture and the arts;
6. Conservation of natural resources;
7. Implementation of the agrarian reform program;
8. Enforcement of customs laws;
9. Composite civilian-military law enforcement activities;
10. Conduct of licensure examinations;
11. Conduct of nationwide tests for elementary and high school students;
12. Anti-drug enforcement activities;
13. Sanitary inspections;
14. Conduct of census work;
15. Administration of the Civil Aeronautics Board;
16. Assistance in installation of weather forecasting devices;
17. Peace and order policy formulation in local government units.

This unquestionably constitutes a gloss on executive power resulting from a systematic, unbroken, executive practice, long pursued to the knowledge of Congress and, yet, never before questioned. What we have here is mutual support and cooperation between the military and civilian authorities, not derogation of civilian supremacy.

16

In the United States, where a long tradition of suspicion and hostility towards the use of military force for domestic purposes has persisted and whose Constitution, unlike ours, does not expressly provide for the power to call, *the use of military personnel by civilian law enforcement officers is allowed under circumstances similar to those surrounding the present deployment of the Philippine Marines*. (***IBP v. Hon. Ronaldo B. Zamora***, G.R. No. 141284, Aug. 15, 2000, En Banc [Kapunan])

THE RIGHT TO A BALANCED AND HEALTHFUL ECOLOGY

31.Is the right to a balanced and healthful ecology any less important than any of the civil and political rights enumerated in the Bill of Rights? Explain.

Held: While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, **it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation, the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind**. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come – generations which stand to inherit nothing but parched earth incapable of sustaining life. (***Oposa v. Factoran, Jr.***, 224 SCRA 792 [1993][Davide])

32.The Province of Palawan and the City of Puerto Princesa enacted ordinances prohibiting the catching and/or exportation of live tropical fishes, and imposing penalties for violations thereof, in order to stop the illegal practice of cyanide fishing which destroys the corals and other marine resources. Several fishermen

apprehended for violating the ordinances in question challenged their constitutionality contending that the ordinances violated their preferential right as subsistence and marginal fishermen to the use of our communal marine resources guaranteed by the Constitution, under Section 7, Article XIII. Will you sustain the challenge?

Held: **The "preferential right" of subsistence or marginal fishermen to the use of marine resources is not absolute. In accordance with the REGALIAN DOCTRINE, marine resources belong to the State, and, pursuant to the first paragraph of Section 2, Article XII of the Constitution, their "exploration, development and utilization x x x shall be under the full control and supervision of the State." Moreover, their mandated protection, development and conservation x x x imply certain restrictions on whatever right of enjoyment there may be in favor of anyone. What must be borne in mind is the State policy enshrined in the Constitution regarding the duty of the State to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature (Section 16, Article II**).

17

The ordinances in question are meant precisely to protect and conserve our marine resources to the end that their enjoyment may be guaranteed not only for the present generation, but also for the generations to come. The right to a balanced and healthful ecology carries with it a correlative duty to refrain from impairing the environment. (***Tano v. Gov. Salvador P. Socrates***, G.R. No. 110249, Aug. 21, 1997)

ACADEMIC FREEDOM

33.May a university validly revoke a degree or honor it has conferred to a student after the graduation of the latter after finding that such degree or honor was obtained through fraud?

Held: In *Garcia v. Faculty Admission Committee, Loyola School of Theology (68 SCRA 277 [1975]),* the SC pointed out that **academic freedom of institutions of higher learning is a freedom granted to "institutions of higher learning" which is thus given a "wide sphere of authority certainly extending to the choice of students." If such institution of higher learning can decide who can and who cannot study in it, it certainly can also determine on whom it can confer the honor and distinction of being its graduates**.

Where it is shown that the conferment of an honor or distinction was obtained through fraud, a university has the right to revoke or withdraw the honor or distinction it has thus conferred. This freedom of a university does not terminate upon the "graduation" of a student, for it is precisely the "graduation" of such a student that is in question.

(***UP Board of Regents v. Hon. Court of Appeals and Arokiaswamy William Margaret Celine***, G.R. No. 134625, Aug. 31, 1999, 2nd Div. [Mendoza])

34.What are the essential freedoms subsumed in the term "academic freedom"?

Held: In ***Ateneo de Manila University v. Capulong*** (G.R. No. 99327, 27 May 1993), this Court cited with approval the formulation made by Justice Felix Frankfurter of the essential freedoms subsumed in the term "academic freedom" encompassing **not only "the freedom to determine x x x on academic grounds who may teach, what may be taught (and) how it shall be taught," but likewise "who may be admitted to study." We have thus sanctioned its invocation by a school in rejecting students**

who are academically delinquent (***Tangonan v. Pano***, 137 SCRA 245 [1985]), **or a laywoman seeking admission to a seminary** (***Garcia v. Loyola School of Theology***, 68 SCRA 277 [1975]), ***or students violating "School Rules on Discipline***." (***Ateneo de Manila University v. Capulong***, *supra*.)
(***Isabelo, Jr. v. Perpetual Help College of Rizal, Inc.***, 227 SCRA 595-597, Nov. 8, 1993, En Banc [Vitug])

ECONOMIC POLICY

35.Does the Constitutional policy of a "self-reliant and independent national economy" rule out foreign competition?

Held: The constitutional policy of a "self-reliant and independent national economy" **does not necessarily rule out the entry of foreign investments, goods and services. It contemplates neither "economic seclusion" nor "mendicancy in the international community**."
18

Aside from envisioning a **trade policy based on "equality and reciprocity," the fundamental law encourages industries that are "competitive in both domestic and foreign markets," thereby demonstrating a clear policy against a sheltered domestic trade environment, but one in favor of the gradual development of robust industries that can compete with the best in the foreign markets**.
(***Tanada v. Angara***, 272 SCRA 18 [1997])

THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLES

36.Enumerate the Constitutional provisions recognizing and protecting the rights and interests of the indigenous peoples.

Held: The framers of the 1987 Constitution, looking back to the long destitution of our less fortunate brothers, fittingly saw the historic opportunity to actualize the ideals of people empowerment and social justice, and to reach out particularly to the marginalized sectors of society, including the indigenous peoples. They incorporated in the fundamental law several provisions recognizing and protecting the rights and interests of the indigenous peoples, to wit:

> ***Section 22***. The State recognizes and promotes the rights of indigenous peoples within the framework of national unity and development. *(**Article II** of the Constitution, entitled State Principles and Policies)*
>
> ***Section 5***. The State, subject to the provisions of the Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.
>
> The Congress may provide for the applicability of customary laws governing property rights and relations in determining the ownership and extent of ancestral domains. *(**Article XII** of the Constitution, entitled National Economy and Patrimony)*
>
> ***Section 1***. The Congress shall give the 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 inequalities 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. *(**Article XIII** of the Constitution, entitled Social Justice and Human Rights)*

Section 6. The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition and utilization of other natural resources, including lands of the public domain under lease or concession, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands. *(**Ibid**.)*

Section 17. The State shall recognize, respect, and protect the rights of cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies. *(**Article XIV** of the Constitution, entitled Education, Science, Technology, Arts, Culture, and Sports)*

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Section 12. The Congress may create a consultative body to advise the President on policies affecting indigenous cultural communities, the majority of the members of which shall come from such communities. *(**Article XVI** of the Constitution, entitled General Provisions)*

(Separate Opinion, Kapunan, J., in ***Isagani Cruz v. Secretary of Environment and Natural Resources***, et al., G.R. No. 135385, Dec. 6, 2000, En Banc)

*37.Discuss the Indigenous Peoples Rights Act (**R.A. No. 8371**).*

Held: ***Republic Act No. 8371*** is entitled "An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for Other Purposes." It is simply known as "***The Indigenous Peoples Rights Act of 1997***" or the IPRA.

The IPRA recognizes the existence of the indigenous cultural communities or indigenous peoples (ICCs/IPs) as a distinct sector in Philippine society. It grants these people the ownership and possession of their ancestral domains and ancestral lands, and defines the extent of these lands and domains. The ownership given is the indigenous concept of ownership under customary law which traces its origin to native title.

X x x

Within their ancestral domains and ancestral lands, the ICCs/IPs are given the right to self-governance and empowerment (Sections 13 to 20), *social justice and human rights* (Sections 21 to 28), **the right to preserve and protect their culture, traditions, institutions and community intellectual rights, and the right to develop their own sciences and technologies** (Sections 29 to 37). (Separate Opinion, Puno, J., in ***Isagani Cruz v. Secretary of DENR***, et al., G.R. No. 135385, Dec. 6, 2000, En Banc)

38.Define "indigenous peoples/indigenous cultural communities."

Held: 1. Drawing inspiration from both our fundamental law and international law, IPRA now employs the politically-correct conjunctive term "indigenous peoples/indigenous cultural communities" as follows:

> **Section 3**. *Definition of Terms*. - For purposes of this Act, the following terms shall mean:
>
> (i) **Indigenous peoples/Indigenous cultural communities**. - refer to **a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions, and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the majority of Filipinos**. Indigenous peoples shall likewise include peoples who are **regarded as indigenous on account of their descent from the populations which inhabited the country at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present State boundaries, who retain some or all of their own social, economic, cultural and political institutions, but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains** x x x.

20

(*Separate Opinion, Kapunan, J., in* ***Isagani Cruz v. Secretary of Environment and Natural Resources, et al.***, G.R. No. 135385, Dec. 6, 2000, En Banc)

2. The IPRA is a law dealing with a specific group of people, i.e., the Indigenous Cultural Communities (ICCs) or the Indigenous Peoples (IPs). The term "ICCs" is used in the 1987 Constitution while that of "IPs" is the contemporary international language in the International Labor Organization (ILO) Convention 169 *(Convention Concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989)* and the United Nations (UN) Draft Declaration on the Rights of Indigenous Peoples *(Guide to R.A. 8371, published by the Coalition for IPs Rights and Ancestral Domains in cooperation with the ILO and Bilance-Asia Department, p. 4 [1999] - hereinafter referred to as Guide to R.A. 8371).*

Indigenous Cultural Communities or Indigenous Peoples refer to a group of people or homogeneous societies who have continuously lived as an organized community on communally bounded and defined territory. These groups of people have actually occupied, possessed and utilized their territories under claim of ownership since time immemorial. They share common bonds of language, customs, traditions and other distinctive cultural traits, or, they, by their resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the Filipino majority. ICCs/IPs also include descendants of ICCs/IPs who inhabited the country at the time of conquest or colonization, who retain some or all of their own social, economic, cultural and political institutions but who may have been displaced from their traditional territories or who may have resettled outside their ancestral domains. (*Separate Opinion, Puno, J., in* ***Isagani Cruz v. Secretary of DENR, et al.***, G.R. No. 135385, Dec. 6, 2000, En Banc)

39.Define "ancestral domains" and "ancestral lands." Do they constitute part of the land of the public domain?

Held: Ancestral domains and ancestral lands are **the private property of indigenous peoples and do not constitute part of the land of the public domain**.

The IPRA grants to ICCs/IPs a distinct kind of ownership over ancestral domains and ancestral lands. Ancestral lands are not the same as ancestral domains. These are defined in Section 3(a) and (b) of the Indigenous Peoples Rights Act x x x.

Ancestral domains are **all areas belonging to ICCs/IPs held under a claim of ownership, occupied or possessed by ICCs/IPs by themselves or through their ancestors, communally or individually since time immemorial, continuously until the present, except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings with government and/or private individuals or corporations**. Ancestral domains comprise lands, inland waters, coastal areas, and natural resources
21 therein and includes ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable or not, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources. They also include lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators (***Section 3[a], IPRA***).

Ancestral lands are **lands held by the ICCs/IPs under the same conditions as ancestral domains except that these are limited to lands and that these lands are not merely occupied and possessed but are also utilized by the ICCs/IPs under claims of individual or traditional group ownership**. These lands include but are not limited to residential lots, rice terraces or paddies, private forests, swidden farms and tree lots *(Section 3[b], IPRA).* (*Separate Opinion, Puno, J., in* ***Isagani Cruz v. Secretary of DENR, et al.***, G.R. No. 135385, Dec. 6, 2000, En Banc)

40.How may ICCs/IPs acquire rights to their ancestral domains and ancestral lands?

Held: The rights of the ICCs/IPs to their ancestral domains and ancestral lands may be acquired in two modes: (1) by **native title** over both ancestral lands and domains; or (2) by **torrens title** under the Public Land Act and the Land Registration Act with respect to ancestral lands only. (*Separate Opinion, Puno, J., in* ***Isagani Cruz v. Secretary of DENR, et al.***, G.R. No. 135385, Dec. 6, 2000, En Banc)

41.What is the concept of "native title"? What is a Certificate of Ancestral Domain Title (CADT)?

Held: *NATIVE TITLE* refers to **ICCs/IPs preconquest rights to lands and domains held under a claim of private ownership as far back as memory reaches**. These lands are **deemed never to have been public lands and are indisputably presumed to have been held that way since before the Spanish Conquest**. The rights of ICCs/IPs to their ancestral *domains* (which also include ancestral *lands*) by virtue of native title shall be recognized and respected *(Section 11, IPRA).* **Formal recognition, when solicited by ICCs/IPs concerned, shall be embodied in a Certificate of Ancestral Domain Title** (CADT), **which shall recognize the title of the concerned ICCs/IPs over the territories identified and delineated**.

Like a torrens title, a CADT is evidence of private ownership of land by native title. *NATIVE TITLE,* however, is a right of private ownership peculiarly granted to ICCs/IPs over their ancestral lands and domains. The IPRA categorically declares **ancestral lands and domains held by native title as NEVER TO HAVE BEEN public land**. Domains and lands held under native title are, therefore, indisputably presumed to have never been public lands and are private.

The concept of native title in the IPRA was taken from the 1909 case of ***Carino v. Insular Government*** (41 Phil. 935 [1909], 212 U.S. 449, 53 L. Ed. 594). *Carino* firmly established a concept of private land title that existed irrespective of any royal grant from the State. (*Separate Opinion, Puno, J., in* ***Isagani Cruz v. Secretary of DENR, et al.***, G.R. No. 135385, Dec. 6, 2000, En Banc)

42.Discuss the concept of "jura regalia" and how it evolved in the Philippines. Does it negate native title to lands held in private ownership since time immemorial?

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Held: Generally, under the concept of ***jura regalia***, **private title to land must be traced to some grant, express or implied, from the Spanish Crown or its successors, the American Colonial government, and thereafter, the Philippine Republic**. The belief that the Spanish Crown is the origin of all land titles in the Philippines has persisted because title to land must emanate from some source for it cannot issue forth from nowhere.

In its broad sense, the term "***jura regalia***" refers to **royal grants, or those rights which the King has by virtue of his prerogatives**. In Spanish law, it refers to **a right which the sovereign has over anything in which a subject has a right of property** or *propriedad.* These were rights enjoyed during feudal times by the king as the sovereign.

The theory of the feudal system was that title to all lands was originally held by the King, and while the use of lands was granted out to others who were permitted to hold them under certain conditions, the King theoretically retained the title. By fiction of law, the King was regarded as the original proprietor of all lands, and the true and only source of title, and from him all lands were held. The theory of *jura regalia* was therefore nothing more than a natural fruit of conquest.

The Regalian theory, however, does not negate native title to lands held in private ownership since time immemorial. In the landmark case of *Carino v. Insular Government* (41 Phil. 935, 212 U.S. 449, 53 L. Ed. 594 [1909]), the United States Supreme Court, reversing the decision of the pre-war Philippine Supreme Court, made the following pronouncement:

> x x x Every presumption is and ought to be taken against the Government in a case like the present. It might, perhaps, be proper and sufficient to say that **when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land**. *x x x* (***Carino v. Insular Government***, supra note 75, at 941)

The above ruling institutionalized the recognition of the existence of native title to land, or ownership of land by Filipinos by virtue of possession

under a claim of ownership since time immemorial and independent of any grant from the Spanish Crown, as an **exception to the theory of *jura regalia.***

X x x

Carino was decided by the U.S. Supreme Court in 1909, at a time when decisions of the U.S. Court were binding as precedent in our jurisdiction *(Section 10, Philippine Bill of 1902).* We applied the *Carino* doctrine in the 1946 case of *Oh Cho v. Director of Lands* (75 Phil. 890 [1946]), where we stated that "**[a]ll lands that were not acquired from the Government either by purchase or by grant, belong to the public domain, but [a]n exception to the rule would be any land that should have been in the possession of an occupant and of his predecessors in interest since time immemorial, for such possession would justify the presumption that the land had never been part of the public domain or that it had been private property even before the Spanish conquest**. (*Separate Opinion, Kapunan, J., in **Isagani Cruz v. Secretary of DENR***, G.R. No. 135385, Dec. 6, 2000, En Banc)

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43.Distinguish ownership of land under native title and ownership by acquisitive prescription against the State.

Held: Ownership by virtue of *NATIVE TITLE* **presupposes that the land has been held by its possessor and his predecessor-in-interest in the concept of an owner since time immemorial**. The land is **not acquired from the State**, that is, Spain or its successor-in-interest, the United States and the Philippine Government. There has been **no transfer of title from the State as the land has been regarded as private in character as far back as memory goes**. In contrast, ownership of land by *ACQUISITIVE PRESCRIPTION* against the State **involves a conversion of the character of the property from alienable public land to private land, which presupposes a transfer of title from the State to a private person**. (*Separate Opinion, Kapunan, J., in **Isagani Cruz v. Secretary of DENR***, G.R. No. 135385, Dec. 6, 2000, En Banc)

THE RIGHT OF THE STATE TO RECOVER PROPERTIES UNLAWFULLY ACQUIRED BY PUBLIC OFFICIALS OR EMPLOYEES

44.Does the right of the State to recover properties unlawfully acquired by public officials or employees which may not be barred by prescription, laches, or estoppel under Section 15, Article XI of the Constitution apply to criminal cases for the recovery of ill-gotten wealth?

Held: ***Section 15***, ***Article XI***, 1987 Constitution provides that "*[T]he right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees as transferees, shall not be barred by prescription, laches, or estoppel*." From the **proceedings of the Constitutional Commission of 1986, however, it was clear that this provision applies only to civil actions for recovery of ill-gotten wealth, and not to criminal cases. Thus, the prosecution of offenses arising from, relating or incident to, or involving ill-gotten wealth contemplated in Section 15, Article XI of the Constitution may be barred by prescription**. (***Presidential Ad Hoc Fact-Finding Committee on Behest Loans, et al. v. Hon. Aniano A. Desierto, et al.***, G.R. No. 130140, Oct. 25, 1999, En Banc [Davide, C.J.])

STRUCTURE OF GOVERNMENT

THE DOCTRINE OF SEPARATION OF POWERS

45.May the Government, through the PCGG, validly bind itself to cause the dismissal of all cases against the Marcos heirs pending before the Sandiganbayan and other courts in a Compromise Agreement entered into between the former and the latter?

Held: This is a **direct encroachment on judicial power, particularly in regard to criminal jurisdiction**. Well-settled is the doctrine that **once a case has been filed before a court of competent jurisdiction, the matter of its dismissal or pursuance lies within the full discretion and control of the judge**. In a criminal case, **the manner in which the prosecution is handled, including the matter of whom to present as witnesses, may lie within the sound discretion of the government prosecutor; but the court decides, based on the evidence proffered, in what manner it will dispose of the case. Jurisdiction, once acquired by the trial court, is not lost despite a resolution, even by the justice secretary, to withdraw the information or to dismiss the complaint. The prosecution's motion to withdraw or to dismiss is not the least binding upon the court**. On the contrary, decisional rules require the trial court to make its own evaluation of the merits of the case, because granting such motion is equivalent to effecting a disposition of the case itself.

Thus, the PCGG, as the government prosecutor of ill-gotten wealth cases, cannot guarantee the dismissal of all such criminal cases against the Marcoses pending in the courts, for said dismissal is not within its sole power and discretion. (***Chavez v. PCGG***, 299 SCRA 744, Dec. 9, 1998 [Panganiban])

DELEGATION OF POWERS

46.What are the tests of a valid delegation of power?

Held: Empowering the COMELEC, an administrative body exercising quasi-judicial functions, to promulgate rules and regulations is a form of delegation of legislative authority x x x. However, **in every case of permissible delegation, there must be a showing that the delegation itself is valid**. It is valid only if the law **(a)** is **complete in itself**, *setting forth therein the policy to be executed, carried out, or implemented by the delegate*; and **(b) fixes a standard** – *the limits of which are sufficiently determinate and determinable* – **to which the delegate must conform in the performance of his functions**. A *SUFFICIENT STANDARD* is one which **defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be effected**. (***Santiago v. COMELEC***, 270 SCRA 106, March 19, 1997)

THE LEGISLATIVE DEPARTMENT

47.Discuss the nature of the Party-List system. Is it, without any qualification, open to all?

Held: 1. The party-list system is a **social justice tool designed not only to give more law to the great masses of our people who have less in life, but also to enable them to become veritable lawmakers themselves, empowered to participate directly in the enactment of laws designed to benefit them. It intends to make the marginalized and the underrepresented not merely passive recipients of the State's benevolence, but active participants in the mainstream of**

representative democracy. Thus, allowing all individuals and groups, including those which now dominate district elections, to have the same opportunity to participate in party-list elections would desecrate this lofty objective and mongrelize the social justice mechanism into an atrocious veneer for traditional politics. (***Ang Bagong Bayani – OFW Labor Party v. COMELEC***, G.R. No. 147589, June 26, 2001, En Banc [Panganiban])

2. Crucial to the resolution of this case is the fundamental social justice principle that those who have less in life should have more in law. **The party-list system is one such tool intended to benefit those who have less in life. It gives the great masses of our people genuine hope and genuine power. It is a message to the destitute and the prejudiced, and even to those in the underground, that change is possible. It is an invitation for them to come out of their limbo and seize the opportunity**.

Clearly, therefore, the Court cannot accept the submissions x x x that the party-list system is, without any qualification, open to all. Such position does not only weaken the electoral chances of the marginalized and underrepresented; it also prejudices them. It would gut the substance of the party-list system. Instead of generating hope, it would create a mirage. Instead of enabling the marginalized, it would further weaken them and aggravate their marginalization. (***Ang Bagong Bayani – OFW Labor Party v. COMELEC***, G.R. No. 147589, June 26, 2001, En Banc [Panganiban])

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48.Are political parties – even the major ones – prohibited from participating in the party-list elections?

Held: Under the ***Constitution*** and ***RA 7941***, private **respondents cannot be disqualified from the party-list elections, merely on the ground that they are political parties**. ***Section 5***, ***Article VI*** of the Constitution, provides that members of the House of Representatives may "be elected through a party-list system of registered *national, regional,* and sectoral *parties* or organizations.

Furthermore, under ***Sections 7*** and ***8***, ***Article IX [C]*** of the Constitution, *political parties may be registered under the party-list system*. X x x

During the deliberations in the Constitutional Commission, Comm. Christian S. Monsod pointed out that the participants in the party-list system may "be a regional party, a sectoral party, a national party, UNIDO, Magsasaka, or a regional party in Mindanao." x x x.

Indeed, Commissioner Monsod stated that the purpose of the party-list provision was to **open up the system**, in order to give a chance to parties that consistently place third or fourth in congressional district elections to win a seat in Congress. He explained: "**The purpose of this is to open the system. In the past elections, we found out that there were certain groups or parties that, if we count their votes nationwide, have about 1,000,000 or 1,500,000 votes. But they were always third or fourth place in each of the districts. So, they have no voice in the Assembly. But this way, they would have five or six representatives in the assembly even if they would not win individually in legislative districts. So, that is essentially the mechanics, the purpose and objective of the party-list system**."

For its part, ***Section 2*** of ***RA 7941*** also provides for "a party-list system of registered national, regional and sectoral *parties* or organizations or coalitions thereof, x x x." Section 3 expressly states that a "party" is "either a political party or a sectoral party or a coalition of parties." More to the point, the law defines "political party" as "an organized group of citizens advocating an

ideology or platform, principles and policies for the general conduct of government and which, as the most immediate means of securing their adoption, regularly nominates and supports certain of its leaders and members as candidates for public office."

Furthermore, ***Section 11*** of ***RA 7941*** leaves no doubt as to the participation of political parties in the party-list system. X x x

Indubitably, therefore, political parties – even the major ones – may participate in the party-list elections.

That political parties may participate in the party-list elections does not mean, however, that *any* political party – or any organization or group for that matter – may do so. **The requisite character of these parties or organizations must be consistent with the purpose of the party-list system, as laid down in the Constitution and RA 7941**. X x x (***Ang Bagong Bayani – OFW Labor Party v. COMELEC***, G.R. No. 147589, June 26, 2001, En Banc [Panganiban])

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49.Who are the marginalized and underrepresented sectors to be represented under the party-list system?

Held: The marginalized and underrepresented sectors to be represented under the party-list system are enumerated in ***Section 5*** of ***RA 7941*** x x x.

While the enumeration of marginalized and underrepresented sectors is **not exclusive**, it demonstrates the **clear intent of the law that not all sectors can be represented under the party-list system**. X x x

[W]e stress that the party-list system seeks to enable certain Filipino citizens – specifically those belonging to **marginalized and underrepresented sectors, organizations and parties** – to be elected to the House of Representatives. The assertion x x x that the party-list system is not exclusive to the marginalized and underrepresented disregards the clear statutory policy. Its claim that even the super-rich and overrepresented can participate desecrates the spirit of the party-list system.

Indeed, the law crafted to address the peculiar disadvantage of Payatas hovel dwellers cannot be appropriated by the mansion owners of Forbes Park. The interests of these two sectors are manifestly disparate; hence, the x x x position to treat them similarly defies reason and common sense. X x x

While the business moguls and the mega-rich are, numerically speaking, a tiny minority, they are neither marginalized nor underrepresented, for the stark reality is that their economic clout engenders political power more awesome than their numerical limitation. Traditionally, political power does not necessarily emanate from the size of one's constituency; indeed, it is likely to arise more directly from the number and amount of one's bank accounts.

It is ironic, therefore, that the marginalized and underrepresented in our midst are the majority who wallow in poverty, destitution and infirmity. It was for them that the party-list system was enacted – to give them not only genuine hope, but genuine power; to give them opportunity to be elected and to represent the specific concerns of their constituencies; and simply to give them a direct vote in Congress and in the larger affairs of the State. In its noblest sense, the party-list system truly empowers the masses and ushers a new hope for genuine change.

Verily, it invites those marginalized and underrepresented in the past – the farm hands, the fisher folk, the urban poor, even those in the underground movement – to come out and participate, as indeed many of them came out and participated during the last elections. The State cannot now disappoint and frustrate them by disabling the desecrating this social justice vehicle.

Because the marginalized and underrepresented had not been able to win in the congressional district elections normally dominated by traditional politicians and vested groups, 20 percent of the seats in the House of Representatives were set aside for the party-list system. In arguing that even those sectors who normally controlled 80 percent of the seats in the House could participate in the party-list elections for the remaining 20 percent, the OSG and the Comelec disregard the fundamental difference between the congressional district elections and the party-list elections.

As earlier noted, **the purpose of the party-list provision was to open up the system, in order to enhance the chance of sectoral groups and organizations to gain representation in the House of Representatives through the simplest scheme possible**. Logic shows that the system has been opened to those who have never gotten a foothold within it – those who cannot otherwise win in regular elections and who therefore need the "simplest scheme possible" to do so. Conversely, it would be illogical to open the system to those who have long been within it – those privileged sectors that have long dominated the congressional district elections.

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X x x

Verily, allowing the non-marginalized and overrepresented to vie for the remaining seats under the party-list system would not only DILUTE, but also PREJUDICE the chance of the marginalized and underrepresented, contrary to the intention of the law to enhance it. The party-list system is a tool for the benefit of the underprivileged; the law could not have given the same tool to others, to the prejudice of the intended beneficiaries. (***Ang Bagong Bayani – OFW Labor Party v. COMELEC***, G.R. No. 147589, June 26, 2001, En Banc [Panganiban])

50.Section 5(2), Article VI of the Constitution provides that "[t]he party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party-list." Does the Constitution require all such allocated seats to be filled up all the time and under all circumstances?

Held: The Constitution simply states that "[t]he party-list representatives shall constitute twenty *per centum* of the total number of representatives including those under the party-list."

X x x

We rule that a simple reading of Section 5, Article VI of the Constitution, easily conveys the equally simple message that **Congress was vested with the broad power to define and prescribe the mechanics of the party-list system of representation. The Constitution explicitly sets down only the percentage of the total membership in the House of Representatives reserved for party-list representatives**.

In the exercise of its constitutional prerogative, Congress enacted *RA 7941*. As said earlier, Congress declared therein a policy to promote "proportional representation" in the election of party-list representatives in order

to enable Filipinos belonging to the marginalized and underrepresented sectors to contribute legislation that would benefit them. **It however deemed it necessary to require parties, organizations and coalitions participating in the system to obtain at least two percent of the total votes cast for the party-list system in order to be entitled to a party-list seat. Those garnering more than this percentage could have "additional seats in proportion to their total number of votes." Furthermore, no winning party, organization or coalition can have more than three seats in the House of Representatives**. X x x

Considering the foregoing statutory requirements, it will be shown x x x that **Section 5(2), Article VI of the Constitution is not mandatory. It merely provides a *CEILING* for party-list seats in Congress**.

(***Veterans Federation Party v. COMELEC***, G.R. No. 136781, Oct. 6, 2000, En Banc [Panganiban])

51.What are the INVIOLABLE PARAMETERS to determine the winners in a Philippine-style party-list election?

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Held: To determine the winners in a Philippine-style party-list election, the Constitution and Republic Act No. 7941 mandate at least four inviolable parameters. These are:

First, THE TWENTY PERCENT ALLOCATION - **the combined number of ALL party-list congressmen shall not exceed twenty percent of the total membership of the House of Representatives, including those elected under the party list**.

Second, THE TWO PERCENT THRESHOLD - **only those garnering a minimum of two percent of the total valid votes cast for the party-list system are "qualified" to have a seat in the House of Representatives**.

Third, THE THREE SEAT LIMIT - ***each qualified party, regardless of the number of votes it actually obtained, is entitled to a maximum of three seats; that is, one "qualifying" and two additional seats***.

Fourth, PROPORTIONAL REPRESENTATION - **the additional seats which a qualified party is entitled to shall be computed "in proportion to their total number of votes**." (***Veterans Federation Party v. COMELEC***, G.R. No. 136781 and Companion Cases, Oct. 6, 2000, En Banc [Panganiban])

52.State the guidelines for screening Party-List Participants.

Held: In this light, the Court finds it appropriate to lay down the following guidelines, culled from the law and the Constitution, to assist the Comelec in its work.

FIRST, ***the political party, sector, organization or coalition must represent the marginalized and underrepresented groups identified in Section 5 of RA 7941. In other words, it must show – through its constitution, articles of incorporation, bylaws, history, platform of government and track record – that it represents and seeks to uplift marginalized and underrepresented sectors. Verily, majority of its membership should belong to the marginalized and underrepresented. And it must demonstrate that in a conflict of interest, it has chosen or is likely to choose the interest of such sectors***.

SECOND, while even major political parties are expressly allowed by RA 7941 and the Constitution to participate in the party-list system, they must comply with the declared statutory policy of enabling "Filipino citizens belonging to marginalized and underrepresented sectors x x x to be elected to the House of Representatives." **In other words, while they are not disqualified merely on the ground that they are political parties, they must show, however, that they represent the interests of the marginalized and underrepresented**. X x x.

THIRD, in view of the objections directed against the registration of Ang Buhay Hayaang Yumabong, which is allegedly a religious group, **the Court notes the express constitutional provision that the religious sector may not be represented in the party-list system**. x x x

Furthermore, the Constitution provides that "**religious denominations and sects shall not be registered**." *(Sec. 2 [5], Article IX [C])* The prohibition was explained by a member of the Constitutional Commission in this wise: "**[T]he prohibition is on any religious organization registering as a political party. I do not see any prohibition here against a priest running as a candidate. That is not prohibited here; it is the registration of a religious sect as a political party**."

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FOURTH, **a party or an organization must not be disqualified under Section 6 of RA 7941, which enumerates the grounds for disqualification as follows**:

1) It is a **religious sect or denomination, organization or association organized for religious purposes**;
2) It **advocates violence or unlawful means** to seek its goal;
3) It is a **foreign party or organization**;
4) It is **receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes**;
5) It **violates or fails to comply with laws, rules or regulations relating to elections**;
6) It **declares untruthful statements in its petition**;
7) It has **ceased to exist for at least one (1) year**; or
8) It **fails to participate in the last two (2) preceding elections or fails to obtain at least two per centum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it had registered**."

Note should be taken of paragraph 5, which disqualifies a party or group for violation of or failure to comply with election laws and regulations. These laws include ***Section 2*** of ***RA 7941***, which states that the party-list system seeks to "enable Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties x x x to become members of the House of Representatives." A party or organization, therefore, that does not comply with this policy must be disqualified.

FIFTH, **the party or organization must not be an adjunct of, or a project organized or an entity funded or assisted by, the government**. By the very nature of the party-list system, the party or organization must be a group of citizens, organized by citizens and operated by citizens. **It must be independent of the government**. The participation of the government or its officials in the affairs of a party-list candidate is not only **illegal and unfair** to other parties, but also **deleterious to the objective of the law**: to enable citizens belonging to marginalized and underrepresented sectors and organization to be elected to the House of Representatives.

SIXTH, **the party must not only comply with the requirements of the law; its nominees must likewise do so**. x x x

SEVENTH, **not only the candidate party or organization must represent marginalized and underrepresented sectors; so also must its nominees**. To repeat, under Section 2 of RA 7941, the nominees must be Filipino citizens "who belong to marginalized and underrepresented sectors, organizations and parties." **Surely, the interests of the youth cannot be fully represented by a retiree; neither can those of the urban poor or the working class, by an industrialist. To allow otherwise is to betray the State policy to give genuine representation to the marginalized and underrepresented**.

EIGHTH, x x x while lacking a well-defined political constituency, **the nominee must likewise be able to contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole**. x x x (***Ang Bagong Bayani – OFW Labor Party v. COMELEC***, G.R. No. 147589, June 26, 2001, En Banc [Panganiban])

30

53.Accused-appellant Congressman Romeo G. Jalosjos filed a motion before the Court asking that he be allowed to fully discharge the duties of a Congressman, including attendance at legislative sessions and committee meetings despite his having been convicted in the first instance of a non-bailable offense. He contended that his reelection being an expression of popular will cannot be rendered inutile by any ruling, giving priority to any right or interest – not even the police power of the State. Resolve.

Held: The immunity from arrest or detention of Senators and members of the House of Representatives x x x arises from a provision of the Constitution. The history of the provision shows that the privilege has always been granted in a restrictive sense. The provision granting an exemption as a special privilege cannot be extended beyond the ordinary meaning of its terms. It may not be extended by intendment, implication or equitable considerations.

The 1935 Constitution provided in its Article VI on the Legislative Department:

> Sec. 15. The Senators and Members of the House of Representatives shall in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the sessions of Congress, and in going to and returning from the same; x x x.

Because of the broad coverage of felony and breach of the peace, the exemption applied only to civil arrests. A congressman like the accused-appellant, convicted under Title Eleven of the Revised Penal Code could not claim parliamentary immunity from arrest. He was subject to the same general laws governing all persons still to be tried or whose convictions were pending appeal.

The 1973 Constitution broadened the privilege of immunity as follows:

> Article VIII, Sec. 9. A Member of the Batasang Pambansa shall, in all offenses punishable by not more than six years imprisonment, be privileged from arrest during his attendance at its sessions and in going to and returning from the same.

For offenses punishable by more than six years imprisonment, there was no immunity from arrest. The restrictive interpretation of immunity and the intent to confine it within carefully defined parameters is illustrated by the concluding portion of the provision, to wit:

> X x x but the Batasang Pambansa shall surrender the member involved to the custody of the law within twenty four hours after its adjournment for a recess or for its next session, otherwise such privilege shall cease upon its failure to do so.

The present Constitution adheres to the same restrictive rule minus the obligation of Congress to surrender the subject Congressman to the custody of the law. The requirement that he should be attending sessions or committee meetings has also been removed. For relatively minor offenses, it is enough that Congress is in session.

The accused-appellant argues that a member of Congress' function to attend sessions is underscored by Section 16(2), Article VI of the Constitution
31 which states that –

> (2) A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent Members in such manner, and under such penalties, as such House may provide.

However, the accused-appellant has not given any reason why he should be exempted from the operation of Section 11, Article VI of the Constitution. **The members of Congress cannot compel absent members to attend sessions if the reason for the absence is a legitimate one. The confinement of a Congressman charged with a crime punishable by imprisonment of more than six years is not merely authorized by law, it has constitutional foundations**.

Accused-appellant's reliance on the ruling in ***Aguinaldo v. Santos*** (212 SCRA 768, at 773 [1992]), which states, *inter alia,* that –

> The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. When the people have elected a man to office, it must be assumed that they did this with the knowledge of his life and character, and that they disregarded or forgave his fault or misconduct, if he had been guilty of any. It is not for the Court, by reason of such fault or misconduct, to practically overrule the will of the people.

will not extricate him from his predicament. **It can be readily seen x x x that the Aguinaldo case involves the administrative removal of a public officer for acts done PRIOR to his present term of office. It does not apply to imprisonment arising from the enforcement of criminal law. Moreover, in the same way that preventive suspension is not removal, confinement pending appeal is not removal. He remains a Congressman unless expelled by Congress or, otherwise, disqualified**.

One rationale behind confinement, whether pending appeal or after final conviction, is public self-defense. Society must protect itself. It also serves as an example and warning to others.

A person charged with crime is taken into custody for purposes of the administration of justice. As stated in ***United States v. Gustilo*** (19 Phil. 208, 212), **it is the injury to the public which State action in criminal law seeks to redress. It is not the injury to the complainant. After**

conviction in the Regional Trial Court, the accused may be denied bail and thus subjected to incarceration if there is risk of his absconding.

The accused-appellant states that the plea of the electorate which voted him into office cannot be supplanted by unfounded fears that he might escape eventual punishment if permitted to perform congressional duties outside his regular place of confinement.

It will be recalled that when a warrant for accused-appellant's arrest was issued, he fled and evaded capture despite a call from his colleagues in the House of Representatives for him to attend the sessions and to surrender voluntarily to the authorities. Ironically, it is now the same body whose call he initially spurned which accused-appellant is invoking to justify his present motion. This can not be countenanced because, x x x aside from its being contrary to well-defined Constitutional restrains; it would be a mockery of the aims of the State's penal system.

Accused-appellant argues that on several occasions, the Regional Trial
32 Court of Makati granted several motions to temporarily leave his cell at the Makati City Jail, for official or medical reasons x x x.

He also calls attention to various instances, after his transfer at the New Bilibid Prison in Muntinlupa City, when he was likewise allowed/permitted to leave the prison premises x x x.

There is no showing that the above privileges are peculiar to him or to a member of Congress. Emergency or compelling temporary leaves from imprisonment are allowed to all prisoners, at the discretion of the authorities or upon court orders.

What the accused-appellant seeks is not of an emergency nature. Allowing accused-appellant to attend congressional sessions and committee meetings for five (5) days or more in a week will virtually make him a free man with all the privileges appurtenant to his position. Such an aberrant situation not only elevates accused-appellant's status to that of a special class, it also would be a mockery of the purposes of the correction system. X x x

The accused-appellant avers that his constituents in the First District of Zamboanga del Norte want their voices to be heard and that since he is treated as *bona fide* member of the House of Representatives, the latter urges a co-equal branch of government to respect his mandate. He also claims that the concept of temporary detention does not necessarily curtail his duty to discharge his mandate and that he has always complied with the conditions/restrictions when he is allowed to leave jail.

We remain unpersuaded.

X x x

When the voters of his district elected the accused-appellant to Congress, they did so with full awareness of the limitations on his freedom of action. They did so with the knowledge that he could achieve only such legislative results which he could accomplish within the confines of prison. To give a more drastic illustration, if voters elect a person with full knowledge that he is suffering from a terminal illness, they do so knowing that at any time, he may no longer serve his full term in office. (***People v. Jalosjos***, 324 SCRA 689, Feb. 3, 2000, En Banc [Ynares-Santiago])

54.Discuss the objectives of Section 26(1), Article VI of the 1987 Constitution, that "[e]very bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof."

Held: The objectives of ***Section 26(1)***, ***Article VI*** of the ***1987 Constitution*** are:

1) To **prevent hodge-podge or log-rolling legislation**;
2) To **prevent surprise or fraud upon the legislature** by means of provisions in bills of which the titles gave no information, and which might therefore be overlooked and carelessly and unintentionally adopted; and
3) To **fairly apprise the people, through such publication of legislative proceedings as is usually made**, of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon by petition or otherwise if they shall so desire.

33

Section 26(1) of Article VI of the 1987 Constitution is sufficiently complied with where x x x the **title is COMPREHENSIVE enough to embrace the general objective it seeks to achieve, and if all the parts of the statute are RELATED and GERMANE to the subject matter embodied in the title or so long as the same are NOT INCONSISTENT with or foreign to the general subject and title**. (***Agripino A. De Guzman, Jr., et al. v. COMELEC***, G.R. No. 129118, July 19, 2000, en Banc [Purisima])

55.Section 44 of R.A. No. 8189 (The Voter's Registration Act of 1996) which provides for automatic transfer to a new station of any Election Officer who has already served for more than four years in a particular city or municipality was assailed for being violative of Section 26(1) of Article VI of the Constitution allegedly because it has an isolated and different subject from that of RA 8189 and that the same is not expressed in the title of the law. Should the challenge be sustained?

Held: ***Section 44*** of ***RA 8189*** **is not isolated considering that it is related and germane to the subject matter stated in the title of the law**. The title of RA 8189 is "The Voter's Registration Act of 1996" with a subject matter enunciated in the explanatory note as "AN ACT PROVIDING FOR A GENERAL REGISTRATION OF VOTERS, ADOPTING A SYSTEM OF CONTINUING REGISTRATION, PRESCRIBING THE PROCEDURES THEREOF AND AUTHORIZING THE APPROPRIATION OF FUNDS THEREFOR." **Section 44, which provides for the reassignment of election officers, is relevant to the subject matter of registration as it seeks to ensure the integrity of the registration process by providing guideline for the COMELEC to follow in the reassignment of election officers. It is not an alien provision but one which is related to the conduct and procedure of continuing registration of voters**. In this regard, it bears stressing that **the Constitution does not require Congress to employ in the title of an enactment, language of such precision as to mirror, fully index or catalogue, all the contents and the minute details therein**. (***Agripino A. De Guzman, Jr., et al. v. COMELEC***, G.R. No. 129118, July 19, 2000, En Banc [Purisima])

56.Do courts have the power to inquire into allegations that, in enacting a law, a House of Congress failed to comply with its own rules?

Held: The cases, both here and abroad, in varying forms of expression, **all deny to the courts the power to inquire into allegations that, in**

enacting a law, a House of Congress failed to comply with its own rules, in the absence of showing that there was a violation of a constitutional provision or the right of private individuals. In ***Osmena v. Pendatun*** (109 Phil. At 870-871), it was held: "At any rate, courts have declared that '**the rules adopted by deliberative bodies are subject to revocation, modification or waiver at the pleasure of the body adopting them.' And it has been said that 'Parliamentary rules are merely procedural, and with their observance, the courts have no concern. They may be waived or disregarded by the legislative body.' Consequently, 'mere failure to conform to parliamentary usage will not invalidate that action (taken by a deliberative body) when the requisite number of members have agreed to a particular measure**.'"

It must be realized that each of the three departments of our government has its separate sphere which the others may not invade without upsetting the delicate balance on which our constitutional order rests. Due regard for the working of our system of government, more than mere comity, compels reluctance on the part of the courts to enter upon an
34 inquiry into an alleged violation of the rules of the House. Courts must accordingly decline the invitation to exercise their power. (***Arroyo v. De Venecia***, 277 SCRA 268, Aug. 14, 1997 [Mendoza])

57.What is the Bicameral Conference Committee? Discuss the nature of its function and its jurisdiction.

Held: While it is true that a conference committee is the **mechanism for compromising differences between the Senate and the House**, it is **not limited in its jurisdiction to this question**. Its broader function is described thus:

A conference committee may deal generally with the subject matter or it may be limited to resolving the precise differences between the two houses. Even where the conference committee is not by rule limited in its jurisdiction, legislative custom severely limits the freedom with which new subject matter can be inserted into the conference bill. But occasionally a conference committee produces unexpected results, results beyond its mandate. These excursions occur even where the rules impose strict limitations on conference committee jurisdiction. This is symptomatic of the authoritarian power of conference committee. (***Philippine Judges Association v. Prado***, 227 SCRA 703, Nov. 11, 1993, En Banc [Cruz])

58.Discuss the Enrolled Bill Doctrine.

Held: ***Under the enrolled bill doctrine, the signing of H. Bill No. 7189 by the Speaker of the House and the President of the Senate and the certification by the secretaries of both Houses of Congress that it was passed on November 21, 1996 are conclusive of its due enactment***. *x* x x To be sure, there is no claim either here or in the decision in the EVAT cases (***Tolentino v. Secretary of Finance***) that **the enrolled bill embodies a conclusive presumption**. In one case (***Astorga v. Villegas***, 56 SCRA 714 [1974]) **we "went behind" an enrolled bill and consulted the Journal to determine whether certain provisions of a statute had been approved by the Senate**.

But, where as here there is no evidence to the contrary, this Court will respect the certification of the presiding officers of both Houses that a bill has been duly passed. Under this rule, this Court has refused to determine claims that the three-fourths vote needed to pass a

proposed amendment to the Constitution had not been obtained, because "a duly authenticated bill or resolution imports absolute verity and is binding on the courts." x x x

This Court has refused to even look into allegations that the enrolled bill sent to the President contained provisions which had been "surreptitiously" inserted in the conference committee x x x. (***Tolentino v. Secretary of Finance***)

It has refused to look into charges that an amendment was made upon the last reading of a bill in violation of Art. VI, Sec. 26(2) of the Constitution that, "upon the last reading of a bill, no amendment shall be allowed." (***Philippine Judges Ass'n v. Prado***, 227 SCRA 703, 710 [1993])

In other cases, this Court has denied claims that the tenor of a bill was otherwise than as certified by the presiding officers of both Houses of Congress.

35 The enrolled bill doctrine, as a rule of evidence, is well-established. It is cited with approval by text writers here and abroad. The enrolled bill rule rests on the following considerations:

> X x x. **As the President has no authority to approve a bill not passed by Congress, an enrolled Act in the custody of the Secretary of State, and having the official attestations of the Speaker of the House of Representatives, of the President of the Senate, and of the President of the United States, carries, on its face, a solemn assurance by the legislative and executive departments of the government, charged, respectively, with the duty of enacting and executing the laws, that it was passed by Congress. The respect due to coequal and independent departments requires the judicial department to act upon that assurance, and to accept, as having passed Congress, all bills authenticated in the manner stated; leaving the court to determine, when the question properly arises, whether the Act, so authenticated, is in conformity with the Constitution**. (***Marshall Field & Co. v. Clark***, 143 U.S. 649, 672, 36 L. Ed. 294, 303 [1891])

To overrule the doctrine now, x x x is to repudiate the massive teaching of our cases and overthrow an established rule of evidence. (***Arroyo v. De Venecia***, 277 SCRA 268, Aug. 14, 1997 [Mendoza])

59.When should the Legislative Journal be regarded as conclusive upon the courts, and why?

Held: The Journal is regarded as conclusive with respect to matters that are required by the Constitution to be recorded therein. With respect to other matters, in the absence of evidence to the contrary, the Journals have also been accorded conclusive effects. Thus, in ***United States v. Pons*** (34 Phil. 729, 735 [1916]], *quoting ex rel. Herron v. Smith*, 44 Ohio 348 [1886]), this Court spoke of the **imperatives of public policy for regarding the Journals as "public memorials of the most permanent character," thus: "They should be public, because all are required to conform to them; they should be permanent, that rights acquired today upon the faith of what has been declared to be law shall not be destroyed tomorrow, or at some remote period of time, by facts resting only in the memory of individuals**." X x x. (***Arroyo v. De Venecia***, 277 SCRA 268, Aug. 14, 1997 [Mendoza])

60.What matters are required to be entered on the Journal?

Held:

1) The **yeas and nays on the third and final reading** of a bill (**Art. VI, Sec. 26[2]**);
2) The **yeas and nays on any question, at the request of one-fifth of the members present** (Id., **Sec. 16[4]**);
3) The **yeas and nays upon repassing a bill over the President's veto** (Id., **Sec. 27[1]**); and
4) The **President's objection to a bill he had vetoed** (Id.).

(***Arroyo v. De Venecia***, 277 SCRA 268, Aug. 14, 1997 [Mendoza])

61.A disqualification case was filed against a candidate for Congressman before the election with the COMELEC. The latter failed to resolve that disqualification case before the election and that candidate won, although he was not yet proclaimed because of that pending disqualification case. Is the COMELEC now ousted of jurisdiction to resolve the pending disqualification case and, therefore, should dismiss the case, considering that jurisdiction is now vested with the House of Representatives Electoral Tribunal (HRET)?

Held: 1. In his first assignments of error, petitioner vigorously contends that after the May 8, 1995 elections, the COMELEC lost its jurisdiction over the question of petitioner's qualifications to run for member of the House of Representatives. He claims that jurisdiction over the petition for disqualification is exclusively lodged with the House of Representatives Electoral Tribunal (HRET). Given the yet-unresolved question of jurisdiction, petitioner avers that the COMELEC committed serious error and grave abuse of discretion in directing the suspension of his proclamation as the winning candidate in the Second Congressional District of Makati City. We disagree.

Petitioner conveniently confuses the distinction between an unproclaimed candidate to the House of Representatives and a member of the same. Obtaining the highest number of votes in an election does not automatically vest the position in the winning candidate. ***Section 17*** of ***Article VI*** of the ***1987 Constitution*** reads:

> *"The Senate and the House of Representatives shall have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns and qualifications of their respective Members*."

Under the above-stated provision, the electoral tribunal clearly assumes jurisdiction over all contests relative to the election, returns and qualifications of candidates for either the Senate or the House only when the latter become MEMBERS of either the Senate or the House of Representatives. A candidate who has not been proclaimed and who has not taken his oath of office cannot be said to be a member of the House of Representatives subject to Section 17 of Article VI of the Constitution. While the proclamation of a winning candidate in an election is ministerial, *B.P. Blg. 881 in conjunction with Sec. 6 of R.A. 6646 allows suspension of proclamation under circumstances mentioned therein*. Thus, petitioner's contention that "after the conduct of the election and (petitioner) has been established the winner of the electoral exercise from the moment of election, the COMELEC is automatically divested of authority to pass upon the question of qualification" finds no basis in law, because **even AFTER the elections the COMELEC is empowered by Section 6 (in relation to Section 7) of R.A. 6646 to continue to hear and decide questions relating to qualifications of candidates**. X x x.

Under the above-quoted provision, not only is a disqualification case against a candidate allowed to continue after the election (and does not oust the COMELEC of its jurisdiction), but his obtaining the highest number of votes will not result in the suspension or termination of the proceedings against him when the evidence of guilt is strong. While the phrase "when the evidence of guilt is strong" seems to suggest that the provisions of Section 6 ought to be applicable only to disqualification cases under Section 68 of the Omnibus Election Code, Section 7 of R.A. 6646 allows the application of the provisions of Section 6 to cases involving disqualification based on ineligibility under Section 78 of BP. Blg. 881. X x x. (***Aquino v. COMELEC***, 248 SCRA 400, Sept. 18, 1995, En Banc [Kapunan, J.])

2. As to the House of Representatives Electoral Tribunal's supposed assumption of jurisdiction over the issue of petitioner's qualifications after the May 8, 1995 elections, suffice it to say that **HRET's jurisdiction as the sole judge of all contests relating to the elections, returns and qualifications of members of Congress begins only after a candidate has become a member of the House of Representatives** (*Art. VI, Sec. 17, 1987 Constitution*). **Petitioner not being a member of the House of Representatives, it is obvious that the HRET at this point has no jurisdiction over the question**. (***Romualdez-Marcos v. COMELEC***, 248 SCRA 300, Sept. 18, 1995, En Banc [Kapunan, J.])

37

62.Will the rule be the same if that candidate wins and was proclaimed winner and already assumed office as Congressman?

Held: While the COMELEC is vested with the power to declare valid or invalid a certificate of candidacy, its refusal to exercise that power following the proclamation and assumption of the position by Farinas is a recognition of the jurisdictional boundaries separating the COMELEC and the Electoral Tribunal of the House of Representatives (HRET). Under Article VI, Section 17 of the Constitution, the HRET has sole and exclusive jurisdiction over all contests relative to the election, returns, and qualifications of members of the House of Representatives. **Thus, once a winning candidate has been proclaimed, taken his oath, and assumed office as a member of the House of Representatives, COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. Thus, the COMELEC's decision to discontinue exercising jurisdiction over the case is justifiable, in deference to the HRET's own jurisdiction and functions**.

X x x

Petitioner further argues that the HRET assumes jurisdiction only if there is a valid proclamation of the winning candidate. He contends that if a candidate fails to satisfy the statutory requirements to qualify him as a candidate, his subsequent proclamation is void *ab initio.* Where the proclamation is null and void, there is no proclamation at all and the mere assumption of office by the proclaimed candidate does not deprive the COMELEC at all of its power to declare such nullity, according to petitioner. **But x x x, in an electoral contest where the validity of the proclamation of a winning candidate who has taken his oath of office and assumed his post as congressman is raised, that issue is best addressed to the HRET. The reason for this ruling is self-evident, for it avoids duplicity of proceedings and a clash of jurisdiction between constitutional bodies, with due regard to the people's mandate**. (***Guerrero v. COMELEC***, 336 SCRA 458, July 26, 2000, En Banc [Quisumbing])

63.Is there an appeal from a decision of the Senate or House of Representatives Electoral Tribunal? What then is the remedy, if any?

Held: The Constitution mandates that the House of Representatives Electoral Tribunal and the Senate Electoral Tribunal shall each, respectively, be the ***sole*** judge of all contests relating to the election, returns and qualifications of their respective members.

The Court has stressed that "x x x **so long as the Constitution grants the HRET the power to be the sole judge of all contests relating to the election, returns and qualifications of members of the House of Representatives, any final action taken by the HRET on a matter within its jurisdiction shall, as a rule, not be reviewed by this Court. The power granted to the Electoral Tribunal x x x excludes the exercise of any authority on the part of this Court that would in any wise restrict it or curtail it or even affect the same**."

38 The Court did recognize, of course, its power of judicial review in exceptional cases. In *Robles v. HRET* (181 SCRA 780), the Court has explained that **while the judgments of the Tribunal are beyond judicial interference, the Court may do so, however, but only "in the exercise of this Court's so-called extraordinary jurisdiction x x x upon a determination that the Tribunal's decision or resolution was rendered without or in excess of its jurisdiction, or with grave abuse of discretion or paraphrasing** *Morrero* (***Morrero v. Bocar*** [66 Phil. 429]), **upon a clear showing of such arbitrary and improvident use by the Tribunal of its power as constitutes a denial of due process of law, or upon a demonstration of a very clear unmitigated error, manifestly constituting such grave abuse of discretion that there has to be a remedy for such abuse**."

The Court does not x x x venture into the perilous area of correcting perceived errors of independent branches of the Government; it comes in only when it has to vindicate a denial of due process or correct an abuse of discretion so grave or glaring that no less than the Constitution itself calls for remedial action. (***Libanan v. HRET***, 283 SCRA 520, Dec. 22, 1997 [Vitug])

THE EXECUTIVE DEPARTMENT

64.Did former President Estrada resign as President or should be considered resigned as of January 20, 2001 when President Gloria Macapagal Arroyo took her oath as the 14th President of the Republic?

Held: *RESIGNATION* x x x is a factual question and its *ELEMENTS* are beyond quibble: **there must be an intent to resign and the intent must be coupled by acts of relinquishment**. *The validity of a resignation is not governed by any formal requirement as to form. It can be oral. It can be written. It can be express. It can be implied.* **As long as the resignation is clear, it must be given legal effect.**

In the cases at bar, the facts show that petitioner did not write any formal letter of resignation before he evacuated Malacanang Palace in the afternoon of January 20, 2001 after the oath-taking of respondent Arroyo. Consequently, **whether or not petitioner resigned has to be determined from his acts and omissions before, during and after January 20, 2001 or by THE TOTALITY OF PRIOR, CONTEMPORANEOUS AND POSTERIOR FACTS AND CIRCUMSTANTIAL EVIDENCE BEARING A MATERIAL RELEVANCE ON THE ISSUE**.

Using this *TOTALITY TEST*, **we hold that petitioner resigned as President**.

X x x

In sum, we hold that the resignation of the petitioner cannot be doubted. It was confirmed by his leaving Malacanang. In the press release containing his final statement, **(1) he acknowledged the oath-taking of the respondent as President** of the Republic albeit with reservation about its legality; **(2) he emphasized he was leaving the Palace**, the seat of the presidency, **for the sake of peace and in order to begin the healing process of our nation. *He did not say he was leaving the Palace due to any kind of inability and that he was going to re-assume the presidency as soon as the disability disappears***; **(3) he expressed his gratitude to the people for the opportunity to serve them. Without doubt, he was referring to the *past opportunity* given him to serve the people as President**; **(4) he assured that he will not shirk from any *future challenge* that may come ahead on the same service of our country. Petitioner's reference is to a *future challenge after occupying the office of the president* which he has given up**; and **(5) he called on his supporters to join him in the promotion of a constructive national spirit of reconciliation and solidarity. *Certainly, the national spirit of reconciliation and solidarity could not be attained if he did not give up the presidency.* The press release was petitioner's valedictory, his final act of farewell. *His presidency is now in the past tense***. (***Estrada v. Desierto***, G.R. Nos. 146710-15, March 2, 2001, en Banc [Puno])

39

65.Discuss our legal history on executive immunity.

Held: The doctrine of executive immunity in this jurisdiction emerged *as a case law*. In the 1910 case of ***Forbes, etc. v. Chuoco Tiaco and Crossfield*** (16 Phil. 534 [1910]), the respondent Tiaco, a Chinese citizen, sued petitioner W. Cameron Forbes, Governor-General of the Philippine Islands, J.E. Harding and C.R. Trowbridge, Chief of Police and Chief of the Secret Service of the City of Manila, respectively, for damages for allegedly conspiring to deport him to China. In granting a writ of prohibition, this Court, speaking thru Mr. Justice Johnson, held:

> "**The principle of nonliability x x x does not mean that the judiciary has no authority to touch the acts of the Governor-General; that he may, under cover of his office, do what he will, unimpeded and unrestrained**. Such a construction would mean that *tyranny*, under the guise of the execution of the law, could walk defiantly abroad, destroying rights of person and of property, wholly free from interference of courts or legislatures. **This does not mean, either, that a person injured by the executive authority by an act unjustifiable under the law has no remedy, but must submit in silence**. On the contrary, it means, simply, that **the Governor-General, like the judges of the courts and the members of the Legislature, may not be personally mulcted in civil damages for the consequences of an act executed in the performance of his official duties**. **The judiciary has full power to, and will, when the matter is properly presented to it and the occasion justly warrants it, declare an act of the Governor-General illegal and void and place as nearly as possible in status quo any person who has been deprived his liberty or his property by such act**. This remedy is assured to every person, however humble or of whatever country, when his personal or property rights have been invaded, even by the highest authority of the state. **The thing which the judiciary can not do is mulct the**

Governor-General personally in damages which results from the performance of his official duty, any more than it can a member of the Philippine Commission or the Philippine Assembly. Public policy forbids it.

Neither does this principle of nonliability mean that the chief executive may not be personally sued at all in relation to acts which he claims to perform as such official. On the contrary, it clearly appears from the discussion heretofore had, particularly that portion which touched the liability of judges and drew an analogy between such liability and that of the Governor-General, **that the latter is liable when he acts in a case so plainly outside of his power and authority that he can not be said to have exercised discretion in determining whether or not he had the right to act. What is held here is that he will be protected from personal liability for damages not only when he acts within his authority, but also when he is without authority, provided he actually used discretion and judgment, that is, the judicial faculty, in determining whether he had authority to act or not**. In other words, he is entitled to protection **in determining the question of his authority**. If he decides wrongly, he is still protected provided the question of his authority was one over which two men, reasonably qualified for that position, might honestly differ; but he is not protected if the lack of authority to act is so plain that two such men could not honestly differ over its determination. In such case, he acts, not as Governor-General but as a private individual, and, as such, must answer for the consequences of his act."

Mr. Justice Johnson underscored the consequences if the Chief Executive was not granted immunity from suit, *viz:* "x x x. **Action upon important matters of state delayed; the time and substance of the chief executive spent in wrangling litigation; disrespect engendered for the person of one of the highest officials of the State and for the office he occupies; a tendency to unrest and disorder; resulting in a way, in a distrust as to the integrity of government itself**."

Our *1935 Constitution* took effect but it *did not contain any specific provision on executive immunity.* Then came the tumult of the martial law years under the late President Ferdinand E. Marcos and the 1973 Constitution was born. In 1981, it was amended and *one of the amendments involved executive immunity*. Section 17, Article VII stated:

"The President shall be immune from suit during his tenure. Thereafter, no suit whatsoever shall lie for official acts done by him or by others pursuant to his specific orders during his tenure.

The immunities herein provided shall apply to the incumbent President referred to in Article XVII of this Constitution."

In his second Vicente G. Sinco Professorial Chair Lecture entitled, "Presidential Immunity And All The King's Men: The Law Of Privilege As A Defense To Actions For Damages," (62 Phil. L.J. 113 [1987]) petitioner's learned counsel, former Dean of the UP College of Law, Atty. Pacifico Agabin, brightened the modifications effected by this constitutional amendment on the existing law on executive privilege. To quote his disquisition:

"In the Philippines though, we sought to do the American one better by enlarging and fortifying the absolute immunity concept. First, we extended it to shield the President not only from civil claims but also from criminal cases and other claims. Second, we enlarged its scope so that it would cover even acts of the President outside the scope of official duties. And third, we broadened its coverage so as to include not only the

President but also other persons, be they government officials or private individuals, who acted upon orders of the President. It can be said that at that point most of us were suffering from AIDS (or absolute immunity defense syndrome)."

The Opposition in the then Batasang Pambansa sought the repeal of this Marcosian concept of executive immunity in the 1973 Constitution. The move was led by then Member of Parliament, now Secretary of Finance, Alberto Romulo, who argued that the *after incumbency immunity* granted to President Marcos violated the principle that a public office is a public trust. He denounced the immunity as a return to the anachronism "the king can do no wrong." The effort failed.

The 1973 Constitution ceased to exist when President Marcos was ousted from office by the People Power revolution in 1986. When the *1987 Constitution* was crafted, *its framers did not reenact* the executive immunity provision of the 1973 Constitution. X x x (***Estrada v. Desierto***, G.R. Nos. 146710-15, March 2, 2001, en Banc [Puno])

41

66.Can former President Estrada still be prosecuted criminally considering that he was not convicted in the impeachment proceedings against him?

Held: <u>We reject his argument that he cannot be prosecuted for the reason that he must first be convicted in the impeachment proceedings</u>. The impeachment trial of petitioner Estrada was aborted by the walkout of the prosecutors and by the events that led to his loss of the presidency. Indeed, on February 7, 2001, the Senate passed Senate Resolution No. 83 "Recognizing that the Impeachment Court is *Functus Officio."* **<u>Since the Impeachment Court is now functus officio, it is untenable for petitioner to demand that he should first be impeached and then convicted before he can be prosecuted. The plea if granted, would put a perpetual bar against his prosecution. Such a submission has nothing to commend itself for it will place him in a better situation than a non-sitting President who has not been subjected to impeachment proceedings and yet can be the object of a criminal prosecution. To be sure, the debates in the Constitutional Commission make it clear that when impeachment proceedings have become moot due to the resignation of the President, the proper criminal and civil cases may already be filed against him</u>** x x x.

This is in accord with our ruling in *In Re: Saturnino Bermudez* (145 SCRA 160 [1986]) that "**<u>incumbent Presidents are immune from suit or from being brought to court during the period of their incumbency and tenure" BUT NOT BEYOND. Considering the peculiar circumstance that the impeachment process against the petitioner has been aborted and thereafter he lost the presidency, petitioner Estrada cannot demand as a condition sine qua non to his criminal prosecution before the Ombudsman that he be convicted in the impeachment proceedings</u>**.

(***Estrada v. Desierto***, G.R. Nos. 146710-15, Mar. 2, 2001, en Banc [Puno])

67.State the reason why not all appointments made by the President under the 1987 Constitution will no longer require confirmation by the Commission on Appointments.

Held: The aforecited provision *(Section 16, Article VII)* of the Constitution has been the subject of several cases on the issue of the restrictive function of the Commission on Appointments with respect to the appointing power of the

President. This Court touched upon the historical antecedent of the said provision in the case of *Sarmiento III v. Mison* (156 SCRA 549) in which it was ratiocinated upon that ***Section 16*** of ***Article VII*** of the ***1987 Constitution*** requiring confirmation by the Commission on Appointments of certain appointments issued by the President **contemplates a system of checks and balances between the executive and legislative branches of government**. **Experience showed that when almost all presidential appointments required the consent of the Commission on Appointments, as was the case under the 1935 Constitution, the commission became a venue of "horse trading" and similar malpractices. On the other hand, placing absolute power to make appointments in the President with hardly any check by the legislature, as what happened under the 1973 Constitution, leads to abuse of such power**. Thus was perceived the need to establish a "middle ground" between the 1935 and 1973 Constitutions. The framers of the 1987 Constitution deemed it imperative to subject certain high positions in the government to the power of confirmation of the Commission on Appointments and to allow other positions within the exclusive appointing power of the President. (***Manalo v. Sistoza***, 312 SCRA 239, Aug. 11, 1999, En Banc [Purisima])

42

68.Enumerate the groups of officers who are to be appointed by the President under Section 16, Article VII of the 1987 Constitution, and identify those officers whose appointments shall require confirmation by the Commission on Appointments.

Held: Conformably, as consistently interpreted and ruled in the leading case of Sarmiento *III v. Mison (Ibid.),* and in the subsequent cases of *Bautista v. Salonga* (172 SCRA 160), *Quintos-Deles v. Constitutional Commission* (177 SCRA 259), and *Calderon v. Carale* (208 SCRA 254), under Section 16, Article VII, of the Constitution, there are four groups of officers of the government to be appointed by the President:

> FIRST, the **heads of the executive departments, ambassadors, other public ministers and consuls, officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution**;
>
> SECOND, **all other officers of the Government whose appointments are not otherwise provided for by law**;
>
> THIRD, **those whom the President may be AUTHORIZED BY LAW to appoint**;
>
> FOURTH, **officers lower in rank whose appointments the Congress may by law vest in the President alone**.

It is well-settled that only presidential appointees belonging to the first group require the confirmation by the Commission on Appointments.
(***Manalo v. Sistoza***, 312 SCRA 239, Aug. 11, 1999, En Banc [Purisima])

69.Under Republic Act 6975 (the DILG Act of 1990), the Director General, Deputy Director General, and other top officials of the Philippine National Police (PNP) shall be appointed by the President and their appointments shall require confirmation by the Commission on Appointments. Respondent Sistoza was appointed Director General of the PNP but he refused to submit his appointment papers to the Commission on Appointments for confirmation contending that his

appointment shall no longer require confirmation despite the express provision of the law requiring such confirmation. Should his contention be upheld?

Held: **It is well-settled that only presidential appointees belonging to the first group (enumerated under the first sentence of Section 16, Article VII of the 1987 Constitution) require the confirmation by the Commission on Appointments**. The appointments of respondent officers, who are not within the first category, need not be confirmed by the Commission on Appointments. As held in the case of *Tarrosa v. Singson* (232 SCRA 553), **Congress cannot by law expand the power of confirmation of the Commission on Appointments and require confirmation of appointments of other government officials not mentioned in the first sentence of Section 16 of Article VII of the 1987 Constitution**.

Consequently, unconstitutional are Sections 26 and 31 of Republic Act 6975 which empower the Commission on Appointments to confirm the appointments of public officials whose appointments are not required by the Constitution to be confirmed. x x x. (***Manalo v. Sistoza***, 312 SCRA 239, Aug. 11, 1999, En Banc [Purisima])

43

70.Will it be correct to argue that since the Philippine National Police is akin to the Armed Forces of the Philippines, therefore, the appointments of police officers whose rank is equal to that of colonel or naval captain will require confirmation by the Commission on Appointments?

Held: This contention is x x x untenable. **The Philippine National Police is separate and distinct from the Armed Forces of the Philippines. The Constitution, no less, sets forth the distinction**. Under ***Section 4*** of ***Article XVI*** of the ***1987 Constitution***,

> "*The Armed Forces of the Philippines shall be composed of a citizen armed force which shall undergo military training and service, as may be provided by law. It shall keep a regular force necessary for the security of the State.*"

On the other hand, ***Section 6*** of the same Article of the Constitution ordains that:

> "*The State shall establish and maintain one police force, which shall be national in scope and civilian in character to be administered and controlled by a national police commission. The authority of local executives over the police units in their jurisdiction shall be provided by law*."

To so distinguish the police force from the armed forces, Congress enacted ***Republic Act 6975*** x x x.

Thereunder, the police force is different from and independent of the armed forces and the ranks in the military are not similar to those in the Philippine National Police. Thus, directors and chief superintendents of the PNP x x x do not fall under the first category of presidential appointees requiring confirmation by the Commission on Appointments. (***Manalo v. Sistoza***, 312 SCRA 239, Aug. 11, 1999, En Banc [Purisima])

71.To what types of appointments is Section 15, Article VII of the 1987 Constitution (prohibiting the President from making appointments two months

before the next presidential elections and up to the end of his term) directed against?

Held: ***Section 15***, ***Article VII*** is directed against two types of appointments: **(1) <u>those made for buying votes</u>** and **(2) <u>those made for partisan considerations</u>**. *The first refers to those appointments made within two months preceding the Presidential election and are similar to those which are declared election offenses in the Omnibus Election Code; while the second consists of the so-called "midnight" appointments*. The SC in ***In Re: Hon. Mateo A. Valenzuela and Hon. Placido B. Vallarta***, (298 SCRA 408, Nov. 9, 1998, En Banc [Narvasa C.J.]) clarified this when it held:

> "**<u>Section 15, Article VII has a broader scope than the Aytona ruling. It may not unreasonably be deemed to contemplate not only "midnight" appointments – those made obviously for partisan reasons as shown by their number and the time of their making – but also appointments presumed made for the purpose of influencing the outcome of the Presidential election</u>**."

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72.Distinguish the President's power to call out the armed forces as their Commander-in-Chief in order to prevent or suppress lawless violence, invasion or rebellion, from his power to proclaim martial and suspend the privilege of the writ of habeas corpus. Explain why the former is not subject to judicial review while the latter two are.

Held: There is a clear textual commitment under the Constitution to bestow on the President full discretionary power to call out the armed forces and to determine the necessity for the exercise of such power. ***Section 18***, ***Article VII*** of the ***Constitution***, which embodies the powers of the President as Commander-in-Chief, provides in part:

> "**<u>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</u>. 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**." (*NOTE: Read complete provision*.)

The full discretionary power of the President to determine the factual basis for the exercise of the calling out power is also implied and further reinforced in the rest of Section 18, Article VII x x x.

<u>Under the foregoing provisions, Congress may revoke such proclamations (of martial law) or suspension (of the privilege of the writ of habeas corpus) and the Court may review the sufficiency of the factual basis thereof. However, there is no such equivalent provision dealing with the revocation or review of the President's action to call out the armed forces. The distinction places the calling out power in a different category from the power to declare martial law and the power to suspend the privilege of the writ of habeas corpus, otherwise, the framers of the Constitution would have simply lumped together the three powers and provided for their revocation and review without any qualification</u>. *Expressio unios est exclusio alterius.* X x x. That the intent of the Constitution is exactly what its letter says, *i.e.*, that the power to call is fully discretionary to the President, is extant in the deliberation of the Constitutional Commission x x x.

The reason for the difference in the treatment of the aforementioned powers highlights the intent to grant the President the widest leeway and broadest discretion in using the power to call out **because it is considered as the lesser and more benign power compared to the power to suspend the privilege of the writ of habeas corpus and the power to impose martial law, both of which involve the curtailment and suppression of certain basic civil rights and individual freedoms, and thus necessitating safeguards by Congress and review by this Court**.

Moreover, under ***Section 18***, ***Article VII*** of the ***Constitution***, in the exercise of the power to suspend the privilege of the writ of *habeas corpus* or to impose martial law, two conditions must concur: **(1)** there must be an **actual invasion or rebellion** and, **(2) public safety must require it.** *These conditions are not required in the case of the power to call out the armed forces. The only criterion is that* "***whenever it becomes necessary***," *the President may call the armed forces* "***to prevent or suppress lawless violence, invasion or rebellion***." The implication is that the President is given full discretion and wide latitude in the exercise of the power to call as compared to the two other powers.

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If the petitioner fails, by way of proof, to support the assertion that the President acted without factual basis, then this Court cannot undertake an independent investigation beyond the pleadings. The factual necessity of calling out the armed forces is not easily quantifiable and cannot be objectively established since matters considered for satisfying the same is a combination of several factors which are not always accessible to the courts. Besides the absence of textual standards that the court may use to judge necessity, information necessary to arrive at such judgment might also prove unmanageable for the courts. Certain pertinent information might be difficult to verify, or wholly unavailable to the courts. In many instances, the evidence upon which the President might decide that there is a need to call out the armed forces may be of a nature not constituting technical proof.

On the other hand, the President as Commander-in-Chief has a vast intelligence network to gather information, some of which may be classified as highly confidential or affecting the security of the state. In the exercise of the power to call, on-the-spot decisions may be imperatively necessary in emergency situations to avert great loss of human lives and mass destruction of property. Indeed, the decision to call out the military to prevent or suppress lawless violence must be done swiftly and decisively if it were to have any effect at all. Such a scenario is not farfetched when we consider the present situation in Mindanao, where the insurgency problem could spill over the other parts of the country. The determination of the necessity for the calling out power if subjected to unfettered judicial scrutiny could be a veritable prescription for disaster, as such power may be unduly straitjacketed by an injunction or a temporary restraining order every time it is exercised.

Thus, it is the unclouded intent of the Constitution to vest upon the President, as Commander-in-Chief of the Armed Forces, full discretion to call forth the military when in his judgment it is necessary to do so in order to prevent or suppress lawless violence, invasion or rebellion. Unless the petitioner can show that the exercise of such discretion was gravely abused, the President's exercise of judgment deserves to be accorded respect from this Court. (***Integrated Bar of the Philippines v. Hon. Ronaldo B. Zamora***, G.R. No. 141284, Aug. 15, 2000, En Banc [Kapunan])

73.By issuing a TRO on the date convicted rapist Leo Echegaray is to be executed by lethal injection, the Supreme Court was criticized on the ground, among others, that it encroached on the power of the President to grant reprieve under Section 19, Article VII, 1987 Constitution. Justify the SC's act.

Held: ***Section 19***, ***Article VII*** of the ***1987 Constitution*** is **simply the source of power** of the President to grant reprieves, commutations, and pardons and remit fines and forfeitures after conviction by final judgment. **This provision, however, cannot be interpreted as denying the power of courts to control the enforcement of their decisions after the finality. In truth, an accused who has been convicted by final judgment still possesses collateral rights and these rights can be claimed in the appropriate courts**. For instance, a death convict who becomes insane after his final conviction cannot be executed while in a state of insanity *(See Article 79 of the Revised Penal Code).* **The suspension of such a death sentence is undisputably an exercise of judicial power. It is not usurpation of the presidential power of reprieve though its effect is the same – the temporary suspension of the execution of the death convict. In the same vein, it cannot be denied that Congress can at any time amend R.A. No. 7659 by reducing the penalty of death to life imprisonment. The effect of such an amendment is like that of commutation of sentence. But by no stretch of the imagination can the exercise by Congress of its plenary power to amend laws be considered as a violation of the President's power to commute final sentences of conviction**. *The powers of the Executive, the Legislative and the Judiciary to save the life of a death convict do not exclude each other for the simple reason that there is no higher right than the right to life.* (***Echegaray v. Secretary of Justice***, 301 SCRA 96, Jan. 19, 1999, En Banc [Puno])

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74.Discuss the nature of a conditional pardon. Is its grant or revocation by the President subject to judicial review?

Held: **A conditional pardon is in the nature of a contract between the sovereign power or the Chief Executive and the convicted criminal to the effect that the former will release the latter subject to the condition that if he does not comply with the terms of the pardon, he will be recommitted to prison to serve the unexpired portion of the sentence or an additional one** (***Alvarez v. Director of Prisons***, 80 Phil. 50). **By the pardonee's consent to the terms stipulated in this contract, the pardonee has thereby placed himself under the supervision of the Chief Executive or his delegate who is duty-bound to see to it that the pardonee complies with the terms and conditions of the pardon**. Under ***Section 64(i)*** of the ***Revised Administrative Code***, the Chief Executive is authorized to order "the arrest and re-incarceration of any such person who, in his judgment, shall fail to comply with the condition, or conditions of his pardon, parole, or suspension of sentence." It is now a well-entrenched rule in this jurisdiction that **this exercise of presidential judgment is beyond judicial scrutiny. The determination of the violation of the conditional pardon rests exclusively in the sound judgment of the Chief Executive, and the pardonee, having consented to place his liberty on conditional pardon upon the judgment of the power that has granted it, cannot invoke the aid of the courts, however erroneous the findings may be upon which his recommitment was ordered**.

It matters not that the pardonee has allegedly been acquitted in two of the three criminal cases filed against him subsequent to his conditional pardon, and that the third remains pending for thirteen (13) years in apparent violation of his right to a speedy trial.

Ultimately, solely vested in the Chief Executive, who in the first place was the exclusive author of the conditional pardon and of its revocation, is the corollary prerogative to reinstate the pardon if in his own judgment, the acquittal of the pardonee from the subsequent charges filed against him, warrants the same. Courts have no authority to interfere with the grant by the President of a pardon to a convicted criminal. It has been our fortified ruling that a final judicial pronouncement as to the guilt of a pardonee is not a requirement for the President to determine whether or not there has been a breach of the terms of a conditional pardon. There is likewise nil a basis for the courts to effectuate the reinstatement of a conditional pardon revoked by the President in the exercise of powers undisputably solely and absolutely in his office. (***In Re: Wilfredo Sumulong Torres***, 251 SCRA 709, Dec. 29, 1995 [Hermosisima])

75.Who has the power to ratify a treaty?

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Held: In our jurisdiction, **the power to ratify is vested in the President** and **NOT**, as commonly believed, **in the legislature**. **The role of the Senate is limited only to giving or withholding its consent, or concurrence, to the ratification**. (***BAYAN*** *[Bagong Alyansang Makabayan]* ***v. Executive Secretary Ronaldo Zamora***, G.R. No. 138570, Oct. 10, 2000, En Banc [Buena])

76.What is the power of impoundment of the President? What are its principal sources?

Held: IMPOUNDMENT refers to the **refusal of the President, for whatever reason, to spend funds made available by Congress. It is the failure to spend or obligate budget authority of any type**.

Proponents of impoundment have invoked at least three principal sources of the authority of the President. Foremost is the **authority to impound given to him either expressly or impliedly by Congress**. Second is the **executive power drawn from the President's role as Commander-in-Chief**. Third is the **Faithful Execution Clause**.

The proponents insist that a faithful execution of the laws requires that the President desist from implementing the law if doing so would prejudice public interest. An example given is when through efficient and prudent management of a project, substantial savings are made. In such a case, it is sheer folly to expect the President to spend the entire amount budgeted in the law. (***PHILCONSA v. Enriquez***, 235 SCRA 506, Aug. 9, 1994 [Quiason])

THE JUDICIAL DEPARTMENT

77.What are the requisites before the Court can exercise the power of judicial review?

Held: 1. The time-tested standards for the exercise of judicial review are: **(1)** the ***existence of an appropriate case***; **(2)** an **interest personal and substantial by the party raising the constitutional question**; **(3)** the **plea that the function be exercised at the earliest opportunity**; and **(4)** the **necessity that the constitutional question be passed upon in order to decide the case**. (*Separate Opinion, Kapunan, J., in* ***Isagani Cruz v. Secretary of Environment and Natural Resources, et al.***, G.R. No. 135385, Dec. 6, 2000, En Banc)

2. When questions of constitutional significance are raised, the Court can exercise its power of judicial review only if the following requisites are complied with, namely: **(1)** the existence of an **actual and appropriate case**; **(2)** a **personal and substantial interest of the party raising the constitutional question**; **(3)** the **exercise of judicial review is pleaded at the earliest opportunity**; and **(4)** the **constitutional question is the lis mota of the case**. (***Integrated Bar of the Philippines v. Hon. Ronaldo B. Zamora***, G.R. No. 141284, Aug. 15, 2000, En Banc [Kapunan])

78.What is an "actual case or controversy"?

Held: An "*ACTUAL CASE OR CONTROVERSY*" means **an existing case or controversy which is both ripe for resolution and susceptible of judicial determination, and that which is not conjectural or anticipatory, or that which seeks to resolve hypothetical or feigned constitutional problems**. A petition raising a constitutional question does not present an "actual controversy," unless it **alleges a legal right or power**. Moreover, it **must show that a conflict of rights exists, for inherent in the term "controversy" is the presence of opposing views or contentions**. Otherwise, the Court will be forced to resolve issues which remain unfocused because they lack such concreteness provided when a question emerges precisely framed from a clash of adversary arguments exploring every aspect of a multi-faceted situation embracing conflicting and demanding interests. The **controversy must also be justiciable; that is, it must be susceptible of judicial determination**. (***Integrated Bar of the Philippines v. Hon. Ronaldo B. Zamora***, G.R. No. 141284, Aug. 15, 2000, En Banc [Kapunan])

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79.Petitioners Isagani Cruz and Cesar Europa brought a suit for prohibition and mandamus as citizens and taxpayers, assailing the constitutionality of certain provisions of Republic Act No. 8371, otherwise known as the Indigenous Peoples Rights Act of 1997 (IPRA), and its Implementing Rules and Regulations. A preliminary issue resolved by the SC was whether the petition presents an actual controversy.

Held: **Courts can only decide actual controversies, not hypothetical questions or cases**. The threshold issue, therefore, is whether an "appropriate case" exists for the exercise of judicial review in the present case.

X x x

In the case at bar, there exists a live controversy involving a clash of legal rights. A law has been enacted, and the Implementing Rules and Regulations approved. Money has been appropriated and the government agencies concerned have been directed to implement the statute. It cannot be successfully maintained that we should await the adverse consequences of the law in order to consider the controversy actual and ripe for judicial resolution. It is precisely the contention of the petitioners that the law, on its face, constitutes an unconstitutional abdication of State ownership over lands of the public domain and other natural resources. **Moreover, when the State machinery is set into motion to implement an alleged unconstitutional statute, this Court possesses sufficient authority to resolve and prevent imminent injury and violation of the constitutional process**. (*Separate Opinion, Kapunan, J., in* ***Isagani Cruz v. Secretary of Environment and Natural Resources, et al.***, G.R. No. 135385, Dec. 6, 2000, En Banc)

80.What is the meaning of "legal standing" or locus standi?

Held: "*LEGAL STANDING*" or *LOCUS STANDI* has been defined as **a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged**. The term "*INTEREST*" means a **material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest**. The gist of the question of standing is whether a party alleges "**such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions**." (***Integrated Bar of the Philippines v. Hon. Ronaldo B. Zamora***, G.R. No. 141284, Aug. 15, 2000)

In addition to the existence of an actual case or controversy, a person who assails the validity of a statute must have a **personal and substantial interest in the case, such that, he has sustained, or will sustain, a direct injury as a result of its enforcement**. Evidently, the rights asserted by petitioners as citizens and taxpayers are held in common by all the citizens, the violation of which may result only in a "generalized grievance". Yet, in a sense, all citizen's and taxpayer's suits are efforts to air generalized grievances about the conduct of government and the allocation of power. (*Separate Opinion, Kapunan, J., in* ***Isagani Cruz v. Secretary of Environment and Natural Resources, et al.***, G.R. No. 135385, Dec. 6, 2000, En Banc)

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81.Asserting itself as the official organization of Filipino lawyers tasked with the bounden duty to uphold the rule of law and the Constitution, the Integrated Bar of the Philippines (IBP) filed a petition before the SC questioning the validity of the order of the President commanding the deployment and utilization of the Philippine Marines to assist the Philippine National Police (PNP) in law enforcement by joining the latter in visibility patrols around the metropolis. The Solicitor General questioned the legal standing of the IBP to file the petition? Resolve.

Held: In the case at bar, the IBP primarily anchors its standing on its alleged responsibility to uphold the rule of law and the Constitution. Apart from this declaration, however, the IBP asserts no other basis in support of its *locus standi.* **The mere invocation by the IBP of its duty to preserve the rule of law and nothing more, while undoubtedly true, is not sufficient to clothe it with standing in this case. This is too general an interest which is shared by other groups and the whole citizenry. Based on the standards above-stated, the IBP has failed to present a specific and substantial interest in the resolution of the case. Its fundamental purpose which, under Section 2, Rule 139-A of the Rules of Court, is to elevate the standards of the law profession and to improve the administration of justice is alien to, and cannot be affected by the deployment of the Marines**. x x x **Moreover, the IBP x x x has not shown any specific injury which it has suffered or may suffer by virtue of the questioned governmental act. Indeed, none of its members, whom the IBP purportedly represents, has sustained any form of injury as a result of the operation of the joint visibility patrols**. Neither is it alleged that any of its members has been arrested or that their civil liberties have been violated by the deployment of the Marines. What the IBP projects as injurious is the supposed "militarization" of law enforcement which might threaten Philippine democratic institutions and may cause more harm than good in the long run. Not only is the presumed "injury" not personal in character, it is likewise too vague, highly speculative and uncertain to satisfy the requirement of standing. **Since petitioner has not successfully established a direct and personal**

injury as a consequence of the questioned act, it does not possess the personality to assail the validity of the deployment of the Marines. This Court, however, does not categorically rule that the IBP has absolutely no standing to raise constitutional issues now or in the future. The IBP must, by way of allegations and proof, satisfy this Court that it has sufficient stake to obtain judicial resolution of the controversy.

(***Integrated Bar of the Philippines v. Hon. Ronaldo B. Zamora***, G.R. No. 141284, Aug. 15, 2000, En Banc [Kapunan])

82.Considering the lack of requisite standing of the IBP to file the petition questioning the validity of the order of the President to deploy and utilize the Philippine Marines to assist the PNP in law enforcement, may the Court still properly take cognizance of the case?

Held: Having stated the foregoing, it must be emphasized that this Court has the discretion to take cognizance of a suit which does not satisfy the requirement of legal standing when paramount interest is involved. In not a few cases, the Court has adopted a liberal attitude on the locus standi of a petitioner where the petitioner is able to craft an issue of transcendental significance to the people. Thus, when the issues raised are of paramount importance to the public, the Court may brush aside technicalities of procedure. In this case, a reading of the petition shows that the IBP has advanced constitutional issues which deserve the attention of this Court in view of their seriousness, novelty and weight as precedents. Moreover, because peace and order are under constant threat and lawless violence occurs in increasing tempo, undoubtedly aggravated by the Mindanao insurgency problem, the legal controversy raised in the petition almost certainly will not go away. It will stare us in the face again. It, therefore, behooves the Court to relax the rules on standing and to resolve the issue now, rather than later. (***Integrated Bar of the Philippines v. Hon. Ronaldo B. Zamora***, G.R. No. 141284, Aug. 15, 2000)

83. *When is an action considered "moot"? May the court still resolve the case once it has become moot and academic?*

Held: 1. It is alleged by respondent that, with respect to the PCCR [Preparatory Commission on Constitutional Reform], this case has become moot and academic. We agree.

An action is considered "*MOOT*" **when it no longer presents a justiciable controversy because the issues involved have become academic or dead**. *Under E.O. No. 43, the PCCR was instructed to complete its task on or before June 30, 1999. However, on February 19, 1999, the President issued Executive Order No. 70 (E.O. No. 70), which extended the time frame for the completion of the commission's work x x x. The PCCR submitted its recommendations to the President on December 20, 1999 and was dissolved by the President on the same day. It had likewise spent the funds allocated to it. Thus, the PCCR has ceased to exist, having lost its raison d'être. Subsequent events have overtaken the petition and the Court has nothing left to resolve*.

The staleness of the issue before us is made more manifest by the impossibility of granting the relief prayed for by petitioner. Basically, petitioner asks this Court to enjoin the PCCR from acting as such. Clearly, prohibition is an inappropriate remedy since the body sought to be enjoined no longer exists. It is well-established that prohibition is a preventive remedy and does not lie to restrain an act that is already FAIT ACCOMPLI. At this point, any ruling regarding the PCCR would simply be in the nature of an advisory opinion, which is definitely

beyond the permissible scope of judicial power. (***Gonzales v. Narvasa***, 337 SCRA 733, Aug. 14, 2000, En Banc [Gonzaga-Reyes])

2. The petition which was filed by private respondents before the trial court sought the issuance of a writ of mandamus, to command petitioners to admit them for enrolment. **Taking into account the admission of private respondents that they have finished their Nursing course at the Lanting College of Nursing even before the promulgation of the questioned decision, this case has clearly been overtaken by events and should therefore be dismissed**. However, the case of ***Eastern Broadcasting Corporation (DYRE) v. Dans, etc., et al.***, *G.R. No. 59329, July 19, 1985, 137 SCRA 628* is the authority for the view that "**even if a case were moot and academic, a statement of the governing principle is appropriate in the resolution of dismissal for the guidance not only of the parties but of others similarly situated**." We shall adhere to this view and proceed to dwell on the merits of this petition. (***University of San Agustin, Inc. v. Court of Appeals***, 230 SCRA 761, 770, March 7, 1994 [Nocon])

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84. In connection with the May 11, 1998 elections, the COMELEC issued a resolution prohibiting the conduct of exit polls on the ground, among others, that it might cause disorder and confusion considering the randomness of selecting interviewees, which further makes the exit polls unreliable. The constitutionality of this resolution was challenged by ABS-CBN Broadcasting Corporation as violative of freedom of expression. The Solicitor General contends that the petition has been rendered moot and academic because the May 11, 1998 election has already been held and done with and, therefore, there is no longer any actual controversy to be resolved. Resolve.

Held: While the assailed Resolution referred specifically to the May 11, 1998 election, its implications on the people's fundamental freedom of expression transcend the past election. The holding of periodic elections is a basic feature of our democratic government. By its very nature, exit polling is tied up with elections. To set aside the resolution of the issue now will only postpone a task that could well crop up again in future elections.

In any event, in ***Salonga v. Cruz Pano*** (134 SCRA 438, 463, Feb. 18, 1985), the Court had occasion to reiterate that it "also has the **duty to formulate guiding and controlling constitutional principles, precepts, doctrines, or rules. It has the symbolic function of educating bench and bar on the extent of protection given by constitutional guarantees**." Since the fundamental freedoms of speech and of the press are being invoked here, we have resolved to settle, for the guidance of posterity, whether they likewise protect the holding of exit polls and the dissemination of data derived therefrom. (***ABS-CBN Broadcasting Corporation v. COMELEC***, G.R. No. 133486, Jan. 28, 2000, En Banc [Panganiban])

85. Discuss the nature of a taxpayer's suit. When may it be allowed?

Held: 1. Petitioner and respondents agree that **to constitute a taxpayer's suit, two requisites must be met, namely, that public funds are disbursed by a political subdivision or instrumentality and in doing so, a law is violated or some irregularity is committed, and that the petitioner is directly affected by the alleged ultra vires act**. The same pronouncement was made in ***Kilosbayan, Inc. v. Guingona, Jr.***, (232 SCRA 110 [1994], where the Court also reiterated its liberal stance in entertaining so-called taxpayer's suits, especially when important issues are involved. A closer examination of the facts of this case would readily demonstrate that petitioner's

standing should not even be made an issue here, "since standing is a concept in constitutional law and here no constitutional question is actually involved."

In the case at bar, disbursement of public funds was only made in 1975 when the Province bought the lands from Ortigas at P110.00 per square meter in line with the objectives of P.D. 674. Petitioner never referred to such purchase as an illegal disbursement of public funds but focused on the alleged fraudulent reconveyance of said property to Ortigas because the price paid was lower than the prevailing market value of neighboring lots. The first requirement, therefore, which would make this petition a taxpayer's suit is absent. The only remaining justification for petitioner to be allowed to pursue this action is whether it is, or would be, directly affected by the act complained of. As we stated in ***Kilosbayan, Inc. v. Morato*** *(supra.),*

> "Standing is a special concern in constitutional law because in some cases suits are brought not by parties who have been personally injured by the operation of a law or by official action taken, but by concerned citizens, taxpayers or voters who actually sue in the public interest. **Hence the question in standing is whether such parties have 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions**.' (Citing ***Baker v. Carr****,* 369 U.S. 186, 7l. Ed. 2d 633 [1962])"

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Undeniably, as a taxpayer, petitioner would somehow be adversely affected by an illegal use of public money. When, however, no such unlawful spending has been shown, as in the case at bar, petitioner, even as a taxpayer, cannot question the transaction validly executed by and between the Province and Ortigas for the simple reason that it is not privy to said contract. In other words, petitioner has absolutely no cause of action, and consequently no locus standi, in the instant case. (***The Anti-Graft League of the Philippines, Inc. v. San Juan***, 260 SCRA 250, 253-255, Aug. 1, 1996, En Banc [Romero])

2. **A taxpayer is deemed to have the standing to raise a constitutional issue when it is established that public funds have been disbursed in alleged contravention of the law or the Constitution. Thus, a taxpayer's action is properly brought only when there is an exercise by Congress of its taxing or spending power** *(Flast v. Cohen, 392 US 83, 20 L Ed 2d 947, 88 S Ct 1942).* This was our ruling in a recent case wherein petitioners Telecommunications and Broadcast Attorneys of the Philippines (TELEBAP) and GMA Network, Inc. questioned the validity of Section 92 of B.P. Blg. 881 (otherwise known as the "Omnibus Election Code") requiring radio and television stations to give free air time to the Commission on Elections during the campaign period *(Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. Commission on Elections, 289 SCRA 337 [1998]).* **The Court held that petitioner TELEBAP did not have any interest as a taxpayer since the assailed law did not involve the taxing or spending power of Congress**.

Many other rulings have premised the grant or denial of standing to taxpayers upon whether or not the case involved a disbursement of public funds by the legislature. In ***Sanidad v. Commission on Elections*** (73 SCRA 333 [1976]), the petitioners therein were allowed to bring a taxpayer's suit to question several presidential decrees promulgated by then President Marcos in his legislative capacity calling for a national referendum, with the Court explaining that –

> X x x [i]t is now an ancient rule that the valid source of a statute – Presidential Decrees are of such nature – may be contested by one who will sustain a direct injury as a result of its enforcement. **At the instance of taxpayers, laws providing for the disbursement of public funds may be enjoined, upon the theory that the expenditure of public funds by an officer of the State for the purpose of executing an unconstitutional act constitutes a misapplication of such funds**. The breadth of Presidential Decree No. 991 carries an appropriation of Five Million Pesos for the effective implementation of its purposes. Presidential Decree No. 1031 appropriates the sum of Eight Million Pesos to carry out its provisions. **The interest of the aforenamed petitioners as taxpayers in the lawful expenditure of these amounts of public money sufficiently clothes them with that personality to litigate the validity of the Decrees appropriating said funds** x x x.

In still another case, the Court held that petitioners – the Philippine Constitution Association, Inc., a non-profit civic organization – had standing as taxpayers to question the constitutionality of Republic Act No. 3836 insofar as it provides for
53 retirement gratuity and commutation of vacation and sick leaves to Senators and Representatives and to the elective officials of both houses of Congress (*Philippine Constitution Association, Inc. v. Gimenez*, 15 SCRA 479 [1965]). And in *Pascual v. Secretary of Public Works* (110 Phil. 331 [1960]), the Court allowed petitioner to maintain a taxpayer's suit assailing the constitutional soundness of Republic Act No. 920 appropriating P85,000 for the construction, repair and improvement of feeder roads within private property. All these cases involved the disbursement of public funds by means of a law.

Meanwhile, in ***Bugnay Construction and Development Corporation v. Laron*** (176 SCRA 251 [1989]), the Court declared that the trial court was wrong in allowing respondent Ravanzo to bring an action for injunction in his capacity as a taxpayer in order to question the legality of the contract of lease covering the public market entered into between the City of Dagupan and petitioner. The Court declared that Ravanzo did not possess the requisite standing to bring such taxpayer's suit since "**[o]n its face, and there is no evidence to the contrary, the lease contract entered into between petitioner and the City shows that no public funds have been or will be used in the construction of the market building**."

Coming now to the instant case, **it is readily apparent that there is no exercise by Congress of its taxing or spending power. The PCCR was created by the President by virtue of E.O. No. 43, as amended by E.O. No. 70. Under Section 7 of E.O. No. 43, the amount of P3 million is "appropriated" for its operational expenses "to be sourced from the funds of the Office of the President**." x x x. **The appropriations for the PCCR were authorized by the President, not by Congress. In fact, there was no appropriation at all**. "In a strict sense, *APPROPRIATION* has been defied '**as nothing more than the legislative authorization prescribed by the Constitution that money may be paid out of the Treasury**,' while *APPROPRIATION MADE BY LAW* refers to '***the act of the legislature setting apart or assigning to a particular use a certain sum to be used in the payment of debt or dues from the State to its creditors***.'" The funds used for the PCCR were taken from funds intended for the Office of the President, in the exercise of the Chief Executive's power to transfer funds pursuant to ***Section 25 (5)*** of ***Article VI*** of the Constitution.

In the final analysis, **it must be stressed that the Court retains the power to decide whether or not it will entertain a taxpayer's suit**. In the case at bar, there being no exercise by Congress of its taxing or spending power, petitioner cannot be allowed to question the creation of the PCCR in his capacity as a taxpayer, but rather, he must establish that he has a "personal and

substantial interest in the case and that he has sustained or will sustain direct injury as a result of its enforcement." In other words, petitioner must show that he is a real party in interest – that he will stand to be benefited or injured by the judgment or that he will be entitled to the avails of the suit. Nowhere in his pleadings does petitioner presume to make such a representation. (***Gonzales v. Narvasa***, 337 SCRA 733, Aug. 14, 2000, En Banc [Gonzaga-Reyes])

86. What is a justiciable controversy? What are political questions?

Held: As a general proposition, a controversy is justiciable if it **refers to a matter which is appropriate for court review. It pertains to issues which are inherently susceptible of being decided on grounds recognized by law**. Nevertheless, the Court does not automatically assume jurisdiction over actual constitutional cases brought before it even in instances that are ripe for resolution. One class of cases wherein the Court hesitates to rule on are "*POLITICAL QUESTIONS*." **The reason is that political questions are concerned with issues dependent upon the WISDOM, NOT THE**
54 **LEGALITY, of a particular act or measure being assailed. Moreover, the political question being a function of the separation of powers, the courts will not normally interfere with the workings of another co-equal branch unless the case shows a clear need for the courts to step in to uphold the law and the Constitution**.

As ***Tanada v. Angara*** (103 Phil. 1051 [1957]) puts it, political questions refer "**to those questions which, under the Constitution, are to be DECIDED BY THE PEOPLE IN THEIR SOVEREIGN CAPACITY, or in regard to which FULL DISCRETIONARY AUTHORITY HAS BEEN DELEGATED to the legislative or executive branch of government**." Thus, if an issue is clearly identified by the text of the Constitution as matters for discretionary action by a particular branch of government or to the people themselves then it is held to be a political question. In the classic formulation of Justice Brennan in ***Baker v. Carr*** (369 U.S. 186, 82 S Ct. 691, 7 L. Ed. 663, 678 [1962]), "[p]rominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on the one question."

The 1987 Constitution expands the concept of judicial review by providing that "**(T)he 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 settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government**." (***Article VIII***, ***Sec. 1*** of the 1987 Constitution) Under this definition, the Court cannot agree x x x that the issue involved is a political question beyond the jurisdiction of this Court to review. **When the grant of power is qualified, conditional or subject to limitations, the issue of whether the prescribed qualifications or conditions have been met or the limitations respected, is justiciable - the problem being one of legality or validity, not its wisdom. Moreover, the jurisdiction to delimit constitutional boundaries has been given to this Court**. *When political questions are involved, the Constitution limits the*

determination as to whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the official whose action is being questioned.

By *GRAVE ABUSE OF DISCRETION* is meant simply **capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility**. Under this definition, *a court is without power to directly decide matters over which full discretionary authority has been delegated. But while this Court has no power to substitute its judgment for that of Congress or of the President, it may look into the question of whether such exercise has been made in grave abuse of discretion*. A showing that plenary power is granted either department of government may not be an obstacle to judicial inquiry, for the improvident exercise or abuse thereof may give rise to justiciable controversy. (***Integrated Bar of the Philippines v. Hon. Ronaldo B. Zamora***, G.R. No. 141284, Aug. 15, 2000, En Banc [Kapunan])

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87. Is the legitimacy of the assumption to the Presidency of President Gloria Macapagal Arroyo a political question and, therefore, not subject to judicial review? Distinguish EDSA People Power I from EDSA People Power II.

Held: Respondents rely on the case of *Lawyers League for a Better Philippines and/or Oliver A. Lozano v. President Corazon C. Aquino, et al.* and related cases to support their thesis that since the cases at bar involve the legitimacy of the government of respondent Arroyo, ergo, they present a political question. A more cerebral reading of the cited cases will show that they are inapplicable. In the cited cases, **we held that the government of former President Aquino was the result of a successful revolution by the sovereign people, albeit a peaceful one. No less than the Freedom Constitution declared that the Aquino government was installed through a direct exercise of the power of the Filipino people "in defiance of the provisions of the 1973 Constitution, as amended." It is familiar learning that the legitimacy of a government sired by a successful revolution by people power is beyond judicial scrutiny for that government automatically orbits out of the constitutional loop. In checkered contrast, the government of respondent Arroyo is not revolutionary in character. The oath that she took at the EDSA Shrine is the oath under the 1987 Constitution. In her oath, she categorically swore to preserve and defend the 1987 Constitution. Indeed, she has stressed that she is discharging the powers of the presidency under the authority of the 1987 Constitution**.

In fine, the legal distinction between EDSA People Power I and EDSA People Power II is clear.

1.) *EDSA I* **involves the exercise of the people power of revolution which overthrows the whole government**. *EDSA II* is an **exercise of people power of freedom of speech and freedom of assembly to petition the government for redress of grievances which only affected the office of the President**.

2.) EDSA I is **extra constitutional and the legitimacy of the new government that resulted from it cannot be the subject of judicial review**, but *EDSA II* is **intra constitutional and the resignation of the sitting President that it caused and the succession of the Vice President as President are subject to judicial review**.

3.) *EDSA I* **presented a political question**; *EDSA II* **involves legal questions**.

Needless to state, the cases at bar pose legal and not political questions. The principal issues for resolution require the proper interpretation of certain provisions in the 1987 Constitution, notably Section 1 of Article II, and Section 8 of Article VII, and the allocation of governmental powers under Section 11 of Article VII. The issues likewise call for a ruling on the scope of presidential immunity from suit. They also involve the correct calibration of the right of petitioner against prejudicial publicity. As early as the 1803 case of *Marbury v. Madison* (1 Cranch [5 US] 137, L Ed 60 [1803]), the doctrine has been laid down that *"it is emphatically the province and duty of the judicial department to say what the law is x x x."* Thus, respondent's invocation of the doctrine of political question is but a foray in the dark. (***Joseph E. Estrada v. Aniano Desierto***, G.R. Nos. 146710-15, March 2, 2001, En Banc [Puno])

88. Is the President's power to call out the armed forces as their Commander-in-Chief in order to prevent or suppress lawless violence, invasion or rebellion subject to judicial review, or is it a political question? Clarify.

56 **Held: <u>When the President calls the armed forces to prevent or suppress lawless violence, invasion or rebellion, he necessarily exercises a discretionary power solely vested in his wisdom. This is clear from the intent of the framers and from the text of the Constitution itself. The Court, thus, cannot be called upon to overrule the President's wisdom or substitute its own. However, this does not prevent an examination of whether such power was exercised within permissible constitutional limits or whether it was exercised in a manner constituting grave abuse of discretion. In view of the constitutional intent to give the President full discretionary power to determine the necessity of calling out the armed forces, it is incumbent upon the petitioner to show that the President's decision is totally bereft of factual basis</u>**. The present petition fails to discharge such heavy burden as there is no evidence to support the assertion that there exists no justification for calling out the armed forces. There is, likewise, no evidence to support the proposition that grave abuse was committed because the power to call was exercised in such a manner as to violate the constitutional provision on civilian supremacy over the military. In the performance of this Court's duty of "purposeful hesitation" before declaring an act of another branch as unconstitutional, only where such grave abuse of discretion is clearly shown shall the Court interfere with the President's judgment. To doubt is to sustain. (***Integrated Bar of the Philippines v. Hon. Ronaldo B. Zamora***, G.R. No. 141284, Aug. 15, 2000, En Banc [Kapunan])

89. Do lower courts have jurisdiction to consider the constitutionality of a law? If so, how should they act in the exercise of this jurisdiction?

Held: <u>We stress at the outset that the lower court had jurisdiction to consider the constitutionality of Section 187, this authority being embraced in the general definition of the judicial power to determine what are the valid and binding laws by the criterion of their conformity to the fundamental law</u>. Specifically, ***BP 129*** vests in the regional trial courts jurisdiction over all civil cases in which the subject of the litigation is incapable of pecuniary estimation *(Sec. 19[1])*, even as the accused in a criminal action has the right to question in his defense the constitutionality of a law he is charged with violating and of the proceedings taken against him, particularly as they contravene the Bill of Rights. Moreover, ***Article VIII***, ***Section 5(2)***, of the Constitution **<u>vests in the Supreme Court appellate jurisdiction over final judgments and orders of lower courts in all cases in which the constitutionality or validity of any treaty, international or</u>**

executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

In the exercise of this jurisdiction, lower courts are advised to act with the utmost circumspection, bearing in mind the consequences of a declaration of unconstitutionality upon the stability of laws, no less than on the doctrine of separation of powers. **As the questioned act is usually the handiwork of the legislative or the executive departments, or both, it will be prudent for such courts, if only out of a becoming modesty, to defer to the higher judgment of this Court in the consideration of its validity, which is better determined after a thorough deliberation by a collegiate body and with the concurrence of the majority of those who participated in its discussion**. (*Art. VIII, Sec. 4[2], Constitution*) ***(Drilon v. Lim, 235 SCRA 135, 139-140, Aug. 4, 1994, En Banc [Cruz])***

90. What cases are to be heard by the Supreme Court en banc?

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Held: Under Supreme Court Circular No. 2-89, dated February 7, 1989, as amended by the Resolution of November 18, 1993:

X x x, the following are considered en banc cases:

1) Cases in which the **constitutionality or validity of any treaty, international or executive agreement, law, executive order, or presidential decree, proclamation, order, instruction, ordinance, or regulation is in question**;
2) **Criminal cases** in which the **appealed decision imposes the death penalty**;
3) Cases raising **novel questions of law**;
4) Cases affecting **ambassadors, other public ministers and consuls**;
5) Cases involving **decisions, resolutions or orders of the Civil Service Commission, Commission on Elections, and Commission on Audit**;
6) Cases where the **penalty to be imposed is the dismissal of a judge, officer or employee of the judiciary, disbarment of a lawyer, or either the suspension of any of them for a period of more than one (1) year or a fine exceeding P10,000.00 or both**;
7) Cases where a **doctrine or principle laid down by the court en banc or in division may be modified or reversed**;
8) Cases **assigned to a division which in the opinion of at least three (3) members thereof merit the attention of the court en banc and are acceptable to a majority of the actual membership of the court en banc**; and
9) All other cases **as the court en banc by a majority of its actual membership may deem of sufficient importance to merit its attention**. (***Firestone Ceramics, Inc. v. Court of Appeals***, 334 SCRA 465, 471-472, June 28, 2000, En Banc [Purisima])

91. What is fiscal autonomy? What is the fiscal autonomy clause?

Held: As envisioned in the Constitution, the fiscal autonomy enjoyed by the Judiciary, the Civil Service Commission, the Commission on Audit, the Commission on Elections, and the Office of the Ombudsman contemplates a **guarantee of full flexibility to allocate and utilize their resources with the wisdom and dispatch that their needs require**. It recognizes the **power and authority to levy, assess and collect fees, fix rates of compensation not exceeding the highest rates authorized by law for compensation and pay plans of the government** and **allocate and**

disburse such sums as may be provided by law or prescribed by them in the course of the discharge of their functions.

FISCAL AUTONOMY means **freedom from outside control**. The Judiciary, the Constitutional Commissions, and the Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties. The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is **anathema to fiscal autonomy** and violative not only of the express mandate of the Constitution but especially as regards the Supreme Court, of the **independence and separation of powers** upon which the entire fabric of our constitutional system is based. (***Bengzon v. Drilon***, 208 SCRA 133, April 15, 1992, En Banc [Gutierrez])

92. May the Ombudsman validly entertain criminal charges against a judge of the regional trial court in connection with his handling of cases before the court.

58 **Held:** Petitioner criticizes the jurisprudence (*Maceda v. Vasquez*, 221 SCRA 464 [1993] and *Dolalas v. Office of the Ombudsman-Mindanao*, 265 SCRA 818 [1996]) cited by the Office of the Ombudsman as erroneous and not applicable to his complaint. He insists that since his complaint involved a criminal charge against a judge, it was within the authority of the Ombudsman not the Supreme Court to resolve whether a crime was committed and the judge prosecuted 58herefore.

The petition can not succeed.

X x x

We agree with the Solicitor General that the Ombudsman committed no grave abuse of discretion warranting the writs prayed for. The issues have been settled in the case of *In Re: Joaquin Borromeo* (241 SCRA 408, 460 [1995]). There, we laid down the rule that **before a civil or criminal action against a judge for a violation of Arts. 204 and 205 (knowingly rendering an unjust judgment or order) can be entertained, there must first be "a final and authoritative judicial declaration" that the decision or order in question is indeed "unjust." The pronouncement may result from either:**

(a) an action of certiorari or prohibition in a higher court impugning the validity of the judgment; or
(b) an administrative proceeding in the Supreme Court against the judge precisely for promulgating an unjust judgment or order.

Likewise, the determination of whether a judge has maliciously delayed the disposition of the case is also an exclusive judicial function (***In Re: Borromeo***, supra, at 461).

> "**To repeat, no other entity or official of the government, NOT THE PROSECUTION OR INVESTIGATION SERVICE OF ANY OTHER BRANCH, not any functionary thereof, has competence to review a judicial order or decision – whether final and executory or not – and pronounce it erroneous so as to lay the basis for a criminal or administrative complaint for rendering an unjust judgment or order. That prerogative BELONGS TO THE COURTS ALONE**.

This having been said, we find that the Ombudsman acted in accordance with law and jurisprudence when he referred the cases against Judge Pelayo to

the Supreme Court for appropriate action. (***De Vera v. Pelayo***, 335 SCRA 281, July 6, 2000, 1st Div. [Pardo])

93. Discuss the validity of "Memorandum Decisions."

Held: 1. **The constitutional mandate that no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based does not preclude the validity of "memorandum decisions" which adopt by reference the findings of fact and conclusions of law contained in the decisions of inferior tribunals**. X x x

Hence, even in this jurisdiction, incorporation by reference is allowed if only to avoid the cumbersome reproduction of the decision of the lower courts, or portions thereof, in the decisions of the higher court (***Francisco v. Permskul***, 173 SCRA 324, 333). This is particularly true when the decision sought to be incorporated is a lengthy and thorough discussion of the facts and
59 conclusions arrived at x x x. (***Oil and Natural Gas Commission v. Court of Appeals***, 293 SCRA 26, July 23, 1998 [Martinez])

2. We have sustained decisions of lower courts as having substantially or sufficiently complied with the constitutional injunction notwithstanding the laconic and terse manner in which they were written and even if "there [was left] much to be desired in terms of [their] clarity, coherence and comprehensibility" provided that they eventually set out the facts and the law on which they were based, as when they stated the legal qualifications of the offense constituted by the facts proved, the modifying circumstances, the participation of the accused, the penalty imposed and the civil liability; or discussed the facts comprising the elements of the offense that was charged in the information, and accordingly rendered a verdict and imposed the corresponding penalty; or quoted the facts narrated in the prosecution's memorandum but made their own findings and assessment of evidence, before finally agreeing with the prosecution's evaluation of the case.

We have also sanctioned the use of memorandum decisions (In ***Francisco v. Permskul***, 173 SCRA 324, 333 [1989], the Court described "[t]he distinctive features of a memorandum decision are, FIRST, it is **rendered by an appellate court**, SECOND, **it incorporates by reference the findings of fact or the conclusions of law contained in the decision, order, or ruling under review**. Most likely, the purpose is to affirm the decision, although it is not impossible that the approval of the findings of facts by the lower court may lead to a different conclusion of law by the higher court. At any rate, **the reason for allowing the incorporation by reference is evidently to avoid the cumbersome reproduction of the decision of the lower court, or portions thereof, in the decision of the higher court. The idea is to avoid having to repeat in the body of the latter decision the findings or conclusions of the lower court since they are being approved or adopted anyway**.), a specie of succinctly written decisions by appellate courts in accordance with the provisions of Section 40, B.P. Blg. 129 on the grounds of expediency, practicality, convenience and docket status of our courts. We have also declared that memorandum decisions comply with the constitutional mandate.

In ***Francisco v. Permskul***, however, we laid the conditions for the validity of memorandum decisions, thus:

> "The memorandum decision, to be valid, **cannot incorporate the findings of fact and the conclusions of law of the lower court only by remote reference**, which is to say that the challenged decision is not

easily and immediately available to the person reading the memorandum decision. **For the incorporation by reference to be allowed, it must provide for direct access to the facts and the law being adopted, which must be contained in a statement ATTACHED to the said decision. In other words, the memorandum decision authorized under Section 40 of B.P. Blg. 129 should actually embody the findings of fact and conclusions of law of the lower court in an annex attached to and made an indispensable part of the decision**.

"It is expected that this requirement will allay the suspicion that no study was made of the decision of the lower court and that its decision was merely affirmed without a prior examination of the facts and the law on which it is based. The *proximity* at least of the annexed statement should suggest that such examination has been undertaken. It is, of course, also understood that the decision being adopted should, to begin with, comply with Article VIII, Section 14 as no amount of incorporation or adoption will rectify its violation.

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"**The Court finds necessary to emphasize that the memorandum decision should be sparingly used lest it become an additive excuse for judicial sloth. It is an additional condition for the validity of this kind of decision may be resorted to only in cases where the facts are in the main accepted by both parties and easily determinable by the judge and there are no doctrinal complications involved that will require an extended discussion of the laws involved. The memorandum decision may be employed in simple litigations only, such as ordinary collection cases, where the appeal is obviously groundless and deserves no more than the time needed to dismiss it**.

X x x

"**Henceforth, all memorandum decisions shall comply with the requirements herein set forth as to the form prescribed and the occasions when they may be rendered. Any deviation will summon the strict enforcement of Article VIII, Section 14 of the Constitution and strike down the flawed judgment as a lawless disobedience**.

Tested against these standards, we find that the RTC decision at bar miserably failed to meet them and, therefore, fell short of the constitutional injunction. The RTC decision is brief indeed, but it is starkly hallow, otiosely written, vacuous in its content and trite in its form. It achieved nothing and attempted at nothing, not even at a simple summation of facts which could easily be done. Its inadequacy speaks for itself.

We cannot even consider or affirm said RTC decision as a memorandum decision because it failed to comply with the measures of validity laid down in *Francisco v. Permskul.* It merely affirmed *in toto* the MeTC decision without saying more. **A decision or resolution, especially one resolving an appeal, should directly meet the issues for resolution; otherwise, the appeal would be pointless** (See ***ABD Overseas Manpower Corporation v. NLRC***, 286 SCRA 454, 464 [1998]).

We therefore reiterate our admonition in ***Nicos Industrial Corporation v. Court of Appeals*** (206 SCRA 127, 134 [1992]), in that while we conceded that brevity in the writing of decisions is an admirable trait, it should not and cannot be substituted for substance; and again in *Francisco v. Permskul,* where

we cautioned that expediency alone, no matter how compelling, cannot excuse non-compliance with the constitutional requirements.

This is not to discourage the lower courts to write abbreviated and concise decisions, but never at the expense of scholarly analysis, and more significantly, of justice and fair play, lest the fears expressed by Justice Feria as the *ponente* in ***Romero v. Court of Appeals*** come true, *i.e.,* **if an appellate court failed to provide the appeal the attention it rightfully deserved, said court deprived the appellant of due process since he was accorded a fair opportunity to be heard by a fair and responsible magistrate. This situation becomes more ominous in criminal cases, as in this case, where not only property rights are at stake but also the liberty if not the life of a human being**.

Faithful adherence to the requirements of ***Section 14***, ***Article VIII*** of the Constitution is indisputably a paramount component of due process and fair play. It is likewise demanded by the due process clause of the Constitution. **The parties to a litigation should be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. The court cannot simply say that judgment is rendered in favor of X and against Y and just leave it at that without any justification whatsoever for its action. The losing party is entitled to know why he lost, so he may appeal to the higher court, if permitted, should he believe that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is precisely prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal. More than that, the requirement is an assurance to the parties that, in reaching judgment, the judge did so through the processes of legal reasoning**. It is, thus, a safeguard against the impetuosity of the judge, preventing him from deciding *ipse dixit*. Vouchsafed neither the sword nor the purse by the Constitution but nonetheless vested with the sovereign prerogative of passing judgment on the life, liberty or property of his fellowmen, the judge must ultimately depend on the power of reason for sustained public confidence in the justness of his decision.

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Thus the Court has struck down as void, decisions of lower courts and even of the Court of Appeals whose careless disregard of the constitutional behest exposed their sometimes cavalier attitude not only to their magisterial responsibilities but likewise to their avowed fealty to the Constitution.

Thus, we nullified or deemed to have failed to comply with Section 14, Article VIII of the Constitution, a decision, resolution or order which: contained no analysis of the evidence of the parties nor reference to any legal basis in reaching its conclusions; contained nothing more than a summary of the testimonies of the witnesses of both parties; convicted the accused of libel but failed to cite any legal authority or principle to support conclusions that the letter in question was libelous; consisted merely of one (1) paragraph with mostly sweeping generalizations and failed to support its conclusion of parricide; consisted of five (5) pages, three (3) pages of which were quotations from the labor arbiter's decision including the dispositive portion and barely a page (two [2] short paragraphs of two [2] sentences each) of its own discussion or reasonings; was merely based on the findings of another court *sans* transcript of stenographic notes, or failed to explain the factual and legal bases for the award of moral damages.

In the same vein do we strike down as a nullity the RTC decision in question. (***Yao v. Court of Appeals***, 344 SCRA 202, Oct. 24, 2000, 1st Div. [Davide])

94. Does the period for decision making under Section 15, Article VIII, 1987 Constitution, apply to the Sandiganbayan? Explain.

Held: <u>The above provision does not apply to the Sandiganbayan. The provision refers to REGULAR COURTS of lower collegiate level</u> that in the present hierarchy applies only to the Court of Appeals.

<u>The Sandiganbayan is a SPECIAL COURT of the same level as the Court of Appeals and possessing all the inherent powers of a court of justice, with functions of a trial court</u>.

<u>Thus, the Sandiganbayan is not a regular court but a special one</u>. The Sandiganbayan was originally empowered to promulgate its own rules of procedure. However, on March 30, 1995, Congress repealed the Sandiganbayan's power to promulgate its own rules of procedure and instead prescribed that the Rules of Court promulgated by the Supreme Court shall apply to all cases and proceedings filed with the Sandiganbayan.
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> "Special courts are judicial tribunals exercising limited jurisdiction over particular or specialized categories of actions. They are the Court of Tax Appeals, the Sandiganbayan, and the Shari'a Courts." *(Supra, Note 23, at p. 8)*

Under Article VIII, Section 5[5] of the Constitution "Rules of procedure of *special courts* and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court."

In his report, the Court Administrator would distinguish between cases which the Sandiganbayan has cognizance of in its original jurisdiction, and cases which fall within the appellate jurisdiction of the Sandiganbayan. The Court Administrator posits that since in the first class of cases, the Sandiganbayan acts more as a trial court, then for that classification of cases, the three [3] month reglementary period applies. For the second class of cases, the Sandiganbayan has the twelve-month reglementary period for collegiate courts. We do not agree.

The law creating the Sandiganbayan, ***P.D. No. 1606*** is clear on this issue. It provides:

> "**Sec**. **6**. *Maximum period for termination of cases* – As far as practicable, the trial of cases before the Sandiganbayan once commenced shall be *continuous until terminated and* ***<u>the judgment shall be rendered within three [3] months from the date the case was submitted for decision</u>***."

On September 18, 1984, the Sandiganbayan promulgated its own rules, thus:

> "**Sec**. **3**. *Maximum Period to Decide Cases* – The judgment or final order of a division of the Sandiganbayan shall be rendered ***<u>within three [3] months from the date the case was submitted for decision</u>***."

<u>Given the clarity of the rule that does not distinguish, we hold that the three [3] month period, not the twelve [12] month period, to decide cases applies to the Sandiganbayan</u>. **<u>Furthermore, the Sandiganbayan presently sitting in five [5] divisions, functions as a trial court. The term "trial" is used in its broad sense, meaning, it allows introduction of evidence by the parties in the cases before it</u>**. The

Sandiganbayan, in original cases within its jurisdiction, conducts trials, has the discretion to weigh the evidence of the parties, admit the evidence it regards as credible and reject that which they consider perjurious or fabricated.

(***Re: Problem of Delays in Cases Before the Sandiganbayan***, A.M. No. 00-8-05-SC, Nov. 28, 2001, En Banc [Pardo])

CONSTITUTIONAL LAW

A. THE INHERENT POWERS OF THE STATE

POLICE POWER

95. Define POLICE POWER and clarify its scope.

Held: 1. *POLICE POWER* is an **inherent attribute of sovereignty**. It has been defined as **the power vested by the Constitution in the legislature to MAKE, ORDAIN, and ESTABLISH all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be FOR THE GOOD AND WELFARE OF THE COMMONWEALTH, and for the subjects of the same**. The power is **PLENARY** and its **SCOPE** is **VAST** and **PERVASIVE**, reaching and justifying measures for **public health, public safety, public morals, and the general welfare**.

It bears stressing that **police power is lodged primarily in the National Legislature. It cannot be exercised by any group or body of individuals not possessing legislative power**. The National Legislature, however, **may delegate this power to the President and administrative boards as well as the lawmaking bodies of municipal corporations or local government units**. Once delegated, the agents can exercise only such legislative powers as are conferred on them by the national lawmaking body. (***Metropolitan Manila Development Authority v. Bel-Air Village Association, Inc.***, 328 SCRA 836, 843-844, March 27, 2000, 1st Div. [Puno])

2. The SCOPE of police power has been held to be **so comprehensive as to encompass almost all matters affecting the health, safety, peace, order, morals, comfort and convenience of the community**. Police power is **essentially REGULATORY in nature and the power to issue licenses or grant business permits, if exercised for a regulatory and not revenue-raising purpose, is within the ambit of this power**.

X x x

[T]he issuance of business licenses and permits by a municipality or city is essentially regulatory in nature. The authority, which devolved upon local government units, to issue or grant such licenses or permits, is essentially in the exercise of the police power of the State within the contemplation of the general welfare clause of the Local Government Code. (***Acebedo Optical Company, Inc. v. Court of Appeals***, 329 SCRA 314, March 31, 2000, En Banc [Purisima])

96. Does Article 263(g) of the Labor Code (vesting upon the Secretary of Labor the discretion to determine what industries are indispensable to the national interest and thereafter, assume jurisdiction over disputes in said industries) violate the workers' constitutional right to strike?

Held: Said article does not interfere with the workers' right to strike but merely regulates it, when in the exercise of such right, national interests will be affected. The rights granted by the Constitution are not absolute. They are still subject to control and limitation to ensure that they

are not exercised arbitrarily. The interests of both the employers and the employees are intended to be protected and not one of them is given undue preference.

The Labor Code vests upon the Secretary of Labor the discretion to determine what industries are indispensable to national interest. Thus, upon the determination of the Secretary of Labor that such industry is indispensable to the national interest, it will assume jurisdiction over the labor dispute of said industry. **The assumption of jurisdiction is in the nature of police power measure. This is done for the promotion of the common good considering that a prolonged strike or lockout can be inimical to the national economy. The Secretary of Labor acts to maintain industrial peace. Thus, his certification for compulsory arbitration is not intended to impede the workers' right to strike but to obtain a speedy settlement of the dispute**. (***Philtread Workers Union [PTWU] v. Confesor***, 269 SCRA 393, March 12, 1997)

64 *97. May solicitation for religious purposes be subject to proper regulation by the State in the exercise of police power?*

Held: The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. **Thus, the Constitution embraces two concepts, that is, freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definitions to preserve the enforcement of that protection**. In every case, the power to regulate must be so exercised, in attaining a permissible end, as not to unduly infringe on the protected freedom.

Whence, even the exercise of religion may be regulated, at some slight inconvenience, in order that the State may protect its citizens from injury. Without doubt, a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent. The State is likewise free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort, or convenience.

It does not follow, therefore, from the constitutional guarantees of the free exercise of religion that everything which may be so called can be tolerated. It has been said that **a law advancing a legitimate governmental interest is not necessarily invalid as one interfering with the "free exercise" of religion merely because it also incidentally has a detrimental effect on the adherents of one or more religion. Thus, the general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissible obstacle to its exercise**.

Even with numerous regulative laws in existence, it is surprising how many operations are carried on by persons and associations who, secreting their activities under the guise of benevolent purposes, succeed in cheating and

defrauding a generous public. It is in fact amazing how profitable the fraudulent schemes and practices are to people who manipulate them. The State has authority under the exercise of its police power to determine whether or not there shall be restrictions on soliciting by unscrupulous persons or for unworthy causes or for fraudulent purposes. That solicitation of contributions under the guise of charitable and benevolent purposes is grossly abused is a matter of common knowledge. Certainly the solicitation of contributions in good faith for worthy purposes should not be denied, but somewhere should be lodged the power to determine within reasonable limits the worthy from the unworthy. The objectionable practices of unscrupulous persons are prejudicial to worthy and proper charities which naturally suffer when the confidence of the public in campaigns for the raising of money for charity is lessened or destroyed. **Some regulation of public solicitation is, therefore, in the public interest**.

To conclude, solicitation for religious purposes may be subject to proper regulation by the State in the exercise of police power.

(***Centeno v. Villalon-Pornillos***, 236 SCRA 197, Sept. 1, 1994 [Regalado])

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THE POWER OF EMINENT DOMAIN

98. What is EMINENT DOMAIN?

Held: 1. *EMINENT DOMAIN* is the **right or power of a sovereign state to APPROPRIATE PRIVATE PROPERTY to particular uses to PROMOTE PUBLIC WELFARE**. It is an **indispensable attribute of sovereignty**; a power **grounded in the primary duty of government to serve the common need and advance the general welfare**. Thus, the right of eminent domain **appertains to every independent government without the necessity for constitutional recognition. The provisions found in modern constitutions of civilized countries relating to the taking of property for the public use do not by implication grant the power to the government, but limit a power which would otherwise be without limit**. Thus, our own Constitution provides that "**[p]rivate property shall not be taken for public use without just compensation**." (***Art. III, Sec. 9***). Furthermore, the due process and equal protection clauses (*1987 Constitution, Art. III, Sec. 1*), act as additional safeguards against the arbitrary exercise of this governmental power.

Since the exercise of the power of eminent domain affects an individual's right to private property, a constitutionally-protected right necessary for the preservation and enhancement of personal dignity and intimately connected with the rights to life and liberty, the need for its circumspect operation cannot be overemphasized. In ***City of Manila v. Chinese Community of Manila*** we said (40 Phil. 349 [1919):

> **The exercise of the right of eminent domain, whether directly by the State, or by its authorized agents, is necessarily in derogation of private rights, and the rule in that case is that THE AUTHORITY MUST BE STRICTLY CONSTRUED. No species of property is held by individuals with greater tenacity, and none is guarded by the Constitution and the laws more sedulously, than the right to the freehold of inhabitants. When the legislature interferes with that right, and, for greater public purposes, appropriates the land of an individual without his consent, the plain meaning of the law should not be enlarged by doubt[ful] interpretation**. *(**Bensley v. Mountainlake Water Co.**, 13 Cal., 306 and cases cited [73 Am. Dec., 576])*

The statutory power of taking property from the owner without his consent is one of the most delicate exercises of governmental authority. It is to be watched with jealous scrutiny. Important as the power may be to the government, the inviolable sanctity which all free constitutions attach to the right of property of the citizens, constrains the strict observance of the substantial provisions of the law which are *prescribed* as modes of the exercise of the power, and to protect it from abuse x x x.

The power of eminent domain is essentially LEGISLATIVE in nature. It is firmly settled, however, that **such power may be validly delegated to local government units, other public entities and public utilities, although the scope of this delegated legislative power is necessarily narrower than that of the delegating authority and may only be exercised in strict compliance with the terms of the delegating law**. (***Heirs of Alberto Suguitan v. City of Mandaluyong***, 328 SCRA 137, 144-146, March 14, 2000, 3rd Div. [Gonzaga-Reyes])

2. *EMINENT DOMAIN* is a fundamental State power that is **inseparable from sovereignty. It is government's right to appropriate, in the nature of a compulsory sale to the State, private property for public use or purpose**. Inherently possessed by the national legislature, the power of eminent domain may be validly delegated to local governments, other public entities and public utilities. **For the taking of private property by the government to be valid, the taking must be for PUBLIC PURPOSE and there must be JUST COMPENSATION**. (***Moday v. Court of Appeals***, 268 SCRA 586, February 20, 1997)

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99. State some limitations on the exercise of the power of Eminent Domain.

Held: The *LIMITATIONS* on the power of eminent domain are that **the USE must be PUBLIC, COMPENSATION must be made and DUE PROCESS OF LAW must be observed**. The Supreme Court, taking cognizance of such issues as the adequacy of compensation, necessity of the taking and the public use character or the purpose of the taking, has ruled that the necessity of exercising eminent domain must be genuine and of a public character. Government may not capriciously choose what private property should be taken. (***Moday v. Court of Appeals***, 268 SCRA 586, February 20, 1997)

100. Discuss the EXPANDED NOTION OF PUBLIC USE in eminent domain proceedings.

Held: The City of Manila, acting through its legislative branch, has the express power to acquire private lands in the city and subdivide these lands into home lots for sale to *bona fide* tenants or occupants thereof, and to laborers and low-salaried employees of the city.

That only a few could actually benefit from the expropriation of the property does not diminish its public character. It is simply not possible to provide all at once land and shelter for all who need them.

Corollary to the expanded notion of public use, **expropriation is not anymore confined to vast tracts of land and landed estates. It is therefore of no moment that the land sought to be expropriated in this case is less than half a hectare only**.

Through the years, **the public use requirement in eminent domain has evolved into a flexible concept, influenced by changing conditions. Public use now includes the broader notion of indirect public benefit or**

advantage, including in particular, urban land reform and housing. (***Filstream International Incorporated v. CA***, 284 SCRA 716, Jan. 23, 1998 [Francisco])

101. The constitutionality of Sec. 92 of B.P. Blg. 881 (requiring radio and television station owners and operators to give to the Comelec radio and television time free of charge) was challenged on the ground, among others, that it violated the due process clause and the eminent domain provision of the Constitution by taking airtime from radio and television broadcasting stations without payment of just compensation. Petitioners claim that the primary source of revenue of radio and television stations is the sale of airtime to advertisers and that to require these stations to provide free airtime is to authorize a taking which is not "a de minimis temporary limitation or restraint upon the use of private property." Will you sustain the challenge?

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Held: All broadcasting, whether by radio or by television stations, is licensed by the government. Airwave frequencies have to be allocated as there are more individuals who want to broadcast than there are frequencies to assign. A franchise is thus a PRIVILEGE subject, among other things, to amendment by Congress in accordance with the constitutional provision that "any such franchise or right granted x x x shall be subject to amendment, alteration or repeal by the Congress when the common good so requires." *(Art. XII, Sec. 11)*

Indeed, provisions for Comelec Time have been made by amendment of the franchises of radio and television broadcast stations and such provisions have not been thought of as taking property without just compensation. Art. XII, Sec. 11 of the Constitution authorizes the amendment of franchises for "the common good." *What better measure can be conceived for the common good than one for free airtime for the benefit not only of candidates but even more of the public, particularly the voters, so that they will be fully informed of the issues in an election?* "**[I]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount**."

Nor indeed can there be any constitutional objection to the requirement that broadcast stations give free airtime. Even in the United States, there are responsible scholars who believe that government controls on broadcast media can constitutionally be instituted to ensure diversity of views and attention to public affairs to further the system of free expression. For this purpose, broadcast stations may be required to give free airtime to candidates in an election.

In truth, radio and television broadcasting companies, which are given franchises, do not own the airwaves and frequencies through which they transmit broadcast signals and images. They are merely given the TEMPORARY PRIVILEGE of using them. Since a franchise is a mere privilege, **the exercise of the privilege may reasonably be burdened with the performance by the grantee of some form of public service**.

In the granting of the privilege to operate broadcast stations and thereafter supervising radio and television stations, the State spends considerable public funds in licensing and supervising such stations. It would be strange if it cannot even require the licensees to render public service by giving free airtime.

The claim that petitioner would be losing P52,380,000.00 in unrealized revenue from advertising is based on the assumption that airtime is "finished product" which, it is said, become the property of

the company, like oil produced from refining or similar natural resources after undergoing a process for their production. As held in *Red Lion Broadcasting Co. v. F.C.C.* (395 U.S. at 394, 23 L. Ed. 2d at 391, quoting 47 U.S.C. Sec. 301), which upheld the right of a party personally attacked to reply, "**licenses to broadcast do not confer ownership of designated frequencies, but only the temporary privilege of using them**." Consequently, "**a license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a radio frequency to the exclusion of his fellow citizens**. There is nothing in the First Amendment which prevents the government from requiring a licensee to share his frequency with others and to conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves." **As radio and television broadcast stations do not own the airwaves, no private property is taken by the requirement that they provide airtime to the Comelec**. (***TELEBAP, Inc. v. COMELEC***, 289 SCRA 337, April 21, 1998 [Mendoza])

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102. May eminent domain be barred by "res judicata" or "law of the case"?

Held: The principle of *RES JUDICATA,* which finds application in generally all cases and proceedings, **cannot bar the RIGHT of the State or its agents to expropriate private property. The very nature of eminent domain, as an INHERENT power of the State, dictates that the RIGHT to exercise the power be ABSOLUTE and UNFETTERED even by a prior judgment or RES JUDICATA**. The *SCOPE* of eminent domain is **plenary** and, like police power, can "reach every form of property which the State might need for public use." **All separate interests of individuals in property are held of the government under this tacit agreement or IMPLIED RESERVATION**. Notwithstanding the grant to individuals, the *EMINENT DOMAIN,* the highest and most exact idea of property, **remains in the government, or in the aggregate body of the people in their sovereign capacity; and they have the right to resume the possession of the property whenever the public interest requires it**." Thus, the State or its authorized agent cannot be forever barred from exercising said *right* by reason alone of previous non-compliance with any legal requirement.

While the principle of res judicata does not denigrate the right of the State to exercise eminent domain, it does apply to specific issues decided in a previous case. For example, a final judgment dismissing an expropriation suit on the ground that there was no prior offer precludes another suit raising the same issue; it cannot, however, bar the State or its agent from thereafter complying with this requirement, as prescribed by law, and subsequently exercising its power of eminent domain over the same property. (***Municipality of Paranaque v. V.M. Realty Corporation***, 292 SCRA 678, July 20, 1998 [Panganiban])

103. Discuss how expropriation may be initiated, and the two stages in expropriation.

Held: Expropriation may be initiated by **court action** or **by legislation**. **In both instances, just compensation is determined by the courts** (***EPZA v. Dulay***, 149 SCRA 305 [1987]).

The expropriation of lands consists of *TWO STAGES*. As explained in ***Municipality of Binan v. Garcia*** (180 SCRA 576, 583-584 [1989], reiterated in ***National Power Corp. v. Jocson***, 206 SCRA 520 [1992]):

The *FIRST* is concerned with the **determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit**. It ends with an order, if not dismissal of the action, "of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose declared in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint" x x x.

The *SECOND* phase of the eminent domain action is concerned with the **determination by the court of "the just compensation for the property sought to be taken**." This is done by the court with the assistance of not more than three (3) commissioners x x x.

It is only upon the completion of these two stages that expropriation is said to have been completed. Moreover, it is ONLY UPON PAYMENT OF JUST COMPENSATION that title over the property passes to the government. Therefore, until the action for expropriation has been completed and terminated, ownership over the property being expropriated remains with the registered owner. Consequently, the latter can exercise all rights pertaining to an owner, including the right to dispose of his property, subject to the power of the State ultimately to acquire it through expropriation. (***Republic v. Salem Investment Corporation, et. al.***, G.R. No. 137569, June 23, 2000, 2nd Div. [Mendoza])

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104. Do the two (2) stages in expropriation apply only to judicial, and not to legislative, expropriation?

Held: The De la Ramas are mistaken in arguing that the two stages of expropriation x x x only apply to judicial, and not to legislative, expropriation. Although Congress has the power to determine what land to take, it can not do so arbitrarily. **Judicial determination of the propriety of the exercise of the power, for instance, in view of allegations of partiality and prejudice by those adversely affected, and the just compensation for the subject property is provided in our constitutional system**.

We see no point in distinguishing between judicial and legislative expropriation as far as the two stages mentioned above are concerned. **Both involve these stages and in both, the process is not completed until payment of just compensation is made**. The Court of Appeals was correct in saying that **B.P. Blg. 340 did not effectively expropriate the land of the De la Ramas. As a matter of fact, it merely commenced the expropriation of the subject property**.

X x x

The De la Ramas make much of the fact that ownership of the land was transferred to the government because the equitable and beneficial title was already acquired by it in 1983, leaving them with only the naked title. However, as this Court held in ***Association of Small Landowners in the Phil., Inc. v. Secretary of Agrarian Reform*** (175 SCRA 343, 389 [1989]):

> The recognized rule, indeed, is that **title to the property expropriated shall pass from the owner to the expropriator only upon full payment of the just compensation**. Jurisprudence on this settled principle is consistent both here and in other democratic jurisdictions. X x x

(***Republic v. Salem Investment Corporation, et. al.***, G.R. No. 137569, June 23, 2000, 2nd Div. [Mendoza])

105. Is PRIOR UNSUCCESSFUL NEGOTIATION a condition precedent for the exercise of eminent domain?

Held: Citing ***Iron and Steel Authority v. Court of Appeals*** (249 SCRA 538, October 25, 1995), petitioner insists that before eminent domain may be exercised by the state, there must be a showing of prior unsuccessful negotiation with the owner of the property to be expropriated.

This contention is not correct. As pointed out by the Solicitor General **the current effective law on delegated authority to exercise the power of eminent domain is found in Section 12, Book III** of the ***Revised Administrative Code***, which provides:

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> "**SEC. 12.** *Power of Eminent Domain* – **The President shall determine when it is necessary or advantageous to exercise the power of eminent domain in behalf of the National Government, and direct the Solicitor General, whenever he deems the action advisable, to institute expropriation proceedings in the proper court**."

The foregoing provision does not require prior unsuccessful negotiation as a condition precedent for the exercise of eminent domain. In *Iron and Steel Authority v. Court of Appeals,* the President chose to prescribe this condition as an additional requirement instead. In the instant case, however, no such voluntary restriction was imposed. (***SMI Development Corporation v. Republic***, 323 SCRA 862, Jan. 28, 2000, 3rd Div. [Panganiban])

THE POWER OF TAXATION

106. Can taxes be subject to off-setting or compensation?

Held: Taxes cannot be subject to compensation for the simple reason that the government and the taxpayer are not creditors and debtors of each other. There is a **material distinction between a tax and debt**. ***DEBTS*** are **due to the Government in its corporate capacity**, while ***TAXES*** are **due to the Government in its sovereign capacity**. It must be noted that a **distinguishing feature of a tax is that it is COMPULSORY rather than a matter of bargain**. Hence, a tax **does not depend upon the consent of the taxpayer**. If any taxpayer can defer the payment of taxes by raising the defense that it still has a pending claim for refund or credit, this would adversely affect the government revenue system. **A taxpayer cannot refuse to pay his taxes when they fall due simply because he has a claim against the government or that the collection of a tax is contingent on the result of the lawsuit it filed against the government**.

(***Philex Mining Corporation v. Commissioner of Internal Revenue***, 294 SCRA 687, Aug. 28, 1998 [Romero])

107. Under Article VI, Section 28, paragraph 3 of the 1987 Constitution, "[C]haritable institutions, churches and parsonages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly and exclusively used for religious, charitable or educational purposes shall be exempt from taxation." YMCA claims that the income earned by its building leased to private entities and that of its parking space is likewise covered by said exemption. Resolve.

Held: The debates, interpellations and expressions of opinion of the framers of the Constitution reveal their intent that which, in turn, may have guided the people in ratifying the Charter. Such intent must be effectuated.

Accordingly, Justice Hilario G. Davide, Jr., a former constitutional commissioner, who is now a member of this Court, stressed during the Concom debates that "x x x **what is exempted is not the institution itself** x x x; **those exempted from real estate taxes are lands, buildings and improvements actually, directly and exclusively used for religious, charitable or educational purposes**. Father Joaquin G. Bernas, an eminent authority on the Constitution and also a member of the Concom, adhered to the same view that **the exemption created by said provision pertained only to PROPERTY TAXES**.

In his treatise on taxation, Mr. Justice Jose C. Vitug concurs, stating that "[t]he tax exemption covers *property* taxes only." (***Commissioner of Internal Revenue v. CA***, 298 SCRA 83, Oct. 14, 1998 [Panganiban])

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108. Under Article XIV, Section 4, paragraph 3 of the 1987 Constitution, "[A]ll revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties." YMCA alleged that it "is a non-profit educational institution whose revenues and assets are used actually, directly and exclusively for educational purposes so it is exempt from taxes on its properties and income."

Held: We reiterate that private respondent is exempt from the payment of property tax, BUT NOT INCOME TAX ON THE RENTALS FROM ITS PROPERTY. The bare allegation alone that it is a non-stock, non-profit educational institution is insufficient to justify its exemption from the payment of income tax.

[*L]aws allowing tax exemption are construed STRICTISSIMI JURIS**. Hence, for the YMCA to be granted the exemption it claims under the abovecited provision, it must prove with substantial evidence that **(1) it falls under the classification *non-stock, non-profit educational institution*;** and **(2) the income it seeks to be exempted from taxation is *used actually, directly, and exclusively for educational purposes. However, the Court notes that not a scintilla of evidence was submitted by private respondent to prove that it met the said requisites. (***Commissioner of Internal Revenue v. CA***, 298 SCRA 83, Oct. 14, 1998 [Panganiban])

109. Is the YMCA an educational institution, within the purview of Article XIV, Section 4, par. 3 of the Constitution?

Held: We rule that it is NOT. The term "*EDUCATIONAL INSTITUTION*" or "*INSTITUTION OF LEARNING*" has acquired a well-known technical meaning, of which the members of the Constitutional Commission are deemed cognizant. Under the Education Act of 1982, **such term refers to schools**. The school system is **synonymous with formal education**, which "**refers to the hierarchically structured and chronologically graded learnings organized and provided by the formal school system and for which certification is required in order for the learner to progress through the grades or move to the higher levels**." The Court has examined the "Amended Articles of Incorporation" and "By-Laws" of the YMCA, but found nothing in them that even hints that it is a school or an educational institution.

Furthermore, under the Education Act of 1982, even non-formal education is understood to be school-based and "private auspices such as foundations and civic-spirited organizations" are ruled out. It is settled that the term "educational institution," when used in laws granting tax exemptions, **refers to a "x x x school seminary, college or educational establishment x x x**." *(84 CJS 566)* Therefore, the private respondent cannot be deemed one of the educational institutions covered by the constitutional provision under consideration. (***Commissioner of Internal Revenue v. CA***, 298 SCRA 83, Oct. 14, 1998 [Panganiban])

110. May the PCGG validly commit to exempt from all forms of taxes the properties to be retained by the Marcos heirs in a Compromise Agreement between the former and the latter?

Held: The power to tax and to grant exemptions is vested in the Congress and, to a certain extent, in the local legislative bodies. Section 28(4), Article VI of the Constitution, specifically provides: "**No law granting any tax exemption shall be passed without the concurrence of a majority of all the members of the Congress**." **The PCGG has absolutely no power to grant tax exemptions, even under the cover of its authority to compromise ill-gotten wealth cases**.

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Even granting that Congress enacts a law exempting the Marcoses from paying taxes on their properties, such law will definitely not pass the test of the equal protection clause under the Bill of Rights. Any special grant of tax exemption in favor only of the Marcos heirs will constitute class legislation. It will also violate the constitutional rule that "taxation shall be uniform and equitable***."*** (***Chavez v. PCGG***, 299 SCRA 744, Dec. 9, 1998 [Panganiban])

111. Discuss the purpose of tax treaties?

Held: The RP-US Tax Treaty is just one of a number of bilateral treaties which the Philippines has entered into for the avoidance of double taxation. The purpose of these international agreements is **to reconcile the national fiscal legislations of the contracting parties in order to help the taxpayer avoid simultaneous taxation in two different jurisdictions**. More precisely, the tax conventions are drafted with a view towards the elimination of *international juridical double taxation* x x x. (***Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.***, 309 SCRA 87, 101-102, June 25, 1999, 3rd Div. [Gonzaga-Reyes])

112. What is "international juridical double taxation"?

Held: It is defined as **the imposition of comparable taxes in two or more states on the same taxpayer in respect of the same subject matter and for identical periods**. (***Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.***, 309 SCRA 87, 102, June 25, 1999)

113. What is the rationale for doing away with international juridical double taxation? What are the methods resorted to by tax treaties to eliminate double taxation?

Held: The apparent rationale for doing away with double taxation is **to encourage the free flow of goods and services and the movement of capital, technology and persons between countries, conditions deemed**

vital in creating robust and dynamic economies. Foreign investments will only thrive in a fairly predictable and reasonable international investment climate and the protection against double taxation is crucial in creating such a climate.

Double taxation usually takes place when **a person is resident of a contracting state and derives income from, or owns capital in the other contracting state and both states impose tax on that income or capital**. In order to eliminate double taxation, a tax treaty resorts to several methods. First, **it sets out the respective rights to tax of the state of source or situs and of the state of residence with regard to certain classes of income or capital**. In some cases, an exclusive right to tax is conferred on one of the contracting states; however, for other items of income or capital, both states are given the right to tax, although the amount of tax that may be imposed by the state of source is limited.

The second method for the elimination of double taxation applies whenever **the state of source is given a full or limited right to tax together with the state of residence**. In this case, **the treaties make it incumbent upon the state of residence to allow relief in order to avoid double taxation**. There are **two methods of relief** - the **EXEMPTION METHOD** and the **CREDIT METHOD**. In the exemption method, the **income or capital which is taxable in the state of source or situs is exempted in the state of residence, although in some instances it may be taken into account in determining the rate of tax applicable to the taxpayer's remaining income or capital**. On the other hand, in the credit method, **although the income or capital which is taxed in the state of source is still taxable in the state of residence, the tax paid in the former is credited against the tax levied in the latter**. The basic difference between the two methods is that in the exemption method, the focus is on the income or capital itself, whereas the credit method focuses upon the tax. (***Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.***, 309 SCRA 87, 102-103, June 25, 1999)

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114. What is the rationale for reducing the tax rate in negotiating tax treaties?

Held: In negotiating tax treaties, the underlying rationale for reducing the tax rate is that **the Philippines will give up a part of the tax in the expectation that the tax given up for this particular investment is not taxed by the other country**. (***Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.***, 309 SCRA 87, 103, June 25, 1999)

B. THE BILL OF RIGHTS

THE DUE PROCESS CLAUSE

115. Discuss the Due Process Clause. Distinguish substantive due process from procedural due process.

Held: Section 1 of the Bill of Rights lays down what is known as the "due process clause" of the Constitution.

In order to fall within the aegis of this provision, *two conditions must concur*, namely, that **there is a deprivation** and that **such deprivation is done without proper observance of due process**. When one speaks of due process of law, however, a distinction must be made between matters of procedure and matters of substance. In essence, *PROCEDURAL DUE PROCESS* "**refers to the METHOD or MANNER by which the law is enforced**," while

SUBSTANTIVE DUE PROCESS "**requires that the LAW itself, not merely the procedures by which the law would be enforced, is FAIR, REASONABLE, and JUST**." (***Corona v. United Harbor Pilots Association of the Phils.***, 283 SCRA 31, Dec. 12, 1997 [Romero])

116. Respondents United Harbor Pilots Association of the Philippines argue that due process was not observed in the adoption of PPA-AO No. 04-92 which provides that: "(a)ll existing regular appointments which have been previously issued by the Bureau of Customs or the PPA shall remain valid up to 31 December 1992 only," and "(a)ll appointments to harbor pilot positions in all pilotage districts shall, henceforth, be only for a term of one (1) year from date of effectivity subject to renewal or cancellation by the Philippine Ports Authority after conduct of a rigid evaluation of performance," allegedly because no hearing was conducted whereby "relevant government agencies" and the harbor pilots themselves could ventilate their views. They also contended that the sole and exclusive right to the exercise of harbor pilotage by pilots has become vested and can only be "withdrawn or shortened" by observing the constitutional
74 *mandate of due process of law.*

Held: They are obviously referring to the *PROCEDURAL ASPECT* of the enactment. Fortunately, the Court has maintained a clear position in this regard, a stance it has stressed in the recent case of ***Lumiqued v. Hon. Exevea*** (G.R. No. 117565, November 18, 1997), where it declared that "**(a)s long as a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law, for this OPPORTUNITY TO BE HEARD is the very ESSENCE of due process. Moreover, this constitutional mandate is deemed satisfied if a person is granted an opportunity to seek reconsideration of the action or ruling complained of**."

In the case at bar, respondents questioned PPA-AO No. 04-92 no less than four times before the matter was finally elevated to this Tribunal. Their arguments on this score, however, failed to persuade. X x x

Neither does the fact that the pilots themselves were not consulted in any way taint the validity of the administrative order. **As a general rule, notice and hearing, as the fundamental requirements of procedural due process, are essential only when an administrative body exercises its QUASI-JUDICIAL FUNCTION. In the performance of its executive or legislative functions, such as issuing rules and regulations, an administrative body need not comply with the requirements of notice and hearing**.

Upon the other hand, it is also contended that the sole and exclusive right to the exercise of harbor pilotage by pilots is a settled issue. Respondents aver that said right has become vested and can only be "withdrawn or shortened" by observing the constitutional mandate of due process of law. Their argument has thus shifted from the procedural to one of SUBSTANCE. It is here where PPA-AO No. 04-92 fails to meet the condition set by the organic law.

Pilotage, just like other professions, may be practiced only by duly licensed individuals. Licensure is "the granting of license especially to practice a profession." It is also "the system of granting licenses (as for professional practice) in accordance with established standards." A license is a right or permission granted by some competent authority to carry on a business or do an act which, without such license, would be illegal.

Before harbor pilots can earn a license to practice their profession, they literally have to pass through the proverbial eye of a needle by taking, not one but *five* examinations, each followed by actual training and practice. X x x

Their license is granted in the form of an appointment which allows them to engage in pilotage until they retire at the age of 70 years. This is a vested right. Under the terms of PPA-AO No. 04-92, "[a]ll existing regular appointments which have been previously issued by the Bureau of Customs or the PPA shall remain valid up to 31 December 1992 only," and "(a)ll appointments to harbor pilot positions in all pilotage districts shall, henceforth, be only for a term of one (1) year from date of effectivity subject to renewal or cancellation by the Authority after conduct of a rigid evaluation of performance."

It is readily apparent that PPA-AO No. 04-92 unduly restricts the right of harbor pilots to enjoy their profession before their compulsory retirement. In the past, they enjoyed a measure of security knowing that after passing five examinations and undergoing years of on-the-job training, they would have a license which they could use until their retirement, unless sooner
75 revoked by the PPA for mental or physical unfitness. Under the new issuance, they have to contend with an annual cancellation of their license which can be temporary or permanent depending on the outcome of their performance evaluation. Veteran pilots and neophytes alike are suddenly confronted with one-year terms which *ipso facto* expire at the end of that period. Renewal of their license is now dependent on a "rigid evaluation of performance" which is conducted only after the license has already been cancelled. Hence, the use of the term "renewal." **It is this pre-evaluation cancellation which primarily makes PPA-AO No. 04-92 unreasonable and constitutionally infirm. In a real sense, it is a deprivation of property without due process of law**.

(***Corona v. United Harbor Pilots Association of the Phils.***, 283 SCRA 31, December 12, 1997 [Romero])

117. Does the due process clause encompass the right to be assisted by counsel during an administrative inquiry?

Held: The right to counsel, which cannot be waived unless the waiver is in writing and in the presence of counsel, is a right afforded a suspect or an accused during custodial investigation. It is not an absolute right and may, thus, be invoked or rejected in a criminal proceeding and, with more reason, in an administrative inquiry. *In the case at bar, petitioners invoke the right of an accused in criminal proceedings to have competent and independent counsel of his own choice. Lumiqued, however, was not accused of any crime in the proceedings below. The investigation conducted by the committee x x x was for the sole purpose of determining if he could be held ADMINISTRATIVELY LIABLE under the law for the complaints filed against him. x x x As such, the hearing conducted by the investigating committee was not part of a criminal prosecution*. X x x

While investigations conducted by an administrative body may at times be akin to a criminal proceeding, the fact remains that under existing laws, a party in an administrative inquiry MAY or MAY NOT BE ASSISTED BY COUNSEL, irrespective of the nature of the charges and of the respondent's capacity to represent himself, and no duty rests on such a body to furnish the person being investigated with counsel. In an administrative proceeding x x x a respondent x x x has the *OPTION* of engaging the services of counsel or not. x x x **Thus, the right to counsel is not imperative in administrative investigations because such inquiries are conducted merely to determine whether there are facts that merit disciplinary measures against erring public officers and employees, with the purpose of maintaining the dignity of government service**.

The right to counsel is not indispensable to due process unless required by the Constitution or the law. X x x. (***Lumiqued v. Exevea***, 282 SCRA 125, Nov. 18, 1997 [Romero])

118. Does an extraditee have the right to notice and hearing during the evaluation stage of an extradition proceeding?

Held: Considering that in the case at bar, the extradition proceeding is only at its evaluation stage, the nature of the right being claimed by the private respondent is nebulous and the degree of prejudice he will allegedly suffer is weak, we accord greater weight to the interests espoused by the government thru the petitioner Secretary of Justice. X x x

In tilting the balance in favor of the interests of the State, the Court stresses that it is not ruling that the private respondent has no
76 **right to due process at all throughout the length and breadth of the extradition proceedings**. Procedural due process requires a determination of what process is due, when it is due, and the degree of what is due. Stated otherwise, **a prior determination should be made as to whether procedural protections are at all due and when they are due, which in turn depends on the extent to which an individual will be "condemned to suffer grievous loss**." We have explained why an extraditee has no right to notice and hearing during the evaluation stage of the extradition process. As aforesaid, **P.D. No. 1069** which implements the RP-US Extradition Treaty **affords an extraditee *sufficient opportunity* to meet the evidence against him *once the petition is filed in court.* The *time* for the extraditee to know the basis of the request for his extradition *is merely moved* to the filing in court of the formal petition for extradition. The extraditee's right to know is *momentarily withheld during the evaluation stage* of the extradition process to accommodate the more compelling interest of the State to prevent escape of potential extraditees which can be precipitated by premature information of the basis of the request for his extradition. No less compelling *at that stage* of the extradition proceedings is the need to be more deferential to the judgment of a co-equal branch of the government, the Executive, which has been endowed by our Constitution with greater power over matters involving our foreign relations**. Needless to state, this balance of interests is *not a static but a moving balance* which can be adjusted as the extradition process moves from the administrative stage to the judicial stage and to the execution stage depending on factors that will come into play. In sum, **we rule that the *temporary hold* on private respondent's privilege of notice and hearing is a *soft restraint* on his right to due process which will not deprive him of *fundamental fairness* should he decide to resist the request for his extradition to the United States. *There is no denial of due process as long as fundamental fairness is assured a party***.
(***Secretary of Justice v. Hon. Ralph C. Lantion***, G.R. No. 139465, Oct. 17, 2000, En Banc [Puno])

THE EQUAL PROTECTION CLAUSE

119. Explain and discuss the equal protection of the law clause.

Held: 1. The equal protection of the law is embraced in the concept of due process, as **every unfair discrimination offends the requirements of justice and fair play**. It has nonetheless been embodied in a separate clause in **Article III**, **Sec. 1**, of the ***Constitution*** to **provide for a more specific**

guaranty against any form of undue favoritism or hostility from the government. **ARBITRARINESS in general** may be challenged on the basis of the **due process clause**. But if the particular act assailed partakes of an **UNWARRANTED PARTIALITY or PREJUDICE**, the sharper weapon to cut it down is the **equal protection clause**.

According to a long line of decisions, *EQUAL PROTECTION* **simply requires that all persons or things SIMILARLY SITUATED should be treated alike, both as to rights conferred and responsibilities imposed**. Similar subjects, in other words, should not be treated differently, so as to give undue favor to some and unjustly discriminate against others.

The equal protection clause does not require the universal application of the laws on all persons or things without distinction. This might in fact sometimes result in unequal protection, as where, for example, a law prohibiting mature books to all persons, regardless of age, would benefit the morals of the youth but violate the liberty of adults. **What the clause requires is equality among equals as determined according to a valid classification. By classification is meant the grouping of persons or things similar to each other in certain particulars and different from all others in these same particulars**.

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(***Philippine Judges Association v. Prado***, 227 SCRA 703, 711-712, Nov. 11, 1993, En Banc [Cruz])

2. The equal protection clause exists **to prevent undue favor or privilege**. It is **intended to eliminate discrimination and oppression based on inequality**. Recognizing the existence of real difference among men, the equal protection clause **does not demand absolute equality**. It merely requires that **all persons shall be treated alike, under like circumstances and conditions both as to the privileges conferred and liabilities enforced. Thus, the equal protection clause does not absolutely forbid classifications x x x. If the classification is (1) based on REAL and SUBSTANTIAL DIFFERENCES; (2) is GERMANE TO THE PURPOSE OF THE LAW; (3) APPLIES TO ALL MEMBERS OF THE SAME CLASS; and (4) APPLIES TO CURRENT AS WELL AS FUTURE CONDITIONS, the classification may not be impugned as violating the Constitution's equal protection guarantee**. A distinction based on real and reasonable considerations related to a proper legislative purpose x x x is neither unreasonable, capricious nor unfounded. (***Himagan v. People***, 237 SCRA 538, Oct. 7, 1994, En Banc [Kapunan])

120. Congress enacted R.A. No. 8189 which provides, in Section 44 thereof, that "No Election Officer shall hold office in a particular city or municipality for more than four (4) years. Any election officer who, either at the time of the approval of this Act or subsequent thereto, has served for at least four (4) years in a particular city or municipality shall automatically be reassigned by the Commission to a new station outside the original congressional district." Petitioners, who are City and Municipal Election Officers, theorize that Section 44 of RA 8189 is violative of the "equal protection clause" of the 1987 Constitution because it singles out the City and Municipal Election Officers of the COMELEC as prohibited from holding office in the same city or municipality for more than four (4) years. They maintain that there is no substantial distinction between them and other COMELEC officials, and therefore, there is no valid classification to justify the objective of the provision of law under attack. Resolve.

Held: The Court is not persuaded by petitioners' arguments. The "*EQUAL PROTECTION CLAUSE*" of the ***1987 Constitution permits a valid classification*** under the following conditions:

1) The classification must rest on **substantial distinction**;
2) The classification must be **germane to the purpose of the law**;
3) The classification must **not be limited to existing conditions only**; and
4) The classification must **apply equally to all members of the same class**.

After a careful study, the ineluctable conclusion is that the classification under Section 44 of RA 8189 satisfies the aforestated requirements.

The singling out of election officers in order to "ensure the impartiality of election officials by preventing them from developing familiarity with the people of their place of assignment" does not violate the equal protection clause of the Constitution.

In ***Lutz v. Araneta*** (98 Phil. 148, 153 [1955]), it was held that "**the legislature is not required by the Constitution to adhere to a policy of 'all or none'**". This is so for underinclusiveness is not an argument against a
78 valid classification. It may be true that all other officers of COMELEC referred to by petitioners are exposed to the same evils sought to be addressed by the statute. However, in this case, it can be discerned that the legislature thought the noble purpose of the law would be sufficiently served by breaking an important link in the chain of corruption than by breaking up each and every link thereof. **Verily, under Section 3(n) of RA 8189, election officers are the highest officials or authorized representatives of the COMELEC in a city or municipality. It is safe to say that without the complicity of such officials, large-scale anomalies in the registration of voters can hardly be carried out**. (***Agripino A. De Guzman, Jr., et al. v. COMELEC***, G.R. No. 129118, July 19, 2000, en Banc [Purisima])

121. Are there substantial distinctions between print media and broadcast media to justify the requirement for the latter to give free airtime to be used by the Comelec to inform the public of qualifications and program of government of candidates and political parties during the campaign period? Discuss.

Held: There are important differences in the characteristics of the two media which justify their differential treatment for free speech purposes. **Because of the physical limitations of the broadcast spectrum, the government must, of necessity, allocate broadcast frequencies to those wishing to use them. There is no similar justification for government allocation and regulation of the print media**.

In the allocation of limited resources, relevant conditions may validly be imposed on the grantees or licensees. The reason for this is that the government spends public funds for the allocation and regulation of the broadcast industry, which it does not do in the case of print media. To require radio and television broadcast industry to provide free airtime for the Comelec Time is a fair exchange for what the industry gets.

From another point of view, the SC has also held that **because of the unique and pervasive influence of the broadcast media, "[n]ecessarily x x x the freedom of television and radio broadcasting is somewhat lesser in scope than the freedom accorded to newspaper and print media**."
(***TELEBAP, Inc. v. COMELEC***, 289 SCRA 337, April 21, 1998 [Mendoza])

122. Does the death penalty law (R.A. No. 7659) violate the equal protection clause considering that, in effect, it punishes only people who are poor, uneducated, and jobless?

Held: ***R.A. No. 7659*** specifically provides that "[T]he death penalty shall be imposed if the crime of rape is committed x x x when the victim is a religious or a child below seven (7) years old." **Apparently, the death penalty law makes no distinction. It applies to all persons and to all classes of persons – rich or poor, educated or uneducated, religious or non-religious. No particular person or classes of persons are identified by the law against whom the death penalty shall be exclusively imposed**. The law punishes with death a person who shall commit rape against a child below seven years of age. Thus, the perpetration of rape against a 5-year old girl does not absolve or exempt an accused from the imposition of the death penalty by the fact that he is poor, uneducated, jobless, and lacks catechetical instruction. To hold otherwise will not eliminate but promote inequalities.

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In ***Cecilleville Realty and Service Corporation v. CA***, (278 SCRA 819 [1997]), the SC clarified that **compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege**. (***People v. Jimmy Mijano y Tamora***, G.R. No. 129112, July 23, 1999, En Banc [Per Curiam])

123. The International School Alliance of Educators (ISAE) questioned the point-of-hire classification employed by International School, Inc. to justify distinction in salary rates between foreign-hires and local-hires, i.e., salary rates of foreign-hires are higher by 25% than their local counterparts, as discriminatory and, therefore, violates the equal protection clause. The International School contended that this is necessary in order to entice foreign-hires to leave their domicile and work here. Resolve.

Held: That public policy abhors inequality and discrimination is beyond contention. Our Constitution and laws reflect the policy against these evils. X x x

International law, which springs from general principles of law, likewise proscribes discrimination x x x. The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Discrimination in Education, the Convention (No. 111) Concerning Discrimination in Respect of Employment and Occupation - all embody the general principle against discrimination, the very antithesis of fairness and justice. The Philippines, through its Constitution, has incorporated this principle as part of its national laws.

[I]t would be an affront to both the spirit and letter of these provisions if the State, in spite of its primordial obligation to promote and ensure equal employment opportunities, closes its eyes to unequal and discriminatory terms and conditions of employment x x x.

Discrimination, particularly in terms of wages, is frowned upon by the Labor Code. Article 135, for example, prohibits and penalizes the payment of lesser compensation to a female employee as against a male employee for work of equal value. Article 248 declares it an unfair labor practice for an employer to discriminate in regards to wages in order to encourage or discourage membership in any labor organization. X x x

The foregoing provisions impregnably institutionalize in this jurisdiction the long honored legal truism of "Equal pay for equal work." Persons who work with substantially equal qualifications, skill, effort and responsibility, under similar conditions, should be paid similar salaries. This rule applies to the School (International School, Inc.), its "international character" notwithstanding.

The School contends that petitioner has not adduced evidence that local-hires perform work equal to that of foreign-hires. The Court finds this argument a little cavalier. **If an employer accords employees the same position and rank, the presumption is that these employees perform equal work. This presumption is borne by logic and human experience. If the employer pays one employee less than the rest, it is not for that employee to explain why he receives less or why the others receive more. That would be adding insult to injury. The employer has discriminated against that employee; it is for the employer to explain why the employee is treated unfairly**.

80 **The employer in this case failed to discharge this burden. There is no evidence here that foreign-hires perform 25% more efficiently or effectively than the local-hires. Both groups have similar functions and responsibilities, which they perform under similar working conditions**.

The School cannot invoke the need to entice foreign-hires to leave their domicile to rationalize the distinction in salary rates without violating the principle of equal work for equal pay.

X x x

While we recognize the need of the School to attract foreign-hires, salaries should not be used as an enticement to the prejudice of local-hires. The local-hires perform the same services as foreign-hires and they ought to be paid the same salaries as the latter. For the same reason, the "dislocation factor" and the foreign-hires' limited tenure also cannot serve as valid bases for the distinction in salary rates. The dislocation factor and limited tenure affecting foreign-hires are adequately compensated by certain benefits accorded them which are not enjoyed by local-hires, such as housing, transportation, shipping costs, taxes and home leave travel allowances.

The Constitution enjoins the State to "protect the rights of workers and promote their welfare", "to afford labor full protection." The State, therefore, has the right and duty to regulate the relations between labor and capital. These relations are not merely contractual but are so impressed with public interest that labor contracts, collective bargaining agreements included, must yield to the common good. Should such contracts contain stipulations that are contrary to public policy, courts will not hesitate to strike down these stipulations.

In this case, we find the point-of-hire classification employed by respondent School to justify the distinction in the salary rates of foreign-hires and local-hires to be an invalid classification. There is no reasonable distinction between the services rendered by foreign-hires and local-hires. The practice of the School of according higher salaries to foreign-hires contravenes public policy and, certainly, does not deserve the sympathy of this Court. (***International School Alliance of Educators (ISAE) v. Hon. Leonardo A. Quisumbing***, G.R. No. 128845, June 1, 2000, 1st Div. [Kapunan])

124. Accused-appellant Romeo G. Jalosjos filed a motion before the Court asking that he be allowed to fully discharge the duties of a Congressman, including attendance at legislative sessions and committee meetings despite his having been convicted in the first instance of a non-bailable offense. Does being an elective official result in a substantial distinction that allows different treatment? Is being a Congressman a substantial differentiation which removes the accused-appellant as a prisoner from the same class as all persons validly confined under law?

Held: In the ultimate analysis, the issue before us boils down to a question of constitutional equal protection.

X x x

The performance of legitimate and even essential duties by public officers has never been an excuse to free a person validly in prison. The duties imposed by the "mandate of the people" are multifarious. The accused-appellant asserts that the duty to legislate ranks highest in the hierarchy of government. **The accused-appellant is only one of 250 members of the House of Representatives, not to mention the 24 members of the Senate, charged with the duties of legislation. Congress continues to function well in the physical absence of one or a few of its members**. Depending on the exigency of Government that has to be addressed, the President or the Supreme Court can also be deemed the highest for that particular duty. The importance of a function depends on the need for its exercise. The duty of a mother to nurse her infant is most compelling under the law of nature. A doctor with unique skills has the duty to save the lives of those with a particular affliction. An elective governor has to serve provincial constituents. A police officer must maintain peace and order. Never had the call of a particular duty lifted a prisoner into a different classification from those others who are validly restrained by law.

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A strict scrutiny of classifications is essential lest wittingly or otherwise, insidious discriminations are made in favor of or against groups or types of individuals.

The Court cannot validate badges of inequality. The necessities imposed by public welfare may justify exercise of government authority to regulate even if thereby certain groups may plausibly assert that their interests are disregarded.

We, therefore, find that election to the position of Congressman is not a reasonable classification in criminal law enforcement. The functions and duties of the office are not substantial distinctions which lift him from the class of prisoners interrupted in their freedom and restricted in liberty of movement. Lawful arrest and confinement are germane to the purposes of the law and apply to all those belonging to the same class.

X x x

It can be seen from the foregoing that incarceration, by its nature, changes an individual's status in society. Prison officials have the difficult and often thankless job of preserving the security in a potentially explosive setting, as well as of attempting to provide rehabilitation that prepares inmates for re-entry into the social mainstream. Necessarily, both these demands require the curtailment and elimination of certain rights.

Premises considered, we are constrained to rule against the accused-appellant's claim that re-election to public office gives priority to any other right or interest, including the police power of the State. (***People v. Jalosjos***, 324 SCRA 689, Feb. 3, 2000, En Banc [Ynares-Santiago])

THE RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES

125. Discuss the constitutional requirement that a judge, in issuing a warrant of arrest, must determine probable cause "personally." Distinguish determination of probable cause by the prosecutor and determination of probable cause by the judge.

Held: It must be stressed that the 1987 Constitution requires the judge to determine probable cause "personally", a requirement which does not appear in the corresponding provisions of our previous constitutions. This emphasis evinces the intent of the framers to place a greater degree of responsibility upon trial judges than that imposed under previous Constitutions.
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In ***Soliven v. Makasiar****,* this Court pronounced:

"What the Constitution underscores is the **exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause**. In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, **the judge is not required to personally examine the complainant and his witnesses**. Following established doctrine and procedure, he shall: **(1) personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest**; or **(2)** if in the basis thereof he finds no probable cause, **he may disregard the fiscal'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**."

Ho v. People *(Ibid.)* summarizes existing jurisprudence on the matter as follows:

"Lest we be too repetitive, we only wish to emphasize three vital matters once more: *FIRST,* as held in *Inting,* **the determination of probable cause by the prosecutor is for a purpose different from that which is to be made by the judge. Whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be held for trial is what the prosecutor passes upon. The judge, on the other hand, determines whether a warrant of arrest should be issued against the accused, i.e., whether there is a necessity for placing him under immediate custody in order not to frustrate the ends of justice. Thus, even if both should base their findings on one and the same proceeding or evidence, there should be no confusion as to their distinct objectives**.

SECOND, since their objectives are different, **the judge cannot rely solely on the report of the prosecutor in finding probable cause to justify the issuance of a warrant of arrest**. Obviously and understandably, the contents of the prosecutor's report will support his own conclusion that there is reason to charge the accused for an offense and hold him for trial. **However, the judge must decide INDEPENDENTLY**. Hence, **he must have supporting evidence, other than the prosecutor's bare report, upon which to legally sustain**

his own findings on the existence (or nonexistence) of probable cause to issue an arrest order. This responsibility of determining personally and independently the existence or nonexistence of probable cause is lodged in him by no less than the most basic law of the land. Parenthetically, the prosecutor could ease the burden of the judge and speed up the litigation process by forwarding to the latter not only the information and his bare resolution finding probable cause, but also so much of the records and the evidence on hand as to enable the His Honor to make his personal and separate judicial finding on whether to issue a warrant of arrest.

LASTLY, it is **not required that the complete or entire records of the case during the preliminary investigation be submitted to and examined by the judge. We do not intend to unduly burden trial courts by obliging them to examine the complete records of every case all the time simply for the purpose of ordering the arrest of an accused. What is required, rather, is that the judge must have sufficient supporting documents** (such as the complaint, affidavits, counter-affidavits, sworn statements of witnesses or transcript of stenographic notes, if any) **upon which to make his independent judgment or, at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause. The point is: he cannot rely solely and entirely on the prosecutor's recommendation**, as Respondent Court did in this case. Although the prosecutor enjoys the legal presumption of regularity in the performance of his official duties and functions, which in turn gives his report the presumption of accuracy, the Constitution, we repeat, commands the judge to *personally* determine probable cause in the issuance of warrants of arrest. This Court has consistently held that a judge fails in his bounden duty if he relies merely on the certification or the report of the investigating officer." *(Citations omitted)*

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In the case at bench, respondent admits that he issued the questioned warrant as there was "no reason for (him) to doubt the validity of the certification made by the Assistant Prosecutor that a preliminary investigation was conducted and that probable cause was found to exist as against those charged in the information filed." The statement is an admission that respondent relied solely and completely on the certification made by the fiscal that probable cause exists as against those charged in the information and issued the challenged warrant of arrest on the sole basis of the prosecutor's findings and recommendations. He adopted the judgment of the prosecutor regarding the existence of probable cause as his own. (***Abdula v. Guiani***, 326 SCRA 1, Feb. 18, 2000, 3rd Div. [Gonzaga-Reyes])

126. In an application for search warrant, the application was accompanied by a sketch of the compound at 516 San Jose de la Montana St., Mabolo, Cebu City, indicating the 2-storey residential house of private respondent with a large "X" enclosed in a square. Within the same compound are residences of other people, workshops, offices, factories and warehouse. The search warrant issued, however, merely indicated the address of the compound which is 516 San Jose de la Montana St., Mabolo, Cebu City. Did this satisfy the constitutional requirement under Section 2, Article III that the place to be searched must be particularly described?

Held: This Court has held that **the applicant should particularly describe the place to be searched and the person or things to be seized, WHEREVER and WHENEVER it is feasible**. In the present case, it must be noted that the application for a search warrant was accompanied by a sketch of the compound at 516 San Jose de la Montana St., Mabolo, Cebu City.

The sketch indicated the 2-storey residential house of private respondent with a large "X" enclosed in a square. Within the same compound are residences of other people, workshops, offices, factories and warehouse. **With this sketch as the guide, it could have been very easy to describe the residential house of private respondent *with sufficient particularity so as to segregate it from the other buildings or structures inside the same compound***. But the search warrant merely indicated the address of the compound which is 516 San Jose de la Montana St., Mabolo, Cebu City. ***This description of the place to be searched is too general and does not pinpoint the specific house of private respondent. Thus, the inadequacy of the description of the residence of private respondent sought to be searched has characterized the questioned search warrant as a general warrant, which is violative of the constitutional requirement***. (***People v. Estrada***, 296 SCRA 383, 400, [Martinez])

127. Can the place to be searched, as set out in the warrant, be amplified or modified by the officers' own personal knowledge of the premises, or the
84 *evidence they adduce in support of their application for the warrant?*

Held: Such a change is PROSCRIBED by the Constitution which requires inter alia the search warrant to particularly describe the place to be searched as well as the persons or things to be seized. It would concede to police officers the power of choosing the place to be searched, even if it not be that delineated in the warrant. **It would open wide the door to abuse of the search process, and grant to officers executing a search warrant that discretion which the Constitution has precisely removed from them. The particularization of the description of the place to be searched may properly be done only by the Judge, and only in the warrant itself; it cannot be left to the discretion of the police officers conducting the search**.

It is neither fair nor licit to allow police officers to search a place different from that stated in the warrant on the claim that the place actually searched – although not that specified in the warrant – is exactly what they had in view when they applied for the warrant and had demarcated in their supporting evidence. What is material in determining the validity of a search is the place stated in the warrant itself, not what applicants had in their thoughts, or had represented in the proofs they submitted to the court issuing the warrant. (***People v. Court of Appeals***, 291 SCRA 400, June 26, 1998 [Narvasa])

128. What is "search incidental to a lawful arrest"? Discuss.

Held: While a contemporaneous search of a person arrested may be effected to discover dangerous weapons or proofs or implements used in the commission of the crime and which search may extend to the area within his immediate control where he might gain possession of a weapon or evidence he can destroy, A VALID ARREST MUST PRECEDE THE SEARCH. The process cannot be reversed.

In a search incidental to a lawful arrest, as the precedent arrest determines the validity of the incidental search, the legality of the arrest is questioned in a large majority of these cases, e.g., whether an arrest was merely used as a pretext for conducting a search. In this instance, the law requires that there be first a lawful arrest before a search can be made – the process cannot be reversed. (*Malacat v. Court of Appeals,* 283 SCRA 159, 175 [1997])

(***People v. Chua Ho San***, 308 SCRA 432, June 17, 1999, En Banc [Davide, Jr., C.J.])

129. What is the "plain view" doctrine? What are its requisites? Discuss.

Held: 1. **Objects falling in plain view of an officer who has a right to be in the position to have that view are subject to seizure even without a search warrant and may be introduced in evidence**. The "plain view" doctrine applies when the following **requisites concur**: (a) **the law enforcement officer in search of the evidence has a PRIOR JUSTIFICATION FOR AN INTRUSION or is in a position from which he can view a particular area**; (b) **the discovery of the evidence in plain view is INADVERTENT**; (c) **it is IMMEDIATELY APPARENT to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure**. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a
85 piece of evidence incriminating the accused. The object must be open to eye and hand and its discovery inadvertent.

It is clear that an object is in plain view if the **object itself is plainly exposed to sight**. The difficulty arises when the object is inside a closed container. Where the object seized was inside a closed package, the object itself is not in plain view and therefore cannot be seized without a warrant. **However, if the package proclaims its contents, whether by its distinctive configuration, its transparency, or if its contents are obvious to an observer, then the contents are in plain view and may be seized. In other words, if the package is such that an experienced observer could infer from its appearance that it contains the prohibited article, then the article is deemed in plain view**. It must be immediately apparent to the police that the items that they observe may be evidence of a crime, contraband or otherwise subject to seizure. (***People v. Doria***, 301 SCRA 668, Jan. 22, 1999, En Banc [Puno, J.])

2. For the doctrine to apply, the following **elements** must be present:

a) a **prior valid intrusion based on the valid warrantless arrest** in which the police are legally present in the pursuit of their official duties;
b) the **evidence was inadvertently discovered** by the police who have the right to be where they are; and
c) the **evidence must be immediately apparent**; and
d) plain view justified mere seizure of evidence **without further search**.

In the instant case, recall that PO2 Balut testified that they first located the marijuana plants before appellant was arrested without a warrant. Hence, there was no valid warrantless arrest which preceded the search of appellant's premises. Note further that the police team was dispatched to appellant's *kaingin* precisely to search for and uproot the prohibited flora. **The seizure of evidence in "plain view" applies only where the police officer is NOT searching for evidence against the accused, but inadvertently comes across an incriminating object**. Clearly, their discovery of the cannabis plants was not inadvertent. We also note the testimony of SPO2 Tipay that upon arriving at the area, they first had to "look around the area" before they could spot the illegal plants. Patently, the seized marijuana plants were not "immediately apparent" and "further search" was needed. In sum, the marijuana plants in question were not in "plain view" or "open to eye and hand." The "plain view" doctrine, thus, cannot be made to apply.

Nor can we sustain the trial court's conclusion that just because the marijuana plants were found in an unfenced lot, appellant could not invoke the protection afforded by the Charter against unreasonable searches by agents of the State. The right against unreasonable searches and seizures is the immunity of one's person, which includes his residence, his papers, and other possessions. The guarantee refers to "the right of personal security" of the individual. X x x, **what is sought to be protected against the State's unlawful intrusion are persons, not places. To conclude otherwise would not only mean swimming against the stream, it would also lead to the absurd logic that for a person to be immune against unreasonable searches and seizures, he must be in his home or office, within a fenced yard or a private place**. *The Bill of Rights belongs as much to the person in the street as to the individual in the sanctuary of his bedroom*. (***People v. Abe Valdez***, G.R. No. 129296, Sept. 25, 2000, En Banc [Quisumbing])

3. Considering its factual milieu, this case falls squarely under the *plain view doctrine.* X x x.

86 When Spencer wrenched himself free from the grasp of PO2 Gaviola, he instinctively ran towards the house of appellant. The members of the buy-bust team were justified in running after him and entering the house without a search warrant for they were hot in the heels of a fleeing criminal. Once inside the house, the police officers cornered Spencer and recovered the buy-bust money from him. They also caught appellant in *flagrante delicto* repacking the marijuana bricks which were in full view on top of a table. X x x.

Hence, appellant's subsequent arrest was likewise lawful, coming as it is within the purview of Section 5(a) of Rule 113 of the 1985 Rules on Criminal Procedure x x x.

Section 5(a) is commonly referred to as the rule on **in flagrante delicto arrests**. Here two elements must concur: (1) **the person to be arrested must execute an overt act indicating that he has 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**. Thus, when appellant was seen repacking the marijuana, the police officers were not only authorized but also duty-bound to arrest him even without a warrant.
(***People v. Elamparo***, 329 SCRA 404, 414-415, March 31, 2000, 2nd Div. [Quisumbing])

130. What is a "stop-and-frisk" search?

Held: 1. In the landmark case of ***Terry v. Ohio*** (20 L Ed 2d 889; 88 S Ct 1868, 392 US 1, 900, June 10, 1968), a stop-and-frisk was defined as **the vernacular designation of the right of a police officer to stop a citizen on the street, interrogate him, and pat him for weapon(s)**:

> "x x x **(W)here a police officer observes an UNUSUAL CONDUCT which leads him REASONABLY TO CONCLUDE IN LIGHT OF HIS EXPERIENCE that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he IDENTIFIED HIMSELF AS A POLICEMAN and make reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself or others in the area to conduct a CAREFULLY LIMITED SEARCH OF THE OUTER CLOTHING OF SUCH PERSONS in an attempt to discover weapons which**

might be used to assault him. Such a search is a reasonable search under the Fourth Amendment, and any weapon seized may properly be introduced in evidence against the person from whom they were taken." *(Herrera, A Handbook on Arrest, Search and Seizure and Custodial Investigation, 1995 ed., p. 185; and Terry v. Ohio, supra, p. 911)*

In allowing such a search, the United States Supreme Court held that **the interest of effective crime prevention and detection allows a police officer to approach a person, in appropriate circumstances and manner, for purposes of investigating possible criminal behavior even though there is insufficient probable cause to make an actual arrest**.

In admitting in evidence two guns seized during the stop-and-frisk, the US Supreme Court held that **what justified the limited search was the more immediate interest of the police officer in taking steps to assure himself that the person with whom he was dealing was not armed with a weapon that could unexpectedly and fatally be used against him**.

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It did not, however, abandon the rule that the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure, excused only by exigent circumstances. (***Manalili v. CA***, 280 SCRA 400, Oct. 9, 1997 [Panganiban])

2. We now proceed to the **justification** for and **allowable scope** of a "stop-and-frisk" as a "**limited protective search of outer clothing for weapons**," as laid down in *Terry,* thus:

> We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth Amendment *(Terry, at 911. In fact, the Court noted that the **'sole justification' for a stop-and-frisk was the 'protection of the police officer and others nearby'**; while the **scope of the search conducted in the case was limited to patting down the outer clothing of petitioner and his companions, the police officer did not place his hands in their pockets nor under the outer surface of their garments until he had felt weapons, and then he merely reached for and removed the guns. This did not constitute a general exploratory search**. Id.)*

Other notable points of *Terry* are that **while probable cause is not required to conduct a "stop-and-frisk," it nevertheless holds that mere suspicion or a hunch will not validate a "stop-and-frisk." A genuine reason must exist, in light of the police officer's experience and surrounding conditions, to warrant the belief that the person detained has weapons concealed about him**. Finally, a "stop-and-frisk" serves a two-fold interest: (1) **the general interest of effective crime prevention and detection**, which underlies the recognition that a police officer may, under appropriate circumstances and in an appropriate manner, approach a person for purposes of investigating possible criminal behavior even without probable cause; and (2) **the more pressing interest of safety and self-preservation which permit the police officer to take steps to assure himself that the**

person with whom he deals is not armed with a deadly weapon that could unexpectedly and fatally be used against the police officer.

(***Malacat v. Court of Appeals***, 283 SCRA 159, Dec. 12, 1997 [Davide])

131. Are searches at checkpoints valid? Discuss.

Held: Accused-appellants assail the manner by which the checkpoint in question was conducted. They contend that the checkpoint manned by elements of the Makati Police should have been announced. They also complain of its having been conducted in an arbitrary and discriminatory manner.

We take judicial notice of the existence of the COMELEC resolution imposing a gun ban during the election period issued pursuant to Section 52(c) in relation to Section 26(q) of the Omnibus Election Code (Batas Pambansa Blg. 881). The national and local elections in 1995 were held on 8 May, the second Monday of the month. The incident, which happened on 5 April 1995, was well within the election period.

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This Court has ruled that **not all checkpoints are illegal. Those which are warranted by the exigencies of public order and are conducted in a way least intrusive to motorists are allowed. For, admittedly, routine checkpoints do intrude, to a certain extent, on motorists' right to "free passage without interruption," but it cannot be denied that, as a rule, it involves only a brief detention of travelers during which the vehicle's occupants are required to answer a brief question or two. For as long as the vehicle is neither searched nor its occupants subjected to a body search, and the inspection of the vehicle is limited to a visual search, said routine checks cannot be regarded as violative of an individual's right against unreasonable search. In fact, these routine checks, when conducted in a fixed area, are even less intrusive**.

The checkpoint herein conducted was in pursuance of the gun ban enforced by the COMELEC. The COMELEC would be hard put to implement the ban if its deputized agents were limited to a VISUAL SEARCH of pedestrians. It would also defeat the purpose for which such ban was instituted. Those who intend to bring a gun during said period would know that they only need a car to be able to easily perpetrate their malicious designs.

The facts adduced do not constitute a ground for a violation of the constitutional rights of the accused against illegal search and seizure. PO3 Suba admitted that they were merely stopping cars they deemed suspicious, such as those whose windows are heavily tinted just to see if the passengers thereof were carrying guns. **At best they would merely direct their flashlights inside the cars they would stop, without opening the car's doors or subjecting its passengers to a body search. There is nothing discriminatory in this as this is what the situation demands**.

We see no need for checkpoints to be announced x x x. Not only would it be impractical, it would also forewarn those who intend to violate the ban. Even so, badges of legitimacy of checkpoints may still be inferred from their FIXED LOCATION and the regularized manner in which they are operated. (***People v. Usana***, 323 SCRA 754, Jan. 28, 2000, 1st Div. [Davide, CJ])

132. Do the ordinary rights against unreasonable searches and seizures apply to searches conducted at the airport pursuant to routine airport security procedures?

Held: **Persons may lose the protection of the search and seizure clause by exposure of their persons or property to the public in a manner reflecting a lack of subjective expectation of privacy, which expectation society is prepared to recognize as reasonable. Such recognition is implicit in airport security procedures**. With increased concern over airplane hijacking and terrorism has come increased security at the nation's airports. Passengers attempting to board an aircraft routinely pass through metal detectors; their carry-on baggages as well as checked luggage are routinely subjected to x-ray scans. Should these procedures suggest the presence of suspicious objects, physical searches are conducted to determine what the objects are. **There is little question that such searches are reasonable, given their minimal intrusiveness, the gravity of the safety interests involved, and the reduced privacy expectations associated with airline travel. Indeed, travelers are often notified through airport public address systems, signs, and notices in their airline tickets that they are subject to search and, if any prohibited materials or substances are found, such would be subject to seizure. These announcements place passengers on notice that ordinary constitutional protections against warrantless searches and seizures do not apply to routine airport procedures**.

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The packs of methamphetamine hydrochloride having thus been obtained through a valid warrantless search, they are admissible in evidence against the accused-appellant herein. Corollarily, her subsequent arrest, although likewise without warrant, was justified since it was effected upon the discovery and recovery of "shabu" in her person *IN FLAGRANTE DELICTO*. (***People v. Leila Johnson***, G.R. No. 138881, Dec. 18, 2000, 2nd Div. [Mendoza])

133. May the constitutional protection against unreasonable searches and seizures be extended to acts committed by private individuals?

Held: As held in ***People v. Marti*** (193 SCRA 57 [1991]), **the constitutional protection against unreasonable searches and seizures refers to the immunity of one's person from interference by government and it cannot be extended to acts committed by private individuals so as to bring it within the ambit of alleged unlawful intrusion**.
(***People v. Mendoza***, 301 SCRA 66, Jan. 18, 1999, 1st Div. [Melo])

134. Should the seized drugs which are pharmaceutically correct but not properly documented subject of an illegal search because the applicant "failed to allege in the application for search warrant that the subject drugs for which she was applying for search warrant were either fake, misbranded, adulterated, or unregistered," be returned to the owner?

Held: With the State's obligation to protect and promote the right to health of the people and instill health consciousness among them *(Article II, Section 15, 1987 Constitution),* in order to develop a healthy and alert citizenry *(Article XIV, Section 19[1]),* it became mandatory for the government to supervise and control the proliferation of drugs in the market. The constitutional mandate that "the State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all people at affordable cost" *(Article XIII, Section 11)* cannot be neglected. This is why "the State shall establish and maintain an effective food and drug regulatory system." *(Article XIII, Section 12)* The BFAD is the government agency vested by law to make a mandatory and authoritative determination of the true therapeutic effect of drugs because it involves technical skill which is within its special competence. The health of the

citizenry should never be compromised. To the layman, medicine is a cure that may lead to better health.

If the seized 52 boxes of drugs are pharmaceutically correct but not properly documented, they should be promptly disposed of in the manner provided by law in order to ensure that the same do not fall into the wrong hands who might use the drugs underground. Private respondent cannot rely on the statement of the trial court that the applicant "failed to allege in the application for search warrant that the subject drugs for which she was applying for search warrant were either fake, misbranded, adulterated, or unregistered" in order to obtain the return of the drugs. The policy of the law enunciated in R.A. No. 8203 is to protect the consumers as well as the licensed businessmen. Foremost among these consumers is the government itself which procures medicines and distributes them to the local communities through direct assistance to the local health centers or through outreach and charity programs. Only with the proper government sanctions can medicines and drugs circulate the market. We cannot afford to take any risk, for the life and health of the citizenry are as precious as the existence of the State.

90 (***People v. Judge Estrella T. Estrada***, G.R No. 124461, June 26, 2000, Spcl. 2nd Div. [Ynares-Santiago])

135. Do Regional Trial Courts have competence to pass upon the validity or regularity of seizure and forfeiture proceedings conducted by the Bureau of Customs and to enjoin or otherwise interfere with these proceedings?

Held: In ***Jao v. Court of Appeals*** (249 SCRA 35, 42-43 [1995]), this Court, reiterating its rulings x x x said:

> **There is no question that Regional Trial Courts are devoid of any competence to pass upon the validity or regularity of seizure and forfeiture proceedings conducted by the Bureau of Customs and to enjoin or otherwise interfere with these proceedings. The Collector of Customs sitting in seizure and forfeiture proceedings has EXCLUSIVE JURISDICTION to hear and determine all questions touching on the seizure and forfeiture of dutiable goods. The Regional Trial Courts are precluded from assuming cognizance over such matters even through petitions of certiorari, prohibition or mandamus**.
>
> It is likewise well-settled that the provisions of the **Tariff and Customs Code** and that of **Republic Act No. 1125**, as amended, otherwise known as "**An Act Creating the Court of Tax Appeals**," specify the proper fora and procedure for the ventilation of any legal objections or issues raised concerning these proceedings. Thus, **actions of the Collector of Customs are appealable to the Commissioner of Customs, whose decision, in turn, is subject to the exclusive appellate jurisdiction of the Court of Tax Appeals and from there to the Court of Appeals**.
>
> **The rule that Regional Trial Courts have no review powers over such proceedings is anchored upon the policy of placing no unnecessary hindrance on the government's drive, not only to prevent smuggling and other frauds upon Customs, but more importantly, to render effective and efficient the collection of import and export duties due the State, which enables the government to carry out the functions it has been instituted to perform**.

> **Even if the seizure by the Collector of Customs were illegal, x x x we have said that such act does not deprive the Bureau of Customs of jurisdiction thereon**.

Respondents cite the statement of the Court of Appeals that regular courts still retain jurisdiction "where, as in this case, for lack of probable cause, there is serious doubt as to the propriety of placing the articles under Customs jurisdiction through seizure/forfeiture proceedings." They overlook the fact, however, that under the law, the question of whether probable cause exists for the seizure of the subject sacks of rice is not for the Regional Trial Court to determine. **The customs authorities do not have to prove to the satisfaction of the court that the articles on board a vessel were imported from abroad or are intended to be shipped abroad before they may exercise the power to effect customs' searches, seizures, or arrests provided by law and continue with the administrative hearings**. As the Court held in ***Ponce Enrile v. Vinuya*** (37 SCRA 381, 388-389 [1971], reiterated in ***Jao v. Court of Appeals***, *supra* and ***Mison v. Natividad***, 213 SCRA 734 [1992]):

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> The governmental agency concerned, the Bureau of Customs, is vested with exclusive authority. Even if it be assumed that in the exercise of such exclusive competence a taint of illegality may be correctly imputed, the most that can be said is that under certain circumstances the grave abuse of discretion conferred may oust it of such jurisdiction. It does not mean however that correspondingly a court of first instance is vested with competence when clearly in the light of the above decisions the law has not seen fit to do so. The proceeding before the Collector of Customs is not final. An appeal lies to the Commissioner of Customs and thereafter to the Court of Tax Appeals. It may even reach this Court through the appropriate petition for review. *The proper ventilation of the legal issues raised is thus indicated. Certainly a court of first instance is not therein included. It is devoid of jurisdiction.*

(***Bureau of Customs v. Ogario***, 329 SCRA 289, 296-298, March 30, 2000, 2nd Div. [Mendoza])

THE PRIVACY OF COMMUNICATIONS AND CORRESPONDENCE

136. Private respondent Rafael S. Ortanez filed with the Regional Trial Court of Quezon City a complaint for annulment of marriage with damages against petitioner Teresita Salcedo-Ortanez, on grounds of lack of marriage license and/or psychological incapacity of the petitioner. Among the exhibits offered by private respondent were three (3) cassette tapes of alleged telephone conversations between petitioner and unidentified persons. The trial court issued the assailed order admitting all of the evidence offered by private respondent, including tape recordings of telephone conversations of petitioner with unidentified persons. These tape recordings were made and obtained when private respondent allowed his friends from the military to wire tap his home telephone. Did the trial court act properly when it admitted in evidence said tape recordings?

Held: ***Republic Act No. 4200*** entitled "***An Act to Prohibit and Penalize Wire Tapping and Other Related Violations of the Privacy of Communication, and For Other Purposes***" **expressly makes such tape recordings inadmissible in evidence**. x x x.

Clearly, respondent trial court and Court of Appeals failed to consider the afore-quoted provisions of the law in admitting in evidence the cassette tapes in question. **Absent a clear showing that both parties to the telephone**

conversations allowed the recording of the same, the inadmissibility of the subject tapes is mandatory under *Rep. Act No. 4200*.

Additionally, it should be mentioned that the above-mentioned Republic Act in Section 2 thereof imposes a penalty of imprisonment of not less than six (6) months and up to six (6) years for violation of said Act. (***Salcedo-Ortanez v. Court of Appeals***, 235 SCRA 111, Aug. 4, 1994 [Padilla])

THE RIGHT TO PRIVACY

137. Is there a constitutional right to privacy?

Held: The ESSENCE of privacy is the "**right to be let alone**." In the 1965 case of ***Griswold v. Connecticut*** (381 U.S. 479, 14 l. ed. 2D 510 [1965]), the United States Supreme Court gave more substance to the right of privacy when it ruled that **the right has a constitutional foundation**. It held that there is a right of privacy which can be found within the penumbras of the First, Third, Fourth, Fifth and Ninth Amendments. In the 1968 case of ***Morfe v. Mutuc*** (22 SCRA 424, 444-445), **we adopted the *Griswold* ruling that there is a constitutional right to privacy**.

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The SC clarified that the right of privacy is recognized and enshrined in several provisions of our Constitution. It is expressly recognized in ***Section 3(1)*** of the ***Bill of Rights***. Other facets of the right to privacy are protected in various provisions of the Bill of Rights, *i.e.,* ***Secs. 1, 2, 6, 8,*** and ***17***.
(***Ople v. Torres***, G.R. No. 127685, July 23, 1998 [Puno])

138. Identify the ZONES OF PRIVACY recognized and protected in our laws.

Held: The ***Civil Code*** provides that "**[e]very person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons**" and punishes as actionable torts several acts by a person of meddling and prying into the privacy of another. It also holds a public officer or employee or any private individual liable for damages for any violation of the rights and liberties of another person, and recognizes the privacy of letters and other private communications. The ***Revised Penal Code*** makes a crime the **violation of secrets by an officer, the revelation of trade and industrial secrets, and trespass to dwelling**. **Invasion of privacy is an offense in special laws like the *Anti-Wiretapping Law* (R.A. 4200), the *Secrecy of Bank Deposits* (R.A. 1405)** and the ***Intellectual Property Code*** **(R.A. 8293)**. The ***Rules of Court*** on privileged communication likewise recognize the **privacy of certain information** *(Section 24, Rule 130[c], Revised Rules on Evidence).* (***Ople v. Torres***, G.R. No. 127685, July 23, 1998 [Puno])

139. Discuss why Administrative Order No. 308 (issued by the President prescribing for a National ID system for all citizens to facilitate business transactions with government agencies engaged in the delivery of basic services and social security provisions) should be declared unconstitutional.

Held: We prescind from the premise that the right to privacy is a fundamental right guaranteed by the Constitution, hence, it is the burden of government to show that A.O. No. 308 is justified by some compelling state interest and that it is narrowly drawn. A.O. No. 308 is predicated on two considerations: **(1) the need to provide our citizens and foreigners with the facility to conveniently transact business with basic service and social security providers and other government instrumentalities** and **(2) the need to reduce, if not totally eradicate, fraudulent transactions**

and misrepresentations by persons seeking basic services. It is debatable whether these interests are compelling enough to warrant the issuance of A.O. No. 308. **But what is not arguable is the BROADNESS, the VAGUENESS, the OVERBREADTH of A.O. No. 308 which if implemented will put our people's right to privacy in clear and present danger**.

The *heart of A.O. No. 308* lies in its Section 4 which provides for a Population Reference Number (PRN) as a "common reference number to establish a linkage among concerned agencies" through the use of "Biometrics Technology" and "computer application designs."

It is noteworthy that A.O. No. 308 does not state what specific biological characteristics and what particular biometrics technology shall be used to identify people who will seek its coverage. Considering the banquet of options available to the implementors of A.O. No. 308, the fear that it threatens the right to privacy of our people is not groundless.

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A.O. No. 308 should also raise our antennas for a further look will show that it does not state whether encoding of data is limited to biological information alone for identification purposes. X x x. Clearly, the indefiniteness of A.O. No. 308 can give the government the roving authority to store and retrieve information for a purpose other than the identification of the individual through his PRN.

The potential for misuse of the data to be gathered under A.O. No. 308 cannot be underplayed x x x. The more frequent the use of the PRN, the better the chance of building a huge and formidable information base through the electronic linkage of the files. **The data may be gathered for gainful and useful government purposes; but the existence of this vast reservoir of personal information constitutes a covert invitation to misuse, a temptation that may be too great for some of our authorities to resist**.

It is plain and we hold that A.O. No. 308 falls short of assuring that personal information which will be gathered about our people will only be processed for unequivocally specified purposes. The lack of proper safeguards in this regard, of A.O. No. 308 may interfere with the individual's liberty of abode and travel by enabling authorities to track down his movement; it may also enable unscrupulous persons to access confidential information and circumvent the right against self-incrimination; it may pave the way for "fishing expeditions" by government authorities and evade the right against unreasonable searches and seizures. **The possibilities of abuse and misuse of the PRN, biometrics and computer technology are accentuated when we consider that the individual lacks control over what can be read or placed on his ID, much less verify the correctness of the data encoded. They threaten the very abuses that the Bill of Rights seeks to prevent**.

The ability of a sophisticated data center to generate a comprehensive *cradle-to-grave dossier* on an individual and transmit it over a national network is one of the most graphic threats of the computer revolution. The computer is capable of producing a comprehensive dossier on individuals out of information given at different times and for varied purposes. X x x. Retrieval of stored data is simple. When information of a privileged character finds its way into the computer, it can be extracted together with other data on the subject. Once extracted, the information is putty in the hands of any person. The end of privacy begins.

[T]he Court will not be true to its role as the ultimate guardian of the people's liberty if it would not immediately smother the sparks that

endanger their rights but would rather wait for the fire that could consume them.

[A]nd we now hold that when the integrity of a fundamental right is at stake, this Court will give the challenged law, administrative order, rule or regulation a stricter scrutiny. It will not do for the authorities to invoke the presumption of regularity in the performance of official duties. Nor is it enough for the authorities to prove that their act is not irrational for a basic right can be diminished, if not defeated, even when the government does not act irrationally. They must satisfactorily show the presence of COMPELLING STATE INTEREST and that the law, rule, or regulation is narrowly drawn to preclude abuses. This approach is demanded by the 1987 Constitution whose entire matrix is designed to protect human rights and to prevent authoritarianism. In case of doubt, the least we can do is to lean towards the stance that will not put in danger the rights protected by the Constitution.

94 The right to privacy is one of the most threatened rights of man living in a mass society. The threats emanate from various sources – governments, journalists, employers, social scientists, etc. In the case at bar, the threat comes from the executive branch of government which by issuing A.O. No. 308 pressures the people to surrender their privacy by giving information about themselves on the pretext that it will facilitate delivery of basic services. Given the record-keeping power of the computer, only the indifferent will fail to perceive the danger that A.O. No. 308 gives the government the power to compile a devastating dossier against unsuspecting citizens. X x x **[W]e close with the statement that the right to privacy was not engraved in our Constitution for flattery**.
(***Ople v. Torres***, G.R. No. 127685, July 23, 1998 [Puno])

140. Should in camera inspection of bank accounts be allowed? If in the affirmative, under what circumstances should it be allowed?

Held: The issue is whether petitioner may be cited for indirect contempt for her failure to produce the documents requested by the Ombudsman. And whether the order of the Ombudsman to have an *in camera* inspection of the questioned account is allowed as an exception to the law on secrecy of bank deposits (R.A. No. 1405).

An examination of the secrecy of bank deposits law (R.A. No. 1405) would reveal the following exceptions:

1) Where the **depositor consents in writing**;
2) **Impeachment cases**;
3) **By court order in bribery or dereliction of duty cases against public officials**;
4) **Deposit is subject of litigation**;
5) Sec. 8, R.A. No. 3019, **in cases of unexplained wealth as held in the case of PNB v. Gancayco** (122 Phil. 503, 508 [1965]).

The order of the Ombudsman to produce for *in camera* inspection the subject accounts with the Union Bank of the Philippines, Julia Vargas Branch, is based on a pending investigation at the Office of the Ombudsman against Amado Lagdameo, *et. al.* for violation of ***R.A. No. 3019***, **Sec. 3 (e)** and **(g)** relative to the Joint Venture Agreement between the Public Estates Authority and AMARI.

We rule that before an in camera inspection may be allowed, (1) there must be a pending case before a court of competent jurisdiction.

Further, (2) the account must be clearly identified, (3) the inspection limited to the subject matter of the pending case before the court of competent jurisdiction. (4) The bank personnel and the account holder must be notified to be present during the inspection, and (5) such inspection may cover only the account identified in the pending case.

In **Union Bank of the Philippines v. Court of Appeals**, we held that "**Section 2** of the **Law on Secrecy of Bank Deposits**, as amended, declares **bank deposits to be 'absolutely confidential' except**:

1) In an **examination made in the course of a special or general examination** of a bank that is specifically authorized by the Monetary Board after being satisfied that there is **reasonable ground to believe that a bank fraud or serious irregularity** has been or is being committed and that it is **necessary to look into the deposit to establish such fraud or irregularity**,
2) In an **examination made by an independent auditor** hired by the bank to conduct its **regular audit** provided that the **examination is for audit purposes only** and the **results** thereof shall be for the **exclusive use of the bank**,
3) Upon **written permission of the depositor**,
4) In cases of **impeachment**,
5) Upon **order of a competent court in cases of bribery or dereliction of duty of public officials**, or
6) In cases where the **money deposited or invested is the subject matter of the litigation**".

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In the case at bar, there is yet no pending litigation before any court of competent authority. What is existing is an investigation by the Office of the Ombudsman. In short, what the Office of the Ombudsman would wish to do is to fish for additional evidence to formally charge Amado Lagdameo, et. al., with the Sandiganbayan. Clearly, there was no pending case in court which would warrant the opening of the bank account for inspection.

Zones of privacy are recognized and protected in our laws. The Civil Code provides that "[e]very person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons" and punishes as actionable torts several acts for meddling and prying into the privacy of another. It also holds public officer or employee or any private individual liable for damages for any violation of the rights and liberties of another person, and recognizes the privacy of letters and other private communications. The Revised Penal Code makes a crime of the violation of secrets by an officer, revelation of trade and industrial secrets, and trespass to dwelling. Invasion of privacy is an offense in special laws like the anti-Wiretapping Law*, the Secrecy of Bank Deposits Act*, and the Intellectual Property Code. (***Lourdes T. Marquez v. Hon. Aniano A. Desierto***, G.R. No. 135882, June 27, 2001, En Banc [Pardo])

FREEDOM OF EXPRESSION

141. Distinguish "CONTENT-BASED RESTRICTIONS" on free speech from "CONTENT-NEUTRAL RESTRICTIONS," and give example of each.

Held: Content-based restrictions are **imposed because of the content of the speech and are, therefore, subject to the clear-and-present danger test**. For example, a rule such as that involved in **Sanidad v. Comelec** (181 SCRA 529 [1990]), **prohibiting columnists, commentators, and announcers from campaigning either for or against an issue in a plebiscite must have compelling reason to support it, or it will not pass**

muster under strict scrutiny. These restrictions are censorial and therefore they bear a heavy presumption of constitutional invalidity. In addition, they will be tested for possible overbreadth and vagueness.

Content-neutral restrictions, on the other hand, like **Sec. 11(b)** of **R.A. No. 6646**, which **prohibits the sale or donation of print space and air time to political candidates during the campaign period, are not concerned with the content of the speech. These regulations need only a substantial governmental interest to support them. A deferential standard of review will suffice to test their validity. The clear-and-present danger rule is inappropriate as a test for determining the constitutional validity of laws, like Sec. 11(b) of R.A. No. 6646, which are not concerned with the content of political ads but only with their incidents**. To apply the clear-and-present danger test to such regulatory measures would be like using a sledgehammer to drive a nail when a regular hammer is all that is needed.

96 The **TEST** for this difference in the level of justification for the restriction of speech is that **content-based restrictions distort public debate, have improper motivation, and are usually imposed because of fear of how people will react to a particular speech. No such reasons underlie content-neutral regulations, like regulation of time, place and manner of holding public assemblies under B.P. Blg. 880, the Public Assembly Act of 1985**.
(***Osmena v. COMELEC***, 288 SCRA 447, March 31, 1998 [Mendoza])

142. Does the conduct of exit poll by ABS CBN present a clear and present danger of destroying the credibility and integrity of the electoral process as it has the tendency to sow confusion considering the randomness of selecting interviewees, which further makes the exit poll highly unreliable, to justify the promulgation of a Comelec resolution prohibiting the same?

Held: Such arguments are purely **speculative** and clearly **untenable**. *FIRST,* **by the very nature of a survey, the interviewees or participants are selected at RANDOM, so that the results will as much as possible be representative or reflective of the general sentiment or view of the community or group polled**. *SECOND,* **the survey result is not meant to replace or be at par with the official Comelec count. It consists merely of the opinion of the polling group as to who the electorate in general has probably voted for**, based on the limited data gathered from polled individuals. *FINALLY,* **not at stake are the credibility and the integrity of the elections, which are exercises that are separate and independent from the exit polls. The holding and the reporting of the results of exit polls cannot undermine those of the elections, since the former is only part of the latter. If at all, the outcome of one can only be indicative of the other**.

The COMELEC's concern with the possible noncommunicative effect of exit polls – disorder and confusion in the voting centers – does not justify a total ban on them. Undoubtedly, the assailed Comelec Resolution is too broad, since its application is without qualification as to whether the polling is disruptive or not. There is no showing, however, that exit polls or the means to interview voters cause chaos in voting centers. Neither has any evidence been presented proving that the presence of exit poll reporters near an election precinct tends to create disorder or confuse the voters.

Moreover, the prohibition incidentally prevents the collection of exit poll data and their use for any purpose. The valuable information

and ideas that could be derived from them, based on the voters' answers to the survey questions will forever remain unknown and unexplored. Unless the ban is restrained, candidates, researchers, social scientists and the electorate in general would be deprived of studies on the impact of current events and of election-day and other factors on voters' choices.

The absolute ban imposed by the Comelec cannot, therefore, be justified. It does not leave open any alternative channel of communication to gather the type of information obtained through exit polling. On the other hand, there are other valid and reasonable ways and means to achieve the Comelec end of avoiding or minimizing disorder and confusion that may be brought about by exit surveys.

With foregoing premises, it is concluded that the interest of the state in reducing disruption is outweighed by the drastic abridgment of the constitutionally guaranteed rights of the media and the electorate. Quite the contrary, instead of disrupting elections, exit polls – properly conducted and publicized – can be vital tools for the holding of honest, orderly, peaceful and credible elections; and for the elimination of election-fixing, fraud and other electoral ills.

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(***ABS-CBN Broadcasting Corporation v. COMELEC***, G.R. No. 133486, Jan. 28, 2000, En Banc [Panganiban])

143. ***Section 5.4*** *of* ***R.A. No. 9006*** *(****Fair Election Act****) which provides: "Surveys affecting national candidates shall not be published fifteen (15) days before an election and surveys affecting local candidates shall not be published seven (7) days before an election." The Social Weather Stations, Inc. (SWS), a private non-stock, non-profit social research institution conducting surveys in various fields; and Kamahalan Publishing Corporation, publisher of the Manila Standard, a newspaper of general circulation, which features newsworthy items of information including election surveys, challenged the constitutionality of aforesaid provision as it constitutes a prior restraint on the exercise of freedom of speech without any clear and present danger to justify such restraint. Should the challenge be sustained?*

Held: For reason hereunder given, we hold that **Section 5.4** of ***R.A. No. 9006*** constitutes an **unconstitutional abridgment of freedom of speech, expression, and the press**.

To be sure, Section 5.4 lays a **prior restraint on freedom of speech, expression, and the press by prohibiting the publication of election survey results affecting candidates within the prescribed periods of fifteen (15) days immediately preceding a national election and seven (7) days before a local election. Because of the preferred status of the constitutional rights of speech, expression, and the press, such a measure is vitiated by a weighty presumption of invalidity. Indeed, "any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity x x x. The Government 'thus carries a heavy burden of showing justification for the enforcement of such restraint**.'" There is thus a reversal of the normal presumption of validity that inheres in every legislation.

Nor may it be argued that because of ***Art. IX-C***, **Sec. 4** of the ***Constitution***, which gives the Comelec supervisory power to regulate the enjoyment or utilization of franchise for the operation of media of communication, no presumption of invalidity attaches to a measure like Sec. 5.4. **For as we have pointed out in sustaining the ban on media political advertisements, the grant of power to the Comelec under Art. IX-C, Sec.**

4 is limited to ensuring "EQUAL OPPORTUNITY, TIME, SPACE, and the RIGHT TO REPLY" as well as UNIFORM and REASONABLE RATES OF CHARGES for the use of such media facilities for "public information campaigns and forums among candidates."

X x x

Nor can the ban on election surveys be justified on the ground that there are other countries x x x which similarly impose restrictions on the publication of election surveys. At best this survey is inconclusive. It is noteworthy that in the United States no restriction on the publication of election survey results exists. It cannot be argued that this is because the United States is a mature democracy. Neither are there laws imposing an embargo on survey results, even for a limited period, in other countries. X x x.

What *TEST* should then be employed **to determine the constitutional validity** of Section 5.4? The United States Supreme Court x x x held in ***United States v. O' Brien***:
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> [A] government regulation is sufficiently justified **(1)** if it is **within the constitutional power of the government**; **(2)** if it **furthers an important or substantial governmental interest**; **(3)** if **the governmental interest is unrelated to the suppression of free expression**; and **(4)** if **the incidental restriction on alleged First Amendment freedoms** (of speech, expression and press) **is no greater than is essential to the furtherance of that interest** (391 U.S. 367, 20 L. Ed. 2d 692, 680 [1968] [bracketed numbers added]).

This is so far the most influential test for distinguishing content-based from content-neutral regulations and is said to have "become canonical in the review of such laws." It is noteworthy that the *O' Brien* test has been applied by this Court in at least two cases (***Adiong v. Comelec***, 207 SCRA 712 [1992]; ***Osmena v. Comelec***, supra.).

Under this test, even if a law furthers an important or substantial governmental interest, it should be invalidated if such governmental interest is "not unrelated to the suppression of free expression." Moreover, even if the purpose is unrelated to the suppression of free speech, the law should nevertheless be invalidated if the restriction on freedom of expression is greater than is necessary to achieve the governmental purpose in question.

Our inquiry should accordingly focus on these two considerations as applied to Sec. 5.4.

FIRST. **Sec. 5.4 fails to meet criterion (3) of the O' Brien test because the causal connection of expression to the asserted governmental interest makes such interest "not unrelated to the suppression of free expression**." *By prohibiting the publication of election survey results because of the possibility that such publication might undermine the integrity of the election, Sec. 5.4 actually suppresses a whole class of expression, while allowing the expression of opinion concerning the same subject matter by newspaper columnists, radio and TV commentators, armchair theorists, and other opinion makers. In effect, Sec. 5.4 shows a bias for a particular subject matter, if not viewpoint, by preferring personal opinion to statistical results*. The constitutional guarantee of freedom of expression means that "**the government has no power to restrict expression because of its message, its ideas, its subject matter, or its contents**." The inhibition of speech should be upheld only if the expression falls within one of the few

unprotected categories dealt with in ***Chaplinsky v. New Hampshire*** (315 U.S. 568, 571-572, 86 L. Ed. 1031, 1035 [1942]), thus:

> There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the **lewd and obscene**, the **profane**, the **libelous**, and the **insulting or 'fighting' words** – **those which by their very utterance inflict injury or tend to incite an immediate breach of the peace**. [S]uch utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.

Nor is there justification for the prior restraint which Sec. 5.4 lays on protected speech. In ***Near v. Minnesota*** (283 U.S. 697, 715-716, 75 l. Ed. 1357, 1367 [1931]), it was held:

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> **[T]he protection even as to previous restraint is not absolutely unlimited. But the limitation has been recognized only in exceptional cases x x x**. No one would question but that a government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops. **On similar grounds, the primary requirements of decency may be enforced against obscene publications. The security of the community life may be protected against incitements to acts of violence and the overthrow by force of orderly government x x x**.

Thus, x x x the prohibition imposed by Sec. 5.4 cannot be justified on the ground that it is only for a limited period and is only incidental. The prohibition may be for a limited time, but the curtailment of the right of expression is direct, absolute, and substantial. It constitutes a total suppression of a category of speech and is not made less so because it is only for a period of fifteen (15) days immediately before a national election and seven (7) days immediately before a local election.

This sufficiently distinguishes Sec. 5.4 from R.A. No. 6646, Sec. 11(b), which this Court found to be valid in *National Press Club v. Comelec (supra.),* and *Osmena v. Comelec (supra.)*. For the ban imposed by R.A. No. 6646, Sec. 11(b) is not only authorized by a specific constitutional provision *(Art. IX-C, Sec. 4),* but it also provided an alternative so that, as this Court pointed out in *Osmena,* there was actually no ban but only a substitution of media advertisements by the Comelec space, and Comelec hour.

SECOND. **Even if the governmental interest sought to be promoted is unrelated to the suppression of speech and the resulting restriction of free expression is only incidental, Sec. 5.4 nonetheless fails to meet criterion (4) of the O' Brien test, namely, that the restriction be not greater than is necessary to further the governmental interest. As already stated, Sec. 5.4 aims at the prevention of last-minute pressure on voters, the creation of bandwagon effect, "junking" of weak or "losing" candidates, and resort to the form of election cheating called "dagdag-bawas." Praiseworthy as these aims of the regulation might be, they cannot be attained at the sacrifice of the fundamental right of expression, when such aim can be more narrowly pursued by PUNISHING UNLAWFUL ACTS, RATHER THAN SPEECH because of apprehension that such speech creates the danger of such evils**. Thus, under the ***Administrative Code of 1987*** (Bk. V, Tit. I, Subtit. C, Ch 1, Sec. 3[1]), **the Comelec is given the power**:

To stop any illegal activity, or confiscate, tear down, and **stop any unlawful, libelous, misleading or false election propaganda**, after due notice and hearing.

This is surely a less restrictive means than the prohibition contained in Sec. 5.4. Pursuant to this power of the Comelec, it can confiscate bogus survey results calculated to mislead voters. Candidates can have their own surveys conducted. No right of reply can be invoked by others. No principle of equality is involved. It is a free market to which each candidate brings his ideas. As for the purpose of the law to prevent bandwagon effects, it is doubtful whether the Government can deal with this natural-enough tendency of some voters. Some voters want to be identified with the "winners." Some are susceptible to the herd mentality. Can these be legitimately prohibited by suppressing the publication of survey results which are a form of expression? It has been held that "[mere] legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions."

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To summarize then, **we hold that Sec. 5.4 is invalid because (1) it imposes a prior restraint on the freedom of expression**, **(2) it is a direct and total suppression of a category of expression even though such suppression is only for a limited period**, and **(3) the governmental interest sought to be promoted can be achieved by means other than the suppression of freedom of expression**.
(***Social Weather Stations, Inc., v. COMELEC***, G.R. No. 147571, May 5, 2001, En Banc [Mendoza])

144. Discuss the "DOCTRINE OF FAIR COMMENT" as a valid defense in an action for libel or slander.

Held: Fair commentaries on matters of public interest are privileged and constitute a valid defense in an action for libel or slander. The doctrine of fair comment means that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, **when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition. If the comment is an expression of opinion, based on established facts, then it is immaterial that the opinion happens to be mistaken, as long as it might reasonably be inferred from the facts**.
(***Borjal v. CA***, 301 SCRA 1, Jan. 14, 1999, 2nd Div. [Bellosillo])

145. What is the "raison d'etre" for the New York Times v. Sullivan (376 US 254) *holding that honest criticisms on the conduct of public officials and public figures are insulated from libel judgments?*

Held: The guarantees of freedom of speech and press prohibit a public official or public figure from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with actual malice, i.e., with knowledge that it was false or with reckless disregard of whether it was false or not.

The raison d'etre for the New York Times doctrine was that **to require critics of official conduct to guarantee the truth of all their factual assertions on pain of libel judgments would lead to self-censorship, since would-be critics would be deterred from voicing out their criticisms even if such were believed to be true, or were in fact true, because of doubt whether it could be proved or because of fear of the expense of having to prove it**.
(***Borjal v. CA***, 301 SCRA 1, Jan. 14, 1999, 2nd Div. [Bellosillo])

146. Who is a "public figure," and therefore subject to public comment?

Held: [W]e deem private respondent a public figure within the purview of the *New York Times* ruling. At any rate, we have also defined "public figure" in ***Ayers Production Pty., Ltd. v. Capulong*** (G.R. Nos. 82380 and 82398, 29 April 1988, 160 SCRA 861) as –

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> X x x **a person who, by his accomplishments, fame, mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doings, his affairs and his character, has become a 'public personage'**. He is, in other words, a **celebrity**. Obviously, to be included in this category are those who have achieved some degree of reputation by appearing before the public, as in the case of an actor, a professional baseball player, a pugilist, or any other entertainer. The list is, however, broader than this. It includes public officers, famous inventors and explorers, war heroes and even ordinary soldiers, infant prodigy, and no less a personage than the Great Exalted Ruler of the lodge. **It includes, in short, anyone who has arrived at a position where the public attention is focused upon him as a person**.

The FNCLT (First National Conference on Land Transportation) was an undertaking infused with public interest. It was promoted as a joint project of the government and the private sector, and organized by top government officials and prominent businessmen. For this reason, it attracted media mileage and drew public attention not only to the conference itself but to the personalities behind as well. As its Executive Director and spokesman, private respondent consequently assumed the status of a public figure.

But even assuming ex-gratia argumenti that private respondent, despite the position he occupied in the FNCLT, would not qualify as a public figure, it does not necessarily follow that he could not validly be the subject of a public comment even if he was not a public official or at least a public figure, for he could be, as long as he was involved in a public issue. If a matter is a subject of public or general interest, it cannot suddenly become less so merely because a private individual is involved or because in some sense the individual did not voluntarily choose to become involved. The public's primary interest is in the event; the public focus is on the conduct of the participant and the content, effect and significance of the conduct, not the participant's prior anonymity or notoriety. (***Borjal v. CA***, 301 SCRA 1, Jan. 14, 1999, 2nd Div. [Bellosillo])

147. The Office of the Mayor of Las Pinas refused to issue permit to petitioners to hold rally a rally in front of the Justice Hall of Las Pinas on the ground that it was prohibited under Supreme Court En Banc Resolution dated July 7,1998 in A.M. No. 98-7-02-SC, entitled, "Re: Guidelines on the Conduct of Demonstrations, Pickets, Rallies and Other Similar Gatherings in the Vicinity of the Supreme Court and All Other Courts." Petitioners thus initiated the instant proceedings. They

submit that the Supreme Court gravely abused its discretion and/or acted without or in excess of jurisdiction in promulgating those guidelines.

Held: We shall first dwell on the critical argument made by petitioners that the rules constitute an abridgment of the people's aggregate rights of free speech, free expression, peaceful assembly and petitioning government for redress of grievances citing Sec. 4, Article III of the 1987 Constitution that "no law shall be passed abridging" them.

It is true that the safeguarding of the people's freedom of expression to the end that individuals may speak as they think on matters vital to them and that falsehoods may be exposed through the processes of education and discussion is essential to free government. **But freedom of speech and expression despite its indispensability has its limitations. It has never been understood as the absolute right to speak whenever, however, and wherever one pleases, for the manner, place, and time of public discussion can be constitutionally controlled. [T]he better policy is not liberty untamed but liberty regulated by law where every freedom is exercised in accordance with law and with due regard for the rights of others**.

Conventional wisdom tells us that the realities of life in a complex society **preclude an absolutist interpretation of freedom of expression where it does not involve pure speech but speech plus physical actions like picketing. There are other significant societal values that must be accommodated and when they clash, they must all be weighed with the promotion of the general welfare of the people as the ultimate objective. In balancing these values, this Court has accorded freedom of expression a preferred position in light of its more comparative importance**. Hence, our rulings now musty in years hold that only the narrowest time, place and manner regulations that are specifically tailored to serve an important governmental interest may justify the application of the balancing of interests test in derogation of the people's right of free speech and expression. **Where said regulations do not aim particularly at the evils within the allowable areas of state control but, on the contrary, sweep within their ambit other activities as to operate as an overhanging threat to free discussion, or where upon their face they are so vague, indefinite, or inexact as to permit punishment of the fair use of the right of free speech, such regulations are void**.

Prescinding from this premise, the Court reiterates that judicial independence and the fair and orderly administration of justice constitute paramount governmental interests that can justify the regulation of the public's right of free speech and peaceful assembly in the vicinity of courthouses. In the case of ***In Re: Emil P. Jurado***, the Court pronounced in no uncertain terms that:

> "x x x **freedom of expression needs on occasion to be adjusted to and accommodated with the requirements of equally important public interests. One of these fundamental public interests is the maintenance of the integrity and orderly functioning of the administration of justice. There is no antinomy between free expression and the integrity of the system of administering justice. For the protection and maintenance of freedom of expression itself can be secured only within the context of a functioning and orderly system of dispensing justice, within the context, in other words, of viable independent institutions for delivery of justice which are accepted by the general community**. x x x" (***In Re: Emil P. Jurado***, 243 SCRA 299, 323-324 [1995])

It is sadly observed that judicial independence and the orderly administration of justice have been threatened not only by contemptuous acts inside, but also by irascible demonstrations outside, the courthouses. They wittingly or unwittingly, spoil the ideal of sober, non-partisan proceedings before a cold and neutral judge. Even in the United States, a prohibition against picketing and demonstrating in or near courthouses has been ruled as valid and constitutional notwithstanding its limiting effect on the exercise by the public of their liberties. X x x

The administration of justice must not only be fair but must also APPEAR to be fair and it is the duty of this Court to eliminate everything that will diminish if not destroy this judicial desideratum. To be sure, there will be grievances against our justice system for there can be no perfect system of justice but these grievances must be ventilated through appropriate petitions, motions or other pleadings. **Such a mode is in keeping with the respect due to the courts as vessels of justice and is necessary if judges are to dispose their business in a fair fashion. It is the traditional conviction of every civilized society that courts must be insulated from every extraneous influence in their decisions. The facts of a case should be determined upon evidence produced in court, and should be uninfluenced by bias, prejudice or sympathies**. (***In Re: Petition to Annul En Banc Resolution A.M. 98-7-02-SC - Ricardo C. Valmonte and Union of Lawyers and Advocates for Transparency in Government [ULAT]***, G.R. No. 134621, Sept. 29, 1998)

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148. Did the Supreme Court commit an act of judicial legislation in promulgating En Banc Resolution A.M. 98-7-02-SC, entitled, "Re: Guidelines on the Conduct of Demonstrations, Pickets, Rallies and Other Similar Gatherings in the Vicinity of the Supreme Court and All Other Courts?"

Held: Petitioners also claim that this Court committed an act of judicial legislation in promulgating the assailed resolution. They charge that this Court amended provisions of Batas Pambansa (B.P.) Blg. 880, otherwise known as "the Public Assembly Act," by converting the sidewalks and streets within a radius of two hundred (200) meters from every courthouse from a public forum place into a "no rally" zone. Thus, they accuse this Court of x x x violating the principle of separation of powers.

We reject these low watts arguments. Public places *historically associated* with the free exercise of expressive activities, such as streets, sidewalks, and parks, are considered, *without more*, to be public fora. **In other words, it is not any law that can imbue such places with the public nature inherent in them. But even in such public fora, it is settled jurisprudence that the government may restrict speech plus activities and enforce reasonable time, place, and manner regulations as long as the restrictions are (1) content-neutral, (2) are narrowly tailored to serve a significant governmental interest, and (3) leave open ample alternative channels of communication**.

Contrary therefore to petitioners' impression, B.P. Blg. 880 did not establish streets and sidewalks, among other places, as public fora. A close look at the law will reveal that it in fact prescribes reasonable time, place, and manner regulations. Thus, it requires a written permit for the holding of public assemblies in public places subject, even, to the right of the mayor to modify the place and time of the public assembly, to impose a rerouting of the parade or street march, to limit the volume of loud speakers or sound system and to prescribe other appropriate restrictions on the conduct of the public assembly.

The existence of B.P. Blg. 880, however, does not preclude this Court from promulgating rules regulating conduct of demonstrations in the vicinity of courts to assure our people of an impartial and orderly administration of justice as mandated by the Constitution. To insulate the judiciary from mob pressure, friendly or otherwise, and isolate it from public hysteria, this Court merely moved away the situs of mass actions within a 200-meter radius from every courthouse. In fine, B.P. Blg. 880 imposes general restrictions to the time, place and manner of conducting concerted actions. On the other hand, the resolution of this Court regulating demonstrations adds specific restrictions as they involve judicial independence and the orderly administration of justice. There is thus no discrepancy between the two sets of regulatory measures. Simply put, **B.P. Blg. 880 and the assailed resolution complement each other**. We so hold following the rule in legal hermeneutics that an apparent conflict between a court rule and a statutory provision should be harmonized and both should be given effect if possible. (***In Re: Petition to Annul En Banc Resolution A.M. 98-7-02-SC - Ricardo C. Valmonte and Union of Lawyers and Advocates for Transparency in Government [ULAT]***, G.R. No. 134621, Sept. 29, 1998)

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149. Should live media coverage of court proceedings be allowed?

Held: The propriety of granting or denying permission to the media to broadcast, record, or photograph court proceedings involves weighing the constitutional guarantees of freedom of the press, the right of the public to information and the right to public trial, on the one hand, and on the other hand, the due process rights of the defendant and the inherent and constitutional power of the courts to control their proceedings in order to permit the fair and impartial administration of justice. Collaterally, it also raises issues on the nature of the media, particularly television and its role in society, and of the impact of new technologies on law.

The records of the Constitutional Commission are bereft of discussion regarding the subject of cameras in the courtroom. Similarly, Philippine courts have not had the opportunity to rule on the question squarely.

While we take notice of the September 1990 report of the United States Judicial Conference Ad Hoc Committee on Cameras in the Courtroom, still the current rule obtaining in the Federal Courts of the United States prohibits the presence of television cameras in criminal trials. **Rule 53 of the Federal Rules of Criminal Procedure forbids the taking of photographs during the progress of judicial proceedings or radio broadcasting of such proceedings from the courtroom. A trial of any kind or in any court is a matter of serious importance to all concerned and should not be treated as a means of entertainment. To so treat it deprives the court of the dignity which pertains to it and departs from the orderly and serious quest for truth for which our judicial proceedings are formulated**.

Courts do not discriminate against radio and television media by forbidding the broadcasting or televising of a trial while permitting the newspaper reporter access to the courtroom, since a television or news reporter has the same privilege, as the news reporter is not permitted to bring his typewriter or printing press into the courtroom.

In ***Estes v. Texas*** (381 U.S. 532), the United States Supreme Court held that **television coverage of judicial proceedings involves an inherent denial of due process rights of a criminal defendant**. Voting 5-4, the Court

through Mr. Justice Clark, identified **four (4) areas of potential prejudice which might arise from the impact of the cameras on the jury, witnesses, the trial judge and the defendant**. The decision in part pertinently stated:

> "Experience likewise has established the prejudicial effect of telecasting on witnesses. **(1) Witnesses might be frightened, play to the camera, or become nervous. They are subject to extraordinary out-of-court influences which might affect their testimony**. Also, **(2) telecasting not only increases the trial judge's responsibility to avoid actual prejudice to the defendant; it may as well affect his own performance. Judges are human beings also and are subject to the same psychological reactions as laymen**. **(3) For the defendant, telecasting is a form of mental harassment and subjects him to excessive public exposure and distracts him from the effective presentation of his defense**.
>
> "**The television camera is a powerful weapon which intentionally or inadvertently can destroy an accused and his case in the eyes of the public**."

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Representatives of the press have no special standing to apply for a writ of mandate to compel a court to permit them to attend a trial, since within the courtroom a reporter's constitutional rights are no greater than those of any other member of the public. **Massive intrusion of representatives of the news media into the trial itself can so alter or destroy the constitutionally necessary judicial atmosphere and decorum that the requirements of impartiality imposed by due process of law are denied the defendant** and a defendant in a criminal proceeding should not be forced to run a gauntlet of reporters and photographers each time he enters or leaves the courtroom.

Considering the prejudice it poses to the defendant's right to due process as well as to the fair and orderly administration of justice, and considering further that the freedom of the press and the right of the people to information may be served and satisfied by less distracting, degrading and prejudicial means, live radio and television coverage of court proceedings shall not be allowed. Video footages of court hearings for news purposes shall be restricted and limited to shots of the courtroom, the judicial officers, the parties and their counsel taken prior to the commencement of official proceedings. No video shots or photographs shall be permitted during the trial proper. (***Supreme Court En Banc Resolution Re: Live TV and Radio Coverage of the Hearing of President Corazon C. Aquino's Libel Case***, dated Oct. 22, 1991)

150. Should the Court allow live media coverage of the anticipated trial of the plunder and other criminal cases filed against former President Joseph E. Estrada before the Sandiganbayan in order "to assure the public of full transparency in the proceedings of an unprecedented case in our history" as requested by the Kapisanan ng mga Brodkaster ng Pilipinas?

Held: The propriety of granting or denying the instant petition involve the weighing out of the constitutional guarantees of freedom of the press and the right to public information, on the one hand, and the fundamental rights of the accused, on the other hand, along with the constitutional power of a court to control its proceedings in ensuring a fair and impartial trial.

When these rights race against one another, jurisprudence tells us that the right of the accused must be preferred to win.

With the possibility of losing not only the precious liberty but also the very life of an accused, it behooves all to make absolutely certain that an accused receives a verdict solely on the basis of a just and dispassionate judgment, a verdict that would come only after the presentation of credible evidence testified to by unbiased witnesses unswayed by any kind of pressure, whether open or subtle, in proceedings that are devoid of histrionics that might detract from its basic aim to ferret veritable facts free from improper influence, and decreed by a judge with an unprejudiced mind, unbridled by running emotions or passions.

Due process guarantees the accused a presumption of innocence until the contrary is proved in a trial that is not lifted above its individual settings nor made an object of public's attention and where the conclusions reached are induced not by any outside force or influence but only by evidence and argument given in open court, where fitting dignity and calm ambiance is demanded.

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Witnesses and judges may very well be men and women of fortitude, able to thrive in hardy climate, with every reason to presume firmness of mind and resolute endurance, but it must also be conceded that "television can work profound changes in the behavior of the people it focuses on." **Even while it may be difficult to quantify the influence, or pressure that media can bring to bear on them directly and through the shaping of public opinion, it is a fact, nonetheless, that, indeed, it does so in so many ways and in varying degrees. The conscious or unconscious effect that such coverage may have on the testimony of witnesses and the decision of judges cannot be evaluated but, it can likewise be said, it is not at all unlikely for a vote of guilt or innocence to yield to it. It might be farcical to build around them an impregnable armor against the influence of the most powerful media of public opinion**.

To say that actual prejudice should first be present would leave to near nirvana the subtle threats to justice that a disturbance of the mind so indispensable to the calm and deliberate dispensation of justice can create. The effect of television may escape the ordinary means of proof, but it is not far-fetched for it to gradually erode our basal conception of a trial such as we know it now.

An accused has a right to a public trial but it is a right that belongs to him, more than anyone else, where his life or liberty can be held critically in balance. A public trial aims to ensure that he is fairly dealt with and would not be unjustly condemned and that his rights are not compromised in secret conclaves of long ago. A public trial is not synonymous with publicized trial; it only implies that the court doors must be open to those who wish to come, sit in the available seats, conduct themselves with decorum and observe the trial process. In the constitutional sense, **a courtroom should have enough facilities for a reasonable number of the public to observe the proceedings, not too small as to render the openness negligible and not too large as to distract the trial participants from their proper functions, who shall then be totally free to report what they have observed during the proceedings**.

The courts recognize the constitutionally embodied freedom of the press and the right to public information. It also approves of media's exalted power to provide the most accurate and comprehensive means of conveying the proceedings to the public and in acquainting

the public with the judicial process in action; nevertheless, within the courthouse, the overriding consideration is still the paramount right of the accused to due process which must never be allowed to suffer diminution in its constitutional proportions. Justice Clark thusly pronounced, "while a maximum freedom must be allowed the press in carrying out the important function of informing the public in a democratic society, its exercise must necessarily be subject to the maintenance of ABSOLUTE fairness in the judicial process."

X x x

The Integrated Bar of the Philippines x x x expressed its own concern on the live television and radio coverage of the criminal trials of Mr. Estrada; to paraphrase: Live television and radio coverage can negate the rule on exclusion of witnesses during the hearings intended to assure a fair trial; at stake in the criminal trial is not only the life and liberty of the accused but the very credibility of the Philippine criminal justice system, and live television and radio coverage of the trial could allow the "hooting throng" to arrogate unto themselves the task of
107 judging the guilt of the accused, such that the verdict of the court will be acceptable only if popular; and live television and radio coverage of the trial will not subserve the ends of justice but will only pander to the desire for publicity of a few grandstanding lawyers.

X x x

Unlike other government offices, courts do not express the popular will of the people in any sense which, instead, are tasked to only adjudicate controversies on the basis of what alone is submitted before them. A trial is not a free trade of ideas. Nor is a competing market of thoughts the known test of truth in a courtroom. (***Re: Request Radio-TV coverage of the Trial in the Sandiganbayan of the Plunder Cases against the former President Joseph E. Estrada***, A.M. No. 01-4-03-SC, June 29, 2001, En Banc [Vitug])

FREEDOM OF RELIGION

151. Discuss why the ***Gerona*** *ruling* (*justifying the expulsion from public schools of children of Jehovah's Witnesses who refuse to salute the flag and sing the national anthem during flag ceremony as prescribed by the Flag Salute Law*) *should be abandoned.*

Held: Our task here is extremely difficult, for the 30-year old decision of this court in *Gerona* upholding the flag salute law and approving the expulsion of students who refuse to obey it, is not lightly to be trifled with.

It is somewhat ironic however, that after the *Gerona* ruling had received legislative cachet by its incorporation in the Administrative Code of 1987, the present Court believes that the time has come to reexamine it. **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 which guarantees their rights to free speech** *(The flag salute, singing the national anthem and reciting the patriotic pledge are all forms of utterances.)* **and the free exercise of religious profession and worship**.

Religious freedom is a fundamental right which is entitled to the highest priority and the amplest protection among human rights, for it

involves the relationship of man to his Creator (Chief Justice Enrique M. Fernando's separate opinion in ***German v. Barangan***, 135 SCRA 514, 530-531).

> "**The right to religious profession and worship has a two-fold aspect, viz., freedom to believe and freedom to act on one's belief. The first is absolute as long as the belief is confined within the realm of thought. The second is subject to regulation where the belief is translated into external acts that affect the public welfare**" *(J. Cruz, Constitutional Law, 1991 Ed., pp. 176-177).*

Petitioners stress x x x that while they do not take part in the compulsory flag ceremony, they do not engage in "external acts" or behavior that would offend their countrymen who believe in expressing their love of country through the observance of the flag ceremony. They quietly stand at attention during the flag ceremony to show their respect for the rights of those who choose to participate in the solemn proceedings. Since they do not engage in disruptive behavior, there is no warrant for their expulsion.

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> "**The sole justification for a prior restraint or limitation on the exercise of religious freedom** (*according to the late Chief Justice Claudio Teehankee in his dissenting opinion in* ***German v. Barangan***, 135 SCRA 514, 517) **is 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 public interest, that the State has a right (and duty) to prevent." Absent such a threat to public safety, the expulsion of the petitioners from the schools is not justified**.
>
> The situation that the Court directly predicted in *Gerona* that:
>
> "[T]he flag ceremony will become a thing of the past or perhaps conducted with very few participants, and the time will come when we would have citizens untaught and uninculcated in and not imbued with reverence for the flag and love of country, admiration for national heroes, and patriotism – a pathetic, even tragic situation, and all because a small portion of the school population imposed its will, demanded and was granted an exemption."

has not come to pass. **We are not persuaded that by exempting the Jehovah's Witnesses from saluting the flag, singing the national anthem and reciting the patriotic pledge, this religious group which admittedly comprises a "small portion of the school population" will shake up our part of the globe and suddenly produce a nation "untaught and uninculcated in and unimbued with reverence for the flag, patriotism, love of country and admiration for national heroes. After all, what the petitioners seek only is exemption from the flag ceremony, not exclusion from the public schools where they may study the Constitution, the democratic way of life and form of government, and learn not only the arts, sciences, Philippine history and culture but also receive training for a vocation or profession and be taught the virtues of "patriotism, respect for human rights, appreciation for national heroes, the rights and duties of citizenship, and moral and spiritual values** *(Sec. 3[2], Art. XIV, 1987 Constitution.)* as part of the curricula. Expelling or banning the petitioners from Philippine schools will bring about the very situation that this Court had feared in *Gerona.* Forcing a small religious group, through the iron hand of the law, to participate in a ceremony that violates their religious beliefs, will hardly be conducive to love of country or respect for duly constituted authorities.

As Mr. Justice Jackson remarked in ***West Virginia v. Barnette***, 319 U.S. 624 (1943):

> "x x x **To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering statement of the appeal of our institutions to free minds. x x x When they (diversity) are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order**."
>
> "**Furthermore, let it be noted that coerced unity and loyalty even to the country, x x x – assuming that such unity and loyalty can be attained through coercion – is not a goal that is constitutionally obtainable at the expense of religious liberty. A desirable end cannot be promoted by prohibited means**." (***Meyer v. Nebraska***, 262 U.S. 390, 67 L. ed. 1042, 1046)

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Moreover, the expulsion of members of Jehovah's Witnesses from the schools where they are enrolled will **violate their right as Philippine citizens, under the 1987 Constitution, to receive free education**, for it is the duty of the State to "protect and promote the right of all citizens to quality education x x x and to make such education accessible to all" *(Sec. 1, Art. XIV).*

In ***Victoriano v. Elizalde Rope Workers' Union***, 59 SCRA 54, we upheld the exemption of members of the Iglesia Ni Cristo, from the coverage of a closed shop agreement between their employer and a union because it would violate the teaching of their church not to join any labor group:

> "x x x **It is certain that not every conscience can be accommodated by all the laws of the land; but when general laws conflict with scruples of conscience, exemptions ought to be granted unless some 'compelling state interests' intervenes**. (***Sherbert v. Berner***, 374 U.S. 398, 10 L. Ed. 2d 965, 970, 83 S. Ct. 1790)."

We hold that a similar exemption may be accorded to the Jehovah's Witnesses with regard to the observance of the flag ceremony out of respect for their religious beliefs, however "bizarre" those beliefs may seem to others. Nevertheless, their right not to participate in the flag ceremony does not give them a right to disrupt such patriotic exercises. Paraphrasing the warning cited by this Court in ***Non v. Dames II***, 185 SCRA 523, **while the highest regard must be afforded their right to the free exercise of their religion, "this should not be taken to mean that school authorities are powerless to discipline them" if they should commit breaches of the peace by actions that offend the sensibilities, both religious and patriotic, of other persons**. If they quietly stand at attention during the flag ceremony while their classmates and teachers salute the flag, sing the national anthem and recite the patriotic pledge, we do not see how such conduct may possibly disturb the peace, or pose "a grave and present danger of a serious evil to public safety, public morals, public health or any other legitimate public interest that the State has a right (and duty) to prevent." (***Ebralinag v. The Division Superintendent of Schools of Cebu***, 219 SCRA 256, 269-273, March 1, 1993, En Banc [Grino-Aquino])

*152. A **pre-taped** TV program of the Iglesia Ni Cristo (INC) was submitted to the MTRCB for review. The latter classified it as "rated X" because it was shown*

to be attacking another religion. The INC protested by claiming that its religious freedom is per se beyond review by the MTRCB. Should this contention be upheld?

Held: <u>The right to religious profession and worship has a two-fold aspect, *viz.,* freedom to believe and freedom to act on one's belief. The first is absolute as long as the belief is confined within the realm of thought. The second is subject to regulation where the belief is translated into external acts that affect the public welfare</u>.

<u>The Iglesia Ni Cristo's postulate that its religious freedom is *per se* beyond review by the MTRCB should be rejected. Its public broadcast on TV of its religious programs brings it out of the bosom of internal belief. Television is a medium that reaches even the eyes and ears of children. The exercise of religious freedom can be regulated by the State when it will bring about the clear and present danger of a substantive evil which the State is duty-bound to prevent, *i.e.,* serious detriment to the more overriding interest of public health, public morals, or public welfare. A *laissez faire* policy on the exercise of religion can be seductive to the liberal mind but history counsels the Court against its blind adoption as religion is and continues to be a volatile area of concern in our society today</u>. "For sure, we shall continue to subject any act pinching the space for the free exercise of religion to a heightened scrutiny but we shall not leave its rational exercise to the irrationality of man. For when religion divides and its exercise destroys, the State should not stand still." (***Iglesia Ni Cristo v. CA***, 259 SCRA 529, July 26, 1996 [Puno])

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153. Did the MTRCB act correctly when it rated "X" the Iglesia Ni Cristo's pre-taped TV program simply because it was found to be "attacking" another religion?

Held: <u>The MTRCB may disagree with the criticisms of other religions by the Iglesia Ni Cristo but that gives it no excuse to interdict such criticisms, however unclean they may be. Under our constitutional scheme, it is not the task of the State to favor any religion by protecting it against an attack by another religion</u>. Religious dogma and beliefs are often at war and to preserve peace among their followers, especially the fanatics, the establishment clause of freedom of religion prohibits the State from leaning towards any religion. **<u>*Vis-à-vis* religious differences, the State enjoys no banquet of options. Neutrality alone is its fixed and immovable stance. In fine, the MTRCB cannot squelch the speech of the INC simply because it attacks another religion</u>**. In a State where there ought to be no difference between the appearance and the reality of freedom of religion, the remedy against bad theology is better theology. The bedrock of freedom of religion is freedom of thought and it is best served by encouraging the marketplace of dueling ideas. When the luxury of time permits, the marketplace of ideas demands that speech should be met by more speech for it is the spark of opposite speech, the heat of colliding ideas, that can fan the embers of truth. (***Iglesia Ni Cristo v. CA***, 259 SCRA 529, July 26, 1996 [Puno])

154. Is solicitation for the construction of a church covered by P.D. No. 1564 and, therefore, punishable if done without the necessary permit for solicitation from the DSWD?

Held: *FIRST*. **<u>Solicitation of contributions for the construction of a church is not solicitation for "charitable or public welfare purpose" but for a religious purpose, and a religious purpose is not necessarily a charitable or public welfare purpose</u>**. A fund campaign for the construction

or repair of a church is not like fund drives for needy families or victims of calamity or for the construction of a civic center and the like. **Like solicitation of subscription to religious magazines, it is part of the propagation of religious faith or evangelization. Such solicitation calls upon the virtue of faith, not of charity, save as those solicited for money or aid may not belong to the same religion as the solicitor. Such solicitation does not engage the philanthropic as much as the religious fervor of the person who is solicited for contribution**.

SECOND. **The purpose of the Decree is to protect the public against fraud in view of the proliferation of fund campaigns for charity and other civic projects. On the other hand, since religious fund drives are usually conducted among those belonging to the same religion, the need for public protection against fraudulent solicitations does not exist in as great a degree as does the need for protection with respect to solicitations for charity or civic projects as to justify state regulation**.

111 *THIRD.* **To require a government permit before solicitation for religious purpose may be allowed is to lay a prior restraint on the free exercise of religion. Such restraint, if allowed, may well justify requiring a permit before a church can make Sunday collections or enforce tithing**. But in ***American Bible Society v. City of Manila*** (101 Phil. 386 [1957]), we precisely held that an **ordinance requiring payment of a license fee before one may engage in business could not be applied to the appellant's sale of bibles because that would impose a condition on the exercise of a constitutional right. It is for the same reason that religious rallies are exempted from the requirement of prior permit for public assemblies and other uses of public parks and streets** (B.P. Blg. 880, Sec. 3[a]). To read the Decree, therefore, as including within its reach solicitations for religious purposes would be to construe it in a manner that it violates the Free Exercise of Religion Clause of the Constitution x x x. (Concurring Opinion, Mendoza, V.V., J., in ***Centeno v. Villalon-Pornillos***, 236 SCRA 197, Sept. 1, 1994)

155. What is a purely ecclesiastical affair to which the State can not meddle?

Held: An *ECCLESIASTICAL AFFAIR* is "**one that concerns doctrine, creed, or form of worship of the church, or the adoption and enforcement within a religious association of needful laws and regulations for the government of the membership, and the power of excluding from such associations those deemed not worthy of membership**." Based on this definition, an ecclesiastical affair **involves the relationship between the church and its members and relate to matters of faith, religious doctrines, worship and governance of the congregation**. To be concrete, examples of this so-called ecclesiastical affairs to which the State cannot meddle are proceedings for excommunication, ordinations of religious ministers, administration of sacraments and other activities with attached religious significance.
(***Pastor Dionisio V. Austria v. NLRC***, G.R. No. 124382, Aug. 16, 1999, 1st Div. [Kapunan])

156. Petitioner is a religious minister of the Seventh Day Adventist (SDA). He was dismissed because of alleged misappropriation of denominational funds, willful breach of trust, serious misconduct, gross and habitual neglect of duties and commission of an offense against the person of his employer's duly authorized representative. He filed an illegal termination case against the SDA before the labor arbiter. The SDA filed a motion to dismiss invoking the doctrine of separation of Church and State. Should the motion be granted?

Held: **Where what is involved is the relationship of the church as an employer and the minister as an employee and has no relation whatsoever with the practice of faith, worship or doctrines of the church**, *i.e.,* the minister was not excommunicated or expelled from the membership of the congregation but was terminated from employment, **it is a purely secular affair. Consequently, the suit may not be dismissed invoking the doctrine of separation of church and the state**.

(***Pastor Dionisio V. Austria v. NLRC***, G.R. No. 124382, Aug. 16, 1999, 1st Div. [Kapunan])

THE RIGHT OF THE PEOPLE TO INFORMATION ON MATTERS OF PUBLIC CONCERN

157. Discuss the scope of the right to information on matters of public concern.

Held: In ***Valmonte v. Belmonte, Jr.***, the Court emphasized that **the information sought must be "matters of public concern," access to which may be limited by law. Similarly, the state policy of full public disclosure extends only to "transactions involving public interest" and may also be "subject to reasonable conditions prescribed by law**." As to the meanings of the terms "**public interest**" and "**public concern**," the Court, in ***Legaspi v. Civil Service Commission***, elucidated:

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> "In determining whether or not a particular information is of public concern there is no rigid test which can be applied. '**Public concern**' like '**public interest**' is a term that eludes exact definition. **Both terms embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen. In the final analysis, it is for the courts to determine on a case by case basis whether the matter at issue is of interest or importance, as it relates to or affects the public**."

Considered a public concern in the above-mentioned case was the "legitimate concern of citizens to ensure that government positions requiring civil service eligibility are occupied only by persons who are eligibles." So was the need to give the general public adequate notification of various laws that regulate and affect the actions and conduct of citizens, as held in *Tanada.* Likewise did the "public nature of the loanable funds of the GSIS and the public office held by the alleged borrowers (members of the defunct Batasang Pambansa)" qualify the information sought in *Valmonte* as matters of public interest and concern. In ***Aquino-Sarmiento v. Morato*** (203 SCRA 515, 522-23, November 13, 1991), the Court also held that **official acts of public officers done in pursuit of their official functions are public in character; hence, the records pertaining to such official acts and decisions are within the ambit of the constitutional right of *access to public records***.

Under ***Republic Act No. 6713***, **public officials and employees are mandated to "provide information on their policies and procedures in clear and understandable language, [and] ensure openness of information, public consultations and hearing whenever appropriate x x x," except when "otherwise provided by law or when required by the public interest." In particular, the law mandates free public access, at reasonable hours, to the annual performance reports of offices and agencies of government and government-owned or controlled corporations; and the statements of assets, liabilities and financial disclosures of all public officials and employees**.

In general, writings coming into the hands of public officers in connection with their official functions must be accessible to the public, consistent with the policy of transparency of governmental affairs. This principle is aimed at affording the people an opportunity to determine whether those to whom they have entrusted the affairs of the government are honestly, faithfully and competently performing their functions as public servants. Undeniably, the essence of democracy lies in the free-flow of thought; but thoughts and ideas must be well-informed so that the public would gain a better perspective of vital issues confronting them and, thus, be able to criticize as well as participate in the affairs of the government in a responsible, reasonable and effective manner. Certainly, it is by ensuring an unfettered and uninhibited exchange of ideas among a well-informed public that a government remains responsive to the changes desired by the people. (***Chavez v. PCGG***, 299 SCRA 744, Dec. 9, 1998, [Panganiban])

158. What are some of the recognized RESTRICTIONS to the right of the people to information on matters of public concern?

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Held:

1) **National security matters and intelligence information**. This jurisdiction recognizes the common law holding that there is a governmental privilege against public disclosure with respect to state secrets regarding military, diplomatic and other national security matters. **Likewise, information on inter-government exchanges prior to the conclusion of treaties and executive agreements may be subject to reasonable safeguards for the sake of national interest**;
2) **Trade or industrial secrets** (pursuant to the ***Intellectual Property Code*** [***R.A. No. 8293***, approved on June 6, 1997] and other related laws) **and banking transactions** (pursuant to the ***Secrecy of Bank Deposits Act*** [***R.A. No. 1405***, as amended]);
3) **Criminal matters**, such as those relating to the apprehension, the prosecution and the detention of criminals, **which courts may not inquire into *prior* to such arrest, detention and prosecution**;
4) **Other confidential information**. The ***Ethical Standards Act*** (***R.A. No. 6713***, enacted on February 20, 1989) further **prohibits public officials and employees from using or divulging "confidential or classified information officially known to them by reason of their office and not made available to the public**." (Sec. 7[c], ibid.) Other acknowledged limitations to information access include **diplomatic correspondence, closed door Cabinet meetings and executive sessions of either house of Congress, as well as the internal deliberations of the Supreme Court**.

(***Chavez v. PCGG***, 299 SCRA 744, Dec. 9, 1998 [Panganiban])

159. Is the alleged ill-gotten wealth of the Marcoses a matter of public concern subject to this right?

Held: With such pronouncements of our government, whose authority emanates from the people, there is no doubt that the recovery of the Marcoses' alleged ill-gotten wealth is a matter of public concern and imbued with public interest. We may also add that "ill-gotten wealth" refers to **assets and properties purportedly acquired, directly or indirectly, by former President Marcos, his immediate family, relatives and close associates through or as a result of their improper or illegal use of government funds or properties; or their having taken undue advantage of their public office; or their use of powers, influences or relationships,**

“resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines.” Clearly, the assets and properties referred to supposedly originated from the government itself. To all intents and purposes, therefore, they belong to the people. As such, upon reconveyance they will be returned to the public treasury, subject only to the satisfaction of positive claims of certain persons as may be adjudged by competent courts. Another declared overriding consideration for the expeditious recovery of ill-gotten wealth is that it may be used for national economic recovery.

We believe the foregoing disquisition settles the question of whether petitioner has a right to respondents' disclosure of any agreement that may be arrived at concerning the Marcoses’ purported ill-gotten wealth. (***Chavez v. PCGG***, 299 SCRA 744, Dec. 9, 1998 [Panganiban])

FREEDOM OF ASSOCIATION

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160. Does the right of civil servants to organize include their right to strike? Clarify.

Held: Specifically, the right of civil servants to organize themselves was positively recognized in ***Association of Court of Appeals Employees (ACAE) v. Ferrer-Calleja*** (203 SCRA 596, November 15, 1991). But, as in the exercise of the rights of free expression and of assembly, there are standards for allowable limitations such as the legitimacy of the purposes of the association, the overriding considerations of national security and the preservation of democratic institutions *(People v. Ferrer, 48 SCRA 382, December 27, 1972, per Castro, J., where the Court, while upholding the validity of the Anti-Subversion Act which outlawed the Communist Party of the Philippines and other "subversive" organizations, clarified, "Whatever interest in freedom of speech and freedom of association is infringed by the prohibition against knowing membership in the Communist Party of the Philippines, is so indirect and so insubstantial as to be clearly and heavily outweighed by the overriding considerations of national security and the preservation of democratic institutions in this country." It cautioned, though, that "the need for prudence and circumspection [cannot be overemphasized] in [the law's] enforcement, operating as it does in the sensitive area of freedom of expression and belief.")*

As regards the right to strike, the Constitution itself qualifies its exercise with the proviso "in accordance with law." This is a clear manifestation that the state may, by law, regulate the use of this right, or even deny certain sectors such right. ***Executive Order No. 180*** *(Issued by former President Corazon C. Aquino on June 1, 1987)* which provides guidelines for the exercise of the right of government workers to organize, for instance, **implicitly endorsed an earlier CSC circular which "enjoins under pain of administrative sanctions, all government officers and employees from staging strikes, demonstrations, mass leaves, walkouts and other forms of mass action which will result in temporary stoppage or disruption of public service**" (***CSC Memorandum Circular No. 6, s. 1987***, dated April 21, 1987) **by stating that the Civil Service law and rules governing concerted activities and strikes in the government service shall be observed**.

It is also settled in jurisprudence that, **in general, workers in the public sector do not enjoy the right to strike**. ***Alliance of Concerned Government Workers v. Minister of Labor and Employment*** (124 SCRA 1, August 3, 1983, also per Gutierrez, Jr., J.) rationalized the proscription thus:

"**The general rule in the past and up to the present is that the 'terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof are governed by law.' X x x. Since the terms and conditions of government employment *are fixed by law*, government workers cannot use the same weapons employed by the workers in the private sector to secure concessions from their employers. The principle behind labor unionism in private industry is that industrial peace cannot be secured through compulsion by law. Relations between private employers and their employees rest on an essentially voluntary basis. Subject to the minimum requirements of wage laws and other labor and welfare legislation, the terms and conditions of employment in the unionized private sector are settled through the process of collective bargaining. In government employment, however, it is the legislature and, where properly given delegated power, the administrative heads of government which fix the terms and conditions of employment. And this is effected through statutes or administrative circulars, rules, and regulations, not through collective bargaining agreements**." *(Ibid., p. 13)*

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After delving into the intent of the framers of the Constitution, the Court affirmed the above rule in ***Social Security System Employees Association (SSSEA) v. Court of Appeals*** (175 SCRA 686, July 28, 1989) and explained:

"Government employees may, therefore, through their unions or associations, either petition the Congress for the betterment of the terms and conditions of employment which are within the ambit of legislation or negotiate with the appropriate government agencies for the improvement of those which are not fixed by law. If there be any unresolved grievances, the dispute may be referred to the Public Sector Labor-Management Council for appropriate action. **But employees in the civil service may not resort to strikes, walkouts and other temporary work stoppages, like workers in the private sector, to pressure the Government 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 Government Employees to Self-Organization, which took effect after the instant dispute arose, '**[t]he terms and conditions of employment in the government, including any political subdivision or instrumentality thereof and government-owned and controlled corporations with original charters are governed by law and employees therein shall not strike for the purpose of securing changes [thereto].**'' *(Ibid., p. 698)*

(***Jacinto v. Court of Appeals***, 281 SCRA 657, Nov. 14, 1997, En Banc [Panganiban])

161. Petitioners public school teachers walked out of their classes and engaged in mass actions during certain dates in September 1990 protesting the alleged unlawful withholding of their salaries and other economic benefits. They also raised national issues, such as the removal of US bases and the repudiation of foreign debts, in their mass actions. They refused to return to work despite orders to do so and subsequently were found guilty of conduct prejudicial to the best interests of the service for having absented themselves without proper authority, from their schools during regular school days, and penalized. They denied that they engaged in "strike" but claimed that they merely exercised a constitutionally guaranteed right – the right to peaceably assemble and petition the government for redress of grievances - and, therefore, should not have been penalized. Should their contention be upheld?

Held: Petitioners, who are public schoolteachers and thus government employees, do not seek to establish that they have a right to strike. Rather, they tenaciously insist that their absences during certain dates in September 1990 were a valid exercise of their constitutional right to engage in peaceful assembly to petition the government for a redress of grievances. They claim that their gathering was not a strike, therefore, their participation therein did not constitute any offense. ***MPSTA v. Laguio*** *(Supra, per Narvasa, J., now CJ.)* and ***ACT v. Carino*** *(Ibid.)*, in which this Court declared that "these 'mass actions' were to all intents and purposes a strike; they constituted a concerted and unauthorized stoppage of, or absence from, work which it was the teachers' duty to perform, undertaken for essentially economic reasons," should not principally resolve the present case, as the underlying facts are allegedly not identical.

STRIKE, as defined by law, means ***any*** **temporary stoppage of work done by the concerted action of employees as a result of an industrial or labor dispute. A labor dispute includes any controversy or matter concerning terms and conditions of employment; or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employers and employees**. With these premises, we now evaluate the circumstances of the instant petition.

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It cannot be denied that the mass action or assembly staged by the petitioners resulted in the non-holding of classes in several public schools during the corresponding period. Petitioners do not dispute that the grievances for which they sought redress concerned the alleged failure of public authorities - essentially, their "employers" - to fully and justly implement certain laws and measures intended to benefit them materially x x x. And probably to clothe their action with permissible character *(In justifying their mass actions, petitioners liken their activity to the pro-bases rally led by former President Corazon C. Aquino on September 10, 1991, participated in, as well, by public school teachers who consequently absented themselves from their classes. No administrative charges were allegedly instituted against any of the participants.)*, they also raised national issues such as the removal of the U.S. bases and the repudiation of foreign debt. In ***Balingasan v. Court of Appeals*** *(G.R. No. 124678, July 31, 1997, per Regalado, J.)*, **however, this Court said that the fact that the conventional term "strike" was not used by the participants to describe their common course of action was insignificant, since the substance of the situation, and not its appearance, was deemed controlling**.

Moreover, the petitioners here x x x were not penalized for the exercise of their right to assemble peacefully and to petition the government for a redress of grievances. Rather, the Civil Service Commission found them guilty of conduct prejudicial to the best interest of the service for having absented themselves without proper authority, from their schools during regular school days, in order to participate in the mass protest, their absence ineluctably resulting in the non-holding of classes and in the deprivation of students of education, for which they were responsible. Had petitioners availed themselves of their free time - recess, after classes, weekends or holidays - to dramatize their grievances and to dialogue with the proper authorities within the bounds of law, no one - not the DECS, the CSC or even this Court - could have held them liable for the valid exercise of their constitutionally guaranteed rights. As it was, the temporary stoppage of classes resulting from their activity necessarily disrupted public services, the very evil sought to be forestalled by the prohibition against strikes by government workers. *Their act by their nature was enjoined by the Civil Service law, rules and regulations, for which they must,*

therefore, be made answerable. (***Jacinto v. CA***, 281 SCRA 657, Nov. 14, 1997, En Banc [Panganiban])

THE NON-IMPAIRMENT CLAUSE

162. Is the constitutional prohibition against impairing contractual obligations absolute?

Held: 1. Nor is there merit in the claim that the resolution and memorandum circular violate the contract clause of the Bill of Rights.

The executive order creating the POEA was enacted to further implement the social justice provisions of the 1973 Constitution, which have been greatly enhanced and expanded in the 1987 Constitution by placing them under a separate Article *(Article XIII).* The Article on Social Justice was aptly described as the "heart of the new Charter" by the President of the 1986 Constitutional Commission, retired Justice Cecilia Munoz Palma. Social justice is identified with
117 the broad scope of the police power of the state and requires the extensive use of such power. X x x.

The constitutional prohibition against impairing contractual obligations is not absolute and is not to be read with literal exactness. It is restricted to contracts with respect to property or some object of value and which confer rights that may be asserted in a court of justice; it has no application to statutes relating to public subjects within the domain of the general legislative powers of the State and involving the public rights and public welfare of the entire community affected by it. It does not prevent a proper exercise by the State of its police power by enacting regulations reasonably necessary to secure the health, safety, morals, comfort, or general welfare of the community, even though contracts may thereby be affected, for such matters cannot be placed by contract beyond the power of the State to regulate and control them.

Verily, **the freedom to contract is not absolute; all contracts and all rights are subject to the police power of the State and not only may regulations which affect them be established by the State, but all such regulations must be subject to change from time to time, as the general well-being of the community may require, or as the circumstances may change, or as experience may demonstrate the necessity. And under the Civil Code, contracts of labor are explicitly subject to the police power of the State because they are not ordinary contracts but are impressed with public interest**. **Article 1700** thereof expressly provides:

> **Art. 1700**. **The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects**.

The challenged resolution and memorandum circular being valid implementations of E.O. No. 797 (Creating the POEA), which was enacted under the police power of the State, they cannot be struck down on the ground that they violate the contract clause. To hold otherwise is to alter long-established constitutional doctrine and to subordinate the police power to the contract clause. (***The Conference of Maritime Manning Agencies, Inc. v. POEA***, 243 SCRA 666, April 21, 1995 [Davide, Jr.])

2. Petitioners pray that the present action should be barred, because private respondents have voluntarily executed quitclaims and releases and received their separation pay. Petitioners claim that the present suit is a "grave derogation of the fundamental principle that obligations arising from a valid contract have the force of law between the parties and must be complied with in good faith."

The Court disagrees. Jurisprudence holds that the constitutional guarantee of non-impairment of contract is subject to the police power of the state and to reasonable legislative regulations promoting health, morals, safety and welfare. Not all quitclaims are per se invalid or against public policy, except (1) where there is **clear proof that the waiver was wangled from an unsuspecting or gullible person**, or **(2)** where the **terms of settlement are unconscionable on their face. In these cases, the law will step in to annul the questionable transactions. Such quitclaim and release agreements are regarded as ineffective to bar the workers from claiming the full measure of their legal rights**.

118 In the case at bar, the private respondents agreed to the quitclaim and release in consideration of their separation pay. Since they were dismissed allegedly for business losses, they are entitled to separation pay under Article 283 of the Labor Code. And since there was thus no extra consideration for the private respondents to give up their employment, such undertakings cannot be allowed to bar the action for illegal dismissal.
(***Bogo-Medellin Sugarcane Planters Association, Inc. v. NLRC***, 296 SCRA 108, 124, [Panganiban])

3. Only slightly less abstract but nonetheless hypothetical is the contention of CREBA that the imposition of the VAT on the sales and leases of real estate by virtue of contracts entered prior to the effectivity of the law would violate the constitutional provision that "No law impairing the obligation of contracts shall be passed." **It is enough to say that the parties to a contract cannot, through the exercise of prophetic discernment, fetter the exercise of the taxing power of the State. For not only are existing laws read into contracts in order to fix obligations as between parties, but the reservation of essential attributes of sovereign power is also read into contracts as a basic postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a government which retains adequate authority to secure the peace and good order of society**.

In truth, the Contract Clause has never been thought as a limitation on the exercise of the State's power of taxation save only where a tax exemption has been granted for a valid consideration. X x x. (***Tolentino v. Secretary of Finance***, 235 SCRA 630, 685-686, Aug. 25, 1994, En Banc [Mendoza])

4. **Since timber licenses are not contracts, the non-impairment clause x x x cannot be invoked**.

X x x, **even if it is to be assumed that the same are contracts, the instant case does not involve a law or even an executive issuance declaring the cancellation or modification of existing timber licenses. Hence, the non-impairment clause cannot as yet be invoked. Nevertheless, granting further that a law has actually been passed mandating cancellations or modifications, the same cannot still be stigmatized as a violation of the non-impairment clause. This is because by its very nature and purpose, such a law could have only been passed in the exercise of the police power of the state for the purpose of advancing the right of the people to a balanced and**

healthful ecology, promoting their health and enhancing their general welfare. X x x.

In short, **the non-impairment clause must yield to the police power of the state**.

Finally, it is difficult to imagine x x x how the non-impairment clause could apply with respect to the prayer to enjoin the respondent Secretary from receiving, accepting, processing, renewing or approving new timber license for, save in cases of *renewal*, no contract would have as yet existed in the other instances. Moreover, with respect to renewal, the holder is not entitled to it as a matter of right.
(***Oposa v. Factoran***, Jr., 224 SCRA 792 [1993])

5. Anent petitioners' contention that the forcible refund of incentive benefits is an unconstitutional impairment of a contractual obligation, suffice it to state that "**[n]ot all contracts entered into by the government will operate as a waiver of its non-suability; distinction must be made between its sovereign and proprietary acts. The acts involved in this case are governmental. Besides, the Court is in agreement with the Solicitor General that the incentive pay or benefit is in the nature of a bonus which is not a demandable or enforceable obligation**.
(***Blaquera v. Alcala***, 295 SCRA 366, 446, Sept. 11, 1998, En Banc [Purisima])

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THE IN-CUSTODIAL INVESTIGATION RIGHTS OF AN ACCUSED PERSON

163. State the procedure, guidelines and duties which the arresting, detaining, inviting, or investigating officer or his companions must do and observe at the time of making an arrest and again at and during the time of the custodial interrogation.

Held: Lastly, considering the heavy penalty of death and in order to ensure that the evidence against an accused were obtained through lawful means, **the Court, *as guardian of the rights of the people* lays down the procedure, guidelines and duties which the arresting, detaining, inviting, or investigating officer or his companions must do and observe at the time of making an arrest and again at and during the time of the custodial interrogation in accordance with the *Constitution*, jurisprudence and *Republic 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*). It is high-time to educate our law-enforcement agencies who neglect either by ignorance or indifference the so-called Miranda rights which had become insufficient and which the Court must update in the light of new legal developments:

1) The person arrested, detained, invited or under custodial investigation **must be INFORMED in a language known to and understood by him of the reason for the arrest and he must be shown the warrant of arrest, if any. Every other warnings, information or communication must be in a language known to and understood by said person**;
2) He must be warned that he has a **right to remain silent and that any statement he makes may be used as evidence against him**;
3) He must be informed that he has the **right to be assisted at all times and have the presence of an independent and competent lawyer, preferably of his own choice**;

4) He must be informed that **if he has no lawyer or cannot afford the services of a lawyer, one will be provided for him; and that a lawyer may also be engaged by any person in his behalf, or may be appointed by the court upon petition of the person arrested or one acting on his behalf**;
5) That whether or not the person arrested has a lawyer, he must be informed that **no custodial investigation in any form shall be conducted except in the presence of his counsel of after a valid waiver has been made**;
6) The person arrested must be informed that, **at any time, he has the right to communicate or confer by the most expedient means - telephone, radio, letter or messenger - with his lawyer (either retained or appointed), any member of his immediate family, or any medical doctor, priest or minister chosen by him or by any one from his immediate family or by his counsel, or be visited by/confer with duly accredited national or international non-government organization. It shall be the responsibility of the officer to ensure that this is accomplished**;
120 7) He must be informed that he has the **right to waive any of said rights provided it is made voluntarily, knowingly and intelligently and ensure that he understood the same**;
8) In addition, if the person arrested **waives his right to a lawyer, he must be informed that it must be done in writing and in the presence of counsel, otherwise, he must be warned that the waiver is void even if he insist on his waiver and chooses to speak**;
9) That the person arrested must be informed that **he may indicate in any manner at any time or stage of the process that he does not wish to be questioned with warning that once he makes such indication, the police may not interrogate him if the same had not yet commenced, or the interrogation must cease if it has already begun**;
10) The person arrested must be informed that his **initial waiver of his right to remain silent, the right to counsel or any of his rights does not bar him from invoking it at any time during the process, regardless of whether he may have answered some questions or volunteered some statements**;
11) He must also be informed that **any statement or evidence, as the case may be, obtained in violation of any of the foregoing, whether inculpatory or exculpatory, in whole or in part, shall be inadmissible in evidence**.

(***People v. Mahinay***, 302 SCRA 455, Feb. 1, 1999, En Banc [Per Curiam])

164. Explain the kind of information that is required to be given by law enforcement officers to suspect during custodial investigation.

Held: [I]t is settled that one's right to be informed of the right to remain silent and to counsel contemplates the transmission of meaningful information rather just the ceremonial and perfunctory recitation of an abstract constitutional principle. It is not enough for the interrogator to merely repeat to the person under investigation the provisions of Section 12, Article III of the 1987 Constitution; **the former must also explain the effects of such provision in practical terms – *e.g.*, what the person under investigation may or may not do – and in a language the subject fairly understands. The right to be informed carries with it a correlative obligation on the part of the police investigator to explain, and contemplates effective communication which results in the subject's understanding of what is conveyed. Since it is comprehension that is sought to be attained, the degree of explanation required will necessarily vary and depend on the**

education, intelligence, and other relevant personal circumstances of the person undergoing investigation. In further ensuring the right to counsel, it is not enough that the subject is informed of such right; he should also be asked if he wants to avail of the same and should be told that he could ask for counsel if he so desired or that one could be provided him at his request. If he decides not to retain a counsel of his choice or avail of one to be provided for him and, therefore, chooses to waive his right to counsel, such waiver, to be valid and effective, must still be made with the assistance of counsel, who, under prevailing jurisprudence, must be a lawyer.
(***People v. Canoy***, 328 SCRA 385, March 17, 2000, 1st Div. [Davide, CJ])

165. What is the meaning of "competent counsel" under Section 12 of the Bill of Rights?

Held: The meaning of "*COMPETENT COUNSEL*" was explained in ***People v. Deniega*** (251 SCRA 626, 637) as follows:

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> "x x x **[T]he lawyer called to be present during such investigation should be as far as reasonably possible, the choice of the individual undergoing questioning. If the lawyer were one furnished in the accused's behalf, it is important that he should be competent and independent, *i.e.,* ***that he is willing to fully safeguard the constitutional rights of the accused, as distinguished from one who would merely be giving a routine, peremptory and meaningless recital of the individual's rights***. In ***People v. Basay*** (219 SCRA 404, 418), this Court stressed that an accused's right to be informed of the right to remain silent and to counsel 'contemplates the transmission of meaningful information rather than just the ceremonial and perfunctory recitation of an abstract constitutional principle.'
>
> "Ideally therefore, a lawyer engaged for an individual facing custodial investigation (if the latter could not afford one) 'should be engaged by the accused (himself), or by the latter's relative or person authorized by him to engage an attorney or by the court, upon proper petition of the accused or person authorized by the accused to file such petition.' Lawyers engaged by the police, whatever testimonials are given as proof of their probity and supposed independence, are generally suspect, as in many areas, the relationship between lawyers and law enforcement authorities can be symbiotic.
>
> "x x x **The competent or independent lawyer so engaged should be present from the beginning to end, *i.e.,* at all stages of the interview, counseling or advising caution reasonably at every turn of the investigation, and stopping the interrogation once in a while either to give advice to the accused that he may either continue, choose to remain silent or terminate the interview**."

(***People v. Espiritu***, 302 SCRA 533, Feb. 2, 1999, 3rd Div. [Panganiban])

166. Can a PAO lawyer be considered an independent counsel within the contemplation of Section 12, Article III, 1987 Constitution?

Held: In ***People v. Oracoy***, 224 SCRA 759 [1993]; ***People v. Bandula***, 232 SCRA 566 [1994], the SC has held that **a PAO lawyer can be considered an independent counsel within the contemplation of the Constitution considering that he is not a special counsel, public or private prosecutor, counsel of the police, or a municipal attorney whose**

interest is admittedly adverse to that of the accused-appellant. Thus, the assistance of a PAO lawyer satisfies the constitutional requirement of a competent and independent counsel for the accused. (***People v. Bacor***, 306 SCRA 522, April 30, 1999, 2nd Div. [Mendoza])

167. Is the confession of an accused given spontaneously, freely and voluntarily to the Mayor admissible in evidence, considering that the Mayor has "operational supervision and control" over the local police and may arguably be deemed a law enforcement officer?

Held: While it is true that a municipal mayor has "operational supervision and control" over the local police and may arguably be deemed a law enforcement officer for purposes of applying Section 12(1) and (3) of Article III of the Constitution, however, **appellant's confession to the mayor was not made in response to any interrogation by the latter. In fact, the mayor did not question the appellant at all. No police authority ordered appellant to talk to the mayor. It was appellant himself who spontaneously, freely and voluntarily sought the mayor for a private meeting. The mayor did not know that appellant was going to confess his guilt to him. *When appellant talked with the mayor as a confidant and not as a law enforcement officer, his uncounselled confession to him did not violate his constitutional rights***. Thus, it has been held that **the constitutional procedures on custodial investigation do not apply to a spontaneous statement, not elicited through questioning by the authorities, but given in an ordinary manner whereby appellant orally admitted having committed the crime. What the Constitution bars is the compulsory disclosure of incriminating facts or confessions. The rights under Section 12 are guaranteed to preclude the slightest use of coercion by the State as would lead the accused to admit something false, not to prevent him from freely and voluntarily telling the truth**.

(***People v. Andan***, 269 SCRA 95, March 3, 1997)

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168. Are confessions made in response to questions by news reporters admissible in evidence?

Answer: YES. **Confessions made in response to questions by news reporters, not by the police or any other investigating officer, are admissible**. In ***People v. Vizcarra***, 115 SCRA 743, 752 [1982], **where the accused, under custody, gave spontaneous answers to a televised interview by several press reporters in the office of the chief of the CIS, it was held that statements spontaneously made by a suspect to news reporters on a televised interview are deemed voluntary and are admissible in evidence**. In ***People v. Andan***, 269 SCRA 95, March 3, 1997, it was held that **appellant's confessions to the news reporters were given free from any undue influence from the police authorities. The news reporters acted as news reporters when they interviewed appellant. They were not acting under the direction and control of the police. They did not force appellant to grant them an interview and reenact the commission of the crime. In fact, they asked his permission before interviewing him. The Supreme Court further ruled that appellant's verbal confessions to the newsmen are not covered by Section 12(1) and (3) of Article III of the Constitution and, therefore, admissible in evidence**.

169. Discuss the two kinds of involuntary or coerced confessions under Section 12, Article III of the 1987 Constitution. Illustrate how the Court should appreciate said involuntary or coerced confessions.

Held: There are two kinds of involuntary or coerced confessions treated in this constitutional provision: **(1)** those which are the **product of third degree methods such as torture, force, violence, threat, intimidation, which are dealt with in paragraph 2 of Section 12**, and **(2)** those which are **given without the benefit of Miranda warnings, which are the subject of paragraph 1 of the same Section 12**.

Accused-appellant claims that his confession was obtained by force and threat. Aside from this bare assertion, he has shown no proof of the use of force and violence on him. He did not seek medical treatment nor even a physical examination. His allegation that the fact that he was made to sign the confession five times is proof that he refused to sign it.

X x x

We discern no sign that the confession was involuntarily executed from the fact that it was signed by accused-appellant five times.

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X x x

Extrajudicial confessions are presumed voluntary, and, in the absence of conclusive evidence showing the declarant's consent in executing the same has been vitiated, such confession will be sustained.

Moreover, the confession contains details that only the perpetrator of the crime could have given. X x x. It has been held that voluntariness of a confession may be inferred from its being replete with details which could possibly be supplied only by the accused, reflecting spontaneity and coherence which cannot be said of a mind on which violence and torture have been applied. When the details narrated in an extrajudicial confession are such that they could not have been concocted by one who did not take part in the acts narrated, where the claim of maltreatment in the extraction of the confession is unsubstantiated and where abundant evidence exists showing that the statement was voluntarily executed, the confession is admissible against the declarant. **There is greater reason for finding a confession to be voluntary where it is corroborated by evidence *aliunde* which dovetails with the essential facts contained in such confession**.

But what renders the confession of accused-appellant inadmissible is the fact that accused-appellant was not given the Miranda warnings effectively. Under the Constitution, an uncounseled statement, such as it is called in the United States from which Article III, Section 12(1) was derived, is presumed to be psychologically coerced. Swept into an unfamiliar environment and surrounded by intimidating figures typical of the atmosphere of police interrogation, the suspect really needs the guiding hand of counsel.

Now, under the first paragraph of this provision, it is required that the suspect in custodial interrogation must be given the following warnings: **(1) he must be informed of his right to remain silent**; **(2) he must be warned that anything he says can and will be used against him**; and **(3) he must be told that he has a right to counsel, and that if he is indigent, a lawyer will be appointed to represent him**.

X x x

There was thus only a perfunctory reading of the Miranda rights to accused-appellant without any effort to find out from him whether he wanted to have counsel and, if so, whether he had his own counsel or he wanted the police to appoint one for him. This kind of giving of warnings, in several decisions of this Court, has been found to be merely ceremonial and inadequate to transmit meaningful information to the suspect. Especially in this case, care should have been scrupulously observed by the police investigator that accused-appellant was specifically asked these questions considering that he only finished the fourth grade of the elementary school. X x x

Moreover, Article III, Section 12(1) requires that counsel assisting suspects in custodial interrogations be competent and independent. Here, accused-appellant was assisted by Atty. De los Reyes, who, though presumably competent, cannot be considered an "independent counsel" as contemplated by the law for the reason that he was station commander of the WPD at the time he assisted accused-appellant. X x x.

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This is error. As observed in ***People v. Bandula*** (232 SCRA 566 [1994]), **the independent counsel required by Article III, Section 12(1) cannot be special counsel, public or private prosecutor, municipal attorney, or counsel of the police whose interest is admittedly adverse to the accused. In this case, Atty. De los Reyes, as PC Captain and Station Commander of the WPD, was part of the police force who could not be expected to have effectively and scrupulously assisted accused-appellant in the investigation**. To allow such a happenstance would render illusory the protection given to the suspect during custodial investigation.

(***People v. Obrero***, 332 SCRA 190, 220 – 208, May 17, 2000, 2nd Div. [Mendoza])

170. What are the requirements for an extra-judicial confession of an accused to be admissible in evidence?

Held: 1. In jurisprudence, **no confession can be admitted in evidence unless** it is given:

1) **Freely and voluntarily, without compulsion, inducement or trickery**;
2) **Knowingly based on an effective communication to the individual under custodial investigation of his constitutional rights**; and
3) **Intelligently with full appreciation of its importance and comprehension of its consequences**.

Once admitted, the confession must inspire credibility or be one which the normal experience of mankind can accept as being within the realm of probability.

A confession meeting all the foregoing requisites constitutes evidence of a high order since it is supported by the strong presumption that no person of normal mind will knowingly, freely and deliberately confess that he is the perpetrator of a crime unless prompted by truth and conscience. When all these requirements are met and the confession is admitted in evidence, the burden of proof that it was obtained by undue pressure, threat or intimidation rests upon the accused. (***People v. Fabro***, 277 SCRA 19, Aug. 11, 1997 [Panganiban])

2. Numerous decisions of this Court rule that for an extrajudicial confession to be admissible, it must be: 1) **voluntary**; 2) **made with the assistance of competent and independent counsel**; 3) **express**; and 4) **in writing**.

The mantle of protection afforded by the above-quoted constitutional provision covers the period from the time a person is taken into custody for the investigation of his possible participation in the commission of a crime or from the time he is singled out as a suspect in the commission of the offense although not yet in custody. The exclusionary rule is premised on the presumption that the defendant is thrust into an unfamiliar atmosphere running through menacing police interrogation procedures where the potentiality for compulsion, physical or psychological is forcefully apparent.

However, the rule is not intended as a deterrent to the accused from confessing guilt if he voluntarily and intelligently so desires but to protect the accused from admitting what he is coerced to admit although untrue. (***People v. Base***, 329 SCRA 158, 169-171, March 30, 2000, 1st Div. [Ynares-Santiago])

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171. Is the choice of a lawyer by a person under custodial investigation who cannot afford the services of a counsel exclusive as to preclude other equally competent and independent attorneys from handling his defense?

Held: It must be remembered in this regard that while the right to counsel is immutable, the option to secure the services of counsel *de parte* is not absolute. Indeed –

> The phrase "competent and independent" and "preferably of his own choice" were explicit details which were added upon the persistence of human rights lawyers in the 1986 Constitutional Commission who pointed out cases where, during the martial law period, the lawyers made available to the detainee would be one appointed by the military and therefore beholden to the military. *(Citing I Record of the Constitutional Commission 731-734; I Bernas, The Constitution of the Republic of the Philippines, 1987 1st ed., p. 347)*
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> X x x x x x x x x
>
> **Withal, the word "preferably" under Section 12(1), Article 3 of the 1987 Constitution does not convey the message that the choice of a lawyer by a person under investigation is exclusive as to preclude other equally competent and independent attorneys from handling his defense. If the rule were otherwise, then, the tempo of a custodial investigation will be solely in the hands of the accused who can impede, nay, obstruct the progress of the interrogation by simply selecting a lawyer who for one reason or another, is not available to protect his interest. This absurd scenario could not have been contemplated by the framers of the charter**.

While the initial choice in cases where a person under custodial investigation cannot afford the services of a lawyer is naturally lodged in the police investigators, the accused really has the *final* choice as he may reject the counsel chosen for him and ask for another one. A lawyer provided by the investigators is deemed engaged by the accused where he never raised any objection against the former's appointment during the course of the investigation and the accused thereafter subscribes to the veracity of his statement before the swearing officer.

Verily, to be an effective counsel "[a] lawyer need not challenge all the questions being propounded to his client. **The presence of a lawyer is not intended to stop an accused from saying anything which might incriminate him but, rather, it was adopted in our Constitution to preclude the slightest coercion as would lead the accused to admit something false** (***People v. Layuso***, 175 SCRA 47 [1989]). **The counsel, however, *should never prevent an accused from freely and voluntarily telling the truth***."

(***People v. Base***, 329 SCRA 158, 169-171, March 30, 2000, 1st Div. [Ynares-Santiago])

172. Should courts be allowed to distinguish between preliminary questioning and custodial investigation proper when applying the exclusionary rule?

Held: The exclusionary rule sprang from a recognition that police interrogatory procedures lay fertile grounds for coercion, physical and
126 psychological, of the suspect to admit responsibility for the crime under investigation. It was not intended as a deterrent to the accused from confessing guilt, if he voluntarily and intelligently so desires but to protect the accused from admitting what he is coerced to admit although untrue. Law enforcement agencies are required to effectively communicate the rights of a person under investigation and to insure that it is fully understood. Any measure short of this requirement is considered a denial of such right. **Courts are not allowed to distinguish between preliminary questioning and custodial investigation proper when applying the exclusionary rule. Any information or admission given by a person while in custody which may appear harmless or innocuous at the time without the competent assistance of an independent counsel should be struck down as inadmissible. It has been held, however, that an admission made to news reporters or to a confidant of the accused is not covered by the exclusionary rule**.

The admission allegedly made by the appellant is not in the form of a written extra-judicial confession; the admission was allegedly made to the arresting officer during an "informal talk" at the police station after his arrest as a prime suspect in the rape and killing of x x x. The arresting policeman testified that the appellant admitted that he was with the victim on the evening of January 12, 1994, the probable time of the commission of the crime and that he carried her on his shoulder but that he was too drunk to remember what subsequently happened. The arresting policeman admitted that he did not inform the appellant of his constitutional rights to remain silent and to counsel. We note that the alleged admission is incriminating because it places the accused in the company of the victim at the time the crime was probably committed.

The exclusionary rule applies.

The accused was under arrest for the rape and killing of x x x and any statement allegedly made by him pertaining to his possible complicity in the crime without prior notification of his constitutional rights is inadmissible in evidence. The policeman's apparent attempt to circumvent the rule by insisting that the admission was made during an "informal talk" prior to custodial investigation prior is not tenable. The appellant was not invited to the police station as part of a general inquiry for any possible lead to the perpetrators of the crime under investigation. At the time the alleged admission was made the appellant was in custody and had been arrested as the prime suspect in the rape and killing of x x x. **The exclusionary rule presumes that the alleged admission was coerced, the very evil the rule**

stands to avoid. Supportive of such presumption is the absence of a written extra-judicial confession to that effect and the appellant's denial in court of the alleged oral admission. The alleged admission should be struck down as inadmissible.
(***People v. Bravo***, 318 SCRA 812, Nov. 22, 1999, En Banc [Gonzaga-Reyes])

173. Explain the procedure for out-of-court identification of suspects and the test to determine the admissibility of such identification.

Held: 1. In ***People v. Teehankee, Jr.*** (249 SCRA 54, October 6, 1995, the Court x x x explained the procedure for out-of-court identification and the test to determine the admissibility of such identification. It listed the following ways of identifying the suspects during custodial investigation: **show-up**, **mug shots** and **line-ups**. The Court there ruled:

> "x x x. Out-of-court identification is conducted by the police in various ways. It is done thru ***show-ups*** where the **suspect alone is brought face to face with the witness for identification**. It is done thru ***mug shots*** where **photographs are shown to the witness to identify the suspect**. It is also done thru ***line ups*** where **a witness identifies the suspect from a group of persons lined up for the purpose**. Since corruption of *out-of-court* identification contaminates the integrity of *in court* identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process. In resolving the admissibility of and relying on out-of- court identification of suspects, courts have adopted the ***TOTALITY OF CIRCUMSTANCES TEST*** where they consider the following factors, *viz:* **(1) the witness' opportunity to view the criminal at the time of the crime**; **(2) the witness' degree of attention at that time**; **(3) the accuracy of any prior description given by the witness**; **(4) the level of certainty demonstrated by the witness at the identification**; **(5) the length of time between the crime and the identification**; and **(6) the suggestiveness of the identification procedure**." *(Ibid., p. 95)* (***People v. Timon***, 281 SCRA 577, Nov. 12, 1997 [Panganiban])

2. x x x. The totality test has been fashioned precisely **to assure fairness as well as compliance with constitutional requirements of due process in regard to out-of-court identification**. These cited factors must be considered to prevent contamination of the integrity of in-court identifications better. (***People v. Gamer***, 326 SCRA 660, Feb. 29, 2000, 2nd Div. [Quisumbing])

174. Does the prohibition for custodial investigation conducted without the assistance of counsel extend to a person in a police line-up? Consequently, is the identification by private complainant of accused who was not assisted by counsel during police line-up admissible in evidence?

Held: The prohibition x x x does not extend to a person in a police line-up because that stage of an investigation is not yet a part of custodial investigation. It has been repeatedly held that custodial investigation commences when a person is taken into custody and is singled out as a suspect in the commission of the crime under investigation and the police officers begin to ask questions on the suspect's participation therein and which tend to elicit an admission. The stage of an investigation wherein a person is asked to stand in a police line-up has been held to be outside the mantle of protection of the right to counsel because it involves a general inquiry into an unsolved crime and is purely investigatory in nature. It has also been

held that an uncounseled identification at the police line-up does not preclude the admissibility of an in-court identification. The identification made by the private complainant in the police line-up pointing to Pavillare as one of his abductors is admissible in evidence although the accused-appellant was not assisted by counsel. X x x (***People v. Pavillare***, 329 SCRA 684, 694-695, April 5, 2000, En Banc [Per Curiam])

175. Petitioner in a case "x x x posits the theory that since he had no counsel during the custodial investigation when his urine sample was taken and chemically examined, Exhibits "L" and "M," x x x are also inadmissible in evidence since his urine sample was derived in effect from an uncounselled extra-judicial confession. Petitioner claims that the taking of his urine sample allegedly violates Article III, Section 2 of the Constitution x x x." Should his contentions be upheld?

Held: We are not persuaded. The right to counsel begins from the time a person is taken into custody and placed under investigation for the commission of a crime, *i.e.*, when the investigating officer starts to ask questions to elicit information and/or confession or admissions from the accused. Such right is guaranteed by the Constitution and cannot be waived except in writing and in the presence of counsel. However, what the Constitution prohibits is the use of physical or moral compulsion to extort communication from the accused, but not an inclusion of his body in evidence, when it may be material. In fact, an accused may validly be compelled to be photographed or measured, or his garments or shoes removed or replaced, or to move his body to enable the foregoing things to be done, without running afoul of the proscription against testimonial compulsion. The situation in the case at bar falls within the exemption under the freedom from testimonial compulsion since what was sought to be examined came from the body of the accused. This was a mechanical act the accused was made to undergo which was not meant to unearth undisclosed facts but to ascertain physical attributes determinable by simple observation. In fact, the record shows that petitioner and his co-accused were not compelled to give samples of their urine but they in fact voluntarily gave the same when they were requested to undergo a drug test. (***Gutang v. People***, 335 SCRA 479, July 11, 2000, 2nd Div. [De Leon])

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THE RIGHT TO BAIL

176. In bail application where the accused is charged with a capital offense, will it be proper for the judge to grant bail without conducting hearing if the prosecutor interposes no objection to such application? Why?

Held: Jurisprudence is replete with decisions compelling judges to conduct the required hearings in bail applications, in which the accused stands charged with a capital offense. **The absence of objection from the prosecution is never a basis for the grant of bail in such cases, for the judge has no right to presume that the prosecutor knows what he is doing on account of familiarity with the case. "Said reasoning is tantamount to ceding to the prosecutor the duty of exercising judicial discretion to determine whether the guilt of the accused is strong. Judicial discretion is the domain of the judge before whom the petition for provisional liberty will be decided. The mandated duty to exercise discretion has never been reposed upon the prosecutor**."

Imposed in ***Baylon v. Sison*** (243 SCRA 284, April 6, 1995) was this **mandatory duty to conduct a hearing despite the prosecution's refusal**

to adduce evidence in opposition to the application to grant and fix bail. (***Joselito V. Narciso v. Flor Marie Sta. Romana-Cruz***, G.R. No. 134504, March 17, 2000, 3rd Div. [Panganiban])

177. What are the duties of the judge in cases of bail applications where the accused is charged with capital offense?

Held: ***Basco v. Rapatalo*** (269 SCRA 220, March 5, 1997) enunciated the following duties of the trial judge in such petition for bail:

1) **Notify the prosecutor of the hearing of the application for bail** or **require him to submit his recommendation**;
2) **Conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion**;
3) **Decide whether the evidence of guilt of the accused is strong** based on the summary of evidence of the prosecution;
4) **If the guilt of the accused is not strong, discharge the accused upon the approval of the bailbond**. Otherwise, petition should be denied.

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The Court added: "**The above-enumerated procedure should now leave no room for doubt as to the duties of the trial judge in cases of bail applications. So basic and fundamental is it to conduct a hearing in connection with the grant of bail in the proper cases that it would amount to judicial apostasy for any member of the judiciary to disclaim knowledge or awareness thereof**."

Additionally, the court's grant or refusal of bail **must contain a summary of the evidence for the prosecution, on the basis of which should be formulated the judge's own conclusion on whether such evidence is strong enough to indicate the guilt of the accused**. The summary thereof is considered an **aspect of procedural due process** for both the prosecution and the defense; **its absence will invalidate the grant or the denial of the application for bail**. (***Joselito V. Narciso v. Flor Marie Sta. Romana-Cruz***, G.R. No. 134504, March 17, 2000, 3rd Div. [Panganiban])

178. Should the accused who remained at large after their conviction be allowed provisional liberty? Can the bail bond that the accused previously posted be used during the entire period of appeal?

Held: Despite an order of arrest from the trial court and two warnings from the Court of Appeals, petitioners had remained at large. **It is axiomatic that for one to be entitled to bail, he should be in the custody of the law, or otherwise, deprived of liberty. The purpose of bail is to secure one's release and it would be incongruous to grant bail to one who is free. Petitioners' Compliance and Motion x x x came short of an unconditional submission to respondent court's lawful order and to its jurisdiction**.

The trial court correctly denied petitioners' motion that they be allowed provisional liberty after their conviction, *under their respective bail bonds.* Apart from the fact that they were at large, **Section 5, Rule 114** of the ***Rules of Court***, as amended by Supreme Court Administrative Circular 12-94, provides that:

X x x

The Court, in its discretion, may allow the accused to continue on provisional liberty under the same bail bond during the *PERIOD TO APPEAL* subject to the consent of the bondsman.

The bail bond that the accused previously posted can only be used during the 15-day *PERIOD TO APPEAL* (Rule 122) and NOT during the entire *PERIOD OF APPEAL.* This is consistent with Section 2(a) of Rule 114 which provides that the bail "shall be effective upon approval and remain in force at all stages of the case, unless sooner cancelled, *UNTIL THE PROMULGATION OF THE JUDGMENT OF THE REGIONAL TRIAL COURT,* irrespective of whether the case was originally filed in or appealed to it." This amendment, introduced by SC Administrative Circular 12-94 is a departure from the old rules which then provided that bail shall be effective and remain in force at all stages of the case until its full determination, and thus even during the period of appeal. **Moreover, under the present rule, for the accused to continue his provisional liberty on the same bail bond during the period to appeal, consent of the bondsman is necessary**. From the record, it appears that the bondsman x x x filed a motion in the trial court x x x for the cancellation of petitioners' bail bond for the latter's failure to renew the same upon its expiration. Obtaining the consent of the bondsman was, thus, foreclosed. (***Maguddatu v. Court of Appeals***, 326 SCRA 362, Feb. 23, 2000, 1st Div. [Kapunan])

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179. Is a condition in an application for bail that accused be first arraigned before he could be granted bail valid?

Held: In requiring that petitioner be first arraigned before he could be granted bail, the trial court apprehended that if petitioner were released on bail he could, by being absent, prevent his early arraignment and thereby delay his trial until the complainants got tired and lost interest in their cases. Hence, to ensure his presence at the arraignment, approval of petitioner's bail bonds should be deferred until he could be arraigned. After that, even if petitioner does not appear, trial can proceed as long as he is notified of the date of the hearing and his failure to appear is unjustified, since under Art. III, Sec. 14(2) of the Constitution, trial *in absencia* is authorized. This seems to be the theory of the trial court in its x x x order conditioning the grant of bail to petitioner on his arraignment.

This theory is mistaken. **(1) In the first place x x x in cases where it is authorized, bail should be granted before arraignment, otherwise the accused may be precluded from filing a motion to quash. For if the information is quashed and the case is dismissed, there would then be no need for the arraignment of the accused**. **(2) In the second place, the trial court could ensure the presence of petitioner at the arraignment precisely by granting bail and ordering his presence at any stage of the proceedings, such as arraignment. Under Rule 114, Sec. 2(b) of the Rules on Criminal Procedure, one of the conditions of bail is that "the accused shall appear before the proper court whenever so required by the court or these Rules," while under Rule 116, Sec. 1(b) the presence of the accused at the arraignment is required**.

On the other hand, to condition the grant of bail to an accused on his arraignment would be to place him in a position where he has to choose between **(1)** *filing a motion to quash and thus delay his release on bail because until his motion to quash can be resolved, his arraignment cannot be held*, and **(2)** *foregoing the filing of a motion to quash so that he can be arraigned at once and thereafter be released on bail*. **These scenarios certainly undermine the accused's constitutional right not to be put on trial except upon valid**

complaint or information sufficient to charge him with a crime and his right to bail. (***Lavides v. CA***, 324 SCRA 321, Feb. 1, 2000, 2nd Div. [Mendoza])

THE RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF ACCUSATION AGAINST THE ACCUSED

180. What are the objectives of the right to be informed of the nature and cause of accusations against the accused?

Held: Instructive in this regard is **Section 6, Rule 110** of the ***Rules of Court*** x x x.

The purpose of the above-quoted rule is to inform the accused of the nature and cause of the accusation against him, a right guaranteed by no less than the fundamental law of the land (**Article III, Section 14[2]**, ***1987 Constitution***). Elaborating on the defendant's right to be
131 informed, the Court held in ***Pecho v. People*** (262 SCRA 518) that the objectives of this right are:

1) **To furnish the accused with such a description of the charge against him as will enable him to make the defense**;
2) **To avail himself of his conviction or acquittal for protection against a further prosecution for the same cause**; and
3) **To inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had**.

I**t is thus imperative that the Information filed with the trial court be complete – to the end that the accused may suitably prepare for his defense. Corollary to this, an indictment must fully state the elements of the specific offense alleged to have been committed as it is the recital of the essentials of a crime which delineates the nature and cause of accusation against the accused**.

X x x

In the case under scrutiny, the information *does not allege the minority of the victim* x x x although the same was proven during the trial x x x. The omission is not merely formal in nature since doctrinally, an accused cannot be held liable for more than what he is indicted for. It matters not how conclusive and convincing the evidence of guilt may be, but an accused cannot be convicted of any offense, not charged in the Complaint or Information on which he is tried or therein necessarily included. He has a right to be informed of the nature of the offense with which he is charged before he is put on trial. To convict an accused of an offense higher than that charged in the Complaint or Information on which he is tried would constitute unauthorized denial of that right. (***People v. Bayya, 327 SCRA 771***, March 10, 2000, En Banc [Purisima])

THE RIGHT TO A FAIR TRIAL

181. What is the purpose of the rule barring trial or sentence of an insane person? What are the reasons underlying it?

Held: The rule barring trial or sentence of an insane person is for the protection of the accused, rather than of the public. It has been held that it is inhuman to require an accused disabled by God to make a just defense for his life or liberty. **To put a legally incompetent person on trial or to convict**

and sentence him is a violation of the constitutional rights to a fair trial; and this has several reasons underlying it. **(1) For *one*, the ACCURACY of the proceedings may not be assured, as an incompetent defendant who cannot comprehend the proceedings may not appreciate what information is relevant to the proof of his innocence. Moreover, he is not in a position to exercise many of the rights afforded a defendant in a criminal case, *e.g.*, the right to effectively consult with counsel, the right to testify in his own behalf, and the right to confront opposing witnesses, which rights are safeguards for the accuracy of the trial result**. **(2) *Second,* the FAIRNESS of the proceedings may be questioned, as there are certain basic decisions in the course of a criminal proceeding which a defendant is expected to make for himself, and one of these is his PLEA**. **(3) *Third,* the DIGNITY of the proceedings may be disrupted, for an incompetent defendant is likely to conduct himself in the courtroom in a manner which may destroy the DECORUM of the court. Even if the defendant remains passive, his lack of comprehension fundamentally impairs the functioning of the trial process. A criminal proceeding is essentially an adversarial proceeding.**
132 **If the defendant is not a conscious and intelligent participant, the adjudication loses its character as a reasoned interaction between an individual and his community and becomes and invective against an insensible object**. **(4) *Fourth*, it is important that the defendant knows why he is being punished, a comprehension which is greatly dependent upon his understanding of what occurs at trial. An incompetent defendant may not realize the moral reprehensibility of his conduct. The societal goal of institutionalized retribution may be frustrated when the force of the state is brought to bear against one who cannot comprehend its significance**.
(***People v. Estrada***, 333 SCRA 699, 718-719, June 19, 2000, En Banc [Puno])

THE RIGHT TO AN IMPARTIAL TRIAL

182. What are the two principal legal and philosophical schools of thought on how to deal with the rain of unrestrained publicity during the investigation and trial of high profile cases?

Held: There are two (2) principal legal and philosophical schools of thought on how to deal with the rain of unrestrained publicity during the investigation and trial of high profile cases. The ***British approach*** the problem with the ***presumption* that publicity will prejudice a jury**. Thus, English courts readily stay and stop criminal trials when the right of an accused to fair trial suffers a threat. The ***American approach*** is different. US courts assume a ***skeptical* approach about the potential effect of pervasive publicity on the right of an accused to a fair trial**. They have developed different strains of **TESTS** to resolve this issue, *i.e.*, **substantial probability of irreparable harm**, **strong likelihood**, **clear and present danger**, etc.
(***Estrada v. Desierto***, G.R. Nos. 146710-15, March 2, 2001, En Banc [Puno])

183. Should the Ombudsman be stopped from conducting the investigation of the cases filed against petitioner (former President) Estrada due to the barrage of prejudicial publicity on his guilt?

Held: Petitioner x x x contends that the respondent Ombudsman should be stopped from conducting the investigation of the cases filed against him due to the barrage of prejudicial publicity on his guilt. He submits that the respondent Ombudsman has developed bias and is all set to file the criminal cases in violation of his right to due process.

X x x

This is *not the first time* the issue of trial by publicity has been raised in this Court to stop the trials or annul convictions in high profile criminal cases. In ***People v. Teehankee, Jr.*** (249 SCRA 54 [1995]), later reiterated in the case of ***Larranaga v. Court of Appeals, et al.*** (287 SCRA 581 at pp. 596-597 [1998]), we laid down the doctrine that:

> "We cannot sustain appellant's claim that he was denied the right to impartial trial due to prejudicial publicity. It is true that the print and broadcast media gave the case at bar pervasive publicity, just like all high profile and high stake criminal trials. ***Then and now, we rule that the right of an accused to a fair trial is not incompatible to a free press.*** **To be sure, responsible reporting enhances an accused's right to a fair trial for, as well pointed out, a responsible press has always been regarded as the handmaiden of effective judicial administration, especially in the criminal field x x x. The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism.**
>
> **Pervasive publicity is not *per se* prejudicial to the right of an accused to fair trial. The mere fact that the trial of appellant was given a day-to-day, gavel-to-gavel coverage does not *by itself* prove that the publicity so permeated the mind of the trial judge and impaired his impartiality**. For one, it is impossible to seal the minds of members of the bench from pre-trial and other off-court publicity of sensational criminal cases. The state of the art of our communication system brings news as they happen straight to our breakfast tables and right to our bedrooms. These news form part of our everyday menu of the facts and fictions of life. For another, our idea of a fair and impartial judge is not that of a hermit who is out of touch with the world. We have not installed the jury system whose members are overly protected from publicity lest they lose their impartiality. x x x. **Our judges are learned in the law and trained to disregard off-court evidence and on-camera performances of parties to a litigation. Their mere exposure to publications and publicity stunts does not *per se* fatally infect their impartiality**.
>
> **At best, appellant can only conjure *POSSIBILITY OF PREJUDICE* on the part of the trial judge due to the barrage of publicity that characterized the investigation and trial of the case. In *Martelino, et al. v. Alejandro, et al.,* we rejected this standard of possibility of prejudice and adopted the test of *ACTUAL PREJUDICE* as we ruled that to warrant a finding of prejudicial publicity, there must be allegation and proof that the judges have been unduly influenced, not simply that they might be, by the barrage of publicity**. In the case at bar, the records do not show that the trial judge developed *actual bias* against appellant as a consequence of the extensive media coverage of the pre-trial and trial of his case. **The *totality of circumstances of the case* does not prove that the trial judge acquired a *fixed* opinion as a result of prejudicial publicity** which is incapable of change even by evidence presented during the trial. Appellant has the burden to prove this actual bias and he has not discharged the burden."

We expounded further on this doctrine in the subsequent case of ***Webb v. Hon. Raul de Leon, etc.*** (247 SCRA 652 [1995]) and its companion cases, *viz.:*

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"Again, petitioners raise the effect of prejudicial publicity on their right to due process while undergoing preliminary investigation. We find no procedural impediment to its early invocation considering the substantial risk to their liberty whole undergoing a preliminary investigation.

X x x

The democratic settings, media coverage of trials of sensational cases cannot be avoided and oftentimes, its excessiveness has been aggravated by kinetic developments in the telecommunications industry. For sure, few cases can match the high volume and high velocity of publicity that attended the preliminary investigation of the case at bar. Our daily diet of facts and fiction about the case continues unabated even today. Commentators still bombard the public with views not too many of which are sober and sublime. Indeed, even the principal actors in the case – the NBI, the respondents, their lawyers and their sympathizers – have participated in this media blitz.
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The possibility of media abuses and their threat to a fair trial notwithstanding, criminal trials cannot be completely closed to the press and public. In the seminal case of ***Richmond Newspapers, Inc. v. Virginia***, it was wisely held:

'x x x

(a) The historical evidence of the evolution of the criminal trial in Anglo-American justice demonstrates conclusively that at the time this Nation's organic laws were adopted, criminal trials both here and in England had long been presumptively open, thus giving assurance that the proceedings were conducted fairly to all concerned and discouraging perjury, the misconduct of participants, or decisions based on secret bias or partiality. In addition, the significant community therapeutic value of public trials was recognized: when a shocking crime occurs, a community reaction of outrage and public protest often follows, and thereafter the open processes of justice serve an important prophylactic purpose, providing an outlet for community concern, hostility, and emotion. To work effectively, it is important that society's criminal process 'satisfy the appearance of justice,' Offutt v. United States, 348 US 11, 14, 99 L Ed 11, 75 S Ct 11, which can best be provided by allowing people to observe such process. From this unbroken, uncontradicted history, supported by reasons as valid today as in centuries past, it must be concluded that a presumption of openness inheres in the very nature of a criminal trial under this Nation's system of justice, Cf., e.g., Levine v. United States, 362 US 610, 4 L Ed 2d 989, 80 S Ct 1038.

(b) **The freedoms of speech, press, and assembly, expressly guaranteed by the First Amendment, share a common core purpose of assuring freedom of communication on matters relating to the functioning of government. In guaranteeing freedoms such as those of speech and press, the First Amendment can be read as protecting the right of everyone to attend trials so as give meaning to those explicit guarantees; the First Amendment right to receive information and ideas means, in the context of trials, that the guarantees of speech and press, standing alone, prohibit government from summarily closing courtroom doors which had long been open to the public at the time the First Amendment was adopted**. Moreover, the

right of assembly is also relevant, having been regarded not only as an independent right but also as a catalyst to augment the free exercise of the other First Amendment rights with which it was deliberately linked by the draftsmen. A trial courtroom is a public place where the people generally – and representatives of the media – have a right to be present, and where their presence historically has been thought to enhance the integrity and quality of what takes place.

(c) **Even though the Constitution contains no provision which by its terms guarantees to the public the right to attend criminal trials, various fundamental rights, not expressly guaranteed, have been recognized as indispensable to the enjoyment of enumerated rights. The right to attend criminal trial is implicit in the guarantees of the First Amendment: without the freedom to attend such trials, which people have exercised for centuries, important aspects of freedom of speech and of the press could be eviscerated**.'

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Be that as it may, we recognize that pervasive and prejudicial publicity under certain circumstances can deprive an accused of his due process right to fair trial. Thus, in ***Martelino, et al. v. Alejandro, et al.,*** we held that **to warrant a finding of prejudicial publicity there must be *allegation and proof* that the judges have been unduly influenced, not simply that they might be, by the barrage of publicity**. In the case at bar, we find nothing in the records that will prove that the tone and content of the publicity that attended the investigation of petitioners fatally infected the fairness and impartiality of the DOJ Panel. **Petitioners cannot just rely on the subliminal effects of publicity on the sense of fairness of the DOJ Panel, for these are basically unbeknown and beyond knowing**. To be sure, the DOJ Panel is composed of an Assistant Chief State Prosecutor and Senior State Prosecutors. Their long experience in criminal investigation is a factor to consider in determining whether they can easily be blinded by the klieg lights of publicity. Indeed, their 26-page Resolution carries no indubitable indicia of bias for it does not appear that they considered any extra-record evidence except evidence properly adduced by the parties. The length of time the investigation was conducted despite it summary nature and the generosity with which they accommodated the discovery motions of petitioners speak well of their fairness. At no instance, we note, did petitioners seek the disqualification of any member of the DOJ Panel on the ground of bias resulting from their bombardment of prejudicial publicity."

Applying the above ruling, we hold that *there is not enough evidence to warrant this Court to enjoin the preliminary investigation of the petitioner by the respondent Ombudsman.* Petitioner needs to offer more than hostile headlines to discharge his burden of proof. He needs to show more than weighty social science evidence to successfully prove the impaired capacity of a judge to render a bias-free decision. Well to note, the cases against the petitioner are *still undergoing* preliminary investigation by a special panel of prosecutors in the office of the respondent Ombudsman. No allegation whatsoever has been made by the petitioner that the minds of the members of this special panel have already been infected by bias because of the pervasive prejudicial publicity against him. Indeed, the special panel has yet to come out with its findings and the Court cannot second guess whether its recommendation will be unfavorable to the petitioner.
(***Estrada v. Desierto***, G.R. Nos. 146710-15, March 2, 2001, En Banc [Puno])

THE RIGHT AGAINST SELF-INCRIMINATION

184. Discuss the types of immunity statutes. Which has broader scope of protection?

Held: **Our immunity statutes are of American origin**. In the United States, there are two types of statutory immunity granted to a witness. They are the **transactional immunity** and the **use-and-derivative-use immunity**. **Transactional immunity is broader in the scope of its protection. By its grant, a witness can no longer be prosecuted for any offense whatsoever arising out of the act or transaction**. In contrast, by the grant of **use-and-derivative-use immunity, a witness is only assured that his or her particular testimony and evidence derived from it will not be used against him or her in a subsequent prosecution**. (***Mapa, Jr. v. Sandiganbayan***, 231 SCRA 783, 797-798, April 26, 1994, En Banc [Puno])

136 *185. Is the grant of immunity to an accused willing to testify for the government a special privilege and therefore must be strictly construed against the accused?*

Held: [W]e reject respondent court's ruling that the grant of section 5 immunity must be strictly construed against the petitioners. It simplistically characterized the grant as a special privilege, as if it was gifted by the government, *ex gratia.* **In taking this posture, it misread the *raison d' etre* and the long pedigree of the right against self-incrimination *vis-à-vis* immunity statutes**.

The days of inquisition brought about the most despicable abuses against human rights. Not the least of these abuses is the expert use of coerced confessions to send to the guillotine even the guiltless. To guard against the recurrence of this totalitarian method, the right against self-incrimination was ensconced in the fundamental laws of all civilized countries. **Over the years, however, came the need to assist government in its task of containing crime for peace and order is a necessary matrix of public welfare. To accommodate the need, the right against self-incrimination was stripped of its absoluteness. Immunity statutes in varying shapes were enacted which would allow government to compel a witness to testify despite his plea of the right against self-incrimination. To insulate these statutes from the virus of unconstitutionality, a witness is given what has come to be known as transactional or a use-derivative-use immunity x x x. Quite clearly, these immunity statutes are not a bonanza from government. Those given the privilege of immunity paid a high price for it – the surrender of their precious right to be silent**. Our hierarchy of values demands that the right against self-incrimination and the right to be silent should be accorded greater respect and protection. Laws that tend to erode the force of these preeminent rights must necessarily be given a liberal interpretation in favor of the individual. The government has a right to solve crimes but it must do it, rightly. (***Mapa, Jr. v. Sandiganbayan***, 231 SCRA 783, 805-806, April 26, 1994, En Banc [Puno])

THE RIGHT AGAINST DOUBLE JEOPARDY

186. Discuss the two kinds of double jeopardy.

Held: Our Bill of Rights deals with **two (2) kinds of double jeopardy**. The first sentence of Clause 20, Section 1, Article III of the Constitution ordains that "**no person shall be twice put in jeopardy of punishment for the**

same offense." The second sentence of said clause provides that "**if an act is punishable by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act**." **Thus, the first sentence prohibits double jeopardy of punishment for the SAME OFFENSE whereas; the second contemplates double jeopardy of punishment for the SAME ACT**. **Under the first sentence, one may be twice put in jeopardy of punishment of the same act, provided that he is charged with different offenses, or the offense charged in one case is not included in, or does not include, the crime charged in the other case. The second sentence applies, even if the offense charged are not the same, owing to the fact that one constitutes a violation of an ordinance and the other a violation of statute. If the two charges are based on one and the same act, conviction or acquittal under either the law or the ordinance shall bar a prosecution under the other. Incidentally, such conviction or acquittal is not indispensable to sustain the plea of double jeopardy of punishment or the same offense. So long as jeopardy has been attached under one of the informations charging said offense, the defense may be availed of in the other case involving the same offense, even if there has been neither conviction nor acquittal in either case**.

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Elsewhere stated, where the offense charged are penalized either by different sections of the same statute or by different statutes, the important inquiry relates to the identity of offenses charged. The constitutional protection against double jeopardy is available only where an identity is shown to exist between the earlier and the subsequent offenses charged. The question of identity or lack of identity of offenses is addressed by examining the essential elements of each of the two offenses charged, as such elements are set out in the respective legislative definitions of the offenses involved. (***People v. Quijada***, 259 SCRA 191, July 24, 1996)

187. What must be proved to substantiate a claim of double jeopardy? When may legal jeopardy attach?

Held: To substantiate a claim of double jeopardy, the following must be proven:

(1) A first jeopardy must have attached prior to the second; **(2) the first jeopardy must have been validly terminated**; **(3) the second jeopardy must be for the same offense, or the second offense includes or is necessarily included in the offense charged in the first information, or is an attempt to commit the same or is a frustration thereof**.

Legal jeopardy attaches only: **(1) upon a valid indictment**; **(b) before a competent court**; **(c) after arraignment**; **(d) when a valid plea has been entered**; and **(e) the case was dismissed or otherwise terminated without the express consent of the accused**.
(***Cuison v. CA***, 289 SCRA 159, April 15, 1998 [Panganiban])

188. In its decision in a criminal case, the Judge promulgated only the civil aspect of the case, but not the criminal. Will the promulgation of the criminal aspect later constitute double jeopardy?

Held: Petitioner contends that "the promulgation by Judge Ramos on April 4, 1995 of the Respondent Court's decision of June 30, 1991 by reading its dispositive portion *has effectively terminated the criminal cases against the*

petitioner x x x." In other words, petitioner claims that the first jeopardy attached at that point.

The Court is not persuaded. **As a rule, a criminal prosecution includes a civil action for the recovery of indemnity. Hence, a decision in such case disposes of both the criminal as well as the civil liabilities of an accused**. Here, trial court promulgated only the civil aspect of the case, but not the criminal.

[T]he promulgation of the CA Decision was not complete. **In fact and in truth, the promulgation was not merely incomplete; it was also void. In excess of its jurisdiction, the trial judge rendered a substantially incomplete promulgation on April 4, 1995, and he repeated his mistake in his April 12, 1996 Order. We emphasize that grave abuse of discretion rendered the aforementioned act of the trial court void. Since the criminal cases have not yet been terminated, the first jeopardy has not yet attached. Hence, double jeopardy cannot prosper as a defense**.
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We must stress that Respondent Court's questioned Decision did not modify or amend its July 30, 1991 Decision. It merely ordered the promulgation of the judgment of conviction and the full execution of the penalty it had earlier imposed on petitioner. (***Cuison v. CA***, 289 SCRA 159, April 15, 1998 [Panganiban])

THE RIGHT AGAINST EX POST FACTO LAWS AND BILLS OF ATTAINDER

189. What is a bill of attainder? Is P.D. 1866 a bill of attainder?

Held: [T]he Court, in ***People v. Ferrer*** (G.R. Nos. L-32613-14, December 27, 1972, 48 SCRA 382), defined a bill of attainder as **a legislative act which inflicts punishment on individuals or members of a particular group without a judicial trial. Essential to a bill of attainder are a specification of certain individuals or a group of individuals, the imposition of a punishment, penal or otherwise, and the lack of judicial trial. This last element, the total lack of court intervention in the finding of guilt and the determination of the actual penalty to be imposed, is the most essential**. P.D. No. 1866 does not possess the elements of a bill of attainder. It does not seek to inflict punishment without a judicial trial. Nowhere in the measure is there a finding of guilt and an imposition of a corresponding punishment. What the decree does is to define the offense and provide for the penalty that may be imposed, specifying the qualifying circumstances that would aggravate the offense. There is no encroachment on the power of the court to determine after due hearing whether the prosecution has proved beyond reasonable doubt that the offense of illegal possession of firearms has been committed and that the qualifying circumstances attached to it has been established also beyond reasonable doubt as the Constitution and judicial precedents require. (***Misolas v. Panga***, 181 SCRA 648, 659-660, Jan. 30, 1990, En Banc [Cortes])

190. What is an ex post facto law? Is R.A. No. 8249 an ex post facto law?

Held: *Ex post facto* law, generally, prohibits retrospectivity of penal laws. *R.A. 8249* is *not* a *penal* law. It is a substantive law on jurisdiction which is not penal in character. Penal laws are those acts of the Legislature which prohibit certain acts and establish penalties for their violations; or those that define crimes, treat of their nature, and provide for their punishment. *R.A. 7975*, which amended P.D. 1606 as

regards the Sandiganbayan's jurisdiction, its mode of appeal and other procedural matters, has been declared by the Court as not a penal law, but clearly a procedural statute, *i.e.,* one which prescribes rules of procedure by which courts applying laws of all kinds can properly administer justice. Not being a penal law, the retroactive application of *R.A. 8249* cannot be challenged as unconstitutional.

Petitioner's and intervenors' contention that their right to a two-tiered appeal which they acquired under R.A. 7975 has been diluted by the enactment of R.A. 8249, is incorrect. The same contention has already been rejected by the court several times considering that the right to appeal is *not* a *natural right* but statutory in nature that can be regulated by law. The mode of procedure provided for in the statutory right of appeal is not included in the prohibition against *ex post facto* laws. R.A. 8249 pertains only to matters of procedure, and being merely an amendatory statute it does not partake the nature of an *ex post facto* law. It does not mete out a penalty and, therefore, does not come within the prohibition. Moreover, the law did not alter the rules of evidence or
139 the mode of trial. It has been ruled that adjective statutes may be made applicable to actions pending and unresolved at the time of their passage.

At any rate, R.A. 8249 has preserved the accused's right to appeal to the Supreme Court to review questions of law. On the removal of the intermediate review of facts, the Supreme Court still has the power of review to determine if the presumption of innocence has been convincingly overcome. (***Panfilo M. Lacson v. The Executive Secretary***, et. al., G.R. No. 128096, Jan. 20, 1999 [Martinez])

ADMINISTRATIVE LAW

191. Describe the Administrative Code of 1987

Held: The Code is a ***general law*** and "**incorporates in a unified document the major structural, functional and procedural principles of governance** (*Third Whereas Clause, Administrative Code of 1987*) and "**embodies changes in administrative structures and procedures designed to serve the people**." (*Fourth Whereas Clause, Administrative Code of 1987*) The Code is divided into seven (7) books. These books contain provisions on the (1) **organization, powers and general administration of departments, bureaus and offices under the executive branch**, (2) **the organization and functions of the Constitutional Commissions and other constitutional bodies**, (3) **the rules on the national government budget, as well as guidelines for the exercise by administrative agencies of quasi-legislative and quasi-judicial powers**. The Code covers both the internal administration, *i.e.,* internal organization, personnel and recruitment, supervision and discipline, and the effects of the functions performed by administrative officials on private individuals or parties outside government. (***Ople v. Torres***, G.R. No. 127685, July 23, 1998 [Puno])

192. What is administrative power?

Held: ***Administrative power*** is **concerned with the work of applying policies and enforcing orders as determined by proper governmental organs. It enables the President to fix a uniform standard of administrative efficiency and check the official conduct of his agents**. To this end, he can issue administrative orders, rules and regulations. (***Ople v. Torres***, G.R. No. 127685, July 23, 1998 [Puno])

193. What is an administrative order?

Held: An ***administrative order*** is an **ordinance issued by the President which relates to specific aspects in the administrative operation of government**. *It must be in harmony with the law and should be for the sole purpose of implementing the law and carrying out the legislative policy*. (***Ople v. Torres***, G.R. No. 127685, July 23, 1998 [Puno])

194. What is the Government of the Republic of the Philippines?

Answer: The ***Government of the Republic of the Philippines*** **refers to the corporate governmental entity through which the functions of the government are exercised throughout the Philippines, including, save as the contrary appears from the context, the various arms through which political authority is made effective in the Philippines, whether pertaining to the autonomous regions, the provincial, city, municipal or barangay subdivisions or other forms of local government**. (**Sec. 2[1], Introductory Provisions, *Executive Order No. 292***)

195. What is a government instrumentality? What are included in the term government instrumentality?

Answer: A ***government instrumentality*** refers to **any agency of the national government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, enjoying operational autonomy, usually through a charter. The term includes regulatory agencies, chartered institutions and government-owned or controlled corporations**. (**Sec. 2[10], Introductory Provisions, *Executive Order No. 292***)

196. What is a regulatory agency?

Answer: A ***regulatory agency*** refers to **any agency expressly vested with jurisdiction to regulate, administer or adjudicate matters affecting substantial rights and interest of private persons, the principal powers of which are exercised by a collective body, such as a commission, board or council**. (**Sec. 2[11], Introductory Provisions, *Executive Order No. 292***)

197. What is a chartered institution?

Answer: A ***chartered institution*** refers to **any agency organized or operating under a special charter, and vested by law with functions relating to specific constitutional policies or objectives**. This term *includes state universities and colleges and the monetary authority of the State*. (**Section 2[12], Introductory Provisions, *Executive Order No. 292***)

198. When is a government-owned or controlled corporation deemed to be performing proprietary function? When is it deemed to be performing governmental function?

Held: Government-owned or controlled corporations may perform governmental or proprietary functions or both, depending on the purpose for

which they have been created. **If the purpose is to obtain special corporate benefits or earn pecuniary profit, the function is proprietary. If it is in the interest of health, safety and for the advancement of public good and welfare, affecting the public in general, the function is governmental**. Powers classified as "**proprietary**" are *those intended for private advantage and benefit*. (***Blaquera v. Alcala***, 295 SCRA 366, 425, Sept. 11, 1998, En Banc [Purisima])

199. Does the petition for annulment of proclamation of a candidate merely involve the exercise by the COMELEC of its administrative power to review, revise and reverse the actions of the board of canvassers and, therefore, justifies non-observance of procedural due process, or does it involve the exercise of the COMELEC's quasi-judicial function?

Held: Taking cognizance of private respondent's petitions for annulment of petitioner's proclamation, COMELEC was not merely performing an administrative function. The administrative powers of the
141 COMELEC include the *power to determine the number and location of polling places, appoint election officials and inspectors, conduct registration of voters, deputize law enforcement agencies and governmental instrumentalities to ensure free, orderly, honest, peaceful and credible elections, register political parties, organizations or coalition, accredit citizen's arms of the Commission, prosecute election offenses, and recommend to the President the removal of or imposition of any other disciplinary action upon any officer or employee* it has deputized for violation or disregard of its directive, order or decision. In addition, the Commission also has *direct control and supervision over all personnel involved in the conduct of election*. However, **the resolution of the adverse claims of private respondent and petitioner as regards the existence of a manifest error in the questioned certificate of canvass requires the COMELEC to act as an arbiter. It behooves the Commission to hear both parties to determine the veracity of their allegations and to decide whether the alleged error is a manifest error. Hence, the resolution of this issue calls for the exercise by the COMELEC of its quasi-judicial power**. *It has been said that where a power rests in judgment or discretion, so that it is of judicial nature or character, but does not involve the exercise of functions of a judge, or is conferred upon an officer other than a judicial officer, it is deemed quasi-judicial.* **The COMELEC therefore, acting as quasi-judicial tribunal, cannot ignore the requirements of procedural due process in resolving the petitions filed by private respondent**. (***Federico S. Sandoval v. COMELEC***, G.R. No. 133842, Jan. 26, 2000 [Puno])

200. Discuss the Doctrine of Primary Jurisdiction (or Prior Resort).

Held: Courts cannot and will not resolve a controversy involving a question which is within the jurisdiction of an administrative tribunal, especially where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.

In recent years, it has been the jurisprudential trend to apply this doctrine to cases involving matters that demand the special competence of administrative agencies even if the question involved is also judicial in character. **It applies "where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such**

case, the judicial process is suspended pending referral of such issues to the administrative body for its view."

In cases where the doctrine of primary jurisdiction is clearly applicable, the court cannot arrogate unto itself the authority to resolve a controversy, the jurisdiction over which is lodged with an administrative body of special competence.
(***Villaflor v. CA***, 280 SCRA 287)

201. Discuss the Doctrine of Exhaustion of Administrative Remedies. Enumerate exceptions thereto.

Held: 1. **Before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a**
142 **matter that comes within his jurisdiction then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of court's jurisdiction is fatal to one's cause of action. Accordingly, absent any finding of waiver or estoppel the case is susceptible of dismissal for lack of cause of action**. This doctrine of exhaustion of administrative remedies was not without its practical and legal reasons, for one thing, availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that the courts of justice for reasons of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case.

This doctrine is disregarded:

1) when there is a **violation of due process**;
2) when the **issue involved is purely a legal question**;
3) when the **administrative action is patently illegal amounting to lack or excess of jurisdiction**;
4) when there is **estoppel on the part of the administrative agency concerned**;
5) when there is **irreparable injury**;
6) when the **respondent is a department secretary whose acts as an *alter ego* of the President bears the implied and assumed approval of the latter**;
7) when to require **exhaustion of administrative remedies would be unreasonable**;
8) when it would **amount to a nullification of a claim**;
9) when the **subject matter is a private land in land case proceeding**;
10) when the rule does **not provide a plain, speedy and adequate remedy**, and
11) when there are **circumstances indicating the urgency of judicial intervention**.

(***Paat v. CA***, 266 SCRA 167 [1997])

Non-exhaustion of administrative remedies is not jurisdictional. It only renders the action premature, *i.e.,* claimed cause of action is not ripe for judicial determination and for that reason a party has no cause of action to ventilate in court. (***Carale v. Abarintos***, 269 SCRA 132)

202. Define Appointment. Discuss its nature.

Held: An "*APPOINTMENT*" to a public office is the **unequivocal act of designating or selecting by one having the authority therefor of an individual to discharge and perform the duties and functions of an office or trust**. The appointment is **deemed complete once the last act required of the appointing authority has been complied with and its acceptance thereafter by the appointee in order to render it effective**. Appointment necessarily calls for an ***exercise of discretion*** on the part of the appointing authority. In ***Pamantasan ng Lungsod ng Maynila v. Intermediate Appellate Court*** (140 SCRA 22), reiterated in ***Flores v. Drilon*** (223 SCRA 568), this Court has held:

> "**The power to appoint is, in essence, discretionary. The appointing power has the right of choice which he may exercise freely according to his judgment, deciding for himself who is best qualified among those who have the necessary qualifications and eligibilities. It is a prerogative of the appointing power** x x x." *(At p. 579)*

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Indeed, it may rightly be said that the right of choice is the heart of the power to appoint. In the exercise of the power of appointment, discretion is an integral thereof. (***Bermudez v. Torres***, 311 SCRA 733, Aug. 4, 1999, 3rd Div. [Vitug])

203. May the Civil Service Commission, or the Supreme Court, validly nullify an appointment on the ground that somebody else is better qualified?

Held: The head of an agency who is the appointing power is the one most knowledgeable to decide who can best perform the functions of the office. Appointment is an essentially discretionary power and must be performed by the officer vested with such power according to his best lights, the only condition being that the appointee should possess the qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. Indeed, this is a prerogative of the appointing authority which he alone can decide. The choice of an appointee from among those who possess the required qualifications is a political and administrative decision calling for considerations of wisdom, convenience, utility and the interests of the service which can best be made by the head of the office concerned, the person most familiar with the organizational structure and environmental circumstances within which the appointee must function.

As long as the appointee is qualified the Civil Service Commission has no choice but to attest to and respect the appointment even if it be proved that there are others with superior credentials. The law limits the Commission's authority only to whether or not the appointees possess the legal qualifications and the appropriate civil service eligibility, nothing else. If they do then the appointments are approved because the Commission cannot exceed its power by substituting its will for that of the appointing authority. Neither can we. (***Rimonte v. CSC***, 244 SCRA 504-505, May 29, 1995, En Banc [Bellosillo, J.])

204. Does the "next-in-rank" rule import any mandatory or peremptory requirement that the person next-in-rank must be appointed to the vacancy?

Held: The "**next-in-rank rule is not absolute; it only applies in cases of promotion, a process which denotes a scalar ascent of an officer to another position higher either in rank or salary. And even in promotions, it can be disregarded for sound reasons made known to the next-in-rank, as the concept does not import any mandatory or peremptory requirement that the person next-in-rank must be appointed to the vacancy. The appointing authority, under the Civil Service Law, is allowed to fill vacancies by promotion, transfer of present employees, reinstatement, reemployment, and appointment of outsiders who have appropriate civil service eligibility, not necessarily in that order. There is no legal fiat that a vacancy must be filled only by promotion; the appointing authority is given wide discretion to fill a vacancy from among the several alternatives provided by law**.

What the Civil Service Law provides is that if a vacancy is filled by promotion, the person holding the position next in rank thereto "shall be considered for promotion."

144 In ***Taduran v. Civil Service Commission*** (131 SCRA 66 [1984]), the Court construed that phrase to mean that **the person next-in-rank "would be among the first to be considered for the vacancy, if qualified**." In ***Santiago, Jr. v. Civil Service Commission*** (178 SCRA 733 [1989]), the Court elaborated the import of the rule in the following manner:

> "**One who is next-in-rank is entitled to preferential consideration for promotion to the higher vacancy but it does not necessarily follow that he and no one else can be appointed. The rule neither grants a vested right to the holder nor imposes a ministerial duty on the appointing authority to promote such person to the next higher position** x x x"

(***Abila v. CSC***, 198 SCRA 102, June 3, 1991, En Banc [Feliciano])

205. The Philippine National Red Cross (PNRC) is a government-owned and controlled corporation with an original charter under R.A. No. 95, as amended. Its charter, however, was amended to vest in it the authority to secure loans, be exempted from payment of all duties, taxes, fees and other charges, etc. With the amendment of its charter, has it been "impliedly converted to a private corporation"?

Held: The *TEST* to determine whether a corporation is government owned or controlled, or private in nature is simple. **Is it created by its own charter for the exercise of a public function, or by incorporation under the general corporation law? Those with special charters are government corporations subject to its provisions, and its employees are under the jurisdiction of the Civil Service Commission**. *The PNRC was not "impliedly converted to a private corporation" simply because its charter was amended to vest in it the authority to secure loans, be exempted from payment of all duties, taxes, fees and other charges, etc*. (***Camporedondo v. NLRC***, G.R. No. 129049, Aug. 6, 1999, 1st Div. [Pardo])

206. What is a primarily confidential position? What is the test to determine whether a position is primarily confidential or not?

Held: A *PRIMARILY CONFIDENTIAL POSITION* is **one which denotes not only CONFIDENCE in the aptitude of the appointee for the duties of the office but primarily CLOSE INTIMACY which ensures freedom from intercourse without embarrassment or freedom from misgivings or**

betrayals of personal trust or confidential matters of state. (***De los Santos v. Mallare***, 87 Phil. 289 [1950])

Under the *PROXIMITY RULE*, **the occupant of a particular position could be considered a confidential employee if the predominant reason why he was chosen by the appointing authority was the latter's belief that he can share a close intimate relationship with the occupant which ensures freedom of discussion without fear or embarrassment or misgivings of possible betrayal of personal trust or confidential matters of state**. *Withal, where the position occupied is more remote from that of the appointing authority, the element of trust between them is no longer predominant.* (***CSC v. Salas***, 274 SCRA 414, June 19, 1997)

207. Does the Civil Service Law contemplate a review of decisions exonerating officers or employees from administrative charges?

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Held: By this ruling, we now expressly abandon and overrule extant jurisprudence that "the phrase 'party adversely affected by the decision' refers to the government employee against whom the administrative case is filed for the purpose of disciplinary action which may take the form of suspension, demotion in rank or salary, transfer, removal or dismissal from office" and not included are "cases where the penalty imposed is suspension for not more than thirty (30) days or fine in an amount not exceeding thirty days salary" *(Paredes v. Civil Service Commission, 192 SCRA 84, 85)* or "**when respondent is exonerated of the charges, there is no occasion for appeal**." *(Mendez v. Civil Service Commission, 204 SCRA 965, 968)* In other words, **we overrule prior decisions holding that the Civil Service Law "does not contemplate a review of decisions exonerating officers or employees from administrative charges**" enunciated in *Paredes v. Civil Service Commission (192 SCRA 84); Mendez v. Civil Service Commission (204 SCRA 965); Magpale v. Civil Service Commission (215 SCRA 398); Navarro v. Civil Service Commission and Export Processing Zone Authority (226 SCRA 207)* and more recently *Del Castillo v. Civil Service Commission (237 SCRA 184).* (***CSC v. Pedro O. Dacoycoy***, G.R. No. 135805, April 29, 1999, En Banc [Pardo])

208. What is preventive suspension? Discuss its nature.

Held: Imposed during the pendency of an administrative investigation, preventive suspension is not a penalty in itself. It is merely a measure of precaution so that the employee who is charged may be separated, for obvious reasons, from the scene of his alleged misfeasance while the same is being investigated. Thus preventive suspension is distinct from the administrative penalty of removal from office such as the one mentioned in Sec. 8(d) of P.D. No. 807. **While the former may be imposed on a respondent during the investigation of the charges against him, the latter is the penalty which may only be meted upon him at the termination of the investigation or the final disposition of the case**.
(***Beja, Sr. v. CA***, 207 SCRA 689, March 31, 1992 [Romero])

209. Discuss the kinds of preventive suspension under the Civil Service Law. When may a civil service employee placed under preventive suspension be entitled to compensation?

Held: There are *TWO KINDS OF PREVENTIVE SUSPENSION* of civil service employees who are charged with offenses punishable by removal or suspension:

(1) **preventive suspension *pending investigation*** (**Sec. 51, *Civil Service Law, EO No. 292***) and (2) **preventive suspension *pending appeal* if the penalty imposed by the disciplining authority is suspension or dismissal and, after review, the respondent is exonerated** (**Section 47, par. 4**, ***Civil Service Law, EO No. 292***).

Preventive suspension *pending investigation* is not a penalty. It is a measure intended to enable the disciplining authority to investigate charges against respondent by preventing the latter from intimidating or in any way influencing witnesses against him. *If the investigation is not finished and a decision is not rendered within that period, the suspension will be lifted and the respondent will automatically be reinstated. If after investigation respondent is found innocent of the charges and is exonerated, he should be reinstated. However, no compensation was due for the period of preventive suspension pending investigation*. The Civil Service Act of 1959 (R.A. No. 2260) providing for compensation in such a case once the respondent was exonerated was revised in 1975 and the provision on the payment of salaries during suspension was deleted.
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But although it is held that employees who are preventively suspended *pending investigation* are not entitled to the payment of their salaries even if they are exonerated, they are entitled to compensation for the period of their suspension *pending appeal* if eventually they are found innocent.

Preventive suspension *pending investigation* x x x is not a penalty but only a means of enabling the disciplining authority to conduct an unhampered investigation. On the other hand, preventive suspension *pending appeal* is actually punitive although it is in effect subsequently considered illegal if respondent is exonerated and the administrative decision finding him guilty is reversed. Hence, he should be reinstated with full pay for the period of the suspension.
(***Gloria v. CA***, G.R. No. 131012, April 21, 1999, En Banc [Mendoza])

210. What is the doctrine of forgiveness or condonation? Does it apply to pending criminal cases?

Held: 1. **A public official cannot be removed for administrative misconduct committed during a *PRIOR TERM*, since his *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 therefor. The foregoing rule, however, finds *NO APPLICATION TO CRIMINAL CASES* pending against petitioner**.
(***Aguinaldo v. Santos***, 212 SCRA 768, 773 [1992])

2. **A reelected local official may not be held administratively accountable for misconduct committed during his prior term of office. The rationale for this holding is that when the electorate put him back into office, it is presumed that it did so with full knowledge of his life and character, including his past misconduct. If, armed with such knowledge, it still reelects him, then such reelection is considered a condonation of his past misdeeds**.
(***Mayor Alvin B. Garcia v. Hon. Arturo C. Mojica, et al.***, G.R. No. 139043, Sept. 10, 1999 [Quisumbing])

211. What are the situations covered by the law on nepotism?

Held: Under the definition of nepotism, **one is guilty of nepotism if an appointment is issued in favor of a relative within the third civil degree of consanguinity or affinity of any of the following**:

a) **appointing authority**;
b) **recommending authority**;
c) **chief of the bureau or office**; and
d) **person exercising immediate supervision over the appointee**.

Clearly, there are four situations covered. **In the last two mentioned situations, it is immaterial who the appointing or recommending authority is. To constitute a violation of the law, it suffices that an appointment is extended or issued in favor of a relative within the third civil degree of consanguinity or affinity of the chief of the bureau or office, or the person exercising immediate supervision over the appointee**.
(***CSC v. Pedro O. Dacoycoy***, G.R. No. 135805, April 29, 1999, En Banc [Pardo])

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212. Distinguish "term" of office from "tenure" of the incumbent.

Held: In the law of public officers, there is a settled distinction between "term" and "tenure." "[T]he term of an office must be distinguished from the tenure of the incumbent. The *TERM* means **the time during which the officer *MAY CLAIM TO HOLD OFFICE AS OF RIGHT*, and fixes the interval after which the several incumbents shall succeed one another**. The *TENURE* represents the **term during which the incumbent *ACTUALLY* holds the office**. The term of office is not affected by the hold-over. The tenure may be shorter than the term for reasons within or beyond the power of the incumbent."
(***Thelma P. Gaminde v. COA***, G.R. No. 140335, Dec. 13, 2000, En Banc [Pardo])

213. Discuss the operation of the rotational plan insofar as the term of office of the Chairman and Members of the Constitutional Commissions is concerned.

Held: In ***Republic v. Imperial*** (96 Phil. 770 [1955]), we said that "the operation of the rotational plan requires ***two conditions, both indispensable*** to its workability: (1) **that the terms of the first three (3) Commissioners should *start on a common date***, and (2) that **any vacancy due to death, resignation or disability before the expiration of the term should only be filled only *for the unexpired balance of the term***."

Consequently, the terms of the first Chairmen and Commissioners of the Constitutional Commissions under the 1987 Constitution must *start on a common date, irrespective of the variations in the dates of appointments and qualifications of the appointees,* in order that the expiration of the first terms of seven, five and three years should lead to the *regular recurrence of the two-year interval* between the expiration of the terms.

Applying the foregoing conditions x x x, we rule that the appropriate *starting point of the terms of office of the first appointees to the Constitutional Commissions under the 1987 Constitution must be on February 2, 1987, the date of the adoption* of the 1987 Constitution. In case of a belated appointment or qualification, the interval between the start of the term and the actual qualification of the appointee must be *counted against the latter*. (***Thelma P. Gaminde v. COA***, G.R. No. 140335, Dec. 13, 2000, En Banc [Pardo])

214. What is the hold-over doctrine? What is its purpose?

Held: 1. The concept of holdover when applied to a public officer **implies that the office has a fixed term and the incumbent is holding onto the succeeding term. It is usually provided by law that officers elected or appointed for a fixed term shall remain in office not only for that term but until their successors have been elected and qualified. Where this provision is found, the office does not become vacant upon the expiration of the term if there is no successor elected and qualified to assume it, but the present incumbent will carry over until his successor is elected and qualified, even though it be beyond the term fixed by law**.

Absent an express or implied constitutional or statutory provision to the contrary, an officer is entitled to stay in office until his successor is appointed or chosen and has qualified. The legislative intent of not allowing holdover must be clearly expressed or at least implied in the legislative enactment, otherwise it is reasonable to assume that the law-making body favors the same.

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Indeed, **the law abhors a vacuum in public offices, and courts generally indulge in the strong presumption against a legislative intent to create, by statute, a condition which may result in an executive or administrative office becoming, for any period of time, wholly vacant or unoccupied by one lawfully authorized to exercise its functions. This is founded on obvious considerations of public policy, for the principle of holdover is specifically intended to prevent public convenience from suffering because of a vacancy and to avoid a hiatus in the performance of government functions**.
(***Lecaroz v. Sandiganbayan***, 305 SCRA 397, March 25, 1999, 2nd Div. [Bellosillo])

2. The rule is settled that **unless "holding over be expressly or impliedly prohibited, the incumbent may continue to hold over until someone else is elected and qualified to assume the office." This rule is demanded by the "most obvious requirements of public policy, for without it there must frequently be cases where, from a failure to elect or a refusal or neglect to qualify, the office would be vacant and the public service entirely suspended**." Otherwise stated, the purpose is to prevent a hiatus in the government pending the time when the successor may be chosen and inducted into office. (***Galarosa v. Valencia***, 227 SCRA 728, Nov. 11, 1993, En Banc [Davide, Jr.])

215. What is RESIGNATION? What are the requisites of a valid resignation?

Held: 1. It is **the act of giving up or the act of an officer by which he declines his office and renounces the further right to use it. It is an expression of the incumbent in some form, express or implied, of the intention to surrender, renounce, and relinquish the office and the acceptance by competent and lawful authority**. To constitute a complete and operative resignation from public office, there must be: (a) an **intention to relinquish a part of the term**; (b) an **act of relinquishment**; and (c) an **acceptance by the proper authority**. **The last one is required by reason of Article 238 of the *Revised Penal Code***.
(***Sangguniang Bayan of San Andres, Catanduanes v. CA***, 284 SCRA 276, Jan. 16, 1998)

2. Resignation x x x is a factual question and its ***elements*** are beyond quibble: ***there must be an intent to resign and the intent must be coupled by acts of relinquishment*** (***Gonzales v. Hernandez***, 2 SCRA 228

[1961]). The validity of a resignation is not governed by any formal requirement as to form. **It can be oral. It can be written. It can be express. It can be implied. As long as the resignation is clear, it must be given legal effect**.
(***Estrada v. Desierto***, G.R. Nos. 146710-15, March 2, 2001, en Banc [Puno])

216. What is abandonment of an office? What are its requisites? How is it distinguished from resignation?

Held: ***Abandonment of an office*** has been defined as **the voluntary relinquishment of an office by the holder, with the intention of terminating his possession and control thereof**. Indeed, abandonment of office is a **species of resignation**; **while resignation in general is a formal relinquishment, abandonment is a voluntary relinquishment through nonuser**.

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Abandonment springs from and is accompanied by DELIBERATION and FREEDOM of CHOICE. Its concomitant effect is that the former holder of an office can no longer legally repossess it even by forcible reoccupancy.

Clear intention to abandon should be manifested by the officer concerned. Such intention may be express or inferred from his own conduct. **Thus, the failure to perform the duties pertaining to the office must be with the officer's actual or imputed intention to abandon and relinquish the office. Abandonment of an office is not wholly a matter of intention; it results from a complete abandonment of duties of such continuance that the law will infer a relinquishment. Therefore, there are two essential elements of abandonment; *first,* an intention to abandon and, *second,* an overt or "external" act by which the intention is carried into effect**. (***Sangguniang Bayan of San Andres, Catanduanes v. CA***, 284 SCRA 276, Jan. 16, 1998)

217. When may unconsented transfers be considered anathema to security of tenure?

Held: As held in ***Sta. Maria v. Lopez*** (31 SCRA 637, 653 citing ***Ibanez v. Commission on Elections***, L-26558, April 27, 1967, 19 SCRA 1002, 1012 and Section 12 of the ***Tax Code***).

> "x x x **the rule that outlaws unconsented transfers as anathema to security of tenure applies only to an officer who is APPOINTED – not merely assigned – to a particular station. Such a rule does not pr[o]scribe a transfer carried out under a specific statute that empowers the head of an agency to periodically reassign the employees and officers in order to improve the service of the agency**. X x x"

The guarantee of security of tenure under the Constitution is not a guarantee of perpetual employment. It only means that an employee cannot be dismissed (or transferred) from the service for causes other than those provided by law and after due process is accorded the employee. What it seeks to prevent is capricious exercise of the power to dismiss. But where it is the law-making authority itself which furnishes the ground for the transfer of a class of employees, no such capriciousness can be raised for so long as the remedy proposed to cure a perceived evil is germane to the purposes of the law.

(***Agripino A. De Guzman, Jr., et al. v. COMELEC***, G.R. No. 129118, July 19, 2000, En Banc [Purisima])

218. Discuss Abolition of Office?

Held: **The creation and abolition of public offices is primarily a legislative function**. **It is acknowledged that Congress may abolish any office it creates without impairing the officer's right to continue in the position held and that such power may be exercised for various reasons, such as the lack of funds or in the interest of economy. However, in order for the abolition to be valid, it must be made in good faith, not for political or personal reasons, or in order to circumvent the constitutional security of tenure of civil service employees**.

An abolition of office connotes an intention to do away with such office wholly and permanently, as the word "abolished" denotes. **Where one office is abolished and replaced with another office vested with similar functions, the abolition is a legal nullity**. Thus, in ***U.P. Board of Regents v. Rasul*** (200 SCRA 685 [1991]) we said:

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> It is true that a valid and *bona fide* abolition of an office denies to the incumbent the right to security of tenure *(De la Llana v. Alba, 112 SCRA 294 [1982]).* **However, in this case, the renaming and restructuring of the PGH and its component units cannot give rise to a valid and *bona fide* abolition of the position of PGH Director. This is because where the abolished office and the offices created in its place have similar functions, the abolition lacks good faith** (***Jose L. Guerrero v. Hon. Antonio V. Arizabal***, G.R. No. 81928, June 4, 1990, 186 SCRA 108 [1990]). We hereby apply the principle enunciated in ***Cezar Z. Dario v. Hon. Salvador M. Mison*** (176 SCRA 84 [1989]) that **abolition which merely changes the nomenclature of positions is invalid and does not result in the removal of the incumbent**.
>
> **The above notwithstanding, and assuming that the abolition of the position of the PGH Director and the creation of a UP-PGH Medical Center Director are valid, the removal of the incumbent is still not justified for the reason that the duties and functions of the two positions are basically the same**.

This was also our ruling in *Guerrero v. Arizabal (186 SCRA 108 [1990]),* wherein we declared that the **substantial identity in the functions between the two offices was *indicia* of bad faith in the removal of petitioner pursuant to a reorganization**. (***Alexis C. Canonizado, et al. v. Hon. Alexander P. Aguirre, et al.***, G.R. No. 133132, Jan. 25, 2000, En Banc [Gonzaga-Reyes])

219. What is reorganization? When is it valid? When is it invalid?

Held: 1. *REORGANIZATION* takes place when there is **an alteration of the existing structure of government offices or units therein, including the lines of control, authority and responsibility between them. It involves a reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions**. Naturally, it may result in the loss of one's position through removal or abolition of an office. However, **for a reorganization to be valid, it must also pass the test of good faith**, laid down in ***Dario v. Mison*** (176 SCRA 84 [1989]):

x x x **As a general rule, a reorganization is carried out in "good faith" if it is for the purpose of economy or to make bureaucracy more efficient. In that event, no dismissal (in case of dismissal) or separation actually occurs because the position itself ceases to exist. And in that case, security of tenure would not be a Chinese wall**. Be that as it may, if the "abolition" which is nothing else but a separation or removal, is done for political reasons or purposely to defeat security of tenure, or otherwise not in good faith, no valid "abolition" takes place and whatever "abolition" is done, is void *ab initio.* **There is an invalid "abolition" as where there is merely a change of nomenclature of positions, or where claims of economy are belied by the existence of ample funds**.

(***Alexis C. Canonizado, et al. v. Hon. Alexander P. Aguirre, et al.***, G.R. No. 133132, Jan. 25, 2000, En Banc [Gonzaga-Reyes])

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While the President's power to reorganize can not be denied, this does not mean however that the reorganization itself is properly made in accordance with law. Well-settled is the rule that reorganization is regarded as valid provided it is pursued in good faith. Thus, in ***Dario v. Mison***, this Court has had the occasion to clarify that:

> "As a general rule, a reorganization is carried out in 'good faith' if it is for the purpose of economy or to make the bureaucracy more efficient. In that event no dismissal or separation actually occurs because the position itself ceases to exist. And in that case the security of tenure would not be a Chinese wall. Be that as it may, if the abolition which is nothing else but a separation or removal, is done for political reasons or purposely to defeat security of tenure, or otherwise not in good faith, no valid abolition takes place and whatever abolition done is void *ab initio*. There is an invalid abolition as where there is merely a change of nomenclature of positions or where claims of economy are belied by the existence of ample funds." *(176 SCRA 84)*

(***Larin v. Executive Secretary***, 280 SCRA 713, Oct. 16, 1997)

220. What are the circumstances evidencing bad faith in the removal of employees as a result of reorganization and which may give rise to a claim for reinstatement or reappointment)?

Held:

1) Where there is a **significant increase in the number of positions in the new staffing pattern of the department or agency concerned**;
2) Where an **office is abolished and another performing substantially the same functions is created**;
3) Where **incumbents are replaced by those less qualified in terms of status of appointment, performance and merit**;
4) Where there is a **reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same functions as the original offices**;
5) Where the **removal violates the order of separation provided in Section 3 hereof.**

(**Sec. 2**, ***R.A. No. 6656; Larin v. Executive Secretary***, 280 SCRA 713, Oct. 16, 1997)

ELECTION LAWS

221. Discuss the reason behind the principle of ballot secrecy. May the conduct of exit polls transgress the sanctity and the secrecy of the ballot to justify its prohibition?

Held: The reason behind the principle of ballot secrecy is **to avoid vote buying through voter identification**. Thus, voters are prohibited from exhibiting the contents of their official ballots to other persons, from making copies thereof, or from putting distinguishing marks thereon so as to be identified. Also proscribed is finding out the contents of the ballots cast by particular voters or disclosing those of disabled or illiterate voters who have been assisted. Clearly, **what is forbidden is the association of voters with their respective votes, for the purpose of assuring that the votes have been cast in accordance with the instructions of a third party**. This result cannot, however, be achieved merely through the voters' verbal and confidential disclosure to a pollster of whom they have voted for.

In exit polls, the contents of the official ballot are not actually exposed. Furthermore, the revelation of whom an elector has voted for is not compulsory, but voluntary. Voters may also choose not to reveal their identities. Indeed, narrowly tailored countermeasures may be prescribed by the Comelec, so as to minimize or suppress incidental problems in the conduct of exit polls, without transgressing the fundamental rights of our people. (***ABS-CBN Broadcasting Corporation v. COMELEC***, G.R. No. 133486, Jan. 28, 2000, En Banc [Panganiban])

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222. Discuss the meaning and purpose of residency requirement in Election Law.

Held: 1. The meaning and purpose of the residency requirement were explained recently in our decision in ***Aquino v. Comelec*** (248 SCRA 400, 420-421 [1995]), as follows:

> X x x **[T]he 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, *i.e.,* his domicile, is that to which the Constitution refers when it speaks of residence for the purposes of election law**. The manifest ***purpose*** of this deviation from the usual conceptions of residency in law as explained in *Gallego v. Vera* is "**to exclude strangers or newcomers unfamiliar with the conditions and needs of the community" from taking advantage of favorable circumstances existing in that community for electoral gain**. While there is nothing wrong with the practice of establishing residence in a given area for meeting election law requirements, this nonetheless defeats the essence of representation, which is to place through the assent of voters those most cognizant and sensitive to the needs of a particular district, if a candidate falls short of the period of residency mandated by law for him to qualify. **That purpose could be obviously best met by individuals who have either had actual residence in the area for a given period or who have been domiciled in the same area either by origin or by choice**.

(***Marcita Mamba Perez v. COMELEC***, G.R. No. 133944, Oct. 28, 1999, En Banc [Mendoza])

2. T**he Constitution and the law requires residence as a qualification for seeking and holding elective public office, in order to give candidates the opportunity to be familiar with the needs, difficulties, aspirations, potentials for growth and all matters vital to the welfare of their constituencies; likewise, it enables the electorate to**

evaluate the office seekers' qualifications and fitness for the job they aspire for. Inasmuch as Vicente Y. Emano has proven that he, together with his family, (1) had actually resided in a house he bought in 1973 in Cagayan de Oro City; (2) had actually held office there during his three terms as provincial governor of Misamis Oriental, the provincial capitol being located therein; and (3) has registered as voter in the city during the period required by law, he could not be deemed "a stranger or newcomer" when he ran for and was overwhelmingly voted as city mayor. Election laws must be liberally construed to give effect to the popular mandate. (***Torayno, Sr. v. COMELEC***, 337 SCRA 574, Aug. 9, 2000, En Banc [Panganiban])

3. Generally, in requiring candidates to have a minimum period of residence in the area in which they seek to be elected, **the Constitution or the law intends to prevent the possibility of a "stranger or newcomer unacquainted with the conditions and needs of a community and not identified with the latter from [seeking] an elective office to serve that community." Such provision is aimed at excluding outsiders "from taking advantage of favorable circumstances existing in that community for electoral gain." Establishing residence in a community merely to meet an election law requirement defeats the purpose of representation: to elect through the assent of voters those most cognizant and sensitive to the needs of the community. This purpose is "best met by individuals who have either had actual residence in the area for a given period or who have been domiciled in the same area either by origin or by choice**." (***Torayno, Sr. v. COMELEC***, 337 SCRA 574, Aug. 9, 2000, En Banc [Panganiban])

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223. Does the fact that a person is registered as a voter in one district prove that he is not domiciled in another district?

Held: The fact that a person is registered as a voter in one district is not proof that he is not domiciled in another district. Thus, in ***Faypon v. Quirino*** (96 Phil. 294 [1954]), this Court held that **the registration of a voter in a place other than his residence of origin is not sufficient to consider him to have abandoned or lost his residence**. (***Marcita Mamba Perez v. COMELEC***, G.R. No. 133944, Oct. 28, 1999, En Banc [Mendoza])

224. What is the Lone Candidate Law? What are its salient provisions?

Answer: The Lone Candidate Law is ***Republic Act No. 8295****, enacted on June 6, 1997.* **Section 2** thereof provides that "**Upon the expiration of the deadline for the filing of the certificate of candidacy in a special election called to fill a vacancy in an elective position other than for President and Vice-President, when there is only one (1) qualified candidate for such position, the lone candidate shall be proclaimed elected to the position by proper proclaiming body of the Commission on Elections without holding the special election upon certification by the Commission on Elections that he is the only candidate for the office and is thereby deemed elected**."

Section 3 thereof provides that "**the lone candidate so proclaimed shall assume office not earlier than the scheduled election day, in the absence of any lawful ground to deny due course or cancel the certificate of candidacy in order to prevent such proclamation, as provided for under Sections 69 and 78 of Batas Pambansa Bilang 881 also known as the Omnibus Election Code**."

225. Who are disqualified to run in a special election under the Lone Candidate Law?

Answer: Section 4 of the Lone Candidate Law provides that "**In addition to the disqualifications mentioned in Sections 12 and 68 of the Omnibus Election Code and Section 40 of Republic Act No. 7160, otherwise known as the Local Government Code, whenever the evidence of guilt is strong**, the following persons are disqualified to run in a special election called to fill the vacancy in an elective office, to wit:

a) 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**; and
b) 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**."

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226. What is the purpose of the law in requiring the filing of certificate of candidacy and in fixing the time limit therefor?

Held: The evident purpose of the law in requiring the filing of certificate of candidacy and in fixing the time limit therefor are: (a) **to enable the voters to know, at least sixty days before the regular election, the candidates among whom they are to make the choice**, and (b) **to avoid confusion and inconvenience in the tabulation of the votes cast**. For if the law did not confine the choice or election by the voters to the duly registered candidates, there might be as many persons voted for as there are voters, and votes might be cast even for unknown or fictitious persons as a mark to identify the votes in favor of a candidate for another office in the same election. (***Miranda v. Abaya***, G.R. No. 136351, July 28, 1999)

227. May a disqualified candidate and whose certificate of candidacy was denied due course and/or canceled by the Comelec be validly substituted?

Held: Even on the most basic and fundamental principles, it is readily understood that **the concept of a substitute presupposes the existence of the person to be substituted, for how can a person take the place of somebody who does not exist or who never was**. The Court has no other choice but to rule that **in all instances enumerated in Section 77 of the Omnibus Election Code, the existence of a valid certificate of candidacy seasonably filed is a requisite *sine qua non***.

All told, a disqualified candidate may only be substituted if he had a valid certificate of candidacy in the first place because, if the disqualified candidate did not have a valid and seasonably filed certificate of candidacy, he is and was not a candidate at all. If a person was not a candidate, he cannot be substituted under Section 77 of the Code. (***Miranda v. Abaya***, G.R. No. 136351, July 28, 1999, en Banc [Melo])

228. Should the votes cast for the substituted candidate be considered votes for the substitute candidate?

Answer: ***Republic Act No. 9006,*** otherwise known as the ***Fair Election Act****,* provides in **Section 12** thereof: "**In case of valid substitutions after the official ballots have been printed, the votes cast for the substituted candidates shall be considered as stray votes but shall not invalidate the whole ballot. For this purpose, the official ballots shall provide spaces where the voters may write the name of the substitute candidates if they are voting for the latter: Provided, however, that if the substitute candidate is of the same family name, this provision shall not apply**."

229. What is the effect of the filing of certificate of candidacy by elective officials?

Answer: ***COMELEC Resolution No. 3636****,* promulgated March 1, 2001, implementing the ***Fair Election Act*** (R.A. No. 9006) provides in **Section 26** thereof: "**any elective official, whether national or local, who has filed a certificate of candidacy for the same or any other office shall not be considered resigned from his office**."

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NOTE that **Section 67** of the ***Omnibus Election Code*** and the first proviso in the third paragraph of **Section 11** of **Republic Act No. 8436** which modified said Section 67, were **expressly repealed and rendered ineffective, respectively, by Section 14** (Repealing Clause) of ***The Fair Election Act*** **(R.A. No. 9006)**.

230. What kind of "MATERIAL MISREPRESENTATION" is contemplated by Section 78 of the Omnibus Election Code as a ground for disqualification of a candidate? Does it include the use of surname?

Held: Therefore, it may be concluded that **the material misrepresentation contemplated by Section 78 of the *Omnibus Election Code* refers to qualifications for elective office**. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in his certificate of candidacy are grave – to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. It could not have been the intention of the law to deprive a person of such a basic and substantial political right to be voted for a public office upon just any innocuous mistake.

[A]side from the requirement of materiality, a false representation under Section 78 must consist of a "deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible." In other words, it must be made with an intention to deceive the electorate as to one's qualifications for public office. The use of a surname, when not intended to mislead or deceive the public as to one's identity, is not within the scope of the provision.

(***Victorino Salcedo II v. COMELEC***, G.R. No. 135886, Aug. 16, 1999, En Banc [Gonzaga-Reyes])

231. Who has authority to declare failure of elections and the calling of special election? What are the three instances where a failure of election may be declared?

Held: **The COMELEC's authority to declare failure of elections is provided in our election laws**. **Section 4** of **RA 7166** provides that **the Comelec sitting *en banc* by a majority vote of its members may decide, among others, the declaration of failure of election and the calling of special election as provided in Section 6 of the Omnibus Election Code**. X x x

There are three instances where a failure of election may be declared, namely, (a) the election in any polling place has **not been held on the date fixed on account of *force majeure,* violence, terrorism, fraud or other analogous causes**; (b) the election in any polling place has been **suspended before the hour fixed by law for the closing of the voting on account of *force majeure,* violence, terrorism, fraud or other analogous causes**; or (c) **after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect on account of *force majeure,* violence, terrorism, fraud or other analogous causes**. In these instances, there is a resulting failure to elect. This is obvious in the first two scenarios, where the
156 election was not held and where the election was suspended. ***As to the third scenario, where the preparation and the transmission of the election returns give rise to the consequence of failure to elect, it must*** x x x, **be interpreted to mean that nobody emerged as a winner**.
(***Banaga, Jr. v. COMELEC***, 336 SCRA 701, July 31, 2000, En Banc [Quisumbing])

232. What are the two conditions that must concur before the COMELEC can act on a verified petition seeking to declare a failure of election?

Held: Before the COMELEC can act on a verified petition seeking to declare a failure of election two conditions must concur, namely: (1) **no voting took place in the precinct or precincts on the date fixed by law, or even if there was voting, the election resulted in a failure to elect**; and (2) **the votes not cast would have affected the result of the election. Note that the cause of such failure of election could only be any of the following: *force majeure,* violence, terrorism, fraud or other analogous causes**.

Thus, in ***Banaga, Jr. v. COMELEC*** (336 SCRA 701, July 31, 2000, En Banc [Quisumbing]), the SC held:

> "**We have painstakingly examined the petition filed by petitioner Banaga before the Comelec. But we found that petitioner did not allege at all that elections were either not held or suspended. Neither did he aver that although there was voting, nobody was elected**. On the contrary, he conceded that an election took place for the office of vice-mayor of Paranaque City, and that private respondent was, in fact, proclaimed elected to that post. While petitioner contends that the election was tainted with widespread anomalies, it must be noted that **to warrant a declaration of failure of election the commission of fraud must be such that it prevented or suspended the holding of an election, or marred fatally the preparation and transmission, custody and canvass of the election returns. These essential facts ought to have been alleged clearly by the petitioner below, but he did not**."

233. Cite instances when Comelec may or may not validly declare failure of elections.

Held: In ***Mitmug v. COMELEC*** (230 SCRA 54 [1994]), petitioner instituted with the COMELEC *an action to declare failure of election* in forty-nine precincts where less than a quarter of the electorate were able to cast their

votes. He also lodged an election protest with the Regional Trial Court disputing the result of the election in all precincts in his municipality. The Comelec denied *motu proprio* and without due notice and hearing the petition to declare failure of election despite petitioner's argument that he has meritorious grounds in support thereto, that is massive disenfranchisement of voters due to terrorism. **On review, we ruled that the Comelec did not gravely abuse its discretion in denying the petition. It was not proven that no actual voting took place. Neither was it shown that even if there was voting, the results thereon would be tantamount to failure to elect. Considering that there is no concurrence of the conditions seeking to declare failure of election, there is no longer need to receive evidence on alleged election irregularities**.

In ***Sardea v. COMELEC*** (225 SCRA 374 [1993]), all election materials and paraphernalia with the municipal board of canvassers were destroyed by the sympathizers of the losing mayoralty candidate. The board then decided to use the copies of election returns furnished to the municipal trial court. Petitioner therein filed a petition to stop the proceedings of the board of canvassers on the
157 ground that it had no authority to use said election returns obtained from the municipal trial court. The petition was denied. Next, he filed a petition assailing the composition of the board of canvassers. Despite that petition, the board of canvassers proclaimed the winning candidates. Later on, petitioner filed a *petition to declare a failure of election* alleging that the attendant facts would justify declaration of such failure. **On review, we ruled that petitioner's first two actions involved pre-proclamation controversies which can no longer be entertained after the winning candidates have been proclaimed. Regarding the petition to declare a failure of election, we held that the destruction and loss of copies of election returns intended for the municipal board of canvassers on account of violence is not one of the causes that would warrant the declaration of failure of election. The reason is that voting actually took place as scheduled and other valid election returns still existed. Moreover, the destruction or loss did not affect the result of the election. We also declared that there is failure of elections only when the will of the electorate has been muted and cannot be ascertained. If the will of the people is determinable, the same must as far as possible be respected**.

X x x

In ***Loong v. COMELEC*** (257 SCRA 1 [1996]), the petition for annulment of election results or to declare failure of elections in Parang, Sulu, on the ground of statistical improbability and massive fraud was granted by the COMELEC. Even before the technical examination of election documents was conducted, the Comelec already observed badges of fraud just by looking at the election results in Parang. Nevertheless, the Comelec dismissed the petition for annulment of election results or to declare failure of elections in the municipalities of Tapul, Panglima Estino, Pata, Siasi and Kalinggalang Calauag. **The COMELEC dismissed the latter action on ground of untimeliness of the petition, despite a finding that the same badges of fraud evident from the results of the election based on the certificates of canvass of votes in Parang are also evident in the election results of the five mentioned municipalities. We ruled that Comelec committed grave abuse of discretion in dismissing the petition as there is no law which provides for a reglementary period to file annulment of elections when there is yet no proclamation. *The election resulted in a failure to elect on account of fraud.* Accordingly, we ordered the Comelec to reinstate the aforesaid petition**. Those circumstances, however, are not present in this case, so that reliance on *Loong* by petitioner Banaga is misplaced. (***Banaga, Jr. v. COMELEC***, 336 SCRA 701, July 31, 2000, En Banc [Quisumbing])

234. Is a petition to declare failure of election different from a petition to annul the election results?

Held: A prayer to declare failure of elections and a prayer to annul the election results x x x are actually **of the same nature**. **Whether an action is for declaration of failure of elections or for annulment of election results, based on allegations of fraud, terrorism, violence or analogous, the Omnibus Election Code denominates them similarly**.
(***Banaga, Jr. v. COMELEC***, 336 SCRA 701, July 31, 2000, En Banc [Quisumbing])

235. What conditions must concur before the Comelec can act on a verified petition seeking to declare a failure of election? Is low turn-out of voters enough basis to grant the petition?

Held: Before COMELEC can act on a verified petition seeking to declare a failure of election, two (2) conditions must concur: *FIRST,* **no voting has taken place in the precinct or precincts on the date fixed by law or, even if there was voting, the election nevertheless results in failure to elect**; and, *SECOND,* **the votes not cast would affect the result of the election**.

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There can be failure of election in a political unit only if the will of the majority has been defiled and cannot be ascertained. But, if it can be determined, it must be accorded respect. After all, there is no provision, in our election laws, which requires that a majority of registered voters must cast their votes. All the law requires is that a winning candidate must be elected by a plurality of valid votes, regardless of the actual number of ballots cast. Thus, even if less than 25% of the electorate in the questioned precincts cast their votes, the same must still be respected. (***Mitmug v. COMELEC***, 230 SCRA 54, Feb. 10, 1994, En Banc [Bellosillo])

236 Distinguish a petition to declare failure of elections from an election protest.

Held: While petitioner may have intended to institute an election protest by praying that said action may also be considered an election protest, in our view, petitioner's action is a petition to declare a failure of elections or annul election results. It is not an election protest.

First, his petition before the Comelec was **instituted pursuant to Section 4 of Republic Act No. 7166 in relation to Section 6 of the *Omnibus Election Code***. **Section 4** of **RA 7166** refers to "***postponement, failure of election and special elections***" while **Section 6** of the ***Omnibus Election Code*** relates to "***failure of election***." It is simply captioned as *"Petition to Declare Failure of Elections and/or For Annulment of Elections."*

Second, an election protest is an ordinary action while a petition to declare a failure of elections is a special action under the 1993 Comelec Rules of Procedure as amended. An election protest is governed by Rule 20 on ordinary actions, while a petition to declare failure of elections is covered by Rule 26 under special actions.

In this case, petitioner filed his petition as a special action and paid the corresponding fee therefor. Thus, the petition was docketed as SPA-98-383. This conforms to petitioner's categorization of his petition as one to declare a failure of elections or annul election results. In contrast, an election protest is assigned a docket number starting with "EPC," meaning election protest case.

Third, petitioner did not comply with the requirements for filing an election protest. He failed to pay the required filing fee and cash deposits for an election protest. Failure to pay filing fees will not vest the election tribunal jurisdiction over the case. Such procedural lapse on the part of a petitioner would clearly warrant the outright dismissal of his action.

Fourth, an *en banc* decision of Comelec in an ordinary action becomes final and executory after thirty (30) days from its promulgation, while an *en banc* decision in a special action becomes final and executory after five (5) days from promulgation, unless restrained by the Supreme Court *(Comelec Rules of Procedure, Rule 18, Section 13 [a], [b]).* **For that reason, a petition cannot be treated as both an election protest and a petition to declare failure of elections**.

Fifth, the allegations in the petition decisively determine its nature. Petitioner alleged that the local elections for the office of vice-
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mayor in Paranaque City held on May 11, 1998, denigrates the true will of the people as it was marred with widespread anomalies on account of vote buying, flying voters and glaring discrepancies in the election returns. He averred that those incidents warrant the declaration of a failure of elections.

Given these circumstances, public respondent cannot be said to have gravely erred in treating petitioner's action as a petition to declare failure of elections or to annul election results. (***Banaga, Jr. v. COMELEC***, 336 SCRA 701, July 31, 2000, En Banc [Quisumbing])

237. What are pre-proclamation cases, and exceptions thereto? What Court has jurisdiction over pre-proclamation cases?

Held: As a *GENERAL RULE*, **candidates and registered political parties involved in an election are allowed to file pre-proclamation cases before the Comelec. Pre-proclamation cases refer to any question pertaining to or affecting the PROCEEDINGS of the BOARD of CANVASSERS which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the PREPARATION, TRANSMISSION, RECEIPT, CUSTODY and APPRECIATION of election returns** (Section 241, ***Omnibus Election Code***). The **Comelec has EXCLUSIVE JURISDICTION over ALL pre-proclamation controversies** (Section 242, *supra*). As an *EXCEPTION*, however, to the general rule, **Section 15** of **Republic Act 7166 prohibits candidates in the presidential, vice-presidential, senatorial and congressional elections from filing pre-proclamation cases**. It states:

> "**Sec. 15**. *Pre-Proclamation Cases Not Allowed in Elections for President, Vice-President, Senator, and Members of the House of Representatives*. - **For purposes of the elections for President, Vice-President, Senator and Member of the House of Representatives, no pre-proclamation cases shall be allowed on matters relating to the preparation, transmission, receipt, custody and appreciation of election returns or the certificates of canvass, as the case may be**. **However, this does not preclude the authority of the appropriate canvassing body *motu proprio* or upon written complaint of an interested person to correct**

manifest errors in the certificate of canvass or election returns before it."

The prohibition **aims to avoid delay in the proclamation of the winner in the election, which delay might result in a vacuum in these sensitive posts**. The law, nonetheless, provides an *EXCEPTION TO THE EXCEPTION*. **The second sentence of Section 15 allows the filing of petitions for correction of *MANIFEST ERRORS* in the certificate of canvass or election returns even in elections for president, vice-president and members of the House of Representatives for the *simple reason* that the correction of manifest error will not prolong the process of canvassing nor delay the proclamation of the winner in the election**. The rule is consistent with and complements the authority of the Comelec under the Constitution to "enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall" *(Section 2[1], Article IX-C, 1987 Constitution)* and its power to "decide, except those involving the right to vote, all questions affecting elections." *(Section 2[3], Article IX-C, supra)*
(***Federico S. Sandoval v. COMELEC***, G.R. No. 133842, Jan. 26, 2000 [Puno])
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238. Who has authority to rule on petitions for correction of manifest error in the certificate of canvass or election returns?

Held: The authority to rule on petitions for correction of manifest error is vested in the *Comelec en banc*. **Section 7** of **Rule 27** of the ***1993 COMELEC Rules of Procedure*** (took effect on February 15, 1993) provides that **if the error is discovered before proclamation, the board of canvassers may *motu proprio*, or upon verified petition by any candidate, political party, organization or coalition of political parties, after due notice and hearing, correct the errors committed. The aggrieved party may appeal the decision of the board to the Commission and said appeal shall be heard and decided by the Commission *en banc*. Section 5, however, of the same rule states that a petition for correction of manifest error may be filed directly with the Commission *en banc* provided that such errors could not have been discovered during the canvassing despite the exercise of due diligence and proclamation of the winning candidate had already been made**.
(***Federico S. Sandoval v. COMELEC***, G.R. No. 133842, Jan. 26, 2000 [Puno])

239. Distinguish Election Protest from Petition for Quo Warranto.

Held: In ***Samad v. COMELEC***, we explained that **a PETITION FOR *QUO WARRANTO* under the *Omnibus Election Code* raises in issue the disloyalty or ineligibility of the winning candidate. It is a proceeding to unseat the respondent from office but not necessarily to install the petitioner in his place**. An ***ELECTION PROTEST* is a contest between the defeated and winning candidates on the ground of frauds or irregularities in the casting and counting of the ballots, or in the preparation of the returns. It raises the question of who actually obtained the plurality of the legal votes and therefore is entitled to hold the office**. (***Dumayas, Jr. v. COMELEC***, G.R. Nos. 141952-53, April 20, 2001, En Banc [Quisumbing])

240. What is a counter-protest? When should it be filed?

Held: Under the ***Comelec Rules of Procedure***, the **protestee may incorporate in his answer a counter-protest. It has been said that a counter-protest is tantamount to a counterclaim in a civil action and**

may be presented as a part of the answer within the time he is required to answer the protest, *i.e.,* within five (5) days upon receipt of the protest, unless a motion for extension is granted, in which case it must be filed before the expiration of the extended time.

As early as in the case of ***Arrieta v. Rodriguez*** (57 Phil. 717), the SC had firmly settled the rule that **the counter-protest must be filed within the period provided by law, otherwise, the forum loses its jurisdiction to entertain the belatedly filed counter-protest**.
(***Kho v. COMELEC***, 279 SCRA 463, Sept. 25, 1997, En Banc [Torres])

241. What is the effect of death of a party in an election protest? Should it warrant the dismissal of the protest?

Held: An election protest involves both the private interests of the rival candidates and the public interest in the final determination of the real choice of the electorate, and for this reason, an election contest necessarily survives the death of the protestant or the protestee. It is true that a public office is personal to the public officer and is not a property transmissible to his heirs upon death, thus, upon the death of the incumbent, no heir of his may be allowed to continue holding his office in his place. **But while the right to a public office is personal and exclusive to the public officer, an election protest is not purely personal and exclusive to the protestant or to the protestee such that after the death of either would oust the court of all authority to continue the protest proceedings. An election contest, after all, involves not merely conflicting private aspirations but is imbued with paramount public interests. The death of the protestant neither constitutes a ground for the dismissal of the contest nor ousts the trial court of its jurisdiction to decide the election contest**.
(***De Castro v. COMELEC***, 267 SCRA 806, Feb. 7, 1997)

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242. Does the fact that one or a few candidates in an election got zero votes in one or a few precincts adequately support a finding that the election returns are statistically improbable?

Held: From experiences in past elections, it is possible for one candidate or even a few candidates to get zero votes in one or a few precincts.

Standing alone and without more, the bare fact that a candidate for public office received zero votes in one or two precincts can not adequately support a finding that the subject election returns are statistically improbable. A no-vote for a particular candidate in election returns is but one strand in the web of circumstantial evidence that those election returns were prepared under "duress, force and intimidation." In the case **of *Una Kibad v. Comelec*** (23 SCRA 588 [1968]), **the SC warned that the doctrine of statistical improbability must be viewed restrictively, the utmost care being taken lest in penalizing the fraudulent and corrupt practices, innocent voters become disenfranchised**, a result which hardly commends itself. Moreover, the doctrine of statistical improbability involves a question of fact and a more prudential approach prohibits its determination *ex parte*.
(***Arthur V. Velayo v. COMELEC***, G.R. No. 135613, March 9, 2000, En Banc [Puno])

243. What Court has jurisdiction over election protests and quo warranto proceedings involving Sangguniang Kabataan (SK) elections?

Held: **Any contest relating to the election of members of the Sangguniang Kabataan (including the chairman) – whether pertaining to their eligibility or the manner of their election – is cognizable by MTCs, MCTCs, and MeTCs**. **Section 6** of ***Comelec Resolution No. 2824*** which provides that **cases involving the eligibility or qualification of SK candidates shall be decided by the City/Municipal Election Officer whose decision shall be final, applies only to proceedings before the election. Before proclamation, cases concerning eligibility of SK officers and members are cognizable by the Election Officer. But after the election and proclamation, the same cases become *quo warranto* cases cognizable by MTCs, MCTCs, and MeTCs. The distinction is based on the principle that it is the proclamation which marks off the jurisdiction of the courts from the jurisdiction of election officials**.

The case of ***Jose M. Mercado v. Board of Election Supervisors*** (243 SCRA 423, G.R. No. 109713, April 6, 1995), in which this Court ruled that election protests involving SK elections are to be determined by the Board of Election Supervisors was decided under the aegis of Comelec Resolution No. 2499, which took effect on August 27, 1992. **However, Comelec Resolution No. 2824, which took effect on February 6, 1996 and was passed pursuant to R.A. 7808, in relation to Arts. 252-253 of the Omnibus Election Code, has since transferred the cognizance of such cases from the Board of Election Supervisors to the MTCs, MCTCs and MeTCs**. Thus, the doctrine of *Mercado* is no longer controlling.
(***Francis King L. Marquez v. COMELEC***, G.R. No. 127318, Aug. 25, 1999, En Banc [Purisima])

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244. What is an autonomous region?

Answer: An *AUTONOMOUS REGION* **consists of provinces, cities, municipalities, and geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics within the framework of the Constitution and the national sovereignty as well as the territorial integrity of the Republic of the Philippines**. (**Sec. 15, Art. X, *1987 Constitution***)

245. What are administrative regions? Are they considered territorial and political subdivisions of the State? Who has the power to create administrative regions?

Held: *ADMINISTRATIVE REGIONS* **are mere groupings of contiguous provinces for administrative purposes. They are not territorial and political subdivisions like provinces, cities, municipalities and barangays. While the power to merge administrative regions is not expressly provided for in the Constitution, it is a power which has traditionally been lodged with the President to facilitate the exercise of the power of general supervision over local governments**. (***Abbas v. COMELEC***, 179 SCRA 287, Nov. 10, 1989, En Banc [Cortes])

246. Is there a conflict between the power of the President to merge administrative regions with the constitutional provision requiring a plebiscite in the merger of local government units?

Held: **There is no conflict between the power of the President to merge administrative regions with the constitutional provision requiring a plebiscite in the merger of local government units because the requirement of a plebiscite in a merger expressly applies only to provinces, cities, municipalities or barangays, not to administrative regions**. (***Abbas v. COMELEC***, 179 SCRA 287, Nov. 10, 1989, En Banc [Cortes])

247. What is the Metropolitan Manila Development Authority (MMDA)? Is it a local government unit or public corporation endowed with legislative power? May it validly exercise police power? How is it distinguished from the former Metro Manila Council (MMC) created under PD No. 824?

Held: *METROPOLITAN or METRO MANILA is a* ***body composed of several local government units – i.e.,*** **twelve (12) cities and five (5) municipalities x x x.** ***With the passage of Republic Act No. 7924 in 1995, Metropolitan Manila was declared as a "special development and administrative region" and the Administration of "metrowide" basic services affecting the region placed under "a development authority" referred to as the MMDA****.*

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The *governing board of the MMDA is the Metro Manila Council.* The Council is composed of the mayors of the component 12 cities and 5 municipalities, the president of the Metro Manila Vice-Mayors' League and the president of the Metro Manila Councilors' League. The Council is headed by a Chairman who is appointed by the President and vested with the rank of cabinet member. As the policy-making body of the MMDA, the Metro Manila Council approves metro-wide plans, programs and projects, and issues the necessary rules and regulations for the implementation of said plans; it approves the annual budget of the MMDA and promulgates the rules and regulations for the delivery of basic services, collection of service and regulatory fees, fines and penalties. X x x

Clearly, the scope of the MMDA's function is limited to the delivery of the seven (7) basic services. One of these is transport and traffic management x x x.

It will be noted that the powers of the MMDA are limited to the following acts: **formulation, coordination, regulation, implementation, preparation, management, monitoring, setting of policies, installation of a system and administration.** ***There is no syllable in R.A. No. 7924 that grants the MMDA police power, let alone legislative power.*** **Even the Metro Manila Council has not been delegated any legislative power. Unlike the legislative bodies of the local government units, there is no provision in R.A. No. 7924 that empowers the MMDA or its Council "to enact ordinances, approve resolutions and appropriate funds for the general welfare" of the inhabitants of Metro Manila. The MMDA is x x x a "development authority." It is an agency created for the purpose of laying down policies and coordinating with the various national government agencies, people's organizations, non-governmental organizations and the private sector for the efficient and expeditious delivery of basic services in the vast metropolitan area.** ***All its functions are administrative in nature*** **and these are actually summed up in the charter itself** x x x.

Secondly, the MMDA is not the same entity as the MMC in ***Sangalang****. Although the MMC is the forerunner of the present MMDA, an examination of*

Presidential Decree No. 824, the charter of the MMC, shows that the latter possessed greater powers which were not bestowed on the present MMDA.

Metropolitan Manila was first created in 1975 by Presidential Decree No. 824. It comprised the Greater Manila Area composed of the contiguous four (4) cities of Manila, Quezon, Pasay and Caloocan, and the thirteen (13) municipalities x x x. Metropolitan Manila was created as a response to the finding that the rapid growth of population and the increase of social and economic requirements in these areas demand a call for simultaneous and unified development; that the public services rendered by the respective local governments could be administered more efficiently and economically if integrated under a system of central planning; and this coordination, "especially in the maintenance of peace and order and the eradication of social and economic ills that fanned the flames of rebellion and discontent [were] part of the reform measures under Martial Law essential to the safety and security of the State."

*Metropolitan Manila was established as a "**public corporation**"* x x x.

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***The administration of Metropolitan Manila was placed under the Metro Manila Commission (MMC)** x x x.*

*The MMC was the "**central government**" of Metro Manila* for the purpose of establishing and administering programs providing services common to the area. As a "central government" it had the power to levy and collect taxes and special assessments, the power to charge and collect fees; the power to appropriate money for its operation, and at the same time, review appropriations for the city and municipal units within its jurisdiction. It was bestowed the power to enact or approve ordinances, resolutions and fix penalties for violation of such ordinances and resolutions. It also had the power to review, amend, revise or repeal all ordinances, resolutions and acts of any of the x x x cities and x x x municipalities comprising Metro Manila.

X x x

***The creation of the MMC also carried with it the creation of the Sangguniang Bayan.* This was composed of the members of the component city and municipal councils, barangay captains chosen by the MMC and sectoral representatives appointed by the President. The *Sangguniang Bayan* had the power to recommend to the MMC the adoption of ordinances, resolutions or measures. *It was the MMC itself, however, that possessed legislative powers.* All ordinances, resolutions and measures recommended by the *Sangguniang Bayan* were subject to the MMC's approval. Moreover, the power to impose taxes and other levies, the power to appropriate money, and the power to pass ordinances or resolutions with penal sanctions were vested exclusively in the MMC**.

***Thus, Metropolitan Manila had a "central government," i.e., the MMC which fully possessed legislative and police powers. Whatever legislative powers the component cities and municipalities had were all subject to review and approval by the MMC**.*

After President Corazon Aquino assumed power, there was a clamor to restore the autonomy of the local government units in Metro Manila. Hence, Sections 1 and 2 of Article X of the 1987 Constitution x x x. The Constitution, however, recognized the necessity of creating metropolitan regions not only in the existing National Capital Region but also in potential equivalents in the Visayas and Mindanao. X x x

The Constitution itself expressly provides that Congress may, by law, create "special metropolitan political subdivisions" which shall be subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected; the jurisdiction of this subdivision shall be limited to basic services requiring coordination; and the cities and municipalities comprising this subdivision shall retain their basic autonomy and their own local executive and legislative assemblies *(Section 11, Article X, 1987 Constitution).* Pending enactment of this law, the Transitory Provisions of the Constitution gave the President of the Philippines the power to constitute the Metropolitan Authority x x x.

In 1990, President Aquino issued Executive Order No. 392 and constituted the Metropolitan Manila Authority (MMA). The powers and functions of the MMC were devolved to the MMA. It ought to be stressed, however, that not all powers and functions of the MMC were passed to the MMA. **The MMA's power was limited to the "delivery of basic urban services requiring coordination in Metropolitan Manila." The MMA's governing body, the Metropolitan Manila Council, although composed of the mayors of the component cities and municipalities, was merely given the power of:** (1) **formulation of policies on the delivery of basic services requiring coordination and consolidation**; and (2) **promulgation of resolutions and other issuances, approval of a code of basic services and the exercise of its rule-making power**."

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Under the 1987 Constitution, the local government units became primarily responsible for the governance of their respective political subdivisions. **The *MMA's jurisdiction was limited* to addressing common problems involving basic services that transcended local boundaries. *It did not have legislative power.* Its power was merely to provide the local government units technical assistance in the preparation of local development plans. Any semblance of legislative power it had was confined to a "review [of] legislation proposed by the local legislative assemblies to ensure consistency among local governments and with the comprehensive development plan of Metro Manila," and to "advise the local governments accordingly**."

When R.A. No. 7924 took effect, Metropolitan Manila became a "special development and administrative region" and the MMDA a "special development authority" whose functions were "without prejudice to the autonomy of the affected local government units." The character of the MMDA was clearly defined in the legislative debates enacting its charter*.*

X x x

Clearly, the MMDA is not a political unit of government. **The power delegated to the MMDA is that given to the Metro Manila Council to promulgate administrative rules and regulations in the implementation of the MMDA's functions. *There is no grant of authority to enact ordinances and regulations for the general welfare of the inhabitants of the metropolis.* This was explicitly stated in the last Committee deliberations prior to the bill's presentation to Congress**. X x x

It is thus beyond doubt that the MMDA is not a local government unit or a public corporation endowed with legislative power. **It is not even a "special metropolitan political subdivision" as contemplated in Section 11, Article X of the Constitution. The creation of a "special metropolitan political subdivision" requires the approval by a majority of the votes cast in a plebiscite in the political units directly affected.**

R.A. No. 7924 was not submitted to the inhabitants of Metro Manila in a plebiscite. The Chairman of the MMDA is not an official elected by the people, but appointed by the President with the rank and privileges of a cabinet member. In fact, part of his function is to perform such other duties as may be assigned to him by the President, whereas in local government units, the President merely exercises supervisory authority. This emphasizes the *administrative character* of the MMDA.

Clearly then, the MMC under P.D. No. 824 is not the same entity as the MMDA under R.A. No. 7924. Unlike the MMC, the MMDA has no power to enact ordinances for the welfare of the community. It is the local government units, acting through their respective legislative councils that possess legislative power and police power. In the case at bar, the Sangguniang Panlungsod of Makati City did not pass any ordinance or resolution ordering the opening of Neptune Street, hence, its proposed opening by petitioner MMDA is illegal x x x. (***MMDA v. Bel-Air Village Association, Inc.***, 328 SCRA 836, March 27, 2000, 1st Div. [Puno])

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248. Discuss the concept of local autonomy.

Held: *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 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**.

Decentralization of power, on the other hand, **involves an abdication of political power in favor of local government units declared autonomous. In that case, the autonomous government is free to chart its own destiny and shape its own future with minimum intervention from central authorities**. *According to a constitutional author, decentralization of power amounts to "self-immolation," since in that event, the autonomous government becomes accountable not to the central authorities but to its constituency*.
(***Limbona v. Mangelin***, 170 SCRA 786, Feb. 28, 1989, En Banc [Sarmiento])

249. What kind of local autonomy is contemplated by the Constitution? What about the kind of autonomy contemplated insofar as the autonomous regions are concerned?

Held: 1. The principle of local autonomy under the 1987 Constitution simply means "**decentralization**." **It does not make local governments sovereign within the state or an "imperium in imperio." Remaining to be an intra sovereign subdivision of one sovereign nation, but not intended, however, to be an *imperium in imperio,"* the local government unit is autonomous in the sense that it is given more powers, authority, responsibilities and resources**. Power which used to be highly centralized in Manila, is thereby deconcentrated, enabling especially the peripheral local government units to develop not only at their own pace and

discretion but also with their own resources and assets. (***Alvarez v. Guingona, Jr.***, 252 SCRA 695, Jan. 31, 1996, En Banc [Hermosisima])

2. **The constitutional guarantee of local autonomy in the Constitution refers to the *ADMINISTRATIVE* AUTONOMY of local government units or, cast in more technical language, the decentralization of government authority**.

On the other hand, the creation of autonomous regions in Muslim Mindanao and the Cordilleras, which is peculiar to the 1987 Constitution, contemplates the grant of *POLITICAL* autonomy and not just administrative autonomy to these regions. Thus, the provision in the Constitution for an autonomous regional government with a basic structure consisting of an executive department and a legislative assembly and special courts with personal, family and property law jurisdiction in each of the autonomous regions.
(***Cordillera Broad Coalition v. COA***, 181 SCRA 495, Jan. 29, 1990, En Banc [Cortes])

250. Whether or not the Internal Revenue allotments (IRAs) are to be included in the computation of the average annual income of a municipality for purposes of its conversion into an independent component city?

Held: YES. **The IRAs are items of income because they form part of the gross accretion of the funds of the local government unit. The IRAs regularly and automatically accrue to the local treasury without need of any further action on the part of the local government unit. They thus constitute income which the local government can invariably rely upon as the source of much needed funds**.

X x x

[T]o reiterate, IRAs are a regular, recurring item of income; nil is there a basis, too, to classify the same as a special fund or transfer, since IRAs have a technical definition and meaning all its own as used in the Local Government Code that unequivocally makes it distinct from special funds or transfers referred to when the Code speaks of "funding support from the national government, its instrumentalities and government-owned or controlled corporations."

Thus, Department of Finance Order No. 35-93 correctly encapsulizes the full import of the above disquisition when it defined ANNUAL INCOME to be "revenues and receipts realized by provinces, cities and municipalities from regular sources of the Local General Fund *including the internal revenue allotment and other shares* provided for in Sections 284, 290 and 291 of the Code, but exclusive of non-recurring receipts, such as other national aids, grants, financial assistance, loan proceeds, sales of fixed assets, and similar others". Such order, constituting executive or contemporaneous construction of a statute by an administrative agency charged with the task of interpreting and applying the same, is entitled to full respect and should be accorded great weight by the courts, unless such construction is clearly shown to be in sharp conflict with the Constitution, the governing statute, or other laws. (***Alvarez v. Guingona, Jr.***, 252 SCRA 695, Jan. 31, 1996, En Banc [Hermosisima, Jr., J.])

251. State the importance of drawing with precise strokes the territorial boundaries of a local government unit.

Held: The importance of drawing with precise strokes the territorial boundaries of a local unit of government cannot be overemphasized. **The**

boundaries must be clear for they define the limits of the territorial jurisdiction of a local government unit. It can legitimately exercise powers of government only within the limits of its territorial jurisdiction. Beyond these limits, its acts are *ultra vires.* Needless to state, any uncertainty in the boundaries of local government units will sow costly conflicts in the exercise of governmental powers which ultimately will prejudice the people's welfare. This is the evil sought to be avoided by the Local Government Code in requiring that the land area of a local government unit must be spelled out in metes and bounds, with technical descriptions. (***Mariano, Jr. v. COMELEC***, 242 SCRA 211, 217-219, Mar. 7, 1995, En Banc [Puno])

252. R.A. 7854 was enacted converting the Municipality of Makati into a highly urbanized city. Section 2 thereof did not provide for a cadastral type of description of its boundary but merely provided that the boundary of the new city of Makati shall be the boundary of the present municipality of Makati. Petitioners contended in a petition brought the SC that R.A. 7854 was defective because it did not comply with the requirement in the Local Government Code that "the territorial jurisdiction of newly created or converted cities should be described by metes and bounds, with technical descriptions." Note that at the time the law was enacted, there was a pending boundary dispute between Makati and one of its neighbors, Taguig, before the regular court. Should the contention be upheld?

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Held: Given the facts of the cases at bench, we cannot perceive how this evil (uncertainty in the boundaries of local government units will sow costly conflicts in the exercise of government powers which ultimately will prejudice the people's welfare) can be brought about by the description made in Section 2 of R.A. No. 7854. **Petitioners have not demonstrated that the delineation of the land area of the proposed City of Makati will cause confusion as to its boundaries. We note that said delineation did not change even by an inch the land area previously covered by Makati as a municipality. Section 2 did not add, subtract, divide, or multiply the established land area of Makati. In language that cannot be any clearer, Section 2 stated that the city's land area "shall comprise the *present* territory of the municipality**."

The deliberations of Congress will reveal that there is a legitimate reason why the land area of the proposed City of Makati was not defined by metes and bounds, with technical descriptions. At the time of the consideration of R.A. No. 7854, the territorial dispute between the municipalities of Makati and Taguig over Fort Bonifacio was under court litigation. Out of a becoming sense of respect to a co-equal department of government, the legislators felt that the dispute should be left to the courts to decide. They did not want to foreclose the dispute by making a legislative finding of fact which could decide the issue. This would have ensued if they defined the land area of the proposed city by its exact metes and bounds, with technical descriptions. We take judicial notice of the fact that Congress has also refrained from using the metes and bounds description of the land area of other local government units with unsettled boundary disputes.

We hold that the existence of a boundary dispute does not *per se* present an insurmountable difficulty which will prevent Congress from defining with reasonable certitude the territorial jurisdiction of a local government unit. In the cases at bench, Congress maintained the existing boundaries of the proposed City of Makati but as an act of fairness, made them subject to the ultimate resolution by the courts. Considering these peculiar circumstances, we are not prepared to hold that

Section 2 of R.A. No. 7854 is unconstitutional. We sustain the submission of the Solicitor General in this regard, *viz:*

> "Going now to Sections 7 and 450 of the Local Government Code, it is beyond cavil that the requirement started therein, *viz:* 'the territorial jurisdiction of newly created or converted cities should be described by metes and bounds, with technical descriptions" – was made in order to provide a means by which the area of said cities may be reasonably ascertained. In other words, **the requirement on metes and bounds was meant merely as a tool in the establishment of local government units. It is not an end in itself. *Ergo,* so long as the territorial jurisdiction of a city may be reasonably ascertained, i.e., by referring to common boundaries with neighboring municipalities, as in this case, then, it may be concluded that the legislative intent behind the law has been sufficiently served**.
>
> Certainly, Congress did not intend that laws creating new cities must contain therein detailed technical descriptions similar to those appearing in Torrens titles, as petitioners seem to imply. To require such description in the law as a condition *sine qua non* for its validity would be to defeat the very purpose which the Local Government Code seeks to serve. The manifest intent of the Code is to empower local government units and to give them their rightful due. It seeks to make local governments more responsive to the needs of their constituents while at the same time serving as a vital cog in national development. To invalidate R.A. No. 7854 on the mere ground that no cadastral type of description was used in the law would serve the letter but defeat the spirit of the Code. It then becomes a case of the master serving the slave, instead of the other way around. This could not be the intendment of the law." X x x

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(***Mariano, Jr. v. COMELEC***, 242 SCRA 211, 217-219, Mar. 7, 1995, En Banc [Puno])

253. What is the meaning of "DEVOLUTION"?

Answer: The term "*DEVOLUTION*" refers to the **act by which the National government confers power and authority upon the various local government units to perform specific functions and responsibilities**. (**Sec. 17[e], 2nd par., *Local Government Code***)

254. Have the powers of the Land Transportation Office (LTO) to register, tricycles in particular, as well as to issue licenses for the driving thereof, been devolved likewise to local government units?

Held: Only the powers of the Land Transportation Franchising Regulatory Board (LTFRB) to regulate the operation of tricycles-for-hire and to grant franchises for the operation thereof have been devolved to local governments under the Local Government Code. Clearly unaffected by the Local Government Code are the powers of the LTO under R.A. No. 4136 requiring the registration of all kinds of motor vehicles "used or operated on or upon any public highway" in the country. This can be gleaned from the explicit language of the statute itself, as well as the corresponding guidelines issued by the DOTC. In fact, even the power of LGUs to regulate the operation of tricycles and to grant franchises for the operation thereof is still subject to the guidelines prescribed by the DOTC. (***LTO v. City of Butuan***, G.R. No. 131512, Jan. 20, 2000, 3rd Div. [Vitug])

255. Distinguish the power to grant a license or permit to do business and the power to issue a license to engage in the practice of a particular profession.

Held: 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**. (1) **The first is usually granted by the local authorities and the second is issued by the Board or Commission tasked to regulate the particular profession**. (2) **A business permit authorizes the person, natural or otherwise, to engage in business or some form of commercial activity. A professional license, on the other hand, is the grant of authority to a natural person to engage in the practice or exercise of his or her profession**.

In the case at bar, what is sought by petitioner (Acebedo Optical Company, Inc.) from respondent City Mayor is a permit to engage in the business of running an optical shop. It does not purport to seek a license to engage in the practice of optometry as a corporate body or entity, although it does have in its employ, persons who are duly licensed to practice optometry by the Board of Examiners in Optometry.

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X x x

In the present case, the objective of the imposition of subject conditions on petitioner's business permit could be attained by requiring the optometrists in petitioner's employ to produce a valid certificate of registration as optometrists, from the Board of Examiners in Optometry. **A business permit is issued primarily to regulate the conduct of business and the City Mayor cannot, through the issuance of such permit, regulate the practice of a profession, like that of optometry. Such a function is within the exclusive domain of the administrative agency specifically empowered by law to supervise the profession, in this case the Professional Regulations Commission and the Board of Examiners in Optometry**. (***Acebedo Optical Company, Inc. v. CA***, 329 SCRA 314, March 31, 2000, En Banc [Purisima])

256. May a local government unit validly authorize an expropriation of private property through a mere resolution of its lawmaking body?

Held: The Local Government Code expressly and clearly requires an ORDINANCE or a LOCAL LAW for that purpose. A resolution that merely expresses the sentiment or opinion of the Municipal Council will not suffice. The case of ***Province of Camarines Sur v. Court of Appeals*** which held that a mere resolution may suffice to support the exercise of eminent domain by a local government unit is **not in point because the applicable law at that time was B.P. 337, the previous Local Government Code, which had provided that a mere resolution would enable an LGU to exercise eminent domain. In contrast, R.A. 7160, the present Local Government Code, explicitly required an ordinance for this purpose**. (***Municipality of Paranaque v. V.M. Realty Corp.***, 292 SCRA 678, July 20, 1998 [Panganiban])

257. What are the requisites before a Local Government Unit can validly exercise the power of eminent domain?

Held:

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**, as required under Section 9, Article III of the Constitution, 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**.

(***Municipality of Paranaque v. V.M. Realty Corp.***, 292 SCRA 678, July 20, 1998 [Panganiban])

258. May the Sangguniang Panlalawigan validly disapprove a resolution or ordinance of a municipality calling for the expropriation of private property to be made site of a Farmers Center and Other Government Sports Facilities on the ground that said "expropriation is unnecessary considering that there are still available lots of the municipality for the establishment of a government center"?

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Held: Under the Local Government Code, the Sangguniang Panlalawigan is granted the power to declare a municipal resolution invalid on the sole ground that it is beyond the power of the Sangguniang Bayan or Mayor to issue. As held in ***Velazco v. Blas*** (G.R. No. L-30456, July 30, 1982, 115 SCRA 540, 544-545), "**The only ground upon which a provincial board may declare any municipal resolution, ordinance or order invalid is when such resolution, ordinance, or order is 'beyond the powers conferred upon the council or president making the same**.' A strictly legal question is before the provincial board in its consideration of a municipal resolution, ordinance, or order. **The provincial board's disapproval of any resolution, ordinance, or order must be premised specifically upon the fact that such resolution, ordinance, or order is outside the scope of the legal powers conferred by law. If a provincial board passes these limits, it usurps the legislative functions of the municipal council or president**. Such has been the consistent course of executive authority." (***Moday v. CA***, 268 SCRA 586, Feb. 20, 1997)

259. Under Section 8, Article X of the Constitution, "[T]he term of office of elective local officials x x x shall be three years and no such official shall serve for more than three consecutive terms." How is this term limit for elective local officials to be interpreted?

Held: The term limit 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 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**. (***Borja, Jr. v. COMELEC and Capco, Jr.***, G.R. No. 133495, Sept. 3, 1998, 295 SCRA 157, En Banc [Mendoza])

Case No. 1. *Suppose A is a vice-mayor who becomes mayor by reason of the death of the incumbent. Six months before the next election, he resigns and is twice elected thereafter. Can he run again for mayor in the next election?*

Answer: **Yes, because although he has already first served as mayor by succession and subsequently resigned from office before the full term expired, he has not actually served three full terms in all for the purpose of applying the term limit. Under Art. X, Sec. 8, voluntary renunciation of the office is not considered as an interruption in the continuity of his service for the full term only if the term is one "for**

which he was elected." Since A is only completing the service of the term for which the deceased and not he was elected, A cannot be considered to have completed one term. His resignation constitutes an interruption of the full term.

Case No. 2. *Suppose B is elected Mayor and, during his first term, he is twice suspended for misconduct for a total of 1 year. If he is twice reelected after that, can he run for one more term in the next election?*

Answer: **Yes, because he has served only two full terms successively.**

In both cases, the mayor is entitled to run for reelection because the two conditions for the application of the disqualification provisions have not concurred, namely, that the local official concerned has been elected three consecutive times and that he has fully served three consecutive terms. In the first case, even if the local official is considered to have served three full terms notwithstanding his resignation before the end of the first term, the fact remains that he has not been elected three times. In the second case, the local official has been elected three consecutive times, but he has not fully *served* three consecutive terms.

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Case No. 3. *The case of vice-mayor C who becomes mayor by succession involves a total failure of the two conditions to concur for the purpose of applying Art. X, Sec. 8. Suppose he is twice elected after that term, is he qualified to run again in the next election?*

Answer: Yes, because he was not elected to the office of mayor in the first term but simply found himself thrust into it by operation of law. Neither had he served the full term because he only continued the service, interrupted by the death, of the deceased mayor. (***Borja, Jr. v. COMELEC and Capco, Jr.***, G.R. No. 133495, Sept. 3, 1998, 295 SCRA 157, En Banc [Mendoza])

260. What are the policies embodied in the constitutional provision barring elective local officials, with the exception of barangay officials, from serving more than three consecutive terms?

Held: To prevent the establishment of political dynasties is not the only policy embodied in the constitutional provision in question (barring elective local officials, with the exception of barangay officials, from serving more than three consecutive terms). The other policy is that of enhancing the freedom of choice of the people. To consider, therefore, only stay in office regardless of how the official concerned came to that office – whether by election or by succession by operation of law – would be to disregard one of the purposes of the constitutional provision in question. (***Borja, Jr. v. COMELEC and Capco, Jr.***, G.R. No. 133495, Sept. 3, 1998, 295 SCRA 157, En Banc [Mendoza])

261. Lonzanida was previously elected and served two consecutive terms as mayor of San Antonio, Zambales prior to the May 1995 mayoral elections. In the May 1995 elections he again ran for mayor of San Antonio, Zambales and was proclaimed winner. He assumed office and discharged the rights and duties of mayor until March 1998 when he was ordered to vacate the post by reason of the COMELEC decision on the election protest against him which declared his opponent Juan Alvez the duly elected mayor. Alvez served the remaining portion of the 1995-1998 mayoral term. Is Lonzanida still qualified to run for mayor of San Antonio, Zambales in the May 1998 local elections?

Held: The two requisites for the application of the three term rule were absent. ***First***, **Lonzanida cannot be considered as having been duly elected to the post in the May 1995 elections**, and second, **he did not fully serve the 1995-1998 mayoral term by reason of involuntary relinquishment of office**. **After a re-appreciation and revision of the contested ballots the COMELEC itself declared by final judgment that Lonzanida lost in the May 1995 mayoral elections and his previous proclamation as winner was declared null and void. His assumption of office as mayor cannot be deemed to have been by reason of a valid election but by reason of a void proclamation. It has been repeatedly held by the SC that a proclamation subsequently declared void is no proclamation at all and while a proclaimed candidate may assume office on the strength of the proclamation of the Board of Canvassers he is only a presumptive winner who assumes office subject to the final outcome of the election protest. Lonzanida did not serve a term as mayor of San Antonio, Zambales from May 1995 to March 1998 because he was not duly elected to the post**; he merely assumed office as presumptive winner, which presumption was later overturned by the COMELEC when it decided with finality that Lonzanida lost in the May 1995 mayoral elections.

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Second, **Lonzanida cannot be deemed to have served the May 1995 to 1998 term because he was ordered to vacate his post before the expiration of the term. His opponents' contention that Lonzanida should be deemed to have served one full term from May 1995-1998 because he served the greater portion of that term has no legal basis to support it; it disregards the second requisite for the application of the disqualification, *i.e.,* that he has fully served three consecutive terms**. The second sentence of the constitutional provision under scrutiny states, "**Voluntary renunciation of office *for any length of time* shall not be considered as an interruption in the continuity of service for the full term for which he was elected**." The clear intent of the framers of the Constitution to bar any attempt to circumvent the three-term limit by a voluntary renunciation of office and at the same time respect the people's choice and grant their elected official full service of a term is evident in this provision. Voluntary renunciation of a term does not cancel the renounced term in the computation of the three term limit; conversely, involuntary severance from office for any length of time short of the full term provided by law amounts to an interruption of continuity of service. Lonzanida vacated his post a few months before the next mayoral elections, not by voluntary renunciation but in compliance with the legal process of writ of execution issued by the COMELEC to that effect. **Such involuntary severance from office is an interruption of continuity of service and thus, Lonzanida did not fully serve the 1995-1998 mayoral term**.

In sum, **Lonzanida was *not* the duly elected mayor and that he did *not* hold office for the full term; hence, his assumption of office from May 1995 to March 1998 cannot be counted as a term for purposes of computing the three term limit**. (***Lonzanida v. COMELEC***, 311 SCRA 602, July 28, 1999, En Banc [Gonzaga-Reyes])

262. May the President validly withhold a portion of the internal revenue allotments of Local Government Units legally due them by administrative fiat?

Held: The Constitution vests the President with the power of supervision, not control, over local government units (LGUs). Such power enables him to see to it that LGUs and their officials execute their tasks in accordance with law. **While he may issue advisories and seek their cooperation in solving economic difficulties, he cannot prevent them**

from performing their tasks and using available resources to achieve their goals. He may not withhold or alter any authority or power given them by the law. Thus, the withholding of a portion of internal revenue allotments legally due them cannot be directed by administrative fiat.

X x x

Section 4 of ***AO 372*** **cannot** x x x **be upheld**. **A basic feature of local fiscal autonomy is the *automatic* release of the shares of LGUs in the National internal revenue. This is mandated by no less than the Constitution. The Local Government Code *(Sec. 286[a])* specifies further that the release shall be made directly to the LGU concerned within five (5) days after every quarter of the year and *"shall not be subject to any lien or holdback that may be imposed by the national government for whatever purpose."* As a rule, the term "shall" is a word of command that must be given a compulsory meaning." The provision is, therefore, imperative**.

174 Section 4 of AO 372, however, orders the withholding, effective January 1, 1998, of 10 percent of the LGUs' IRA "pending the assessment and evaluation by the Development Budget Coordinating Committee of the emerging fiscal situation" in the country. **Such withholding clearly contravenes the Constitution and the law. Although, temporary, it is equivalent to a holdback, which means "something held back or withheld**. Often temporarily." **Hence, the "temporary" nature of the retention by the national government does not matter. Any retention is prohibited**.

In sum, while Section 1 of AO 372 may be upheld as an advisory effected in times of national crisis, Section 4 thereof has no color of validity at all. The latter provision effectively encroaches on the fiscal autonomy of local governments. Concededly, the President was well-intentioned in issuing his Order to withhold the LGUs' IRA, but the rule of law requires that even the best intentions must be carried out within the parameters of the Constitution and the law. Verily, laudable purposes must be carried out by legal methods. (***Pimentel, Jr. v. Aguirre***, G.R. No. 132988, 336 SCRA 201, July 19, 2000, En Banc [Panganiban])

263. What is meant by fiscal autonomy of Local Governments? Does it rule out in any manner national government intervention by way of supervision in order to ensure that local programs are consistent with national goals?

Held: Under existing law, local government units, in addition to having administrative autonomy in the exercise of their functions, enjoy fiscal autonomy as well. Fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities. It extends to the preparation of their budgets, and local officials in turn have to work within the constraints thereof. They are not formulated at the national level and imposed on local governments, whether they are relevant to local needs and resources or not. Hence, the necessity of a balancing of viewpoints and the harmonization of proposals from both local and national officials, who in any case are partners in the attainment of national goals.

Local fiscal autonomy does not, however, rule out any manner of national government intervention by way of supervision, in order to ensure that local programs, fiscal and otherwise, are consistent with national goals. Significantly, the President, by constitutional fiat, is the head of

the economic and planning agency of the government *(Section 9, Article XII of the Constitution),* primarily responsible for formulating and implementing continuing, coordinated and integrated social and economic policies, plans and programs *(Section 3, Chapter 1, Subtitle C, Title II, Book V, EO 292 [Administrative Code of 1987])* for the entire country. **However, under the Constitution, the formulation and the implementation of such policies and programs are subject to "consultations with the appropriate public agencies, various private sectors, and local government units." The President cannot do so unilaterally**. (***Pimentel, Jr. v. Aguirre***, 336 SCRA 201, July 19, 2000, En Banc [Panganiban])

264. What are the requisites before the President may interfere in local fiscal matters?

Held: x x x [T]he ***Local Government Code*** provides (Sec. 284. See also Art. 379 of the *Rules and Regulations Implementing the Local Government Code of 1991*):

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> "x x x **[I]n the event the national government incurs an unmanaged public sector deficit**, the President of the Philippines is hereby authorized, **upon the recommendation of [the] Secretary of Finance, Secretary of the Interior and Local Government and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the *liga***, to make the necessary adjustments in the internal revenue allotment of local government units **but in no case shall the allotment be less than thirty percent (30%) of the collection of national internal revenue taxes of the third fiscal year preceding the current fiscal year** x x x"

There are therefore several requisites before the President may interfere in local fiscal matters: (1) an **unmanaged public sector deficit of the national government**; (2) **consultations with the presiding officers of the Senate and the House of Representatives *and the presidents of the various local leagues*;** and (3) **the corresponding recommendation of the secretaries of the Department of Finance, Interior and Local Government, and Budget and Management**. Furthermore, **any adjustment in the allotment shall in no case be less than thirty percent (30%) of the collection of national internal revenue taxes of the third fiscal year preceding the current one**. (***Pimentel, Jr. v. Aguirre***, 336 SCRA 201, July 19, 2000, En Banc [Panganiban])

265. Distinguish an ordinance from a mere resolution.

Held: A municipal ordinance is different from a resolution. An *ORDINANCE* is a **law**, but a *RESOLUTION* is **merely a declaration of the sentiment or opinion of a lawmaking body on a specific matter**. An *ORDINANCE* possesses a **general and permanent character**, but a *RESOLUTION* is **temporary in nature**. Additionally, the two are enacted differently – **a third reading is necessary for an ordinance, but not for a resolution, unless decided otherwise by a majority of all the Sanggunian members**. (***Municipality of Paranaque v. V.M. Realty Corporation***, 292 SCRA 678, July 20, 1998 [Panganiban])

266. On its first regular session, may the Sanggunian transact business other than the matter of adopting or updating its existing rules or procedure?

Held: We cannot infer the mandate of the (Local Government) Code 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 first regular session** x x x **the *sanggunian* concerned shall adopt or update its existing rules or procedures**." **There is nothing in the language thereof that restricts the matters to be taken up during the first regular session merely to the adoption or updating of the house rules. If it were the intent of Congress to limit the business of the local council to such matters, then it would have done so in clear and unequivocal terms. But as it is, there is no such intent**.

Moreover, adopting or updating of house rules would necessarily entail work beyond the day of the first regular session. Does this mean that prior thereto, the local council's hands were tied and could not act on any other matter? That would certainly be absurd for it would result in a hiatus and a paralysis in the local legislature's work which could not have been intended by the law. (***Malonzo v. Zamora***, 311 SCRA 224, July 27, 1999, En Banc [Romero])

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267. May an incumbent Vice-Governor, while concurrently the Acting Governor, continue to preside over the sessions of the Sangguniang Panlalawigan (SP)? If no, who may preside in the meantime?

Held: **Being the acting governor, the Vice-governor cannot continue to simultaneously exercise the duties of the latter office, since the nature of the duties of the Provincial Governor calls for a full-time occupant to discharge them**. Such is not only consistent with but also appears to be the clear rationale of the new (Local Government) Code wherein the policy of performing dual functions in both offices has already been abandoned. **To repeat, the creation of a temporary vacancy in the office of the Governor creates a corresponding vacancy in the office of the Vice-Governor whenever the latter acts as Governor by virtue of such temporary vacancy. This event constitutes an "inability" on the part of the regular presiding officer (Vice-Governor) to preside during the SP sessions, which thus calls for the operation of the remedy set in Article 49(b) of the Local Government Code – concerning the election of a temporary presiding officer**. The continuity of the Acting Governor's (Vice-Governor) powers as presiding officer of the SP is suspended so long as he is in such capacity. Under **Section 49(b)**, "**in the event of the inability of the regular presiding officer to preside at the sanggunian session, the members present and constituting a quorum shall elect from among themselves a temporary presiding officer**." (***Gamboa, Jr. v. Aguirre, Jr.***, G.R. No. 134213, July 20, 1999, En Banc [Ynares-Santiago])

268. What is recall?

Held: *RECALL* is a **mode of removal of a public officer by the people before the end of his term of office. The people's prerogative to remove a public officer 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**. Not undeservedly, it is frequently described as a fundamental right of the people in a representative democracy. (***Garcia v. COMELEC***, 227 SCRA 108, Oct. 5, 1993, En Banc [Puno])

269. What is the ground for recall? Is this subject to judicial inquiry?

Held: Former Senator Aquilino Pimentel, Jr., a major author of the subject law in his book *The Local Government Code of 1991: The Key to National Development*, stressed the same reason why the substantive content of a vote of lack of confidence is beyond any inquiry, thus:

> "**There is only one ground for recall of local government officials: loss of confidence. This means that the people may petition or the Preparatory Recall Assembly may resolve to recall any local elective official without specifying any particular ground except loss of confidence. There is no need for them to bring up any charge of abuse or corruption against the local elective officials who are subject of any recall petition**.
>
> In the case of ***Evardone v. Commission on Elections, et al.***, 204 SCRA 464, 472 (1991), the Court ruled that '**loss of confidence**' **as a ground for recall is a political question. In the words of the Court, 'whether or not the electorate of the municipality of Sulat has lost confidence in the incumbent mayor is a political question**.'"

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(***Garcia v. COMELEC***, 227 SCRA 108, Oct. 5, 1993, En Banc [Puno])

270. The members of the Preparatory Recall Assembly (PRA) of the province of Bataan adopted a resolution calling for the recall of Governor Garcia. It was admitted, however, by the proponents of the recall resolution that only those members of the assembly inclined to agree were notified of the meeting where said resolution was adopted "as a matter of strategy and security." They justified these selective notices on the ground that the law (Local Government Code) does not specifically mandate the giving of notice. Should this submission be sustained?

Held: We reject this submission of the respondents. The due process clause of the Constitution requiring notice as an element of fairness is inviolable and should always be considered part and parcel of every law in case of its silence. The need for notice to all the members of the assembly is also imperative for these members represent the different sectors of the electorate of Bataan. To the extent that they are not notified of the meeting of the assembly, to that extent is the sovereign voice of the people they represent nullified. The resolution to recall should articulate the majority will of the members of the assembly but the majority will can be genuinely determined only after all the members of the assembly have been given a fair opportunity to express the will of their constituents. Needless to stress, **the requirement of notice is mandatory for it is indispensable in determining the collective wisdom of the members of the Preparatory Recall Assembly. Its non-observance is fatal to the validity of the resolution to recall petitioner Garcia as Governor of the province of Bataan**. (***Garcia v. COMELEC***, G.R. No. 111511, Sept. 21, 1993; 227 SCRA 100, Oct. 5, 1993, En Banc [Puno])

271. Will it be proper for the Commission on Elections to act on a petition for recall signed by just one person?

Held: A petition for recall signed by just one person is in violation of the statutory 25% minimum requirement as to the number of signatures supporting any petition for recall. **Sec. 69(d)** of the ***Local Government Code*** of 1991 expressly provides that '**recall of any elective x x x municipal x x x 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.' The law is plain and unequivocal as to what constitutes recall proceedings: only a petition of at least 25% of the total number of registered voters may validly initiate recall proceedings. (***Angobung v. COMELEC***, G.R. No. 126576, March 5, 1997)

272. Section 74 of the Local Government Code provides that "no recall shall take place within one year x x x immediately preceding a regular local election." What does the term "regular local election," as used in this section, mean?

Held: The term "**regular local election**" under **Sec. 74** of the ***Local Government Code*** of 1991 which provides that "**no recall shall take place within one (1) year x x x immediately preceding a regular local election" refers to one where the position of the official sought to be recalled is to be actually contested and filled by the electorate** (***Paras v. Comelec***, G.R. No. 123169, Nov. 4, 1996). **The one-year time bar will not apply where the local official sought to be recalled is a Mayor and the approaching election is a barangay election**. (***Angobung v. COMELEC***, G.R. No. 126576, March 5, 1997)

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273. Does the word "Recall" in paragraph (b) of Section 74 of the Local Government Code include the convening of the Preparatory Recall Assembly and the filing by it of a recall resolution? Discuss.

Held: Petitioner contends that the term "*RECALL*" in Sec. 74 (b) refers to a process, in contrast to the term "recall election" found in Sec. 74 (a), which obviously refers to an election. He claims that "when several barangay chairmen met and convened on May 19, 1999 and unanimously resolved to initiate the recall, followed by the taking of votes by the PRA on May 29, 1999 for the purpose of adopting a resolution 'to initiate the recall of Jovito Claudio as Mayor of Pasay City for loss of confidence,' the process of recall began" and, since May 29, 1999 was less than a year after he had assumed office, the PRA was illegally convened and all proceedings held thereafter, including the filing of the recall petition on July 2, 1999, were null and void.

The COMELEC, on the other hand, maintains that the process of recall starts with the filing of the petition for recall and ends with the conduct of the recall election, and that, since the petition for recall in this case was filed on July 2, 1999, exactly one year and a day after petitioner's assumption of office, the recall was validly initiated outside the one-year prohibited period.

Both petitioner Claudio and the COMELEC thus agree that the term "recall" as used in Sec. 74 refers to a process. They disagree only as to when the process starts for purpose of the one-year limitation in paragraph (b) of Sec. 74.

We can agree that recall is a process which begins with the convening of the preparatory recall assembly or the gathering of the signatures at least 25% of the registered voters of a local government unit, and then proceeds to the filing of a recall resolution or petition with the COMELEC, the verification of such resolution or petition, the fixing of the date of the recall election, and the holding of the election on the scheduled date. However, as used in paragraph (b) of Sec. 74, "recall" refers to the election itself by means of which voters decide whether they should retain their local official or elect his replacement.

X x x

To sum up, the term "*RECALL*" **in paragraph (b) refers to the recall election and not to the preliminary proceedings to initiate recall** –

1) **Because Sec. 74 speaks of limitations on "recall" which, according to Sec. 69, is a power which shall be exercised by the registered voters of a local government unit**. Since the voters do not exercise such right except in an election, it is clear that the initiation of recall proceedings is not prohibited within the one-year period provided in paragraph (b);
2) **Because the purpose of the first limitation in paragraph (b) is to provide voters a sufficient basis for judging an elective local official, and final judging is not done until the day of the election**; and
3) **Because to construe the limitation in paragraph (b) as including the initiation of recall proceedings would unduly curtail freedom of speech and of assembly guaranteed in the Constitution**.

(***Jovito O. Claudio v. COMELEC***, G.R. No. 140560, May 4, 2000, En Banc [Mendoza])

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274. Who has the legal authority to represent a municipality in lawsuits?

Held: Only the provincial fiscal, provincial attorney, and municipal attorney should represent a municipality in its lawsuits. Only in *EXCEPTIONAL INSTANCES* may a private attorney be hired by a municipality to represent it in lawsuits. (***Ramos v. CA***, 269 SCRA 34, March 3, 1997)

275. What are the EXCEPTIONAL INSTANCES when a private attorney may be validly hired by a municipality in its lawsuits?

Held: In ***Alinsug v. RTC Br. 58, San Carlos City, Negros Occidental*** (225 SCRA 553, Aug. 23, 1993), it was held that "**the law allows a private counsel to be hired by a municipality only when the municipality is an adverse party in a case involving the provincial government or another municipality or city within the province**. This provision has its apparent origin in ***De Guia v. The Auditor General*** (44 SCRA 169, March 29, 1979) where the Court held that **the municipality's authority to employ a private attorney is expressly limited only to situations where the provincial fiscal would be disqualified to serve and represent it**." (***Ramos v. CA***, 269 SCRA 34, March 3, 1997)

276. Cite instances when the provincial fiscal may be disqualified to represent in court a particular municipality.

Held: As held in ***Enriquez, Sr. v. Gimenez*** (107 Phil. 932 [1960]), the provincial fiscal may be disqualified to represent in court a particular municipality in the following instances:

1) **If and when original jurisdiction of case involving the municipality is vested in the Supreme Court**;
2) **When the municipality is a party adverse to the provincial government or to some other municipality in the same province**; and
3) **When, in a case involving the municipality, he, or his wife, or child, is pecuniarily involved, as heir, legatee, creditor or otherwise**.

(***Ramos v. CA***, 269 SCRA 34, March 3, 1997)

277. May a municipality be represented by a private law firm which had volunteered its services gratis, in collaboration with the municipal attorney and the fiscal?

Held: ***NO***. Such representation will be **violative of Section 1983 of the old Administrative Code. This strict coherence to the letter of the law appears to have been dictated by the fact that "the municipality should not be burdened with expenses of hiring a private lawyer" and that "the interests of the municipality would be best protected if a government lawyer handles its litigations**."

Private lawyers may not represent municipalities on their own. Neither may they do so even in collaboration with authorized government lawyers. This is anchored on the principle that only accountable public officers may act for and in behalf of public entities and that public funds should not be expended to hire private lawyers.
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(***Ramos v. CA***, 269 SCRA 34, March 3, 1997)

278. May a municipality adopt the work already performed in good faith by a private lawyer, which work proved beneficial to it?

Held: Although a municipality may not hire a private lawyer to represent it in litigations, in the interest of substantial justice, however, it was held that **a municipality may adopt the work already performed in good faith by such private lawyer, which work is beneficial to it** (1) **provided that no injustice is thereby heaped on the adverse party** and (2) **provided further that no compensation in any guise is paid therefor by said municipality to the private lawyer. Unless so expressly adopted, the private lawyer's work cannot bind the municipality**. (***Ramos v. CA***, 269 SCRA 34, March 3, 1997)

279. May the Punong Barangay validly appoint or remove the barangay treasurer, the barangay secretary, and other appointive barangay officials without the concurrence of the majority of all the members of the Sangguniang Barangay?

Held: The Local Government Code explicitly vests on the *punong barangay*, **upon approval by a majority of all the members of the *sangguniang barangay*, the power to appoint or replace the *barangay* treasurer, the *barangay* secretary, and other appointive *barangay* officials**. 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*. Without such conjoint action, neither an appointment nor a replacement can be effectual**.

Applying the rule that the power to appoint includes the power to remove, the questioned dismissal from office of the *barangay* officials by the *punong barangay* without the concurrence of the majority of all the members of the *Sangguniang Barangay* cannot be legally justified. To rule otherwise could also create an absurd situation of the *Sangguniang Barangay* members refusing to give their approval to the replacements selected by the *punong barangay* who has unilaterally terminated the services of the incumbents. It is likely that the legislature did not intend this absurdity to follow from its enactment of the law.

(***Ramon Alquizola, Sr. v. Gallardo Ocol***, G.R. No. 132413, Aug. 27, 1999, 3rd Div. [Vitug])

PUBLIC INTERNATIONAL LAW

280. What is the doctrine of incorporation? How is it applied by local courts?

Held: 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**.

The doctrine of incorporation is **applied whenever municipal tribunals (or local courts) are confronted with situations in which there appears to be a conflict between a rule of international law and the provisions of the Constitution or statute of the local state. Efforts should first be exerted to harmonize them, so as to give effect to both since it is to be presumed that municipal law was enacted with proper regard for the generally accepted principles of international law in observance of the Incorporation Clause in Section 2, Article II of the Constitution. In a situation however, where the conflict is irreconcilable and a choice has to be made between a rule of international law and municipal law, jurisprudence dictates that municipal law should be upheld by the municipal courts for the reason that such courts are organs of municipal law and are accordingly bound by it in all circumstances**. The fact that international law has been made part of the law of the land does not pertain to or imply the primacy of international law over national or municipal law in the municipal sphere. The *DOCTRINE OF INCORPORATION*, as applied in most countries, decrees that **rules of international law are given equal standing with, but are not superior to, national legislative enactments**. Accordingly, the **principle of *LEX POSTERIOR DEROGATE PRIORI* takes effect – a treaty may repeal a statute and a statute may repeal a treaty**. In states where the Constitution is the highest law of the land, such as the Republic of the Philippines, **both statutes and treaties may be invalidated if they are in conflict with the Constitution**. (***Secretary of Justice v. Hon. Ralph C. Lantion***, G.R. No. 139465, Jan. 18, 2000, En Banc [Melo])

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281. Is sovereignty really absolute and all-encompassing? If not, what are its restrictions and limitations?

Held: While sovereignty has traditionally been deemed absolute and all-encompassing on the domestic level, it is however subject to restrictions and limitations voluntarily agreed to by the Philippines, expressly or impliedly, as a member of the family of nations. By the doctrine of incorporation, the country is bound by generally accepted principles of international law, which are considered to be automatically part of our own laws. One of the oldest and most fundamental rules in international law is *pacta sunt servanda* – international agreements must be performed in good faith. A state which has contracted valid international obligations is bound to make in its legislations such modifications as may be necessary to ensure the fulfillment of the obligations.

By their inherent nature, treaties really limit or restrict the absoluteness of sovereignty. By their voluntary act, nations may surrender some aspects of their state power in exchange for greater benefits granted by or derived from a convention or pact. After all, states, like individuals, live with coequals, and in pursuit of mutually covenanted objectives and benefits, they also commonly agree to limit the exercise of their

otherwise absolute rights. Thus, treaties have been used to record agreements between States concerning such widely diverse matters as, for example, the lease of naval bases, the sale or cession of territory, the termination of war, the regulation of conduct of hostilities, the formation of alliances, the regulation of commercial relations, the settling of claims, the laying down of rules governing conduct in peace and the establishment of international organizations. **The sovereignty of a state therefore cannot in fact and in reality be considered absolute. Certain restrictions enter into the picture**: (1) **limitations imposed by the very nature of membership in the family of nations** and (2) **limitations imposed by treaty stipulations**.
(***Tanada v. Angara***, 272 SCRA 18, May 2, 1997 [Panganiban])

282. What must a person who feels aggrieved by the acts of a foreign sovereign do to espouse his cause?

Held: Under both Public International Law and Transnational Law, a person who feels aggrieved by the acts of a foreign sovereign can **ask his own government to espouse his cause through diplomatic channels**.

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Private respondent can ask the Philippine government, through the Foreign Office, to espouse its claims against the Holy See. Its first task is to persuade the Philippine government to take up with the Holy See the validity of its claims. Of course, the Foreign Office shall first make a determination of the impact of its espousal on the relations between the Philippine government and the Holy See. Once the Philippine government decides to espouse the claim, the latter ceases to be a private cause.

According to the Permanent Court of International Justice, the forerunner of the International Court of Justice:

> "**By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own rights – its right to ensure, in the person of its subjects, respect for the rules of international law**." *(The Mavrommatis Palestine Concessions, 1 Hudson, World Court Reports 293, 302 [1924])*

(***Holy See, The v. Rosario, Jr.***, 238 SCRA 524, 533-534, Dec. 1, 1994, En Banc [Quiason])

283. Discuss the Status of the Vatican and the Holy See in International Law.

Held: Before the annexation of the Papal States by Italy in 1870, the Pope was the monarch and he, as the Holy See, was considered a subject of International Law. With the loss of the Papal States and the limitation of the territory under the Holy See to an area of 108.7 acres, the position of the Holy See in International Law became controversial.

In 1929, Italy and the Holy See entered into the **Lateran Treaty**, where **Italy recognized the exclusive dominion and sovereign jurisdiction of the Holy See over the Vatican City**. It also **recognized the right of the Holy See to receive foreign diplomats, to send its own diplomats to foreign countries, and to enter into treaties according to International Law**.

The Lateran Treaty established the statehood of the Vatican City "for the purpose of assuring to the Holy See absolute and visible

independence and of guaranteeing to it indisputable sovereignty also in the field of international relations."

In view of the wordings of the Lateran Treaty, it is difficult to determine whether the statehood is vested in the Holy See or in the Vatican City. Some writers even suggested that the treaty created two international persons – the Holy See and Vatican City.

The Vatican City fits into none of the established categories of states, and the attribution to it of "sovereignty" must be made in a sense different from that in which it is applied to other states. In a community of national states, the Vatican City represents an entity organized not for political but for ecclesiastical purposes and international objects. Despite its size and object, the Vatican City has an independent government of its own, with the Pope, who is also head of the Roman Catholic Church, as the Holy See or Head of State, in conformity with its traditions, and the demands of its mission in the world. Indeed, the world-wide interests and activities of the Vatican City are such as to make it in a sense an "international state."

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One authority wrote that the recognition of the Vatican City as a state has significant implication – that it is possible for any entity pursuing objects essentially different from those pursued by states to be invested with international personality.

Inasmuch as the Pope prefers to conduct foreign relations and enter into transactions as the Holy See and not in the name of the Vatican City, one can conclude that in the Pope's own view, it is the Holy See that is the international person.

The Republic of the Philippines has accorded the Holy See the status of a foreign sovereign. The Holy See, through its Ambassador, the Papal Nuncio, has had diplomatic representations with the Philippine government since 1957. This appears to be the universal practice in international relations. (***Holy See, The v. Rosario, Jr.***, 238 SCRA 524, 533-534, Dec. 1, 1994, En Banc [Quiason])

284. What are international organizations? Discuss their nature.

Held: *INTERNATIONAL ORGANIZATIONS* are **institutions constituted by international agreement between two or more States to accomplish common goals. The legal personality of these international organizations has been recognized not only in municipal law, but in international law as well**.

Permanent international commissions and administrative bodies have been created by the agreement of a considerable number of States for a variety of international purposes, economic or social and mainly non-political. **In so far as they are autonomous and beyond the control of any one State, they have distinct juridical personality independent of the municipal law of the State where they are situated. As such, they are deemed to possess a species of international personality of their own**.
(***SEAFDEC-AQD v. NLRC***, 206 SCRA 283, Feb. 14, 1992)

285. Discuss the BASIC IMMUNITIES OF INTERNATIONAL ORGANIZATIONS and the reason for affording them such immunities.

Held: One of the basic immunities of an international organization is **immunity from local jurisdiction, *i.e.,* that it is immune from legal writs and processes issued by the tribunals of the country where it is found**. The obvious reason for this is that **the subjection of such an organization to the authority of the local courts would afford a convenient medium through which the host government may interfere in their operations or even influence or control its policies and decisions; besides, such subjection to local jurisdiction would impair the capacity of such body to discharge its responsibilities impartially on behalf of its member-states**.
(***SEAFDEC-AQD v. NLRC***, 206 SCRA 283, Feb. 4, 1992)

286. Discuss the two conflicting concepts of sovereign immunity from suit.

Held: There are two conflicting concepts of sovereign immunity, each widely held and firmly established. According to the *CLASSICAL OR ABSOLUTE THEORY*, **a sovereign cannot, without its consent, be made a respondent in the courts of another sovereign**. According to the newer or *RESTRICTIVE THEORY*, **the immunity of the sovereign is recognized only with regard to public acts or acts *jure imperii* of a state, but not with regard to private acts or acts *jure gestionis***.

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Some states passed legislation to serve as guidelines for the executive or judicial determination when an act may be considered as *jure gestionis.* The United States passed the Foreign Sovereign Immunities Act of 1976, which defines a commercial activity as "either a regular course of commercial conduct or a particular commercial transaction or act." Furthermore, the law declared that the "commercial character of the activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose." The Canadian Parliament enacted in 1982 an Act to Provide For State Immunity in Canadian Courts. The Act defines a "commercial activity" as any particular transaction, act or conduct or any regular course of conduct that by reason of its nature, is of a "commercial character."

The restrictive theory, which is intended to be a solution to the host of problems involving the issue of sovereign immunity, has created problems of its own. Legal treatises and the decisions in countries which follow the restrictive theory have difficulty in characterizing whether a contract of a sovereign state with a private party is an act *jure gestionis* or an act *jure imperii.*

The restrictive theory came about because of the entry of sovereign states into purely commercial activities remotely connected with the discharge of governmental functions. This is particularly true with respect to the Communist states which took control of nationalized business activities and international trading. (***Holy See, The v. Rosario, Jr.***, 238 SCRA 524, Dec. 1, 1994, En Banc [Quiason])

287. Cite some transactions by a foreign state with private parties that were considered by the Supreme Court as acts "jure imperii" and acts "jure gestionis."

Held: This Court has considered the following transactions by a foreign state with private parties as acts ***jure imperii***: (1) **the lease by a foreign government of apartment buildings for use of its military officers** (***Syquia v. Lopez***, 84 Phil. 312 [1949]); (2) **the conduct of public bidding for the repair of a wharf at a United States Naval Station** (***United States of America v. Ruiz****, supra*.); and (3) **the change of employment status of base employees** (***Sanders v. Veridiano***, 162 SCRA 88 [1988]).

On the other hand, this Court has considered the following transactions by a foreign state with private parties as acts ***jure gestionis***: (1) **the hiring of a cook in the recreation center, consisting of three restaurants, a cafeteria, a bakery, a store, and a coffee and pastry shop at the John Hay Air Station in Baguio City, to cater to American servicemen and the general public** (***United States of America v. Rodrigo***, 182 SCRA 644 [1990]; and (2) **the bidding for the operation of barber shops in Clark Air Base in Angeles City** (***United States of America v. Guinto***, 182 SCRA 644 [1990]). The operation of the restaurants and other facilities open to the general public is undoubtedly for profit as a commercial and not a governmental activity. By entering into the employment contract with the cook in the discharge of its proprietary function, the United States government impliedly divested itself of it sovereign immunity from suit. (***Holy See, The v. Rosario, Jr.***, 238 SCRA 524, Dec. 1, 1994, En Banc [Quiason])

288. What should be the guidelines to determine what activities and transactions shall be considered "commercial" and as constituting acts "jure gestionis" by a foreign state?

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Held: In the absence of legislation defining what activities and transactions shall be considered "commercial" and as constituting acts *jure gestionis,* we have to come out with our own guidelines, tentative they may be.

Certainly, the mere entering into a contract by a foreign state with a private party cannot be the ultimate test. Such an act can only be the start of the inquiry. The logical question is whether the foreign state is engaged in the activity in the regular course of business. If the foreign state is not engaged regularly in a business or trade, the particular act or transaction must then be tested by its nature. If the act is in pursuit of a sovereign activity, or an incident thereof, then it is an act *jure imperii,* especially when it is not undertaken for gain or profit.

As held in ***United States of America v. Guinto*** *(supra.)*:

> "There is no question that the United States of America, like any other state, will be deemed to have impliedly waived its non-suability if it has entered into a contract in its proprietary or private capacity. It is only when the contract involves its sovereign or governmental capacity that no such waiver may be implied."

(***Holy See, The v. Rosario, Jr.***, 238 SCRA 524, Dec. 1, 1994, En Banc [Quiason])

289. May the Holy See be sued for selling the land it acquired by donation from the Archdiocese of Manila to be made site of its mission or the Apostolic Nunciature in the Philippines but which purpose cannot be accomplished as the land was occupied by squatters who refused to vacate the area?

Held: In the case at bench, if petitioner (Holy See) has bought and sold lands in the ordinary course of a real estate business, surely the said transaction can be categorized as an act *jure gestionis*. However, petitioner has denied that the acquisition and subsequent disposal of Lot 5-A were made for profit but claimed that it acquired said property for the site of its mission or the Apostolic Nunciature in the Philippines. X x x

Lot 5-A was acquired by petitioner as a donation from the Archdiocese of Manila. The donation was made not for commercial purpose, but for the use of petitioner to construct thereon the official place of residence of the Papal Nuncio. The right of a foreign sovereign

to acquire property, real or personal, in a receiving state, necessary for the creation and maintenance of its diplomatic mission, is recognized in the 1961 Vienna Convention on Diplomatic Relations. This treaty was concurred in by the Philippine Senate and entered into force in the Philippines on November 15, 1965.

In **Article 31(a)** of the Convention, **a diplomatic envoy is granted immunity from the civil and administrative jurisdiction of the receiving state over any real action relating to private immovable property situated in the territory of the receiving state which the envoy holds on behalf of the sending state for the purposes of the mission. If this immunity is provided for a diplomatic envoy, with all the more reason should immunity be recognized as regards the sovereign itself, which in this case is the Holy See**.

The decision to transfer the property and the subsequent disposal thereof are likewise clothed with a governmental character. Petitioner did not sell Lot 5-A for profit or gain. It merely wanted to dispose off
186 **the same because the squatters living thereon made it almost impossible for petitioner to use it for the purpose of the donation**.
(***Holy See, The v. Rosario, Jr.***, 238 SCRA 524, Dec. 1, 1994, En Banc [Quiason])

290. How is sovereign or diplomatic immunity pleaded in a foreign court?

Held: In Public International Law, when a state or international agency wishes to plead sovereign or diplomatic immunity in a foreign court, **it requests the Foreign Office of the state where it is sued to convey to the court that said defendant is entitled to immunity**.

In the United States, the procedure followed is the **process of "suggestion,"** where the **foreign state or the international organization sued in an American court requests the Secretary of State to make a determination as to whether it is entitled to immunity. If the Secretary of State finds that the defendant is immune from suit, he, in turn, asks the Attorney General to submit to the court a "suggestion" that the defendant is entitled to immunity**. In England, a similar procedure is followed, only the Foreign Office issues a certification to that effect instead of submitting a "suggestion".

In the Philippines, the practice is for the foreign government or the international organization to first secure an executive endorsement of its claim of sovereign or diplomatic immunity. But how the Philippine Foreign Office conveys its endorsement to the courts varies. In ***International Catholic Migration Commission v. Calleja***, 190 SCRA 130 (1990), the Secretary of Foreign Affairs just sent a **letter** directly to the Secretary of Labor and Employment, informing the latter that the respondent-employer could not be sued because it enjoyed diplomatic immunity. In ***World Health Organization v. Aquino***, 48 SCRA 242 (1972), the Secretary of Foreign Affairs sent the trial court a **telegram** to that effect. In ***Baer v. Tizon***, 57 SCRA 1 (1974), the U.S. Embassy **asked** the Secretary of Foreign Affairs to request the Solicitor General to make, in behalf of the commander of the United States Naval Base at Olongapo City, Zambales, a "**suggestion**" to respondent Judge. The Solicitor General embodied the "suggestion" in a **Manifestation and Memorandum** as *amicus curiae.*

In the case at bench, the Department of Foreign Affairs, through the Office of Legal Affairs moved with this Court to be allowed to intervene on the side of

petitioner. The Court allowed the said Department to file its memorandum in support of petitioner's claim of sovereign immunity.

In some cases, the defense of sovereign immunity was submitted directly to the local courts by the respondents through their private counsels. In cases where the foreign states bypass the Foreign Office, the courts can inquire into the facts and make their own determination as to the nature of the acts and transactions involved. (***Holy See, The v. Rosario, Jr.***, 238 SCRA 524, Dec. 1, 1994, En Banc [Quiason])

291. Is the determination of the executive branch of the government that a state or instrumentality is entitled to sovereign or diplomatic immunity subject to judicial review, or is it a political question and therefore, conclusive upon the courts?

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Held: **The issue of petitioner's (The Holy See) non-suability can be determined by the trial court without going to trial in light of the pleadings** x x x. Besides, the privilege of sovereign immunity in this case was sufficiently established by the Memorandum and Certification of the Department of Foreign Affairs. As the department tasked with the conduct of the Philippines' foreign relations, the Department of Foreign Affairs has formally intervened in this case and officially certified that the Embassy of the Holy See is a duly accredited diplomatic mission to the Republic of the Philippines exempt from local jurisdiction and entitled to all the rights, privileges and immunities of a diplomatic mission or embassy in this country. **The determination of the executive arm of government that a state or instrumentality is entitled to sovereign or diplomatic immunity is a political question that is conclusive upon the courts. Where the plea of immunity is recognized and affirmed by the executive branch, it is the duty of the courts to accept this claim so as not to embarrass the executive arm of the government in conducting the country's foreign relations**. As in *International Catholic Migration Commission* and in *World Health Organization,* we abide by the certification of the Department of Foreign Affairs. (***Holy See, The v. Rosario, Jr.***, 238 SCRA 524, Dec. 1, 1994, En Banc [Quiason])

292. What is EXTRADITION? To whom does it apply?

Held: It is the "**process by which persons charged with or convicted of crime against the law of a State and found in a foreign State are returned by the latter to the former for trial or punishment. It *applies* to those who are merely charged with an offense but have not been brought to trial; to those who have been tried and convicted and have subsequently escaped from custody; and those who have been convicted in absentia. It *does not apply* to persons merely suspected of having committed an offense but against whom no charge has been laid or to a person whose presence is desired as a witness or for obtaining or enforcing a civil judgment**." (*Weston, Falk, D' Amato,* ***International Law and Order***, 2nd ed., p. 630 [1990], cited in *Dissenting Opinion,* ***Puno, J.,*** in ***Secretary of Justice v. Hon. Ralph C. Lantion***, G.R. No. 139465, Jan. 18, 2000, En Banc)

293. Discuss the basis for allowing extradition.

Held: Extradition was first practiced by the Egyptians, Chinese, Chaldeans and Assyro-Babylonians but their basis for allowing extradition was unclear. Sometimes, it was granted due to pacts; at other times, due to plain good will. The *classical commentators* on international law thus focused their

early views on the *nature of the duty* to surrender an extradite --- whether the duty is legal or moral in character. Grotius and Vattel led the school of thought that international law imposed a *legal duty* called *civitas maxima* to extradite criminals. In sharp contrast, Puffendorf and Billot led the school of thought that the so-called duty was but an *"imperfect obligation* which could become *enforceable only* by a contract or agreement between states.

Modern nations tilted towards the view of Puffendorf and Billot that under international law there is no duty to extradite in the absence of treaty, whether bilateral or multilateral. Thus, the US Supreme Court in ***US v. Rauscher*** (119 US 407, 411, 7 S Ct. 234, 236, 30 L. ed. 425 [1886]), held: "x x x **it is *only in modern times* that the nations of the earth have imposed upon themselves the obligation of delivering up these fugitives from justice to the states where their crimes were committed, for trial and punishment. This has been done generally by treaties** x x x. Prior to these treaties, and apart from them there was no well-defined obligation on one country to deliver up such fugitives to another; and though such delivery was often made it was upon the principle of comity x x x." (***Dissenting Opinion, Puno, J.***, in ***Secretary of Justice v. Hon. Ralph C. Lantion***, G.R. No. 139465, Jan. 18, 2000, En Banc)

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294. What is the nature of an extradition proceeding? Is it akin to a criminal proceeding?

Held: [A]n extradition proceeding is *sui extradi.* It is *not a criminal proceeding* which will call into operation *all* the rights of an accused as guaranteed by the Bill of Rights. To begin with, *the process of extradition does not involve the determination of the guilt or innocence of an accused.* His guilt or innocence will be adjudged in the court of the state where he will be extradited. Hence, as a rule, constitutional rights that are only relevant to determine the guilt or innocence of an accused cannot be invoked by an extraditee especially by one whose extradition papers are still undergoing evaluation. As held by the US Supreme Court in ***United States v. Galanis***:

> "**An extradition proceeding is not a criminal prosecution, and the constitutional safeguards that accompany a criminal trial in this country do not shield an accused from extradition pursuant to a valid treaty**." *(Wiehl, Extradition Law at the Crossroads: The Trend Toward Extending Greater Constitutional Procedural Protections To Fugitives Fighting Extradition from the United States, 19 Michigan Journal of International Law 729, 741 [1998], citing United States v. Galanis, 429 F. Supp. 1215 [D. Conn. 1977])*

There are *other differences* between an extradition proceeding and a criminal proceeding. **An extradition proceeding is summary in natural while criminal proceedings involve a full-blown trial. In contradistinction to a criminal proceeding, the rules of evidence in an extradition proceeding allow admission of evidence under less stringent standards. In terms of the quantum of evidence to be satisfied, a criminal case requires proof beyond reasonable doubt for conviction while a fugitive may be ordered extradited "upon showing of the existence of a prima facie case." Finally, unlike in a criminal case where judgment becomes executory upon being rendered final, in an extradition proceeding, our courts may adjudge an individual extraditable but the President has the final discretion to extradite him**. The United States adheres to a similar practice whereby the Secretary of State exercises wide discretion in balancing the equities of the case and the demands of the nation's foreign relations before making the ultimate decision to extradite.

As an extradition proceeding is not criminal in character and the evaluation stage in an extradition proceeding is not akin to a preliminary investigation, the due process safeguards in the latter do not necessarily apply to the former. **This we hold for the procedural due process required by a given set of circumstances "must begin with a determination of the *precise nature of the government function involved as well as the private interest that has been affected by governmental action*."** The concept of due process is *flexible* for "not all situations calling for procedural safeguards call for the same kind of procedure." (***Secretary of Justice v. Hon. Ralph C. Lantion***, G.R. No. 139465, Oct. 17, 2000, En Banc [Puno])

295. Will the retroactive application of an extradition treaty violate the constitutional prohibition against "ex post facto" laws?

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Held: The prohibition against *ex post facto* law applies only to criminal legislation which affects the substantial rights of the accused. This being so, there is no merit in the contention that the ruling sustaining an extradition treaty's retroactive application violates the constitutional prohibition against *ex post facto* laws. The treaty is neither a piece of criminal legislation nor a criminal procedural statute. (***Wright v. CA***, 235 SCRA 341, Aug. 15, 1994 [Kapunan])

296. Discuss the rules in the interpretation of extradition treaties.

Held: [A]ll treaties, including the RP-US Extradition Treaty, should be *interpreted in light of their intent*. Nothing less than the *Vienna Convention on the Law of Treaties* to which the Philippines is a signatory provides that "**a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and *in light of its object and purpose***." X x x. It cannot be gainsaid that today, countries like the Philippines forge extradition treaties to arrest the dramatic rise of international and transnational crimes like terrorism and drug trafficking. Extradition treaties provide the assurance that the punishment of these crimes will not be frustrated by the frontiers of territorial sovereignty. Implicit in the treaties should be the unbending commitment that the perpetrators of these crimes will not be coddled by any signatory state.

It ought to follow that the RP-US Extradition Treaty calls for an interpretation that will minimize if not prevent the escape of extradites from the long arm of the law and expedite their trial. X x x

[A]n equally compelling factor to consider is the *understanding of the parties* themselves to the RP-US Extradition Treaty as well as the *general interpretation of the issue in question by other countries with similar treaties with the Philippines*. The rule is recognized that while courts have the power to interpret treaties, the meaning given them by the departments of government particularly charged with their negotiation and enforcement is accorded great weight. The reason for the rule is laid down in ***Santos III v. Northwest Orient Airlines, et al.*** (210 SCRA 256, 261 [1992]), where we stressed that a treaty is a joint executive-legislative act which enjoys the presumption that "it was first carefully studied and determined to be constitutional before it was adopted and given the force of law in the country." (***Secretary of Justice v. Hon. Ralph C. Lantion***, G.R. No. 139465, Oct. 17, 2000, En Banc [Puno])

297. What is a Treaty? Discuss.

Held: A *TREATY*, as defined by the ***Vienna Convention on the Law of Treaties***, is "**an international instrument concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments, and whatever its particular designation**." There are many other terms used for a treaty or international agreement, some of which are: act, protocol, agreement, *compromise d' arbitrage*, concordat, convention, declaration, exchange of notes, pact, statute, charter and *modus vivendi.* All writers, from Hugo Grotius onward, have pointed out that the names or titles of international agreements included under the general term *treaty* have little or no significance. Certain terms are useful, but they furnish little more than mere description

Article 2(2) of the ***Vienna Convention*** provides that "**the provisions of paragraph 1 regarding the use of terms in the present Convention are without prejudice to the use of those terms, or to the meanings which may be given to them in the internal law of the State**." (***BAYAN [Bagong Alyansang Makabayan] v. Executive Secretary Ronaldo Zamora***, G.R. No. 138570, Oct. 10, 2000, En Banc [Buena])

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298. Discuss the binding effect of treaties and executive agreements in international law.

Held: [I]n international law, there is no difference between treaties and executive agreements in their binding effect upon states concerned, as long as the functionaries have remained within their powers. International law continues to make no distinction between treaties and executive agreements: they are equally binding obligations upon nations. (***BAYAN [Bagong Alyansang Makabayan] v. Executive Secretary Ronaldo Zamora***, G.R. No. 138570, Oct. 10, 2000, En Banc [Buena])

299. Does the Philippines recognize the binding effect of executive agreements even without the concurrence of the Senate or Congress?

Held: In our jurisdiction, we have recognized the binding effect of executive agreements even without the concurrence of the Senate or Congress. In ***Commissioner of Customs v. Eastern Sea Trading*** (3 SCRA 351, 356-357 [1961]), we had occasion to pronounce:

> "x x x **the right of the Executive to enter into binding agreements *without* the necessity of subsequent Congressional approval has been *confirmed by long usage.* From the earliest days of our history we have entered into executive agreements covering such subjects as commercial and consular relations, most-favored-nation rights, patent rights, trademark and copyright protection, postal and navigation arrangements and the settlement of claims. *The validity of these has never been seriously questioned by our courts*. "**

(***BAYAN [Bagong Alyansang Makabayan] v. Executive Secretary Ronaldo Zamora***, G.R. No. 138570, Oct. 10, 2000, En Banc [Buena])

300. What is a "PROTOCOL DE CLOTURE"? Will it require concurrence by the Senate?

Held: A ***final act***, sometimes called ***protocol de cloture***, is **an instrument which records the winding up of the proceedings of a diplomatic conference and usually includes a reproduction of the texts of treaties, conventions, recommendations and other acts agreed upon and signed by the plenipotentiaries attending the conference. It is not the treaty itself. It is rather a summary of the proceedings of a**

protracted conference which may have taken place over several years. It will not require the concurrence of the Senate. The documents contained therein are deemed adopted without need for ratification.
(***Tanada v. Angara***, 272 SCRA 18, May 2, 1997 [Panganiban])

301. What is the "most-favored-nation" clause? What is its purpose?

Answer: 1. The *MOST-FAVORED-NATION CLAUSE* may be defined, in general, as **a pledge by a contracting party to a treaty to grant to the other party treatment not less favorable than that which has been or may be granted to the "most favored" among other countries**. The clause has been commonly included in treaties of commercial nature.

There are generally **two types** of most-favored-nation clause, namely, *CONDITIONAL* and *UNCONDITIONAL*. According to the clause in its *unconditional* form, **any advantage of whatever kind which has been or may in future be granted by either of the contracting parties to a third State shall simultaneously and unconditionally be extended to the other under the same or equivalent conditions as those under which it has been granted to the third State**. (***Salonga & Yap, Public International Law***, *5th Edition, 1992, pp. 141-142*)

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2. **The purpose of a most favored nation clause is to grant to the contracting party treatment not less favorable than that which has been or may be granted to the "most favored" among other countries. The most favored nation clause is intended to establish the principle of equality of international treatment by providing that the citizens or subjects of the contracting nations may enjoy the privileges accorded by either party to those of the most favored nation**.
(***Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.***, 309 SCRA 87, 107-108, June 25, 1999, 3rd Div. [Gonzaga-Reyes])

302. What is the essence of the principle behind the "most-favored-nation" clause, as applied to tax treaties?

Held: The essence of the principle is to allow the taxpayer in one state to avail of more liberal provisions granted in another tax treaty to which the country of residence of such taxpayer is also a party provided that the subject matter of taxation x x x is the same as that in the tax treaty under which the taxpayer is liable.

In ***Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.***, 309 SCRA 87, June 25, 1999, the SC did not grant the claim filed by S.C. Johnson and Son, Inc., a non-resident foreign corporation based in the USA, with the BIR for refund of overpaid withholding tax on royalties pursuant to the most-favored-nation clause of the RP-US Tax Treaty in relation to the RP-West Germany Tax Treaty. It held:

> **Given the purpose underlying tax treaties and the rationale for the most favored nation clause, the concessional tax rate of 10 percent provided for in the RP-Germany Tax Treaty should apply only if the taxes imposed upon royalties in the RP-US Tax Treaty and in the RP-Germany Tax Treaty are paid under similar circumstances**. This would mean that private respondent (S.C. Johnson and Son, Inc.) must prove that the RP-US Tax Treaty grants similar tax reliefs to residents of the United States in respect of the taxes imposable upon royalties earned from sources within the Philippines as those allowed to their German counterparts under the RP-Germany Tax Treaty.

The RP-US and the RP-West Germany Tax Treaties do not contain similar provisions on tax crediting. Article 24 of the RP-Germany Tax Treaty x x x expressly allows crediting against German income and corporation tax of 20% of the gross amount of royalties paid under the law of the Philippines. On the other hand, Article 23 of the RP-US Tax Treaty, which is the counterpart provision with respect to relief for double taxation, does not provide for similar crediting of 20% of the gross amount of royalties paid. X x x

X x x The entitlement of the 10% rate by U.S. firms despite the absence of matching credit (20% for royalties) would derogate from the design behind the most favored nation clause to grant equality of international treatment since the tax burden laid upon the income of the investor is not the same in the two countries. The similarity in the circumstances of payment of taxes is a condition for the enjoyment of most favored nation treatment precisely to underscore the need for equality of treatment.

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303. What is ratification? Discuss its function in the treaty-making process.

Held: *RATIFICATION* is generally held to be **an executive act, undertaken by the head of state or of the government, as the case may be, through which the formal acceptance of the treaty is proclaimed**. A State may provide in its domestic legislation the process of ratification of a treaty. The consent of the State to be bound by a treaty is expressed by ratification when: (a) **the treaty provides for such ratification**, (b) **it is otherwise established that the negotiating States agreed that ratification should be required**, (c) **the representative of the State has signed the treaty subject to ratification**, or (d) **the intention of the State to sign the treaty subject to ratification appears from the full powers of its representative, or was expressed during the negotiation**.
(***BAYAN [Bagong Alyansang Makabayan] v. Executive Secretary Ronaldo Zamora***, G.R. No. 138570, Oct. 10, 2000, En Banc [Buena])

304. Explain the "PACTA SUNT SERVANDA" rule.

Held: One of the oldest and most fundamental rules in international law is *pacta sunt servanda* – **international agreements must be performed in good faith**. "**A treaty engagement is not a mere moral obligation but creates a legally binding obligation on the parties x x x. A state which has contracted valid international obligations is bound to make in its legislations such modifications as may be necessary to ensure the fulfillment of the obligations undertaken**." (***Tanada v. Angara***, 272 SCRA 18, May 2, 1997 [Panganiban])

305. Explain the "REBUS SIC STANTIBUS" rule (i.e., things remaining as they are). Does it operate automatically to render a treaty inoperative?

Held: According to *Jessup*, the doctrine constitutes **an attempt to formulate a legal principle which would justify non-performance of a treaty obligation if the conditions with relation to which the parties contracted have changed so materially and so unexpectedly as to create a situation in which the exaction of performance would be unreasonable. The key element of this doctrine is the vital change in the condition of the contracting parties that they could not have foreseen at the time the treaty was concluded**.

The doctrine of *rebus sic stantibus* **does not operate automatically to render the treaty inoperative. There is a necessity for a formal act of rejection, usually made by the head of state, with a statement of the reasons why compliance with the treaty is no longer required**. (***Santos III v. Northwest Orient Airlines***, 210 SCRA 256, June 23, 1992)

306. What is the "DOCTRINE OF EFFECTIVE NATIONALITY" (genuine link doctrine)?

Held: This principle is expressed in **Article 5** of the ***Hague Convention of 1930*** on the ***Conflict of Nationality Laws*** as follows:

> Art. 5. **Within a third State a person having more than one nationality shall be treated as if he had only one. Without prejudice to the application of its law in matters of personal status and of any convention in force, a third State shall, of the nationalities which any such person possesses, recognize exclusively in its territory 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 in fact most closely connected**.

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(***Frivaldo v. COMELEC***, 174 SCRA 245, June 23, 1989)