

ADMINISTRATIVE LAW

Source: ADMINISTRATIVE LAW: A Text, Neptali Gonzales

CHAPTER I INTRODUCTION

What is administrative law?

- ❖ The author adopts this definition:
 - In a narrower sense and as commonly used today, this is the branch of modern law under which the executive department of the gov't, acting in a quasi-legislative or quasi-judicial capacity, interferes with the conduct of the individual for the purposes of promoting the well-being of the community. (*Dean Roscoe Pound*)
- ❖ Embraces all the law that controls, or is intended to control, the administrative operations of gov't, and includes the law:
 - W/c provides the structure of gov't & prescribes the procedure
 - It does NOT include the substantive law w/c administration is supposed to apply.
- ❖ In modern usage, it is concerned with the legal problem arising out of the existence of agencies which combine in a single entity legislative, executive and judicial powers which, in our system of law were traditionally kept separate.
 - *Justice Frankfurter* - field of control exercised by law-administering agencies other than courts, and the field of control exercised by courts over them.
- ❖ Part of the public law which fixes the organization and determines the competence of administrative authorities and indicates to the individual remedies for the violation of his rights. (*Goodnow*)
- ❖ It is the system of legal principles which settle the conflicting claims of executive and administrative authority on the one side, and of individual or private rights on the other. (Freund)
- ❖ Law concerning the powers and procedures of administrative agencies including specially the law governing judicial review of administrative action. (*Prof. Kenneth Culp Davis, this is the well accepted concept of admin law*)

Distinguish Administrative Law from other Disciplines

Administrative Law v. Law of Public Admin

Admin law	Law of Public Admin
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Emphasis is to the <u>problems of administrative regulation</u> rather than administrative management.	Emphasis of the law is made on the <u>organization, operation and management</u> of the different branches of gov't and on their <u>relations</u>
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- If the relation is between the admin agencies and the individuals affected by the exercise of their rule-making or adjudicatory activities, this is covered by admin law.

Administrative Law v. Constitutional Law

Admin law	Constitutional Law
Provides the details which give the skeleton structure the characteristics of a finished whole.	Provides the framework of governmental organization
Lays down the <i>secondary rules</i> w/c limit and qualify or expand and amplify the general precepts laid down by consti to be understood and applied to the needs of layman citizens.	Lays down the <i>general rules</i> of gov't which are fundamental and w/o w/c no gov't org can survive
Treats relations of gov't with individual from the standpoint of the powers of gov't.	Treats of the relations of the gov't with individual from the latter's standpoint.
Lays emphasis on duties	Lays stress upon rights

- Admin law complements consti insofar as it determines the rules of law relative to the activity of the admin authorities.
- It supplements consti law insofar as it regulates the admin org of the gov't.

Administrative Law v. Penal Law

Admin law	Penal Law
Penal sanctions for the purpose of enforcing a rule of admin law w/c is the most common and efficient means to enforce such admin law.	Consists of a body of penal sanctions w/c are applied to <i>ALL branches of the law</i> , including admin law.

- Mere affixing of a penalty to the violation of a rule of admin law does not deprive it of its administrative character.

Administrative Law v. International Law

Admin law	International Law
Lays down the rules w/c shall guide the officers of the administration in their	Cannot be regarded as binding upon the officers of any gov't considered in

actions as agents of the gov't.	their relation to their own gov't. EXCEPT: insofar as it has been adopted into the admin law of the state.
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- For Phil. Gov't officers to be bound by mandates of international law, the Legislature must adopt such principles and translate it into Philippine law.

Is Administrative Law a General or Specific Law?

- ❖ It is both.
 - *General Admin Law* – is that which is common to all or to many different types of admin agencies. (subj matter of the author's book)
 - *Special Admin Law* – law which is provided for and derived from the activity of a particular admin agency.
 - Proceeds from a particular statute or ordinance creating the individual agency.
 - Applies only to such agency.

What are the Kinds of Administrative Law?

- 1) Statutes setting up admin authorities either by:
 - creating boards, commissions, and admin officers or
 - confiding the powers and duties to existing boards, commission or officers to:
 - amplify,
 - execute,
 - supervise the operations of, and
 - determine controversies arising under particular laws in the enactment of which the legislature decided for matters of convenience or for quicker or more efficient administration to withhold the controversies, at least in the first instance, from the courts of law.
- 2) Rules, regulations or orders of such administrative authorities enacted and promulgated in pursuance of the purposes for which they were created or endowed.
- 3) Determinations, decisions and orders of such admin authorities made in the settlement of controversies arising in their particular fields
- 4) Body of Doctrines and decisions dealing with the creation, operation, and effect of determinations and regulations of such admin authorities.

What is the scope of Administrative Law?

- 1) Body of statutes which sets up admin agencies and endows them with powers and duties.
- 2) Body of rules, regulations, and orders issued by admin agencies.
- 3) Body of determinations, decisions and orders of such admin authorities made in the settlement of controversies arising in their respective fields.
- 4) Body of doctrines and decisions dealing with the creation, operation and effect of determinations and regulations of such admin agencies.

How did Administrative Law Grow and Develop?

- ❖ Origin is legislation and proceeds from the increased functions of government.
 - The multiplication of subjects of gov't regulations and the increased difficulty of administering laws became one of the causes for its development.
- ❖ In order to enable admin agencies to perform their functions efficiently and effectively, the legislature has granted to them the power to adjudicate on cases arising within the scope of their activities.
- ❖ The Phil used to be under the economic principle of *laissez faire* (let live alone)
 - *Ang Tibay v. CIR*
 - Policy of *laissez faire* has to some extent given way to assumption by the gov't of the right of intervention in contractual relations that are affected with public interest.
 - Gov't has gone into the control & regulation of banking, insurance, public utilities, foreign exchange, finance, industry, the professions, health, morals and labor-management relations.
- ❖ Admin law deals pre-eminently with law in the making, and its growth is traced to its:
 - Adjustability to change,
 - Flexibility in the light of experience,
 - Swiftswess in meeting new emergency situations, and
 - Efficiency and expertise.

What is the reason for the development of Admin Law?

- ❖ It arises out of Necessity. The existence and powers proceed from:
 - Increased function of gov't
 - Complexity of modern social, economic, and industrial systems,
 - Inability of legis or courts to perform their functions directly
 - Necessity for constant supervision by experts and specialists and the experience acquired by such specialist in difficult and complicated fields

- Flexibility which is the mark of admin process in contrast to leg or judicial process.

What is the relation of Administrative law to Traditional Law?

- ❖ Admin law embraces elements hostile to traditional law and regarded as subversive of the “rule of law”.
- ❖ Law and administration are to some extent antagonistic institutions of the government.
- ❖ Legislature have:
 - Entrusted protection of interests to admin agencies rather than to courts (*remember legis has power to apportion court jurisdiction, w/ exceptions of course*)
 - Established admin agencies as very imp. tribunals in the administration of justice, making decisions sometimes of vast importance and equal to matters determined by courts.
- ❖ Although admin agencies strictly speaking are not courts, their creation involves the emergence of a new system of courts in a broad sense no less significant than the evolution of chancery.

What is the role of the Courts in relation to Admin Agencies?

- ❖ Role of Courts is to:
 - Accommodate administrative process to the traditional judicial system,
 - Accommodate private rights and public interest in the powers reposed in admin agencies, and
 - Reconcile in the fields of admin action, democratic safeguards & standards of fair play with the effective conduct of government (*that is why they can review admin decisions in cases of GADALEJ*)

What are the important aspects of judicial role & the search for accommodation?

- 1) The determinations by the courts of the degree to which admin agencies may be left free to act in their own discretion w/o the declaration of standards for such action by the legislature.
- 2) The extent to which the courts will:
 - Require in quasi-judicial procedure which approaches that of courts
 - Refrain from interference with the admin process
 - Be restricted from passing upon the legality or correctness of the action taken by the admin agency
 - Review, enforce, or provide relief from, action of an administrative agencies

- 3) Determinations whether the administrative or judicial process provides the appropriate remedy in a particular situation.

- ❖ In all of these areas, particularly in regard to the constitutional rights of persons, the judicial process aims to provide security and safeguards where expediency is served by the expertise and absence of rigidity in the admin process.

What is the Nature of Administration?

- ❖ Administration may be viewed either as a *function* or as an *organization*.

What is Administration as a function?

- ❖ It is the **execution**, in *non-judicial* matters, of the law or will of the state as expressed by the competent authority. It is the activity of the executive officers of the gov’t taken in this narrow but proper sense.
- ❖ It is the government in action as opposed to deliberation of the rendering of judicial decision and can be found in all the manifestations of executive action.
- ❖ This has to do with carrying the laws into effect – their application to the current affairs by way of management and oversight, including investigation, regulation and control, in accordance with and in execution of the principles prescribed by the lawmaker.

What is Administration as an Organization?

- ❖ It is that group of aggregate persons in whose hands, the reigns of government are for the time being.
- ❖ Indicates the entire administrative organization extending down from the Pres to the most humble of his subordinates. It is the totality of the executive and administrative authorities.

Distinguish between Administration and Politics

Administration	Politics
Execution of the policies and expressions of the state will	Policies and expressions of the state will
Subjected to the control of politics	Primary function is the expression of the state will, with a 2ndary function of execution of such will.

Distinguish between Administration and Law

Administration	Law
Achieves public security by preventive measures, and selects a hierarchy of officials to each of whom definite work is assigned.	Operates by redress or punishment rather than prevention. It formulates general rules of action and visits infractions with

	penalties.
Supervises the action.	It leaves individuals free to act, but imposes pains upon those who do not act in accordance with the principles described.
Governed by the ends rather than the rules and is personal, often arbitrary and subject to abuses.	Safeguards against ignorance, caprices or corruption of magistrates and is impersonal.
If well exercise, it is extremely efficient, more efficient than the rival agency can be.	Is not quick enough or automatic enough to meet the requirements of a complex social organization.

Admin of Gov't v. Admin of Justice

Administration of Gov't	Administration of Justice
Officers are called <i>Administrative Officers</i>	Officers are called <i>Judicial Officers</i>
Work done is NOT necessarily the result of any controversy, and is not merely dependent on the solution of the question "what is the law" but made as a result of consideration of expediency.	Work consists in the decision of controversies between individuals and government officers as to the applicability in the cases in question of a particular rule of law.
Determination of won they are competent to act, and must also decide (in case they are competent to act) if it is wise for them to act.	Determination of what law is applicable to the facts set before them

What are the advantages of Administrative Action Over Both Legislative and Judicial Action

- 1) Regulation by gov't opens a way for action to be taken in the public interest to prevent future harm where there would be no assurance that any action would be taken if initiative were left wholly to interested individuals.
- 2) It provides for action that will be prompt and preventive, rather than merely remedial, and will be based on technical knowledge, which would not be available if it were taken through the ordinary courts of law.
- 3) It ensures that the action taken will have regard for the interests of the general public in a way not possible if it were only the outcome of a controversy between private parties to a law suit.
- 4) It permits the flexibility of rules for the prevention of socially hurtful, based on discretion, and makes possible the introduction of order in fields, not advantageously admitting

the application of rules of a rigid and permanent character.

What are the recognized weakness and criticisms against Administrative action?

- ❖ Sometimes referred to as the "fourth branch of gov't" is attacked as a government of discretion and is open to potential abuse and arbitrariness. (Justice Frankfurter)
- 1) Tendency towards arbitrariness;
 - 2) Lack of legal knowledge and aptitude in sound judicial technique
 - 3) Susceptibility to political bias or pressure often brought about by uncertainty of tenure and lack of sufficient safeguards for independence;
 - 4) Disregard for the safeguards that insure a full ad fair hearing;
 - 5) Absence of standard rules of procedure suitable to the activities of each agency;
 - 6) A dangerous combination of legislative, executive and judicial functions

What are the other kinds of Administration?

- ❖ Administration is of two kinds: *internal* and *external*.

External v. Internal Administration.

External Administration	Internal Administration
Deals with relations between administrative agencies and individuals affected by their quasi-legislative and quasi-judicial activities.	Considers the legal aspects of public administration in its institutional side, that is a going concern Includes the legal structure or organization of public administration, and the legal aspects of institutional activities. Also involves the legal qualifications for office, disqualifications, appointments, etc.
Deals with the relations of the administration or its officers with private individuals	Concerned with the relations of officers with each other or with the administration itself
Concerned with problems of administrative regulation	Concerned with the problems of administrative management
This is the subject matter of Administrative law in its modern and narrower sense.	Roughly includes the subjects covered in the Law of Public Officers

What is Administrative Law in the Philippine Setting?

- ❖ Administrative regulation of private activities was originally undertaken through regular departments of the executive branch.
- ❖ There is an increasing use of regulatory agencies specially created to carry out the legislative policy regulating specified activities. These agencies are given powers to promulgate rules and regulations implementing statutes and to adjudicate controversies arising therefrom.



CHAPTER II CREATION, ESTABLISHMENT AND ABOLITION OF ADMINISTRATIVE AGENCIES

What is the nature (in General) of Administrative Agencies?

- ❖ Admin agency is an indefinite and generic term and covers boards, commission, departments and divisions and somewhat less familiar designations of “office” and “authority”. It may even cover a single officer.
- ❖ Used to describe an agency exercising some significant combinations of executive, legislative, and judicial powers.
- ❖ Some assert that “administrative” is the 4th power of gov’t. Viewed from the standpoint of any particular act of the agency:
 - It is either executive or in the narrowest sense administrative, or legislative, or judicial, or,
 - To distinguish it from organs which are purely or essentially legislative or judicial, quasi-legislative or quasi-judicial.
- ❖ Some partake of the nature of public agencies acting in the public interests, and their jurisdiction is dependent upon the existence of a public interest, since they are not tribunals for the enforcement of private rights.
- ❖ Mere fact that a statute setting up a commission, does not itself render the commission a court even if:
 - The rules of procedure adopted by such commission provide a mode of procedure conforming in many respects to the regular practice of the court, or
 - The commission possess or exercises powers and functions resembling those exercised by the courts

What are some limitations of Admin agencies acting as a court?

- ❖ Administrative agencies:
 - CANNOT exercise PURELY judicial functions,
 - Do NOT have the inherent powers of a court,
 - Are NOT bound in their proceedings by all the rules applicable to proceeding in court.

What are other natures of Admin agencies?

- ❖ Some are deemed to be agents of the legislative branch of the government and not of the executive branch.
- ❖ Some on the other hand are deemed as agents of the executive, or described as “executive or administrative” agencies.
- ❖ Some are bodies corporate with legal capacity to sue and be sued in the courts and were held to constitute legal entities with perpetual existence apart from their members.
- ❖ Others are without independent existence but are merely regarded as instrumentalities of the government or political divisions thereof.

What is an Administrative Agency?

- ❖ It is an organ of government, other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule making.
- ❖ It may be called a commission, board, bureau, office administrator, department, authority, corporation, administration, division or agency.

How are administrative agencies Created?

They are created whether individual or institutional by:

- 1) **Constitutional Provisions**
 - E.g.: CSC, COMELEC, COA
- 2) **Legislature in legislative enactments**
 - E.g. : Bureau of Customs, BIR, NLTC, PRC, Court of Agrarian Relations, Phil. Patent Office, SEC, Board of Transportation, Social Security Commission, BSP, National Grains Authority
- 3) **Authority of law**
 - Under various gov’t reorganization acts, the President and the Gov’t Survey and Reorganization Commission had been authorized and had in fact created administrative offices and agencies in the course of the reorganization of the executive branch of the gov’t.

- E.g.: defunct Board of Tax Appeals and Regional Offices of the DOLE.

What are the Purposes of Administrative Agencies?

- 1) To dispense certain privileges accorded by the govt;
- 2) To carry on governmental business or functions;
- 3) To carry on or undertake some business service for the public;
- 4) To regulate certain public callings or business affected with public interest;
- 5) To promote the general welfare through police regulations
- 6) To determine rights of individuals in certain cases where a strong social policy is involved.

What are Common Types of Administrative Agencies?

- 1) Agencies created in situations wherein the *government is offering some gratuity, grant, or special privilege*
 - E.g.: Phil. Veterans board (defunct), Board on pensions for Veterans, NARRA, Philippine Veterans Administration
- 2) Agencies set up to function in situations wherein the *gov't is seeking to carry on certain gov't functions.*
 - E.g.: Bureau of Immigration, BIR, Board of Special Inquiry, Board of Commissioners, CSC, BSP
- 3) Agencies set up to function in situations wherein the *gov't is performing some business service for the public*
 - E.g.: Bureau of Posts, Postal Savings Bank, MWSS, Phil National Railways, Civil Aeronautics Administration
- 4) Agencies set up to function in situations wherein the *gov't is seeking to regulate business affected with public interests*
 - E.g.: Fiber Inspection Board, Phil Patent Office, Office of the Insurance Commissioner
- 5) Agencies set up to function in situations wherein the *gov't is seeking under the police power to regulate private business and individuals*
 - E.g.: SEC, Board of Food Inspectors, MTRCB, PRC
- 6) Agencies set up to function in situations wherein the *gov't is seeking to adjust individual controversies because of some strong social policy involved*
 - E.g.: NLRC, Court of Agrarian Relations, the Regional Offices of DOLE, the Social Security Commission, Bureau of Labor Standards, Women and Minors Bureau.

What is the degree of Control of the Legislature over Administrative Agencies?

- ❖ Legislative power over admin agencies is very broad, it is the legislative branch that:
 - Promulgates the general policy
 - Creates the agency to administer it if none is already in existence for the purpose
 - Prescribes the mode of appointment, the term of office and compensation;
 - Fixes its authority and procedure;
 - Determines the size of its personnel and staff;
 - Exercises continuing surveillance over its activities;
 - May investigate its operations for remedial or corrective legislation
- ❖ Legislature is more and more in favor of enacting statutes in broad and general wording and leaving details thereof to administrative agencies to fill by rules, orders, regulations and the like.

How are Administrative Agencies Reorganized and Abolished?

- ❖ Experimentation is frequent in the field of administration, and particular admin agencies are sometimes:
 - Abolished and new ones created embodying the fruits of experience;
 - Reorganized or their functions transferred to other agencies.
- ❖ Congress has at various times vested powers in the President to reorganize executive agencies and redistribute functions and the transfers made under such are held by the SC to be within the authority of President.
- ❖ Any doubt as to the authority granted to the President and the due exercise thereof, is determined by congressional approval and ratification in subsequently recognizing the validity of the transfer by making appropriations for the purpose of carrying out the transferred function.
- ❖ Constitutionally created admin agencies cannot be abolished by statute, while admin agencies created by statute or through the authority of a statute may be validly abolished and reorganized by the legislature.

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CHAPTER III
ADMINISTRATIVE AGENCIES AND THE
PRINCIPLES OF SEPARATION AND
NON-DELEGATION OF POWERS

What are the three broad segments of the study of Administrative Law?

- 1) Transfer of power from the legislature to administrative agencies;
- 2) Exercise of such delegated powers by these agencies;
- 3) Review of such administrative actions by the courts

In general, how are the principles of separation and non-delegation of powers applied in administrative agencies?

- ❖ Laws enacted by the legislature prescribing the powers and functions of administrative agencies must respect constitutional limitations.
- ❖ It is important to determine whether the transfer violates constitutional inhibitions since administrative agencies are usually vested rule-making and adjudicatory powers similar to legislative and judicial powers.

What are the most common limitations imposed by the constitution?

- ❖ Constitutional principles of separation of powers and non-delegability of powers.
 - Prohibits the delegation of legislative power, the vesting of judicial officers with non-judicial functions, as well as the investing of non-judicial officers with judicial powers.
 - It is for these reasons that the principles of separation and non-delegation of powers are intertwined with the 1st & 3rd segments in the study of administrative law.

What is the effect of the emergence of administrative agencies in the execution of laws and promulgation of rules and regulations?

- ❖ It has to a large extent, relaxed the rigidity of the theory of separation of powers by permitting the delegation of greater power by the legislature and vesting a large amount of discretion in administrative and executive officials

What is the Rule of Non-Delegation of Powers?

- ❖ No department of the government (legislative, executive & judiciary) can abdicate authority or escape responsibility by delegating any of its power to another body.
- ❖ **EXCEPT:** when such delegation is authorized by the Constitution.
- ❖ **EFFECT of delegation:** It is VOID under the maxim of *potestas delegate non potest delegari*

What is the origin of the Rule of Non-Delegation of Powers?

- ❖ This rule is wholly judge-made.
- ❖ Justice Laurel in *People v. Vera* gave the origin as follows:

- It originated from glossators,
- Was introduced into the English law through the misreading of Bracton, and it developed as a principle of agency, as established by Lord Coke in the English public law in decisions forbidding the delegation of judicial power.
- It found its way into America as an enlightened principle of free government and has become an accepted corollary of the principle of Separation of Powers.

What is the ethical basis for the Rule?

- ❖ Based on the principle of *potestas delegate non potest delegari*
 - A delegated power constitutes not only a right but a duty to be performed by the delegate by the instrumentality of his own judgment and not through the intervening mind of another.
- ❖ According to Judge Cooley
 - One of the settled maxims in constitutional law is that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority.
 - Where the sovereign power of the state has located the authority, it must remain there, and by that constitutional agency alone the laws must be made until the Constitution is changed.
 - The power to whose judgment, wisdom, and patriotism this high prerogative has been entrusted cannot relieve itself of the responsibility by choosing other agencies upon which the power shall be devolved, nor can it substitute the judgment, wisdom and patriotism of another body for those to whom the people alone have seen fit to confide this sovereign trust.

What is the applicability of this Rule to Legislative Power?

- ❖ The rule is applicable to all three departments, but has found greater persistent application to the prohibition against the delegation of **legislative power**.
- ❖ According to *Locke*:
 - Legislative neither must nor can transfer the power of making laws to anybody else, or place it anywhere but where the people have.
- ❖ Rule against delegation of legislative power is **fixed** and **unalterable**, not depending upon the existence of an emergency.

- ❖ Unconstitutional delegation of power is **not** validated by the establishment of:
 - Procedural safeguards;
 - Right of judicial review; or
 - Assumption that the officer acts and will act for the public good.

Is the prohibition provided by the Rule absolute?

- ❖ The rule does not embrace every power the legislature may properly exercise.
 - Any power **NOT legislative** in character which the legislature may exercise, it may delegate.
- ❖ What the rule precludes is the:
 - (1) Delegation of powers which are *strictly and exclusively* legislative; **and**
 - (2) The legislature's abdication of its own power and the conferring of such power upon an administrative agency to be exercised in its *uncontrolled discretion*.
- ❖ Supreme essential power that the legis CANNOT delegate is the power to make law, at least purely *substantive law*.
 - Legislature can't delegate to admin agencies the determination of:
 - What the law shall be
 - Whom it may be applied
 - What acts are necessary to effectuate the law.
 - The essentials of the legislative function are:
 - The determination of the legislative policy; and
 - The formulation and promulgation as a defined and binding rule of conduct.

(stated otherwise, it is the determination of the legislative policy and legislative approval of a rule of conduct to carry that policy into execution.)
- ❖ Consti has never been regarded as denying to the legislature the necessary resources of flexibility and practicality to perform its functions.
 - The legislature may delegate to an administrative agency the exercise of a limited portion of its legislative power with respect to some specified subject matter.

What are the exceptions to non-delegation of powers by legis?

- 1) When permitted by the Constitution itself;*
- 2) In case of delegation of legislative powers to local gov'ts*
- 3) Delegation of the power to "fill in" details;
- 4) Delegation of rule-making and adjudicatory powers to admin bodies, PROVIDED, ascertainable standards are set;

- 5) Delegation of power to ascertain facts, contingencies, or events upon which the applicability or non-applicability of a law is made to depend;
- 6) Delegation of powers to the people at large, when such has been reserved in the Constitution;
- 7) Delegation of power to the executive in the field of foreign or international relations.

* **Note:** *Strictly speaking* there are only two instances of permissible delegation that is nos. 1&2, exceptions no. 3-7 are exceptions in a broader sense.

What are permissible delegations under the Constitution?

- ❖ 1973 Constitution, Art. VIII, Secs. 15 & 17(2) [*these are now contained in Art. VI, Sec. 23(2) & 28(2) of the 1987 Consti respectively*]

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

The national assembly may by law authorize the Prime Minister to fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties and imposts.

- ❖ In the *Emergency Powers Cases*, the SC interpreted Sec. 22(2) of 1935 Consti and ruled:
 - The grant of emergency powers to the President in times of war or any other national emergency should be for a "limited period". And such powers are
 - Self-liquidating in nature
 - Co-extensive and co-existent with the emergency w/c gave rise to the grant thereof.
 - When Congress is able to meet and regularly perform other duties under the Constitution, an automatic extinction of the law delegating such emergency powers results.
 - In one case, Justice Padilla (*concurring opinion*) said that:
 - To withdraw, terminate or revoke the delegation of legislative powers to the President, a **concurrent resolution** would be sufficient.

- The concurrence of the President is superfluous and unnecessary.
 - After Congress had made that declaration that the President would no longer exercise the legislative powers delegated to him, it partook of a complete and absolute revocation of the delegation of such powers.
 - A bill w/c Congress passed revoking emergency powers granted by the President cannot be vetoed by the latter, and even if vetoed, such bill may at least be considered as a *concurrent resolution* of Congress formally declaring the termination of the emergency powers. (*CJ Paras, ponente*)
- ❖ Sec. 15 of 1973 Consti (see left) solved the problem by providing that the Nat'l Assembly (Congress) need not pass a bill repealing a statute granting emergency powers and may be withdrawn by mere *resolution*.
 - If not withdrawn sooner by a resolution, such powers cease upon the next adjournment of Congress.
 - ❖ In cases of authority of President to fix tariff rates, etc., Sec. 17, of 1973 Consti provides that the delegated power must be exercised “*within specified limits*” and “*subject to such limitations and restrictions as it may impose*” to prevent a wholesale abdication of authority by the legislature.
 - The max and min should be fixed by law and the authority granted to Pres must be exercised within these limits.

What is the exception of Delegation of Powers to Local Gov'ts?

- ❖ Rule is sanctioned by the practice that delegation to local authorities does not transgress the principle of non-delegation.
 - Local affairs shall be managed by local authorities and general affairs by the central authority.
 - The creation of municipalities exercising local self-government has never been held to trench upon the rule and is not regarded as a transfer of general legislative power but rather as the grant of authority to prescribe:
 - Local regulations accdg. to immemorial practice
 - Subject to the interposition of the superior cases of necessity.

- ❖ Congress is empowered to delegate this legislative power to such agencies in the territories it may select.
 - A territory stands in the same relation to Congress as a municipality or city to a state government.

What are the powers usually delegated to Local governments?

- 1) Part of Police Power of the state
- 2) Power of Taxation
- 3) Power of Eminent Domain
- 4) Creation of Municipal Offices
- 5) Establishment of Municipal hospitals, asylums, poor-houses and other charitable institutions;
- 6) Franchises to use municipal streets
- 7) Incurring of Municipal Indebtedness
- 8) Municipal Licenses for Occupations/Privileges
- 9) Ownership of Public Utilities
- 10) Regulation and Control over Streets
- 11) Special Assessments and others.

What is the exception of Delegation of Power to “Fill Up” Details?

- ❖ Matters of detail may be left by the legislature to be filled by rules and regulations to be adopted or promulgated by executive officers and administrative boards.
 - Legislature may only make a general provision and give powers to those who are to act under such general provision to fill up the details.
- ❖ This is the subsidiary power to fill up the details or to find facts to carry the legislative declared policies into effect.
 - Congress may declare its will, and after fixing a primary standard, devolve upon administrative officers, the “power to fill up the details” by prescribing administrative rules and regulations.

What is the exception of Delegations of Powers to Admin Bodies?

- ❖ With the increasing complexities of modern life, it was found that neither the legislature nor the courts were equipped to administer the laws.
- ❖ Legislature is not always in session and can agree only on general policies but not on matters of detail.
 - There is also a danger that too detailed control and regulation on the part of the statute creating admin bodies may hamper their efficiency and render them impotent in the face of changing conditions.
 - To enable admin agencies to achieve their functions efficiently and effectively, the legislature has granted to them the power to adjudicate on cases arising w/n the scope of their activities.

- ❖ SC has constantly held that there is no undue delegation of powers to admin agencies so long as the legislature:
 - (1) Lays down a policy
 - (2) Provides a standard by which an administrative body may be guided.
- ❖ While it is “not necessary that Congress supply administrative officials with a *specific formula* for their guidance, it is yet **mandatory** that Congress shall lay down by legislative act an **intelligible principle** which the agency is bound to follow.

What are the advantages of Delegation of Power to Administrative Agencies?

- 1) It relieves the legislature of a great burden of work in respect to which it has no special competence, and thus enables it more largely to direct its attention to matters of general import;
- 2) It entrusts the drafting of detailed provisions, which are usually of a highly technical character, to the agencies most familiar with the conditions to be met and which will have the responsibility of their enforcement;
- 3) It permits a great flexibility in adopting the regulations to the different classes of individuals or interests affected; and
- 4) It makes possible the prompt modification of a provision as soon as experience demonstrates that it is unsatisfactory.

What is the exception of Delegation of Power to Ascertain Facts and Events to determine the applicability of the law?

- ❖ Congress may enact a law the taking effect of w/c is made to depend upon the happening of future specified contingencies to be determined by executive or administrative offices/agencies.
- ❖ The *power to ascertain the existence of facts or conditions as the basis of taking into effect of a law* may be rightfully exercised by Congress itself and since it is NOT legislative in character, it may be delegated.
- ❖ *Cruz v. Youngberg*
 - To assert that a law is less than a law because it is made to depend on a future event or act, is to rob the legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed or to things future and impossible to fully know.
 - Legislature **cannot** delegate its power *to make the law*; but it *can make a law to delegate* its power to determine some fact or

state of things upon which the law makes, or intends to make, its own action to depend.

- There are many things upon which wise and useful legislation must depend which cannot be known to the lawmaking power, and must, therefore, be a subject to inquiry and determination outside the halls of legislation.

What is the exception of Delegation of Powers to the People at Large?

- ❖ People in their sovereign capacity have voluntarily delegated the power to enact laws to the legislature, and conversely, no objection may be raised where the people have expressly reserved to themselves in the Consti the power of decision with respect to certain matters.
- Under Art. XVI, Sec. 2 of 1973 Consti (*now Art. XVII, Sec. 3, 1987 Consti*) the people have reserved to themselves the finality of decision with respect to approval of any changes in the Consti.

What is referendum?

- ❖ It is the principle or practice of referring measures passed upon by the legislative to a body of voters, or electorate, for approval or rejection.
- ❖ Also defined as the reservation by the people of a state, or local subdivision thereof, of the right to have submitted for their approval or rejection under certain prescribed conditions, any law or part of a law passed by the law making body.
- ❖ Referendum according to weight of authorities is not violative of a republican gov't.

What are the Tests of Validity of Delegation of powers?

- ❖ Two tests have been resorted to by the courts in deciding delegation of power cases these are:
 - (1) The completeness or incompleteness of the statute; and
 - (2) The absence or sufficiency of standard.
- ❖ These two tests have apparently been **merged into one** as held in *Vigan Electric Light Co. Inc., vs. Public Service Commission & Pelaez vs. Auditor General*:
 - For a valid delegation, it is essential that the **law** delegating powers **must both** be:
 - a) **Complete in itself** – it must set forth the policy to be executed by the delegate; **and**
 - b) **Fix a standard** – the limits of which are sufficiently determinate or determinable – to which the delegate must conform.

What is the “Completeness or Incompleteness of the Statute” Test?

- ❖ A law must be complete in all its terms and provisions when it leaves the legislative branch of gov’t.
 - Nothing is left to the judgment of others, or other appointee or delegate of the legislature.
- ❖ A law is unconstitutional and deemed as an improper delegation of legislative power where:
 - It is incomplete as a legislation; and
 - Authorizes an executive board to decide what shall and what shall not be deemed as an infringement of the law.
- ❖ A statute is COMPLETE when the following are stated:
 - (1) Subject of the law
 - (2) The manner of its application
 - (3) The extent of its operation
- ❖ The test of completeness is the question of whether the provision is sufficiently definite and certain to enable one to know his rights and obligations.
 - It is not improper delegation when the legis already describes in the law what job must be done, who must do it, and the scope of his authority.

When statutes delegate discretion, is it necessarily incomplete?

- ❖ A statute is NOT necessarily incomplete and an undue delegation of power because it delegates discretion.
- ❖ It becomes incomplete depending upon the discretion delegated. The true distinction is between the delegation of power:
 - **To make the law** – w/c necessarily involves a *discretion as to what the law shall be* (improper delegation)
 - **Conferring authority** – w/c involves *discretion as to the execution of the law* to be exercised under and pursuance of the law. (valid delegation)

What is the “Absence of Sufficiency of Standard” Test?

- ❖ Even if a statute delegates authority, if it lays down a policy and a **definite standard** by which the executive or admin officer or board may be guided in the exercise of his discretionary authority, there is no undue delegation of legislative power.
- ❖ In order for a delegation of legislative power to the President or any admin body or officer to be

lawful, Justice Hughes provides for three criteria that must be met:

- (1) The **“policy”** must be clearly defined in the language of the statute and not left to the discretion of the “grantee” or “delegate”
- (2) The statute must pronounce **“standards”** to guide the executory behavior of the delegate or grantee; presumably, such standards would also have the virtue of giving the Court something to determine, upon judicial review, whether the subordinate action was ultra vires in relation to the law.
- (3) Formal **“findings”** by the delegate or grantee would be a condition precedent to a valid exercise of such delegated authority, assuming that the statute satisfied the above **“policy”** and **“standards”** criteria.
 - ✓ The delegate must specify in his order the facts and circumstances that justified the action that he purported to take under the statute delegating to him his authority to act.

What is a standard? (*Edu v. Ericta*)

- ❖ It is a **critereon** laid down by the legislature by which the policy and the purpose of the law may be carried out.
- ❖ It defines the legislative policy, marks its limits, and maps out its boundaries.
- ❖ It indicates the **circumstances** under which the legislative command is to be effected.

Some Delegation Cases discussed in the book (doctrines only)

- ❖ *Vigan Electric Light Co., Inc. v. Public Service Commission*
 - Consistently with the principle of separation of powers w/c underlie our constitutional system, the legislative powers may not be delegated except to local gov’ts and only as to matters purely of local concern.
 - Congress may delegate to admin agencies the power to supply the details in the enforcement or execution of a policy laid down by a law w/c is complete in itself.
 - The law is not deemed complete unless it lays down a standard or pattern sufficiently fixed or determinate or at least determinable without requiring further legislation.
 - Without such, there would be no reasonable means to ascertain whether or not said body has acted w/in the scope of his authority.
 - As a consequence of such absence, the power of legislation would be

exercised by a branch of gov't other than the legis as ordained by the Const and violates separation of powers.

- ❖ *Schechter Poultry Co. v. United States*
 - The broad discretion granted to the President in approving or prescribing codes of the fair competition is virtually unfettered and such code-making authority is an unconstitutional delegation of legislative powers.
- ❖ *Pelaez v. Auditor General*
 - The authority to create municipal corporations is essentially and eminently legislative in nature since they are purely creatures of the statute.
 - For Congress to validly delegate to another branch of the gov't the power to fill in the details in the execution, enforcement or administration of a law it is essential that the law delegating the powers must be:
 - a) Complete in itself; and
 - b) Fix a standard.
 - Without a *statutory declaration of policy*, the delegate would in effect, make or formulate such policy, which is the essence of every law.
 - Without the *standard*, there would be no means to determine whether the delegate has acted within or beyond the scope of his authority.

What are “Legislative Standards” which are considered adequate in the US and in the Philippines?

- ❖ In the United States:
 - (1) “Just and reasonable”;
 - (2) “Unreasonable and Obstruction to navigation”;
 - (3) “Public Interest”;
 - (4) “Reciprocally unequal and unreasonable”;
 - (5) “Public convenience, interest, or necessity”;
 - (6) “National Security or defense”;
 - (7) “Unfair Methods of Competition”;
 - (8) “Tea of an inferior quality”;
 - (9) “Films are in the judgment and discretion of the Board of Censors of a moral, educational or amusing, and harmless character”.
- ❖ In the Philippines:
 - (1) “Public welfare”;
 - (2) “Necessary in the interest of law and order”;
 - (3) “Public interest”;
 - (4) “Justice and equity and substantial merits of the case”;
 - (5) “Simplicity, economy and efficiency”;
 - (6) “Adequate and sufficient instruction”;

- (7) “In order to protect the international reserves... to protect the international stability of the peso... to maintain monetary stability in the Philippines... to promote a rising level of production, employment and real income in the Phil”;
- (8) “All educational institutions to observe daily flag ceremony, which shall be *simple and dignified* and shall include the playing or singing of the Phil Nat’l Anthem.”

How has the SC applied the aforementioned Legislative standards in its decisions? (Case discussions in book)

- ❖ “*Public Interest*” as a Standard:

PEOPLE v. ROSENTHAL (68 PHIL 28)

Act no. 2581, otherwise known as the Blue Sky Law; requires every person, partnership or corporation to obtain a certificate or permit from the Insular Treasurer before offering for sale to the public speculative securities. The Insular Treasurer, under the law, is empowered to cancel or revoke a certificate or permit previously issued by him. Convicted under the penal provision of the law, Rosenthal appealed to the SC and argued that Act 2581, insofar as it empowers the insular treasurer to issue and cancel permits or certificates is an undue delegation of power.

HELD: The act furnishes the Insular Treasurer sufficient standard to follow in reaching a decision regarding the issuance or cancellation of a certification or permit. He is empowered to issue a permit only when his is satisfied that the applicant *has complied with the provisions of the said Act*. On the other hand, the authority of the Insular Treasurer to cancel or revoke a certificate or permit is expressly conditioned upon a finding that such a cancellation is in the *public interest*. In view of the intention and purpose of the Act to protect the public against “speculative schemes which have no more basis than so many feet of blue sky” and against the “sale of stock in fly-by night concerns, visionary oil wells, distant gold mines, and other like fraudulent exploitation,” – *public interest* in this case is a sufficient standard to guide the Insular Treasurer.

- ❖ “*Public Convenience and Interest*” as a Standard:

CALALANG v. WILLIAMS

(70 PHIL 726)

Commonwealth Act 548 authorized the Dir. Of Public Works, with the approval of the Sec. of Public Works and Communications to promulgate rules and regulations for the regulation and control of the use and traffic on national roads. The Dir. of Public Works, with the approval of the Sec., and upon the recommendation of the National Traffic Commission, issued an order closing to animal-drawn vehicles, certain portions of Rizal Ave and Rosario St., both in the City of Manila. Petitioner challenges the constitutionality of said order as having been issued pursuant to an undue delegation of power.

HELD: There is no undue delegation of power. The authority delegated to the Dir. of Public Works is not to determine what public policy demands or what the law shall be, but merely the ascertainment of facts and circumstances upon which the application of the law is to be predicated. Under the law in question, the promulgation of rules and regulations on the use of national roads and the determination of when and how long a national road should be closed to traffic, is to be made with a view of the condition of the road or the traffic thereon and the *requirements of public convenience and interest*. Definite standards are therefore provided in the law.

❖ “*Simplicity, Economy and Efficiency*” as a Standard:

**CERVANTES v. AUDITOR GENERAL
(GR No. L-4043, prom. May 26, 1952)**

Petitioner was in 1949, the manager on the NAFCO with the salary of P15T a year. By resolution of the Board of Dir of the said corporation, he was granted quarters allowance of not exceeding P400 a month. Submitted to the Control Committee of the Gov’t Enterprises Council for approval, said resolution was disapproved on the strength of the recommendation of the NAFCO auditor concurred in by the Auditor General. The Gov’t Enterprises Council was created by the President under EO 93 pursuant to RA 51, which authorizes the President to effect such reforms and changes in GOCC’s for the purpose of promoting “simplicity, economy, and efficiency in operations”. Petitioner challenged the action of the Gov’t Enter. Council and contended that EO 93 is an undue delegation of power.

HELD: So long as the legislature lays down a policy and a standard is established by the statute, there

is no undue delegation of power. RA 51 in authorizing the President, among others, to make reforms and changes in GOCC’s lays down a standard policy that the purpose shall be to met the exigencies attendant upon the establishment of the free and independent Gov’t of the Philippines and to promote simplicity, economy and efficiency in their operation. The standard was set and the policy fixed. The President had to carry the mandate. This he did by promulgating EO 93 which, tested by the rules above cited, does not constitute an undue delegation of legislative power.

❖ *To Maintain Monetary Stability*“ as a Standard:

**PEOPLE v. JOLLIFFE
(GR No. L-9552, prom. May 13, 1959)**

On Dec. 7, 1953, when appellant was about to board a plane of the Pan American World Airways, four pieces of gold bullion were found in his body. There was also found in his possession a \$100 traveler’s check. He was charged with and convicted of violation of RA 265 and sentenced to imprisonment, to pay fine and costs, as well as decreeing the forfeiture in favor of the Gov’t of the gold bullion and the traveler’s check. He appealed and among others challenged the validity of Circular No. 21 of the Central Bank on the ground that it is an undue delegation of powers.

HELD: Distinction should be made between the delegation of the power to determine *what the law shall be* and the delegation of *authority to fix the details in the execution or enforcement of a policy set out in the law itself*. The delegated authority falls under the second category for which a reasonable standard has been set. Sec 74 of RA 265 conferred upon the Monetary Board and the President the power to subject to licensing all transactions in gold and foreign exchange in order to *protect the international reserve of the Central bank* during an exchange crisis and to give the Board and the Gov’t time in which to take constructive measures to combat such crisis. The Board is likewise authorized “to take such appropriate remedial measures as are appropriate” to protect *the international stability of the peso* whenever the international reserve is falling, as a result of the payment or remittance abroad w/c, in the opinion of the Board, are contrary to the national welfare. Furthermore, these powers must be construed and exercised in relation to the objectives of the law to *maintain monetary stability in the Phil* and to *promote a rising level of production employment and real income in the Phil*. These standards are sufficiently

concrete and definite to vest in the delegated authority the character of administrative details in the enforcement of the law and to place the grant of said authority beyond the category of a delegation of legislative power.

❖ “*Simplicity and Dignity*” as a Standard:

**GIL BALBUNA v. SEC OF EDUCATION
(GR No. L-14283, prom. Nov. 29, 1960)**

Petitioners, members of the religious sect “Jehovah’s Witnesses” challenged the constitutionality of RA 1265 by virtue of w/c the Sec. of Education issued Dept. Order No. 8, prescribing compulsory flag ceremony in all schools as an undue delegation of legislative power. Sec 1 of the said act requires all educational institutions to observe daily flag ceremony, which shall be simple and dignified and shall include the playing or singing of the Phil National anthem. Sec 2 thereof authorizes the Sec of Educ to issue rules and regulations for the proper conduct of the flag ceremony.

HELD: The requirements constitute an adequate standard to wit, *simplicity and dignity* of the flag ceremony and the singing of the national anthem – especially when contrasted with other standards heretofore upheld by the courts such as *public interest, public welfare, interest of law and order, justice and equity, and substantial merits of the case, or adequate and efficient instruction*. That the legislature did not specify the details of the flag ceremony is no objection to the validity of the statute, for all that is required of it is the laying down of standard and policy that will limit the discretion of the regulatory agency. To require the statute to establish in detail the manner of exercise of the delegated power would be to destroy the administrative flexibility that the delegation is intended to achieve.

Where should the “Legislative Standard” be located and found?

- ❖ It is desirable that it be embodied in the very provision of the statute delegating the authority, although it may be found elsewhere like when other provisions are considered.
- ❖ The purpose of the law may NOT be left out in the ascertainment of the standard.
 - The standards need not be tested in isolation but referred to the purpose of the law, its factual background and its statutory context.

What are the two fundamental concepts that emerged from the Rule of Delegation of Powers to Admin agencies?

- ❖ From the principles governing the rule against delegation of powers and the exceptions, the *two fundamental concepts* are:
 - (1) The legislature MAY NOT confer discretion in the *execution or administration* of the law; and
 - (2) The legislature MUST DECLARE a *policy* and FIX a *standard* in enacting a statute conferring discretionary power upon an administrative agency.
 - ✓ The agency may be authorized to “fill up the details” in promoting the purpose of the legislation and carrying it into effect.
- ❖ Although in *general*, the power to legislate CANNOT be delegated, the legislature has the right to delegate to designated agencies certain powers of *fact-finding* and *regulation* it possesses as long as legislature:
 - Fixes the limits within w/c such powers are to be exercised.

What are the powers vested in the Legislature by the Consti w/c cannot be delegated to Admin agencies?

- ❖ The powers to:
 - Declare whether or not there shall be a law
 - To determine the general purpose or policy to be achieved by the law
 - To fix the limits within which the law shall operate

Can the Legislature delegate the above powers without violating the Constitutional prohibition?

- ❖ Where the legislature has laid down the fundamentals of a law (as discussed above, e.g. policy and standard), it may delegate to administrative agencies the authority to exercise such legislative power as is necessary to carry into effect the general legislative purpose.

Is there a need for “Clear Legislative Intent to Delegate” in cases of delegation of powers?

- ❖ Legislature may confer on admin boards or bodies *quasi-judicial*, powers involving the exercise of judgment and discretion, *as an incident* to the performance of admin functions.
- ❖ Legislature MUST state its intention in EXPRESS terms that would leave not doubt.
- ❖ To be **valid**, the exercise of quasi-judicial powers conferred must:

- Be **limited** to only those:
 - Incidental to, or
 - In connection with the performance of admin duties; and
- **NOT amount** to conferment of jurisdiction over a matter exclusively vested in courts.
- ❖ *Bill Miller v. Atanacio A. Mardo et al.*
 - Judicial powers are vested only in the SC and in such inferior courts as may be established by law.
 - The legislature could not have intended to grant such powers to the Reorganization Commission, an executive body, as the Legislature **MAY NOT** and **CANNOT** delegate its power to legislate or create courts of justice to any other agency of the gov't.
 - The legislature must state its intention in express terms when conferring upon admin boards or bodies quasi-judicial powers involving the exercise of judgment and discretion as incident to the performance of admin functions.

What is Subdelegation in Administrative Agencies?

- ❖ It is the transmission of authority from the heads of agencies to subordinates.
- ❖ “Sound principles of organization demand that those at the top be able to concentrate their attention upon the larger more important questions of policy and practice, and that their time be freed, so far as possible, from the consideration of the smaller and less important matters of detail.”

What is the Extent of Permissible Subdelegation of Authority?

- ❖ The permissible extent depends primarily upon the intent of the legislature.
- ❖ The general principle of “delegates potestas non potest delegare” provides that a delegated power may not be further delegated by the person to whom such power is delegated.
- ❖ Merely *ministerial functions* may be delegated to assistants whose employment is authorized.
- ❖ There is **NO** authority to delegate (subdelegate) acts *discretionary* or *quasi-judicial* in nature.
 - Authority from the legislature is necessary to the power of a commission to appoint a general deputy who may exercise quasi-judicial powers.

- ❖ An officer who is required to exercise his own judgment and discretion in making an order is not precluded from utilizing, as a matter of practical administrative procedure, the aid of subordinates directed by him to investigate and report the facts and their recommendation in relation to the advisability of the order.
- ❖ Administrative authorities having the power to determine certain questions after a hearing may make use of subordinates to hold the hearing, and make their determinations upon the report of the subordinates, without violating the principles as to fairness of hearing or delegation of powers.



CHAPTER IV POWERS AND FUNCTIONS OF ADMINISTRATIVE AGENCIES

What is the Source and Scope of the Powers and Functions of Administrative Agencies?

- ❖ Powers and functions of Admin agencies are defined either in:
 - (1) Constitution;
 - (2) Legislation; or
 - (3) Both.
- ❖ Admin boards, commissions, and officers have no common-law powers.

What is the effect if the powers and functions are created by statutes or left only to be defined by the legislature?

- ❖ Such powers are limited only to those that are conferred expressly or by fair implication.
- ❖ An admin officer, has only such powers as are expressly granted to him and those necessarily implied in the exercise thereof.

❖ *Makati Stock Exchange Inc., v. SEC*

- The test is not whether the Act forbids the Commission for imposing a prohibition but whether it empowers the Commission to prohibit.
- No specific portion of the statute has been cited to uphold this power.
- It is fundamental that an administrative officer has only such powers as are expressly granted to him by the statute, and those necessarily implied in the exercise thereof.

How should the Grant of Powers to Admin Agencies be Construed?

- ❖ General language describing the powers and functions of an administrative body may be construed to extend **no further** than the *specific duties and powers conferred in the same statute*.
- ❖ In determining whether the admin agency has a certain power, the authority given should be liberally construed in the light of:
 - (1) The purposes for which it is created; and
 - (2) That which is incidentally necessary to a full exposition of the legislative intent should be upheld as being germane to the law.
- ❖ In the construction of a grant of powers, it is a general principle of law that where the end is required, the appropriate means are given.
 - Implication of necessary powers may be especially appropriate in the field of internal administration.
- ❖ Powers should NOT be extended by implication beyond what may be necessary for their just and reasonable execution.
 - Official powers cannot be merely assumed by administrative officers, nor can they be created by the courts in the exercise of their judicial functions.

What are the Powers usually exercised by Admin Agencies?

- ❖ The powers and functions usually granted to and exercised by administrative agencies are:
 - (1) Rule making
 - (2) Adjudication
 - (3) Incidental powers such as:
 - a. Investigating
 - b. Supervising
 - c. Prosecuting
 - d. Advising
 - e. Declaring
 - f. Informally adjudicating.

What is the Administrative Rule-Making or Quasi-Legislative Power?

- ❖ It is the power to:
 - (1) Promulgate rules and regulations or general orders which are legally binding and receive statutory force upon going into effect; **and**
 - (2) Formulate interpretative rulings or regulations w/c do NOT receive statutory force but are accorded great weight when questioned in court.
- ❖ SC has held that an agency that issues rules and regulations has in a sense auxiliary or subordinate legislative powers and is therefore legislation on the **administrative level**.

What is the test in Determining the Nature of the Power?

- ❖ The test as to whether a power is *strictly legislative* or whether it is *administrative* is to determine whether its exercise involves a discretion as to:
 - **What the law shall be** – this is a legislative powers which cannot be validly delegated to an admin body
 - The declaration and establishment of the policy of the law, cannot be delegated to nor exercised by admin agencies.
 - **Merely the authority to fix the details in the execution or enforcement of a policy set out in the law itself** – this is merely a administrative or quasi-legislative power, and can be validly delegated.
 - The authority to make rules and regulations to carry out a policy declared by the lawmakers is administrative and not legislative.
- ❖ It is to be remembered that if allowed, administrative legislation should be exercised within the framework or confines (standards) of the provisions allowing regulatory powers on the agency and the policy of the statute w/c it administers.

What are the General Kinds of Administrative Rules & Regulations?

- 1) **Supplementary or Detailed Legislation**
 - Rules and regulations issued by reason of particular delegation of authority.
- 2) **Interpretative Rules and Regulations**
 - Rules and regulations constructing or interpreting the statute being administered
- 3) **Contingent Legislation**
 - Rules and regulations involving determination under a delegated power whether a statute shall go into effect

What are Supplementary or Detailed Legislations?

- ❖ These are issued by an administrative agency pursuant to a delegated authority to fix “*the details*” in the *execution or enforcement* of a policy set out in the law itself.
- ❖ They add to the procedural or enforcing provisions of substantive law w/c in a sense involve the exercise of discretion of the lawmaker in the administrative body, to be exercised within the confines of definite prescribed standards.

- ❖ Often referred to as the “*filling of details*” or “*subjects... of interest*” to carry out the policy laid down by the lawmakers.
 - Ex: CB Circulars regulating transactions involving gold or foreign exchange issued under RA 265 in order to protect the international reserves of the Central Bank.

What are Interpretative Rules and Regulations?

- ❖ These are the rules and regulations issued by an administrative authority construing or interpreting the provision of a statute to be enforced and they are binding upon all concerned until they are changed.
- ❖ Official construction of the law and valid if they properly construe the statute the administrative agency is bound to enforce.
- ❖ E.g.: General Circular Issued by Collector of Internal Revenue (providing that all losses of property during WWII are deductible in the year of actual loss) is interpretative of Sec. 30(d) of NIRC.

What are Contingent Legislations?

- ❖ These are rules and determinations made by an administrative authority on the existence of the proper occasion for the enforcement or application of the law.
 - This is pursuant to a “*delegation of authority to determine some facts or state of things upon which the enforcement of the act depends*”
- ❖ The Reason behind this is that Congress may enact a law the taking effect of which is made to depend upon the happening of future specified contingencies to be determined by executive or administrative officers or agencies.
 - The power to ascertain facts is a power NOT essentially legislative and may be delegated.

What is Administrative Construction and Interpretation?

- ❖ Admin agencies in the discharge of their duties are necessarily called upon to construe and apply the law under which they function.
- ❖ The necessity for the exercise of the power of construction and interpretation does NOT:
 - Change the character of a ministerial duty; or
 - Involve an unlawful use of legislative or judicial power.
- ❖ Admin agencies may also interpret their own rules which have the force and effect of law.
- ❖ These are appropriate aids toward eliminating construction and uncertainty in doubtful cases.

- Clarifying regulations or one indicating the method of application of a statute to specific cases is permissible when a statute uses ambiguous terms or is of doubtful construction.

What is the effect of Administrative Construction and Interpretation?

- ❖ It provides:
 - A practical guide as to how the agency will seek to apply the law; and
 - An experienced and informed judgment to which courts and litigants may properly resort for guidance.
- ❖ The construction extends beyond meeting the necessities of administration and is given effect by courts when they are called upon to determine the true construction and interpretation of such laws.

What is the effect of relying upon an interpretative regulation promulgated by administrative bodies?

- ❖ One who chooses to rely upon an interpretative regulation does so at his own risk, because the courts may choose not to follow them.
- ❖ The fact that an interpretation has been made by regulation or otherwise, does not preclude a subsequent different, but correct, interpretation by the agency.

What is the effect of an erroneous construction of a statute by an administrative agency?

- ❖ It cannot operate to confer a legal right in accordance with such construction.

Do administrative constructions and interpretations control a court’s decision as to the proper construction of the statute?

- ❖ **No.** But, generally or in particular circumstances, courts give it great weight and such may have a very persuasive influence and may actually be regarded by the courts as the controlling factor.
- ❖ In cases of doubt, there is an inclination to adopt the administrative construction, which will NOT be disturbed by the courts **EXCEPT** for cogent and persuasive reasons and clear conviction of error.
- ❖ This is particularly true with regard to regulations enacted pursuant to a broad rule-making power existing under a statute conferring a privilege to be exercised “under regulations prescribed” by an administrative agency.

What is the effect of a Change in Construction?

- ❖ A construction of a statute by those administering it, even though long continued, is **NOT** binding on them or their successors IF, thereafter, they become satisfied that a different construction should be given.
- ❖ **RATIO:** Prior administrative practice is always subject to change through exercise by the administrative agency of its continuing rule making power.

When is Notice and Hearing in the Promulgations of Rules and Regulations NOT Required?

- ❖ There is no constitutional necessity for a hearing as prerequisite to the promulgation of a **general regulation** by an admin body.
- ❖ In the absence of a statutory restriction, an administrative agency may ascertain in any manner it sees fit what rules should be made.
- ❖ When the rule is **procedural** in nature or where the agency's "rules" are in effect no more than **legal opinions**, no notice is required.
- ❖ Notice is also NOT required in the preparation of **substantive rules** where:
 - (1) The class to be affected is large
 - (2) Questions to be resolved involve the use of wide discretion which has been committed to the rule-making agency

When is Notice and Hearing in the Promulgations of Rules and Regulations Required?

- ❖ Actual notice and opportunity for hearing may be required if the rule or order is:
 - (1) **directed specifically** to a party or a compact group; and
 - (2) The administrative agency exercises only a **limited degree of discretion**.

***Note:** The rules (WON hearing is required) are subject to the statutory requirements or restrictions upon administrative agencies.

If required, what kind of Notice and Hearing should administrative agencies employ?

- ❖ Where notice and hearing are required before the promulgation of a regulation, the admin agency concerned is NOT required to conduct a **quasi-judicial** proceeding.
- ❖ It is sufficient if it is of the same order as had been given by congressional committees when the legislative process was in the hands of the Congress.
- ❖ It need NOT be shown that the rule or order is supported by evidence taken at the hearing, **EXCEPT** when there is a specific statutory requirement for such.

Is the power to fix Rates Legislative or Quasi-Judicial?

- ❖ It partakes a **legislative** character when:
 - Rules and/or rates laid down by an administrative body are meant to apply to **all** enterprises of a given kind, **throughout** the Philippines. (*No previous notice or hearing is required in these cases.*)
- ❖ It partakes a **judicial** character when:
 - Rules and/or rates apply:
 - (1) **Exclusively** to a **particular** party
 - (2) It is predicated upon a finding of fact (based upon a report submitted by the Gen Auditing Office)
 - (3) Such fact is denied by said party.
 - In these cases, SC has held that in making said findings of fact, the agency performed a function partaking of a quasi-judicial character w/c demands **previous notice and hearing for its valid exercise**.

What are the Requisites for the Validity of Administrative Rules and Regulations?

- 1) The rules and regulations must have been issued on the authority of law;
- 2) The rules and regulations must be within the scope and purview of the law; and
- 3) Rules and regulations must be reasonable.

Explain the First Requisite.

- ❖ It is essential that the authority of an admin agency to issue them must be based upon some legislative act.
- ❖ There must be a law authorizing it to issue rules and regulations.

Explain the Second Requisite.

- ❖ Rules and Regulations must be within the authority conferred upon the admin agency.
 - A rule which is broader than the statute empowering the making of the rules cannot be sustained.
- ❖ Admin authorities must strictly adhere to the standards, policies, and limitations provided in the statutes vesting power to them.
- ❖ Regulations are valid only as subordinate rules when found to be within the framework of the policy which the legislature has sufficiently defined.
- ❖ The regulations adopted under legislative authority must be in execution of or supplementary to, but not in conflict with, the law itself.
 - As long as the regulations relate solely to carrying into effect the provisions of the law, they are valid.

- ❖ The delegated power cannot extend to amending or adding to the requirements of the statute itself.
- ❖ It is to be presumed that the regulations adopted were to carry out only the provisions of the statute and NOT to embrace matters not covered, nor intended to be covered thereby.
- ❖ Administrative rules and regulations must be germane to the object and purpose of the law and conform to the standards that the law prescribes.
 - They cannot supplant the plain and explicit command of the statute. An admin agency cannot amend an act of Congress.

Explain the Third Requisite.

- ❖ Admin agencies may not act arbitrarily and capriciously in the enactment of rules and regulations in the exercise of their delegated powers.
- ❖ Whether required by statute or judicial decisions, the regulations must be reasonable to be valid.
- ❖ They must be reasonably adapted to secure the end in view, and are invalid if shown to bear *no reasonable relation to the purposes for which they are authorized to be made.*
- ❖ Rules and regulations must:
 - (1) Be reasonably directed to the accomplishment of the purposes of the statute under which they are made,
 - (2) Tend to its enforcement, or
 - (3) Be reasonable adapted to secure the end in view.
- ❖ The requirement simply means that the regulation must be based upon reasonable grounds – that is supported by good reasons.
 - Reasonableness of rules and regulations are determined by:
 - a) Their relationship to the statutory scheme they are designed to supplement, protect and enforce.
 - b) Stated objectives of the legislation.
- ❖ Whether a regulation is reasonable depends on the character or nature of the conditions to be met or overcome, and the nature of the subject matter of a rule may affect its reasonableness.
 - Ex: Regulation of activities involving mere privileges (*sale of alcohol, conduct of jai alai*) is accorded liberal judicial support, and the court is slow to find such regulations unreasonable.

- ❖ An administrator has a large range or choice in determining what regulations or standards should be adopted.
 - One cannot object and claim that another choice could reasonably have been made, or that experts disagreed over the desirability of a particular standard or that some method of regulation would have accomplished the same purpose and would have been less onerous.
 - It is enough that:
 - The administrator has acted within the statutory bounds of his authority; and
 - His choice among possible alternatives, adapted to the statutory ends, is one which a reasonable person could have made.

What is the Power to fix Rates and Charges?

- ❖ The power to fix or limit the rates or charges exacted by public service corporations, such as railroads and other carriers, telephone companies, gas, electric, power, and bridge companies may be conferred upon administrative authorities without involving any unlawful delegation of legislative power.
- ❖ Same rule has been applied in the regulation of prices in other businesses, personal services and commodity prices.
- ❖ Authorizing a commission to change existing rates fixed by legislature itself is valid for in such a case, the legislature itself has repealed the prior enactment, only leaving to the commission to fix the time when such repeal shall become operative.
- ❖ The only standard that legislature must prescribe for the guidance of the administrative authorities is that the rate be reasonable and just.
 - This standard is **implied** in the absence of an express requirement as to reasonableness.

Can Administrative Agencies promulgate Administrative Rules with Penal Sanctions?

- ❖ Any criminal or penal sanction for the violations of such rules and regulations **MUST come from the legislature itself.**
 - Admin authorities may NOT initiate such sanctions.
- ❖ To declare what shall constitute a crime and how it shall be punished is a power vested solely in the legislature and it may NOT be delegated to any other body or agency.
 - Prescribing of penalties is a **legislative function.**
 - A Commission may not be empowered to impose such penalties for violations of

duties which it creates under a statute permitting it to make rules.

Is the abovementioned prohibition absolute?

- ❖ The legislature may validly provide a criminal or penal sanction for the violation of the rules and regulations which it may empower administrative authorities to enact.

What are the Requisites for the Validity of Administrative Regulations with Penal Sanctions?

- 1) The law authorizing administrative authorities to issue rules and regulations must itself declare as punishable the violation of rules and regulations issued under its authority.
- 2) The law should define or fix the penalty for the violation of rules and regulations.
- 3) Publication in the Official Gazette be made.

What is an illustration of the above Requirements?

Under Sec 6 of RA 3018 which nationalizes the rice and corn industries in the Philippines, the Rice and Corn Board is authorized to “issue such rules and regulations as may be necessary to carry out the provisions of this Act.” Sec. 7 of the same RA provides: “Violation of the provisions of this Act or any *rules and regulations issued thereunder* shall be punished by imprisonment of not less than 5 yrs nor more than 10 yrs and a fine of not less than 5T no more than 10T and immediate deportation.

- In this particular case (requirement #1) it is the law itself authorizing the issuance of rules and regulations and that declares as punishable the violation “of any rules and regulations issued thereunder”.
- It is also the law (requirement #2) which prescribes the penalty for such violation.
- ❖ *People v. Manceren* (electro-fishing case)
 - SC held that admin agencies are clothed with rule-making power because the lawmaking body finds it impracticable, if not impossible to anticipate and provide for the multifarious and complex situations that may be encountered in enforcing the law.
 - All that is required is that the regulations should be germane to the standards that the law prescribes.
 - Admin regulations adopted under legislative authority must be in harmony with the provision of law, and should be for the sole

purpose of carrying into effect its general provisions.

- The regulations should NOT extend the law itself.

When is Publication of Administrative Rules and Regulations Necessary?

- ❖ Administrative rules and regulations which are *general in character* and which *carry criminal or penal sanctions*, publication is necessary.
 - While such are not statutes or law, these are issued in implementation of the laws authorizing their issuance and have the force and effect of law.
 - **RATIO:** General principle and theory that before the public is bound by their contents, especially their penal provisions, such regulations must first be published and the people officially and specifically informed of their contents and penalties.
- ❖ Art. 2, NCC provides that laws are to take effect 15 days following the completion of their publication in the OG, **UNLESS** otherwise provided.

When is Publication of Administrative Rules and Regulations NOT Necessary?

- ❖ The requirement above does not apply when the administrative regulation:
 - (1) Merely interprets the provision of a law being administered for the proper guidance of those concerned; and
 - (2) Merely furnishes the implementing details of another regulation already published.

What is the Legal Force and Effect of Administrative Rules and Regulations?

- ❖ Rules and regulations, and General Orders enacted by admin authorities *pursuant to the powers delegated to them* have the force and effect of law and are:
 - Binding on all persons subject to them; and
 - Courts will take judicial notice of them.
- ❖ Compliance with valid admin rules and regulations is compliance with the law.
- ❖ Regulations in accordance with *specific delegated authority* in the enabling act have uniformly been held to have the force and effect of law if found to have been in consonance and in harmony with the general purposes and objects of the enabling or governing acts.
- ❖ Rules on procedure, pleading, evidence and practice promulgated by an administrative agency under proper delegatory authority have the force and effect of law as well.

Do Administrative Interpretative rulings have statutory force?

- ❖ Interpretative rulings DO NOT have statutory force but are accorded great weight when questioned in the court and will not be overturned unless such are patently erroneous.

How Should Administrative Rules and Regulations be Construed?

- ❖ Rules made in the exercise of a power delegated by statute should be construed together with the statute.
 - Same rules of construction which apply to statutes also govern the construction and interpretation of admin rules and regulations.
- ❖ If it can fairly be done, the rule should be so construed and applied to make it conform to the powers conferred upon the administrative body, rather than as being an assumption of power not so conferred.
- ❖ NO retroactive application **UNLESS** the intention to have it so operate clearly appears.
- ❖ After an interpretative regulation has been “ratified” by the legislative enactment and was otherwise valid, a new and different interpretative regulation could not be retroactively applied to the prejudice of an individual who had relied on the former valid interpretation.

How are Administrative Rules and Regulations Repealed?

- ❖ An admin body does not exhaust its power to make rules and regulations by having made a particular enactment.
 - It may modify or repeal its rules or regulations, and a later regulation does NOT revoke an earlier one by implication, if there is nothing in the second one inconsistent with the continuance of the first.
- ❖ Where a commission has made an order having a dual aspect as legislative in one respect and judicial in another, it may not in subsequent proceedings act in its quasi-legislative capacity and retroactively repeal its own enactment.

What is the Extent of the Acts of Administrative Agencies?

- ❖ *Duly executed acts* of admin bodies can have legal effects *beyond* the life span of that body.
- ❖ Rules and regulations issued under a law expressly providing that “*they shall be in full force and effect until Congress of the Phil shall otherwise provide*” are good only up to the life of the law itself.



**CHAPTER V
ADMINISTRATIVE ADJUDICATION**

What is the Adjudicating or Quasi-Judicial Power of Admin Bodies?

- ❖ It is the power to hear and determine, or ascertain facts in the enforcement and administration of a law.
- ❖ In its general sense, it has been defined as any power of an administrative agency other than rule-making but including licensing.

Quasi-Judicial v. Judicial Power.

Quasi-Judicial	Judicial
Function is primarily administrative and power to hear and determine controversies is granted as an <i>incident</i> to the admin duty	Duty is <i>primarily to decide question of legal rights</i> between private parties, such decision being the primary object and not merely incidental to regulation or some admin function.
Exercisable by administrative authorities	Exercisable only by courts.
Limited as a result of its expertise to the ascertainment of the decisive facts	Entrusted with the determination of all legal questions.

Administrative Rule-Making v. Quasi-Judicial Power.

Administrative Rule-Making	Administrative Adjudication
Consists of the issuance of rules and regulations	Refers to its end product called, order, award or decision
Admin rule or regulation has general applicability	Applies only to a specific situation, hence it is particular and immediate
Prospective in that it envisages the promulgation of a rule or regulation generally applicable in the future	Present determination of rights, privileges and duties as of a previous or present time or concurrence.

How are Quasi-Judicial Powers conferred?

- ❖ Legislature may confer on administrative boards or bodies quasi-judicial powers involving the exercise of judgment and discretion as *incident* to the performance of administrative functions.

What are the limitations of the Quasi-Judicial Powers?

- (1) The legislature must state its intention in **express** terms that would leave no doubt, as

such quasi-judicial prerogatives must be limited only to those:

- a. Incidental to, or
- b. In connection with the performance of admin duties.

(2) The grant **must not amount** to conferment of jurisdiction over a matter exclusively vested in the courts.

What are the Classifications of Adjudicating Powers?

❖ Adjudicatory or quasi-judicial powers also called *determinative powers* are generally classified into:

- (1) **Enabling Powers**; and
- (2) **Directing Powers**.

What are Enabling powers?

- ❖ Refer to those powers granted to administrative bodies to permit or allow something which the law undertakes to regulate to be done by their approval.
- ❖ The chief application of this power is of course, in the granting or denial of licenses to engage in a particular business or occupation.
 - Examples:
 - Power of the Board of Transportation to issue certificates of public convenience or necessity.
 - Power of SEC to permit the issuance of securities
 - Powers of Phil Patent Office to issue patents and copyrights, and register trade-marks and trade names
 - Power of Central Bank to license Banks.

What are Directing Powers?

- ❖ These include the powers of abstract determination – such as definition, valuation, classification and fact finding – and dispensing, examining and summary powers.
 - Illustrated by:
 - Corrective powers of Public Utility Commissions,
 - Powers of assessment under the revenue and assessment laws
 - Reparations under Public Utility Laws
 - Awards under the workmen's compensation laws

What are the Kinds of Directing Powers?

- ❖ Directing powers are further classified into:
 - (1) Dispensing Powers
 - (2) Examining Powers
 - (3) Summary Powers

What are Dispensing Powers?

- ❖ Refers to the authority to:
 - **Exempt** from or relax a general prohibition,
 - Ex: Authority of zoning boards to vary the provisions of a zoning statute or ordinance.
 - OR -
 - **Relieve** from an affirmative duty.
 - Ex: Authority of Public Service commission to permit the abandonment of service by carriers.

What are Examining Powers?

- ❖ Also known as *investigatory* or *inquisitorial powers* which include the power to inspect or to secure or to require the disclosure of information by means or accounts, records or otherwise.
- ❖ Powers included in the investigatory or inquisitorial powers are:
 - (1) Subpoena
 - (2) Swearing of Witnesses
 - (3) Interrogating Witnesses
 - (4) Calling for Production of books, papers and records
 - (5) Requiring that books, papers and records be made available for inspection
 - (6) Inspection of premises
 - (7) Requiring written answers to questionnaires
 - (8) Requiring reports, periodic or special
 - (9) Requiring of filing of Statements

What are Summary Powers?

- ❖ Refer to the authority of administrative agencies to **apply compulsion or force** against person or property to effectuate a legal purpose *without judicial warrant* to authorize such action.
- ❖ These powers are exemplified by the authority of admin agencies in the fields of health, banking, agriculture, animals, aliens, game laws, building regulations, licenses, nuisances, schools, taxation and other fields.
- ❖ In the absence of a statutory grant of power, admin authorities **MAY NOT** themselves enforce their determinations, at least not by direct and positive action.
- ❖ Ex: Collector under the NIRC may resort to the summary proceedings of distraint and levy for the collection of taxes.

What is the Nature of the Administrative Proceedings in the Exercise of Quasi-Judicial Powers?

- ❖ They *partake* of the nature of a judicial proceeding.
 - A proceeding requiring the taking and weighing of evidence, the determination of facts based upon the consideration of evidence and the making of an order

supported by findings has a quality resembling that of a judicial proceeding.

- Described as a proceeding of Quasi-judicial character.

What is the Necessity of Jurisdiction in Admin Proceedings?

- ❖ Jurisdiction is essential to give validity to the determinations of administrative authorities.
 - Without jurisdiction, acts are void and open to collateral attack.
- ❖ **RATIO:** Admin Authorities are tribunals of limited jurisdiction.
 - Their jurisdiction is dependent entirely upon the provisions of the statutes reposing power in them.
 - If the provisions of the statute are not met and complied with, they have no jurisdiction.

What are the Sources of Jurisdiction?

- ❖ The limited jurisdiction of these tribunals may proceed from the *constitution* or *statute*.
- ❖ If established by **Constitution**
 - A statute attempting to enlarge such jurisdiction is unconstitutional.
 - Constitutional amendment relating to its jurisdiction cannot have a retroactive effect so as to embrace a case arising and decided prior to the amendment.
- ❖ If derived from **Statutes**
 - Jurisdiction is dependent entirely upon the validity and the terms of the statutes reposing power in them.
 - Admin agencies cannot confer jurisdiction on themselves.
 - If at least the basic mandatory provisions and the condition precedent are not met and complied with, admin agencies have no jurisdiction.

Can jurisdiction of Admin agencies be affected by the Consent, Waiver or Estoppel of the party litigants?

- ❖ An admin agency CANNOT enlarge its own jurisdiction nor can jurisdiction be conferred upon the agency by parties before it.
- ❖ Deviations from an agency's statutorily established sphere of action cannot be upheld because based upon agreement, contract, or

consent of the parties, nor can they be made effective by waiver or estoppel.

What is the effect on the Jurisdiction of Admin Agencies by the Expiration of a Law providing for such jurisdiction?

- ❖ The expiration of a law, unlike abrogation, will NOT divest an admin body of its lawfully-acquired jurisdiction over a case.
- ❖ Expiration of statute may be held NOT to deprive an admin agency of jurisdiction to enforce the statute as to liabilities incurred while such was in force, where a *general saving* statute continues such liabilities.
 - If there is **NO saving clause**, a repeal of a statute while proceedings are pending and prior to the filing of an order may remove any support in law for such order.

***NOTE:** Simultaneous repeal and re-enactment of substantially the same statute is regarded at common law as a substitution and not a repeal.

What is a substituted statute?

- ❖ A Substituted statute is construed as a continuation of the original provisions and the jurisdiction of a board is NOT disturbed nor its order voided.

Is Due Process required in Administrative Proceedings?

- ❖ Constitutional Guaranty of Due process of law must be observed in order to preserve personal and property rights against the arbitrary action of public officials.
- ❖ Extends to all whose legal rights may be involved and concluded by the determination of the board in proceedings.

What are the Elements of Administrative Due Process?

- 1) There must be an impartial tribunal constituted to determine the right involved.
- 2) There must be due notice and opportunity to be heard.
- 3) The procedure at the hearing must be consistent with the essentials of a fair trial.
- 4) Proceedings must have been conducted in such a way that there will be opportunity for a court to determine whether the applicable rules of law and procedure were observed.

What does Administrative Due Process Include?

- ❖ Right of a party to confront and cross-examine opposing witnesses in a judicial litigation or before admin tribunals exercising quasi-judicial

powers is a fundamental right which is a part of due process.

- ❖ Due process contemplates notice and opportunity to be heard before judgment is rendered affecting one's person or property.
 - There is substantial compliance where the claimant to the position in question was accorded a full hearing prior to the rejection of his claim.
 - Due process is not denied where the admission of a party in his pleadings dispenses with the need for a formal hearing.
 - There is no denial of due process where the adverse parties were given the opportunity to file a **motion for reconsideration** of an order which was issued pursuant to a petition filed without prior notice to them.

Can Administrative Agencies exercising Quasi-Judicial functions delegate to its subordinates the Authority to Hear and Receive Evidence?

- ❖ Power to **decide** resides *solely* in the admin agency vested by law BUT this does NOT preclude a delegation of the power to hold a hearing on the basis of which the decision of the admin agency will be made. (*see subdelegation*)
- ❖ Admin officer is not precluded from utilizing, as a matter of practical admin procedure, the aid of his subordinates to investigate and report to him the facts, on the basis of which he makes his decisions.
- ❖ It is sufficient that the judgment and discretion *finally* exercised are those of the officer authorized by law.
- ❖ Due process or the requirements of fair hearing do NOT mandate that the actual taking of testimony be made before the same officer who will make the decision in the case. It is sufficient that the:
 - a) Party is not deprived of his right to present his own case and submit evidence in support thereof; **and**
 - b) The decision is supported by the evidence in record
- ❖ There is no abnegation of responsibility on the part of the officer concerned as the actual decision remains with and is made by said officer.

What are the Cardinal Rights to be Respected?

- ❖ The following cardinal primary rights must be respected in Quasi-judicial proceedings affecting life, liberty and property:

- 1) ***Right to a Hearing***
 - Includes the right of the party interested or affected to present his own case and submit evidence in support thereof.
 - Liberty and property of the citizen shall be protected by the rudimentary requirements of fair play.
- 2) ***Tribunal Must Consider the Evidence Presented***
 - Right to adduce evidence, w/o the corresponding duty on the part of the board to consider it is a futility.
- 3) ***Decision must have something to support itself***
 - A decision with absolutely nothing to support it is a nullity.
- 4) ***Decision must be based on substantial evidence.***
 - Substantial evidence is more than a mere scintilla.
 - It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
 - Mere uncorroborated hearsay or rumor does not constitute substantial evidence.
- 5) ***Decision must be rendered on the evidence presented***
 - Decision must be rendered on the evidence:
 - Present at the hearing; or
 - At least contained in the record and disclosed to the parties affected.
 - The parties are protected in their right to know and meet the case against them only by confining the admin tribunal to evidence disclosed by the parties.
- 6) ***Tribunal must act on its or their own independent consideration of the law and facts of the controversy***
 - Board or its judges must act on their own and not simply accept the views of a subordinate in arriving at a decision.
- 7) ***Decision must be rendered in such a manner that the parties to the proceeding can know the various issues involved and the ratio for the decision***
 - In all controversial questions, the performance of this duty is inseparable from the authority conferred upon it.

What is the Summary of Elements that Must be Present if Administrative Action is to be sustained (as given by Walter Dodd)?

- 1) The administrative body must have *acted within its authority*, that is, within the powers conferred upon it and in the manner provided by law;
- 2) There must be *notice* and an *opportunity to be heard*.
- 3) There must be *a reasonable opportunity* to know the claims of the opposing party and to meet them.
- 4) A finding may NOT be *based on undisclosed facts*.
- 5) The procedure must be *consistent* with the essentials of a fair trial.
- 6) The findings must be based on *substantial evidence* and must not be arbitrary and capricious.
- 7) Mere uncorroborated hearsay or rumor or a mere scintilla of evidence do not suffice, but there must be *such relevant evidence* as a reasonable mind might accept as adequate to support a conclusion.

What are Examples of Administrative Actions Requiring Notice and Hearing?

- 1) A subject of a foreign power residing in the Phil shall not be deported, expelled, or excluded from the Phil or repatriated to his own country by the President *except upon prior investigation* conducted by the Pres or his authorized agent, on the ground upon which such action is contemplated.
 - The person concerned shall be *informed* of the charge against him and be allowed no less than 3 days for the preparation for his defense.
 - Also have the right to be heard by himself or counsel, to produce witnesses in his own behalf, and to cross-examine the opposing witnesses.
- 2) The Board of Pharmaceutical Examiners may also revoke a certificate of registration as a pharmacist for any cause specified in Sec. 746 of the Revised Admin Code, or for unprofessional conduct, *after due notice* to the person interested, and a *hearing* which is subject to an appeal to the Department Head whose decision shall be final.
- 3) The power of the Boar of Dental Examiners to revoke or suspend the validity of a certification of registration of a dentist for the grounds specified under the law, or for the employment of persons who are duly authorized to do the work which under this Act , provided that the
 - action of the Board in the exercise of this power shall be appealable to the Secretary of Health whose decision shall be final.
- 4) In cases of expiration of the year for which the tax is due, the provincial treasurer shall advertise the sale at public auction of the delinquent real property or so much thereof as may be necessary to satisfy all taxes and penalties due and the costs of sale.
 - Advertisement shall be made by posting a notice for 3 consecutive weeks at the main entrance of the provincial building and all municipal buildings in the province, and in a public conspicuous place in the barrio wherein the property is situated.
 - Copy of the notice shall be sent by registered mail or by messenger to the delinquent taxpayer at his residence if known to the said treasurer.
- 5) The Collector of Customs shall give the owner or importer of the property or his agent a *written notice* of the seizure and shall give him an *opportunity to be heard* in reference to the *delinquency* which was the occasion of such seizure.
- 6) In case of levy on real estate of a delinquent taxpayer for the collection of internal revenue taxes, a *written notice* of the levy shall be mailed to or served upon the delinquent or, if he is absent from the Phil, to his agent or the manager of the business in respect to which the liability arose, or, if there be none such, to the occupant of the property in question.
- 7) Hearing compensation cases shall be held by the Commissioner upon his own motion or upon application of any party interested therein. The commissioner shall cause *reasonable notice* of such hearing to be given to each party interested, by service upon him personally or mailing a copy thereof.
 - All parties in interest shall have the *right to be present at any hearing* in person or by counsel or by any other agent or representative, to present such testimony as may be pertinent to the controversy before the Commissioner and to cross examine the witnesses against them.
- 8) Board of Medical Examiners may disapprove applications for examination or registrations, reprimand erring physicians, or suspend or revoke registration certificates, if the respondents are found guilty after due investigation.

What are Examples of Administrative Determinations Voided of Lack of Notice and Hearing?

- 1) An order of the Public Service Commission canceling the certificate of Public Convenience of an operator *ex-parte* upon petition of a rival company *without notice and hearing*.
- 2) An order of the Public Service Commission revoking the right or authority of an operator under its certificate of public convenience to make extra or special trips without notice and hearing.
- 3) Order of the Public Service Commission granting an applicant a certificate of public convenience after excluding said line from the hearing thereby depriving the oppositors of the right to present evidence in support of their opposition.
- 4) An order of the Public Service Commission limiting the period of the certificate of public convenience of an operator where it appears the latter had never been given notice nor given an opportunity to be heard or present evidence.
- 5) Order of the Public Service Commission altering the route previously granted to a transportation operator to the prejudice of other operators without notice and hearing upon claim that is merely a correction of clerical errors in a decision previously rendered.
- 6) A resolution of a municipal council ordering the elevation of a smoke-stack of an ice plant company within a period of one month from the approval of the said resolution otherwise said establishment will be closed or its operation suspended, it appearing that no compelling necessity justifies such summary action and done without notice and hearing to the party affected.
- 7) Action of the District Engineer and the Provincial Governor destroying the dam constructed by the plaintiff across a certain creek without any judicial proceeding whatever under pretense that such private property constitutes a nuisance.
- 8) A decision of the CIR authorizing a movie production company to lay off 44 workers on the ground that it was suffering financial losses where it appears that the Presiding Judge thereof, instead of conducting a formal hearing made an ocular inspection of the premises of the company in the course of which he interrogated 15 laborers on the basis of which the decision was rendered without receiving full evidence to determine the cause or motive of the lay off of

the said workers thereby denying the parties affected an opportunity to be heard.

- 9) An order of deportation of an alien on the basis of a charge other than that contained in the warrant of arrest and upon which no opportunity for a fair hearing was made.
- 10) A tax delinquency sale held on a date other than that fixed in the notice as advertised, it being a requirement of law that notice of such sale to the delinquent tax-payers and landowners in particular, and to the public in general, be made, non-fulfillment of which vitiates and nullifies the sale and if it appears necessary to postpone the sale indefinitely, new notices to the taxpayers and to the public should be made.
- 11) In this case, a workmen's compensation award was issued without hearing on the failure of the employer to controvert the claim. Although admitting non-controversion, the employer corporation argued that this merely meant that it accepted the allegation in the claim that the employee was "lost or missing".

Is Notice and Hearing Required in ALL cases of Administrative Determinations?

- ❖ Not every administrative determination affecting private individuals requires notice and hearing.
 - Only required in order to comply with due process of law only when **some constitutional right is claimed to be invaded**.
- ❖ Notice and Hearing is NOT necessary in the **absence** of an express or implied statutory provision therefore, and a statute may provide for such determination without requiring notice and hearing if::
 - (1) The **purpose** of an administrative determination is to decide WON a right or privilege which an applicant does not possess shall be:
 - a) granted to him or
 - b) withheld in the exercise of a discretion vested by statute,
 - (2) The power exercised is essentially administrative or executive and NOT judicial or quasi-judicial.
- ❖ Even though the power exercised is quasi-judicial, notice or hearing may not be essential to due process of law if **no personal or property rights are involved**.
 - There are many cases in which powers of determination and action of a quasi-judicial character are given to officers entrusted with duties of local or municipal administration by which lives and properties of individuals are affected, and from the very nature of

these duties, they must be exercised without prior hearing or finally and conclusively without any hearing, or even notice to the parties who may be affected.

What are examples of administrative determinations that even without prior notice and hearing are still valid?

- 1) Summary proceedings of distraint and levy upon the property of a delinquent taxpayer for the collection of internal revenue taxes, fees, or charges, and any increment thereto.
- 2) Preventive suspension of officer or employee pending investigation
- 3) Removal of “acting” or “temporary” employees
- 4) Cancellation of a passport where no abuse of discretion has been committed by the Secretary of Foreign Affairs
- 5) Summary abatement of nuisance *per se* which affects the immediate safety of person and property (remember property?)
- 6) Grant or revocation of licenses for permits to operate certain businesses affecting public order or morals, like selling of liquor, or operating of a dance hall, since the legislature did not intend to leave the morals of a neighborhood to be imperiled while a protracted hearing should hold in abeyance the proper admin action to terminate or recall a license used to cover immoral or disorderly conduct;
- 7) Summary seizure, condemnation or destruction by municipal officers without a preliminary hearing of such food which are unfit for human consumption;
- 8) No hearing is required in the consideration of any application for the installation, establishment or operation of a radio system, unlike those instances specified in Radio Control Law.
- 9) The oppositor in an application for taxi service was not able to present evidence in support of her opposition because there was a failure to notify her of the date of the hearing. The Supreme Court nevertheless did not find denial of due process as she did not show that she suffered substantial injury and therefore had no reason to complain. The court placed value on the fact that she did not move for reconsideration and did not ask for new trial for presentation of her evidence.

What are the Rules of Procedure in Administrative Determinations?

- ❖ The differences in origin and function of courts and of administrative agencies preclude the wholesale transportation to admin proceedings of the rules or procedure, trial and review which have evolved from the history and experience of the courts.
- ❖ It is a general rule that they are unrestricted by the technical or formal rules of procedure which govern trials before a court.
 - The atmosphere of admin tribunals may be one of expeditiousness, expertness, or liberally conceived remedies.
 - Ex: Court of Industrial Relations is not narrowly constrained to technical rules of procedure.
 - The Industrial Act requires it to “act according to justice and equity and substantial merits of the case, without regard to technicalities or legal forms and shall not be bound by any technical rules of legal evidence but may inform its mind in such manner as it may deem just and equitable.”

Do Admin Agencies exercising powers of administrative determination have the authority to promulgate Rules of Procedure?

- ❖ They may adopt and prescribe the rules of procedure applicable in proceedings before them.
- ❖ Even if rules of practice have not been provided by the law-making power, admin agencies exercising judicial or quasi-judicial functions have the authority to establish rules of procedure under which such functions will be exercised.
 - They must be reasonable and not arbitrary.

What are Limitations on the Authority to Adopt Rules of Procedure?

- ❖ Such promulgated Rules of Procedure cannot ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character.
- ❖ As stated, they must be reasonable and not arbitrary.

How are these Rules of Procedure Interpreted?

- ❖ They should be construed **liberally** in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determinations of their respective claims and defenses.
- ❖ Admin authorities have the power to *interpret* their own rules and a certain latitude of discretion in their application is permitted.

- An officer having the power to impose a regulation governing the practice of a tribunal has power to dispense with such regulation for reasons satisfactory to him.
- The rules may even be *disregarded* in any particular case without infringing on the rights of the litigants provided that:
 - a. Tribunal must not act in an arbitrary manner
 - b. It may not deny an essential right to a hearing
- ❖ **RATIO:** Rules are only for the convenience of the tribunal, as well as of litigants, and are adopted to facilitate the transaction of business, and may be *suspended or disregarded* by the tribunal whenever the purposes of justice requires it.

Can Administrative Agencies issue *Ex Parte* orders?

- ❖ Where admin proceedings involve parties, admin agencies may not simply issue an *ex parte* order; it must proceed against the proper parties.

How are Parties to an Admin Proceeding Determined?

- ❖ Who are, may or must be parties to the proceedings is dependent upon the:
 - (1) **Purpose and effect** of the proceeding;
 - (2) Particular **statute** under which it is brought; and
 - Certain statutes are aimed to provide protection for the public and not remedy for private wrongs.
 - (3) **Rules of agency.**
 - While a private person may request that action be taken by an admin agency or a charge by such person may be essential to put the machinery of the agency into motion, the person at whose instigation a proceeding is instituted does NOT become a party to the proceeding or have any control over it.
- ❖ Analogy to the law on parties as developed in judicial proceedings may not be compelling, particularly when the purpose of the proceeding is not the adjudication of private rights.
- ❖ The personal merit, motives or conduct of the private complainant is immaterial if the practice of which he complains is one in which the public generally has an interest.
- ❖ Many admin proceedings are instituted on the complaint or motion of the agency before which the hearing is had, however it has been held generally that an admin agency is NOT a party

to a litigation as that term is customarily used and should not be so considered unless the legislature has provided.

Are the Rules on Pleadings followed in courts applicable to Administrative Determinations?

- ❖ The right to some sort of due, adequate and appropriate statement of issues or pleadings may exist under a constitutional or statutory right to a hearing, or under specific provisions of statutes or rules or the particular admin agency.
- ❖ Sufficiency of an application, claim, petition, notice, complaint, charge, rule to show cause, or whatever other form an initial statement before an admin agency or tribunal may take is NOT governed by the rules applicable to courts.
 - Pleadings may be informal, and the sufficiency of statements therein is not to be measured by the requirements of a complaint or initial pleading in a court civil or criminal proceeding.
- ❖ What is required under some statutes and rules is a:
 - a) Brief statement of the facts, or
 - b) Clear or concise statement of the claims or charge upon which the petitioner relies and of the relief sought.
- ❖ Complaint must set out facts sufficient to establish all the essential elements, but it is no more necessary to plead the law relied on in an administrative proceeding than in a judicial proceeding.
- ❖ A statutory provision may provide that a complaint shall be verified by the oaths of the complainants and specify the acts complained of, requires that the verification be genuine, attest the truth of the particular circumstances alleged, and be based upon personal knowledge of those averring them.
- ❖ Proceedings instituted by complaint necessarily involve the right of counterpleading or answer, and the complaint is subject to demurrer on the ground that it does not state facts sufficient to constitute a cause of action.

How is Evidence presented in Administrative Proceedings?

- ❖ **GEN. RULE:** Admin tribunals are NOT bound by the strict or technical rules of evidence governing court proceedings even though the administrative agency is acting in an adjudicatory or quasi-judicial capacity.
- ❖ Admission before an admin tribunal of matter which would be deemed incompetent in judicial proceedings will NOT:
 - Invalidate the admin order, and

- Constitute ground for reversal where it is merely cumulative, or it is shown that the admin agency relied upon such evidence.
- ❖ Admin tribunals are given great leeway in hearing and considering a variety of material as evidence, and the receipt and consideration of incompetence evidence is not a denial of due process of law.
- ❖ Rule that admin agencies are not bound by the strict or technical rules of evidence is recognition that admin agencies may relax rules.
 - This should not be construed to mean as an approval of an utter disregard of rules of evidence where private rights are involved.
 - The exemption from strict rules of evidence does not empower an admin agency to act arbitrarily.

Can an Admin tribunals in a quasi-judicial proceeding use its own agency files and records without introducing them as evidence?

- ❖ Courts have **generally** held that it *is improper* for an admin agency in a quasi-judicial or adjudicatory proceeding to base its decision or findings upon:
 - (1) Facts gathered from its own files without introducing the files in evidence, or
 - (2) Facts obtained from other cases pending before, or
 - (3) Facts obtained from other cases previously decided by the tribunal
- ❖ There are cases however that hold that an admin agency can take judicial notice of its own records or decisions or may act on the knowledge of matters disclosed to it through its own records.
 - Some cases hold that the use of evidence gathered from its own files is for a limited purpose of supplementing or checking and weighing evidence properly introduced.
- ❖ **Better View:** An administrative agency may take notice of data on file or records reached by it in other cases where:
 - Such facts is made known from the other cases, and
 - There is adequate opportunity for rebuttal.

How are Secret information and Confidential Communications to an agency treated?

- ❖ **GEN RULE:** In adjudicatory proceedings involving primarily the interests of private litigants, information cannot be withheld from the parties on the ground that it is of confidential

nature and at the same time be used as a basis for decision by the admin agency.

- ❖ There are some cases which support the proposition that in some instances, a right to hearing *does not* embrace the right to know information which must be kept secret in the public interest.

What is the Quantum of Evidence required in Admin Proceedings?

- ❖ It must be Substantial Evidence.
 - More than mere scintilla of evidence.
 - Such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

What is the Substantial Evidence Rule?

- ❖ The judicial inquiry goes no further than to ascertain whether there is evidence to support the findings, and the question of the weight of the evidence in determining issues of fact lies with the agency acting within its statutory authority. (*Ang Tibay v. CIR*)

What is the required Form of Administrative Determinations?

- ❖ Administrative order or determinations must in particular cases *conform to the statutes governing the particular proceeding*. They must be in proper form and must be entered against the proper party.
 - 1) They must contain findings *sufficiently definite* and *certain* as to enable the court to review the decision intelligently and ascertain if the facts afford a reasonable basis for the order.
 - Findings of quasi-jurisdictional facts by an administrative agency are not sufficient where ascertainment of their existence is left to conflicting inferences.
 - 2) It must also state the law on which the decision is based.
 - The decision must have something to support itself for an order with absolutely nothing to support itself is a patent nullity.
 - 3) Order should be sufficiently *definite* and *certain* to inform the party what is required to be done, and to enable the courts to enforce them.

What is the effect of Administrative Decisions rendered Beyond the Period provided for in the statute?

- ❖ It is usual for statutes to require that administrative decisions be rendered within a prescribed period.
 - These requirements are generally *directory* and NOT jurisdictional.

- A decision rendered beyond such period is **NOT necessarily** null and void, in the absence of provision to the contrary.
- ❖ Ex: Sec. 5(d) of RA 875 provides that unfair labor practices cases must be decided w/n 30 days after their submission. It also provides that the 30-day period shall be considered mandatory in char.
 - This does not mean that a decision rendered beyond the 30-day pd is null and void.
 - After a court has acquired jurisdiction over the case, it retains such jurisdiction until the case is finally disposed of.
 - The 30-day period was designed to provide the parties to the industrial dispute with means to compel prompt decisions of the case by the court by a writ of mandamus, admin complaint or a similar recourse.
 - Here, congress **did not** say that a decision rendered after the 30 day period would be null and void.

What is the effect of a VOID or INVALID Order?

- ❖ It is not enforceable and may be disregarded or challenged in a collateral proceeding and it affords no protection for acts done under it.

Can there be Appeals and Reviews of Admin Decisions?

- ❖ In many admin systems, there is a hierarchy of authorities so that a review may be had within the system itself of the action of the lower admin authorities by their superiors.
- ❖ Admin review may be provided for where a court is made a part of an admin scheme with supervisory powers of such extent that its action on review is deemed different from its ordinary judicial functions.

What are some examples of Administrative Appeals and Reviews?

- ❖ Decisions of the Collector of Customs in any matter presented upon protest or by his action in any case may be reviewed by the Commissioner.
 - The aggrieved party within 15 days (*after notification in writing by the Collector of his action or decision*), must give written notice to the Collector intimating his desire to have the matter reviewed.
 - Collector shall transmit all records of the proceeding to the Commissioner who shall approve, modify or reverse the action or decision of the Collector and take such steps and make such orders as necessary to effectuate his order.

- ❖ Orders and Determinations of Director of Lands under the Public Land Act (CA 141) are appealable and subject to review by the Sec of Agriculture and Natural Resources.
- ❖ Decisions and Orders of Director of Mines on cases pertaining to the reconstitution or reconstruction of mining records may be appealed to Sec of Agriculture and Natural Resources by filing with the Director of Mines a notice of appeal w/n 30 days after rcpt of the party appealing a copy of such decision/order.
- ❖ Any property owner not satisfied in the assessment of his property, may within 60 days from the date of receipt by him of the written notice of assessment, appeal to the Board on Tax Appeals. If he is not satisfied with the decision of the Board on Tax Appeals he may appeal to the Sec. of Finance.
- ❖ Art. 260 of New labor Code (PD. 442) states that any party to a Certification election (CE) may appeal the order or results of the election of the BLR on the ground that the rules and regulations or parts thereof established by the Sec. Of labor for the conduct of the CE has been violated. Appeal shall be decided w/n 15 working days.
- ❖ ART. 264 New Labor Code – decisions of the NLRC on a dispute certified to it shall be final and executory unless appealed to the Sec. of Labor within 10 days from receipt only on grounds of GADALEJ.

Is Compliance with the period provided by law for perfection of an appeal Mandatory or Jurisdictional?

- ❖ Compliance with the period provided by law for the perfection of an appeal is **not merely mandatory** but also a **jurisdictional** requirement.

Are Dept. Heads Authorized by law to Repeal or Modify the Decisions of Bureaus or Offices Under Their Control?

- ❖ Department Heads are authorized by law to have direct control, discretion and supervision over all bureaus and offices under their respective jurisdiction and may, any provision of existing law to the contrary notwithstanding, **repeal or modify** the decisions of the chief of said bureaus and offices when advisable in the public interest. [Sec. 79(c) Rev. Admin Code]

Does the President have the power to control Executive Depts., Bureaus and Offices Independent of Statutory Authority,?

- ❖ Art. VII Sec. 10(1), 1973 Consti [now Art. VII, Sec. 17, 1986 Consti]:

- President as administrative head, has the constitutional power to control executive departments, bureaus and offices.
- The president may exercise his constitutional power of revision on his own motion, or on the appeal of some individual who might deem himself aggrieved by the action of an administrative official.

Does the Principle of Res Adjudicata apply in Administrative Proceedings?

- ❖ This has found little systematic consideration partly due to the fact that the doctrine of *res judicata*, properly understood, has only a narrowly confined area of application in the field of admin law.
- ❖ By way of generalization and only as a broad principle subject to exceptions, the principle of *res adjudicate* **does NOT** apply when:
 - (1) Administrative determination has been issued with respect to a matter wherein an administrative agency has **continuing jurisdiction**;
 - (2) No rights have **vested** in the meantime by reason thereof;
 - (3) So long as the case has not yet passed beyond the control of the administrative authorities as where the:
 - Determination is not yet final but interlocutory
 - Powers and jurisdiction of the admin authorities are continuing in character.

What are the grounds that will enable Admin agencies to modify their determinations?

- ❖ Admin agencies, whether by reason of express statutory provision granting the power of revision or by reason of the principles applied by the others, have the power to modify their determinations on the grounds of:
 - (1) Fraud or imposition
 - (2) Mistake
 - (3) Inadvertence
 - (4) Newly discovered evidence
 - (5) In order to meet the changed conditions

When does Res Adjudicata apply to Admin Proceedings?

- (1) A decision or determination was issued or made in the exercise of **essentially judicial function** involving:
 - a. The grant of some right or privilege **intended as a final determination of the question itself**

- b. **Rights have already vested in the meantime** by reason thereof

- OR -

- (2) When such administrative determination has been the **judicially affirmed**.

***NOTE:** The courts usually apply it not as res adjudicata itself but as a specie of **equitable estoppel** which produces approximately the same result as would application of the rules of **res adjudicata**.

Is the Reopening of Administrative Proceedings allowed?

- ❖ Reopening cannot be allowed without **legal and plausible grounds**.
 - It tends to breed chaos and lead to an insecurity of status already established by a previous admin agency.
- ❖ An arbitrary, abusive and indiscriminate exercise of the right to review even if granted by law, will obliterate the right of an individual to due process – a destructive blow to the rule of law.

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CHAPTER V ADMINISTRATIVE ENFORCEMENT AND SANCTIONS

How are Administrative Determinations Enforced?

- ❖ Enforceable only in the manner provided by the statute.
 - If statute does not provide a remedy for their enforcement they are **unenforceable**.
- ❖ Some determinations are not to be enforced at all, in the ordinary sense of the term.
 - In these cases, their only sanction is the:
 - Force of public opinion invoked by the fairness of a full hearing,
 - Intrinsic justice of the conclusion, strengthened by the official prestige on the tribunal
 - Full publication of any violation of the decision.

What are the Methods of Enforcement of Admin Determinations?

- ❖ The methods of enforcement of admin determinations are:
 - (1) Investigation
 - (2) Summary Action
 - (3) Imposition of Administrative Sanctions
 - (4) Judicial Actions

What is Investigation as a Method of Enforcement?

- ❖ Life blood of the admin process is the flow of fact, the gathering, the organization and the analysis of evidence.
- ❖ Investigations are useful for all admin functions, not only for rule making, adjudication and licensing, but also for prosecuting, for supervising and directing, for determining general policy, for recommending legislation and for purposes no more specific than illuminating obscure areas to find out what if anything should be done.
 - Admin agency may be authorized to make investigations, not only in proceedings of a legislative and judicial nature, but also in proceedings the purpose of which is to obtain info upon which future action of a legis or judicial nature may be taken.
 - This may require the attendance of witnesses in proceedings of a purely investigatory nature.
 - They may conduct general inquiries into evils for correction, and to report findings to appropriate bodies and make recommendations for actions.
- ❖ Investigatory or inquisitorial powers may consist of the power to inspect or to secure or to require the disclosure of information by means of accounts, records, or otherwise.
- ❖ These powers are conferred on practically all boards and commissions as an adjunct of their regulatory powers which may include the powers of: (see Chap 4)
 - a) Subpoena;
 - b) Swearing Witnesses
 - c) Interrogating Witnesses
 - d) Calling for the production of books, papers and records
 - e) Requiring that books, papers and records be made available for inspection
 - f) Inspecting premises
 - g) Requiring Written Answers to Questionnaires
 - h) Requiring reports, periodic or special
 - i) Requiring the filing of statements.

Discuss the power of Admin Agencies to Require Attendance of Witnesses, Compelling Testimony, and Production of Evidence in General.

- ❖ Admin officers do **NOT** have the inherent power to require the attendance of witnesses before them, put them under oath and require them to testify.

- ❖ This power and the power to require the production of books, papers, documents and other evidence are *basic* to the power of investigations and it is common for statutes to confer such powers to admin agencies.
- ❖ Such powers may be validly vested in admin agencies even for purposes not quasi-judicial.
- ❖ An Admin agency *in itself* is **NOT** empowered to compel the attendance and testimony of witnesses, and may only do so through judicial process.
 - It is common for the statutes to provide for *application to a court to:*
 - Enforce obedience to a *subpoena* of an admin agency or
 - The giving of testimony before it.
 - Power to compel a witness to testify will **NOT** be inferred from a grant of authority to summon and examine a witness.
 - The power to compel a witness to testify must be clearly given by statute.
 - The book says there is authority to the contrary.

What is the Power to issue a Subpoena?

- ❖ This aids in the effective exercise of the Investigatory power.
 - Without the power to summon witnesses and require the production of books, papers and documents, investigation may not prosper.
- ❖ Subpoena power is thus the coercive arm or feature of investigation.
- *NOTE: This is **NOT** an inherent power of admin agencies.
- ❖ Admin agencies may enforce subpoenas issued in the course of investigations, whether or not adjudication is involved or whether or not probable cause is shown even before issuance of a complaint.
 - It is unlike a *warrant* where:
 - A specific charge or complaint of violation of law should be pending; or
 - That the order be made pursuant to one is required before its issuance.
 - In the issuance of a subpoena, it is enough that the investigation be for a lawfully authorized purpose.
- ❖ Admin agency has the power of inquisition which is **NOT** dependent upon a case or controversy in order to get evidence but can investigate merely on suspicion that the law is being violated or wants an assurance that it is not.

- Upon delegation by a statute of investigative and accusatory duties to an admin agency, it may take steps to inform itself as to whether there is probable violation of the law.

What is the Purpose of a Subpoena?

- ❖ Its purpose is to *discover evidence*, not to prove a pending charge.
 - Upon discovery of evidence, a charge can be made if the evidence so justifies the making of one.
- ❖ Its obligation cannot rest on a trial of the value of the testimony sought as it is enough that:
 - (1) The proposed investigation be for a lawfully authorized purpose; and
 - (2) The proposed witness be claimed to have information that might shed some helpful light.

What are the Requisites for the Validity of a Subpoena?

- ❖ A subpoena meets the requirements of enforcement if the inquiry is:
 - (1) Within the authority of the agency
 - (2) The demand is not too indefinite
 - (3) The information is reasonably relevant.

Does the Right Against Self-Incrimination extend to Administrative Investigations?

- ❖ This constitutionally granted privilege extends in administrative investigations, generally, in scope similar to adversary proceedings.
- ❖ *Cabal v. Kapunan Jr.*,
 - Since the Admin charge of Unexplained wealth may result in the forfeiture of the property under the Anti-Graft and Corrupt Practices Act, a proceeding criminal or penal in nature, the complainant cannot call the responded to the witness stand without encroaching upon his constitutional privilege against self-incrimination.
- ❖ Any person whether the respondent or a witness in an admin investigation, may contest an attempt in the investigation that tends to disregard his privilege against self-incrimination.

What are Examples of Statutory Grant of Subpoena Powers?

- ❖ COMELEC has power to summon the parties to a controversy pending before it, issue subpoena and subpoena duces tecum and take testimony in any investigation or hearing before it and delegate such power to any officer of the Commission who shall be a member of the Phil. Bar. (Sec. 185(1), PD 1296)
- ❖ SEC may issue subpoena duces tecum and summon witnesses to appear in any proceedings

of the Commission and in appropriate case order search and seizure or cause the search and seizure of all documents, papers, files and records as well as books of accounts of any entity or person under investigation for the proper disposition on cases before it. (Sec. 6(e) PD 902-A)

- ❖ BLR has the power to require the appearance of any person or the production of any paper, document or matter relevant to a labor dispute under its jurisdiction either at the request of any interested party or its own initiative. (Art. 229, PD 442)
- ❖ NLRC shall have the power and authority to administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers... in any investigation or hearing in pursuance of the New Labor Code. (Art. 218(b) PD 442)

When authority to take testimony or evidence is conferred upon an admin officer is it understood to comprehend the right to issue subpoena?

- ❖ YES. When authority to take testimony or evidence is conferred upon an admin officer, any non-judicial person, committee or other body, such authority is understood to comprehend the right:
 - To administer oaths and summon witnesses
 - Authority to require the production of documents under a subpoena duces tecum or otherwise.
- ❖ This authority is subject in all respects to the same restrictions and qualifications as applied in judicial proceedings of similar character.

Can Subpoena Power be subdelegated?

- ❖ In the absence of express statutory authority, such subdelegation of authority to subordinates should **NOT** be inferred.
- ❖ Unlimited authority of an admin officer to delegate the exercise of subpoena power is **NOT** light to be inferred.
 - Capable of oppressive use, especially when it may be indiscriminately delegated and the subpoena is not returnable before a judicial officer.

How are Subpoenas Enforced?

- ❖ As stated, admin agencies ordinarily do not and cannot have the power to compel the attendance and testimony of witnesses.
 - The usual procedure is the *application* by the admin agency or by an interested party to a court for an order enforcing the administrative order or subpoena.

- ❖ It is the **order of the court** which is the basis of the obligation, and enforced by contempt proceedings if not obeyed.

Do Administrative Agencies have Contempt Powers?

- ❖ The power to punish contempt is **inherently judicial in nature** and has always been regarded as a necessary incident and attribute of the courts.
- ❖ It may be granted to an admin body **only in the exercise of judicial or quasi-judicial powers.**
 - The grant or contempt power in the furtherance of the purely admin function of such body has been held to be **invalid**.

What are Examples of Statutory Grant of Contempt Powers?

- ❖ COMELEC or any of the members thereof shall have the power to punish contempt provided in Rule 71 under the same procedure and with the same penalties provided therein for the violation of any final and executory decision, order, or ruling of the COMELEC. (*Sec. 185(e) PD. 1296*)
- ❖ NLRC has the power to hold any person in contempt directly or indirectly against any person guilty of misbehaviour in the presence of or so near the Chairman of any member of the Commission of any Labor Arbiter. Indirect contempt shall be dealt with by the Commission or Labor Arbiter in the manner prescribed under Rule 71 of the Rules of Court. (*Art. 218(d) PD 442*)
- ❖ Any violation of any order, award, or decision of the Court of Industrial Relations shall, after such has become final, conclusive and executory, shall constitute contempt of court, provided that the complaint charging the commission of indirect contempt of the Court shall be in writing signed and filed with the Clerk of Court by the Attorney of Court. (*Sec. 6, CA 103*)

What are Summary Powers as a Method of Enforcement?

- ❖ Used to designate the admin power to apply compulsion or force against person or property to effectuate a legal purpose without a judicial warrant to authorize such action.
- ❖ Where only property rights are involved, mere postponement of judicial inquiry into liability is NOT a denial of due process if the opportunity given for the ultimate judicial determination of the liability is adequate.
- ❖ Property rights must yield provisionally to governmental need where adequate opportunity

is afforded for a later judicial determination of legal rights.

- Summary proceedings to secure prompt performance of pecuniary obligations to the gov't have been consistently sustained.
- Ex: Summary proceedings of distraint and levy of the property of delinquent taxpayers for collection of taxes have never been successfully questioned.

What are Administrative Sanctions as a Method of Enforcement?

- ❖ These are **Vindictory parts** of a law or those parts which ordain or denounce a penalty for the violation.
- ❖ These may include revocation of licenses, refusal to renew licenses, refusal to grant clearance papers, seizure and sale or destruction of property, rejection of applicants, suspension or expulsion, restraint of person, imposition of admin fines and forfeitures.
- ❖ These sanctions are regarded as **remedial** and **civil** NOT criminal, and may be imposed by admin agencies.

What are Examples of Administrative Sanctions?

- 1) Suspension, revocation or cancellation of certificates of public convenience, after notice and Hearing by the Public Service Commission;
- 2) Imposition of a fine not exceeding P200/day for every default or violation by any public service of terms and conditions of any certificate or any order, decisions, and regulations of the Public Services Commission which is empowered to impose the same, after due notice and hearing;
- 3) Imposition of admin fines and forfeitures by the Collector of Customs under the Customs and Tariff Code;
- 4) Imposition and collection of penalties and surcharges by the Collector of Internal Revenue under the NIRC;
- 5) Exclusion and deportation of aliens under the provisions of the Immigration Act and as an inherent act of the state; and
- 6) Suspension, cancellation, or revocation of licenses of physicians and dentists under the Phil Medical Act of 1959 and the Phil Dental Act.

Are Admin Agencies given the Power to Enforce their own decisions?

- ❖ Some agencies may be given the power to enforce their own decisions without invading the province of the judiciary.

- ❖ Imposition of a penalty for violation of law has been held as a **judicial function** which may NOT be reposed in an admin agency.
 - For example, Legislature cannot leave the amount of penalty between fixed limits, to case-by-case determination by a tax commission, this being exactly the same function which a court would exercise in imposing a fine upon conviction of a crime.

When is an Admin Agency Allowed to enforce its own Decisions?

- ❖ If the sanction (penalty) invoked is **civil** and NOT **criminal**, it may be applied by an Admin Agency.
- ❖ Authorizing an admin agency, after hearing and findings of non-observance of an order, to publish the names of those failing to observe such order does not attempt to confer unconstitutional authority to usurp the judicial function by imposing a penalty.
 - Such information would be public knowledge and could be printed in any newspaper irrespective of the consent, or authorization of the admin agency.
- ❖ In the **absence of specific provisions of law**, penal sanctions for the violation of admin rules, regulations and determinations, are **enforceable through the machinery of the regularly constituted court**.
- ❖ There is NO constitutional principle which prohibits the legislature from authorizing admin agencies from imposing **administrative** as distinguished from **criminal** sanctions like fines and forfeitures.
 - Such sanctions are regarded as merely **civil** and **remedial** rather than **criminal** or **punitive** in nature.
 - Good examples are internal revenue and custom cases.

What is Judicial Enforcement as a Method of Enforcement?

- ❖ Admin orders CANNOT be enforced in the courts of justice **in the absence of an express statutory provision** for that purpose.
- ❖ Some statutes, generally provide for the judicial enforcement of admin orders:
 - (1) Sometimes by provisions for transfer of admin records and decision to a court for the entry of a judgment and decree; and
 - (2) Sometimes by actions for penalties for violation of orders or by actions to enforce reparation awards.

- ❖ Some statutes make available mandamus and injunction as methods of Judicial Enforcement.

What are Examples of Statutory Provisions on Judicial Enforcement?

- ❖ Observance of the orders, decisions and regulations of the Public Service Commission and the terms and conditions of any certificate may also be enforced by mandamus or injunction in appropriate cases, or by action to compel the specific performance of the orders, decisions, and regulations so made, or o the duties imposed by law upon such public service: Provided, that the Commission may compromise any case that may arise under this Act in such manner for such amount as it may deem just and reasonable. (*Sec. 22, Public Service Act*)
- ❖ Upon application of the SEC, the CFI of Manila shall also have the jurisdiction to issue mandatory injunctions commanding any person to comply with the provisions of the Securities Act or any order of the Commission made in pursuance thereof. (*Sec. 31(e) Securities Act.*)
- ❖ Board of Medical Examiners may file an action to enjoin any person illegally practicing medicine from the performance of any act constituting practice of medicine if the case so warrants until the necessary certificate therefore is secured. Any such person who, after having been so enjoined continues in the illegal practice of medicine shall be punished for contempt of court.

Can Judicial Enforcement be had through Criminal Prosecutions?

- ❖ Independently of such specific statutory provisions, judicial enforcement is also had through criminal prosecutions for the violation of the provisions of statutes and of the rules and regulations issued thereunder if made a crime by the law itself and penalty therefore specially provided by law.

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CHAPTER VII JUDICIAL REVIEW

What is the Meaning of Judicial Review of Administrative Actions?

- ❖ In connection with the action of and admin agency, judicial review is used generally to embrace any matter which arises when such action is brought into question before a court.

What are the Basic Concepts of Judicial Review?

- ❖ The problem of judicial review of administrative actions necessarily brings the judicial process

into conflict with the admin process and presents vital questions as to the relative roles of admin agencies and the courts in our gov't.

- ❖ Both admin agencies and courts are considered collaborative governmental instrumentalities of justice rather than rivals or competitors.
 - Admin agency have their source in necessity to perform functions which are beyond the capacity of the courts
 - The role of the courts in regard to admin action is the accommodation of the admin process to the traditional judicial system and to reconcile democratic safeguards and standards of fair play with the effective conduct of gov't.
- ❖ One basic approach to judicial review:
 - Questions of *law* or *validity* are for the COURT;
 - Questions of *fact, policy, or discretion* are determinable by the ADMIN AGENCY.
- ❖ Total concept of Judicial Review is, and necessarily must be, a matter which is highly fluid.
 - Judicial review of administrative action has developed gradually from cases to case, in response to the pressures of particular situations, the teachings of experience, and the guidance of ideals and general principles, and influence of legislation.
- ❖ When courts are confronted with judicial review cases of admin actions they:
 - Often speak of judicial review and especially the scope of judicial review in terms of administrative agencies generally;
 - Often apply the same rules to different types of admin agencies
 - Sometimes hold expressly that the extent of review in regard to a particular agency is the same as that in regard to a specific agency.
- ❖ The following militate against the generalization of administrative action and precludes too much into any one decision of judicial review by the courts:
 - Continuing growth of admin law,
 - Different fields in which admin agencies operate, and
 - Variety of their functions and purposes, and
 - Variety in the manner in which legislature in different statutes has distributed the responsibilities of law enforcement as between the courts and administrative agencies.

How is the Right to Judicial Review Granted to the Courts?

- ❖ Most often, the right to Judicial Review is granted by **statute**.
- ❖ It may also exist under the **general powers** of the courts when the legislature has not precluded judicial review expressly or impliedly in an area where the courts have such power AND where:
 - A justiceable right exists; or
 - A right which the courts may enforce

What are the proper questions to be asked in cases of Judicial Review of Administrative Actions? (*1 question broken down into diff. aspects*)

- 1) May this party,
 - 2) At this time,
 - 3) In this particular proceeding,
 - 4) In this particular court, obtain
 - 5) Any review of these specific issues about this admin proceeding, and if so,
 - 6) How much review on each issue will this court give?
- ❖ The questions above give rise to further inquiries such as:
 - (1) What type of hearing,
 - (2) What type of record
 - (3) What type of decision, have been given by the agency in this case.
 - These last 3 questions raise the critical problem of the basic prerequisites for the meaningful exercise of judicial review.

May Administrative Determinations be Made Final and Irreviewable?

- ❖ Judicial Review of Admin Action may be granted or withheld as Congress chooses **EXCEPT** when the Constitution requires judicial review.
- ❖ When the law confers exclusive and final jurisdiction upon the executive departments of the gov't to dispose of particular questions, their judgment or the judgment of that particular department are NO more reviewable by the courts.
- ❖ In such cases there is no violation of due process.
 - Due process does not require that a decision made by an appropriate tribunal shall be reviewable by another.
 - The safeguard of due process has been complied with so long as:
 - a) the trier of facts shall be an impartial tribunal
 - b) No findings shall be made except upon due notice and opportunity to be heard
 - c) Procedure at the hearing shall be consistent with the essentials of a fair trial

d) It shall be conducted in such a way that there will be an opportunity for a court to determine whether the applicable rules of law and procedure were observed.

- ❖ Authority of Congress to withhold judicial review over cases involving grants, benefits, or “privileges”, where the state accords something to an individual in which he has no pre-existing legal right is beyond question.
 - Determinations of Admin bodies on such questions may be made final and conclusive, however mistaken its exercise may be.

What are the Main Sources of Judicial Review?

- ❖ Judicial Control or review of administrative actions may proceed from any of the following:
 - (1) Constitutional Provisions
 - (2) Validly enacted Legislation
 - (3) Doctrines developed by the courts themselves, independently or statutory provisions.
- ❖ In the Philippines, the basis for judicial review may be:
 - (1) **Constitution**

Sec. 11, Art. XII-C of 1973 Consti [now Art. IX-A, 1987 Consti]

 - “any decision, order, or ruling of the COMELEC may be brought to the SC on *certiorari* by the aggrieved party within 30 days from his receipt of a copy thereof.”

Sec. 2(2) of Art. XII-D of 1973 Consti [now Art. IX-A, 1987 Consti]

 - “unless otherwise provided by law, any decision, order or ruling of the COA may be brought to the SC on *certiorari* by the aggrieved party within 30 days from his receipt of a copy thereof.
 - (2) **Statutes**
 - Decisions of Agrarian Relations, Philippine Patents Office, SEC, Social Security Commission, NLRC
 - (3) **General Principles of Public Law**
 - Decisions of deportation, immigration, public lands, and postal authorities, and of the numerous professional boards, are likewise reviewable by the courts.

Can there be Judicial Review in the Absence of Statutory Authority?

- ❖ In *San Miguel Corporation v. Secretary of Labor*
 - Generally understood that as to admin agencies exercising quasi-judicial or legislative powers, there is an *underlying*

power in the courts to scrutinize the acts of such agencies on questions of law and jurisdiction even though no right of review is given by the statute.

What is the purpose of judicial review even if it is not granted by the statute?

- ❖ Purpose of judicial review is to keep the admin agency within its jurisdiction and protect substantial rights of parties affected by its decisions.
- ❖ It is a part of a system of checks and balances restricting the separation of powers and forestalling arbitrary and unjust adjudications.

Generally, when is Judicial Review proper?

- (1) Lack of Jurisdiction
- (2) Grave Abuse of Discretion
- (3) Error of law,
- (4) Fraud or Collusion.

What may the Courts do in exercise of Judicial Review?

- ❖ The courts may declare an action or resolution of administrative authority to be illegal because:
 - (1) It violates or fails to comply with some mandatory provisions of law; or
 - (2) It is corrupt, arbitrary and capricious

Does the Legislative have Control over Judicial Review?

- ❖ In the absence of constitutional provisions, legislative control over judicial review is *absolute*.
- ❖ Legis may grant or withhold judicial review of admin actions and determine when judicial review is available and under what circumstance if granted are questions that depend on the particular enactment under which judicial review is authorized.

What are Conditions for the Exercise of Judicial Review?

- ❖ Before Judicial Review of Administrative Determinations may be had, it is required:
 - (1) **Principle of Finality of Administrative Action**
 - That the Administrative action has already been fully completed, and therefore, final; and
 - (2) **Doctrine of Exhaustion of Administrative Remedies**
 - All administrative remedies have been exhausted.

What is the Principle of Finality of the Administrative Action?

- ❖ The principle states that courts are reluctant to interfere with administrative action prior to its completion and in this sense not final.
- ❖ Courts are averse to review *interim* steps in an admin proceeding, and *preliminary or procedural* orders of an admin body, primarily on the ground that such a review would afford opportunity for constant delay.

What are the Exceptions to and Limitations on the Doctrine of Finality?

- ❖ Doctrine of finality of admin action as a requisite for review is NOT only concerned with the completeness of the admin action; but also
 - Involves immediacy of impact of such action as has been taken; and
 - The impingement of that action upon asserted rights.
- ❖ The considerations above operate to limit or create exceptions to the requirement that judicial intervention be withheld until admin action has reached its complete development.
 - In such instances, judicial relief for review at an initial or intermediate stage of the judicial process is permitted.
- ❖ It is also recognized that judicial review may be available as to an interlocutory order affecting the merits of a controversy, and that a court may grant relief to preserve the *status quo* pending further action by the admin agency.
- ❖ Under *Equity Jurisdiction*, judicial intervention prior to the completion of admin action may be invoked when:
 - Essential to the protection of the rights asserted or
 - The admin officer assumes to act in violation of the Consti and other laws or
 - Such order is not reviewable in any other way and the complainants will suffer great and obvious damage if the order is carried out; or
 - Such relief is expressly allowed by law.
- ❖ Doctrine of Finality DOES NOT preclude exercise of the general discretion of the court to set aside an order made in excess of power, contrary to specific prohibition in the statute governing the agency and thus operating as a deprivation of a right assured by the statute.

Can there be Judicial Relief from Threatened Admin Action?

- ❖ Judicial relief from *threatened or pending admin action* has been DENIED on several grounds among them:
 - (1) The courts will not render a decree *in advance* of the admin action and there render such action nugatory;

- (2) Until the admin authority has acted, the complainant can show no more than an apprehension that such agency will perform its duty wrongly
 - This is a fear which the courts cannot act upon
- (3) That it is not for the court to stop an admin officer from performing his statutory duty for fear he will perform it wrongly;
- (4) That admin officer to whom public duties are confided by law is not subject to the control of the courts in the exercise of the judgment and discretion which the law reposes in him as part of his official functions
 - UNLESS: such duties are of a purely ministerial character and involve no exercise discretion and no other grounds.

What is the Doctrine of Exhaustion of Admin Remedies?

- ❖ This requires that when an admin remedy is provided by law, relief must be sought by exhausting this remedy before the courts will act.
- ❖ No recourse can be had until all such remedies have been exhausted and special civil actions agst admin officers should not be entertained if superior admin officers could grant relief.
- ❖ **IMPT:** SC has held that exhaustion of admin remedies is *necessary ONLY* when required by law, and that ignorance of the existence of such admin remedy is no excuse.

Does the Non-Exhaustion of Admin Remedies Prevent Judicial Review?

- ❖ GENERALLY, non-exhaustion of admin remedies would prevent judicial review.
- ❖ Unless the process of admin decision-making has been **completed**, a case is not ready for judicial review.
- ❖ Exhaustion of admin remedies imports recourse to the highest admin authority.

Does Exhaustion of Admin Remedies Include the Appeal to the President?

- ❖ Under the system of government that we have, exhaustion of remedies theoretically envisages appeal from the head of a bureau or office to the department head and finally to the President of the Philippines.
- ❖ The President's Constitutional Control Power over all departments, bureaus, and offices places

him in a position to reverse, modify, or affirm a decision or ruling by a head of a department bureau or office.

- ❖ The progress of an admin case in the ordinary course of law is an upward step-by-step progression to the office of the President
 - *Calo v. Fuertes*
 - Withdrawal of an appeal to the President before he could act on it is tantamount to **not appealing at all**.
 - A subsequent petition for certiorari and prohibition cannot prosper because such withdrawal was fatal, as the appeal to the President is the last step the aggrieved party should take in an admin case
 - *Dimaisip v. CA*
 - Failure to appeal from a decision of the Sec of Agriculture and Natural Resources to the Pres does not preclude the plaintiff from taking the case to the court, in view of the theory that the Sec. is a mere alter-ego of the President.
 - If the appeal to the Pres is not necessary in order that the case may be taken to court, the highest admin authority (in this case the Sec) had already spoken.
 - To require the filing of a formal motion for reconsideration of the decision of the Exec Sec. would have been a useless formality.

When is appeal to the President indispensable?

- ❖ Appeal to the President is **indispensable** where it rests not only upon the power of control of the President over departments, bureaus, and offices but upon a statute expressly providing for the right of appeal to the President.

When is appeal to the President NOT indispensable?

- ❖ It is NOT necessary where the statute does not provide so.
 - In these cases, appeal to the President from a decision of a Dept. Head is optional

Distinguish between the Principle of Finality and Exhaustion.

- ❖ Doctrine of exhaustion is merely **one aspect** of the broader doctrine of finality which requires final administrative action as prerequisite of judicial review.
- ❖ Principle of Finality of admin action is thus broader in scope and application than the doctrine of exhaustion of remedies.

- ❖ In GENERAL, the two principles are applied in situations in which a like result could be reached.
 - In some instances, the doctrine of exhaustion of remedy may not be available in a particular court, but the lack of finality of admin action may not yet be urged.

What are some of the Reasons for the Doctrine of Exhaustion?

- 1) If the relief is first sought from a higher or superior admin agency, resort to courts may prove unnecessary, saving the delay and expense of litigation, and preventing the courts from being swamped by resort to them in the first place.
- 2) If a mistake is committed in the initial steps of the admin activity or by an admin agency, it should be given the chance to correct such error, and if such mistake is not corrected therein, relief may be obtained from the higher admin authorities.
- 3) The principle of comity and convenience requires the courts to stay their hands until the admin processes have been completed.
- 4) Finally, since judicial review of admin actions is usually had through special civil actions, such proceedings cannot ordinarily lie if there is an appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.

What are some of the Exceptions to the Doctrine of Exhaustion?

- 1) Where it plainly appears that the administrative remedy would be of no value and fruitless, the party seeking judicial relief does not have to complete administrative procedures before resorting to the courts.
- 2) When there estoppel on the part of the administrative agency claiming the benefit of the doctrine.
- 3) When no administrative action is possible because the question involved is purely a legal question.
- 4) When the administrative action for which the relief is sought is patently illegal amounting to lack of jurisdiction.
- 5) When there is unreasonable delay or official inaction.
- 6) When there is an irreparable damage or injury or threat thereof unless resort to the court is immediately made.

- 7) When the doctrine of qualified political agency applies.
- 8) In extreme cases where there is no other plain, speedy, or adequate remedy in the ordinary course of law.
- 9) In land case, the doctrine applies ONLY to lands of the public domain in pursuance of the Public Land Act. The rule is *inapplicable to private lands*, not even to those acquired by the Gov't by purchase for resale to individuals.
- 10) When there are special reasons or circumstances demanding immediate court action.
- 11) Where the law does not make an administrative remedy a condition precedent to judicial resort.
- 12) In cases where the observance of the exhaustion requirement “would result in the nullification of the claim being asserted”
- 13) In case when there is nothing left to be done but to go to court.

What is the Doctrine of Primary Administrative Jurisdiction or Prior Resort?

- ❖ This doctrine holds that courts cannot and will NOT determine a controversy:
 - a) Involving a question which is *within the jurisdiction* of the administrative tribunal;
 - b) Such administrative tribunal has not yet rendered a decision of that question;
 - c) The question demands the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal;
 - d) The purpose of such discretion is to determine technical and intricate matters of fact; and a
 - e) Uniformity of ruling is essential to comply with the purposes of the regulatory statute administered.
- ❖ The doctrine therefore requires *prior resort* to the appropriate admin agency before the jurisdiction of the courts can be invoked. (*hmm... isn't this similar to doctrine of finality?*)

What are the reasons for the Doctrine of Prior Resort?

- 1) To take full advantage of administrative expertise;
- 2) To attain uniformity of application of regulatory laws.

Distinguish the Doctrine of Prior Resort from Exhaustion.

- ❖ Exhaustion Doctrine operates where an admin agency has the authority to pass on *every question* raised by a party resorting to judicial relief and enables the court to withhold its aid entirely until admin remedies have been exhausted.
 - a) The doctrine cannot apply to defeat a right of election which a party may have (such as when given expressly by the statute) between an admin and judicial remedy.
- ❖ Doctrine of Prior Resort operates to shut out from courts *only the determination of certain issues* in a proceeding of which it admittedly has jurisdiction.
 - a) The doctrine is applied in the face of the statutes purporting to permit a choice of remedies.

What are the Limitations on Prior Resort?

- ❖ Doctrine does not apply in relation to a question where the following circumstances concur:
 - a) What is involved is not a question of fact, but *one of pure law*;
 - b) The question is determinable apart from the exercise of administrative discretion (*meaning admin discretion is not essential to the determination of the question.*)
 - c) Requisite uniformity of determination is attainable otherwise than by confining determination of the question to the admin tribunal.

What are the Classifications of Methods of Obtaining Relief from or a Review of Administrative Actions?

- 1) Statutory or Non-Statutory Methods;
- 2) Direct or Collateral methods.

What are Statutory/Non-Statutory Methods?

- ❖ **Statutory Methods**
 - Those available pursuant to specific statutory provision.
 - Manner and extent of which are expressly governed by statutes or rules.
- ❖ **Non-Statutory Methods**
 - Those which are not expressly provided for by statutes but which the courts supply by their reason inherent power to review such proceedings upon questions of *jurisdiction* and *questions of law*.
 - Questions of law and jurisdiction are of a judicial nature, whether the tribunal was exercising a judicial function or a purely admin function.

What are Direct/Collateral Methods?**❖ Direct Proceedings**

- One designed by law for a review or relief from a judgment and other proceedings the primary purpose of which is some relief or result other than the setting aside of the judgment.
 - An attack on the judgment may be *incidentally* involved.

❖ Collateral Attack

- There is an attempt to question in a subsequent proceeding the conclusiveness or validity of a prior admin decision on the ground that the decision is invalid and void for:
 - a) Lack of jurisdiction over the person, or
 - b) Lack of jurisdiction over the subject matter, or
 - c) Because the determination attacked was not the act of the body vested with power to make the determination.

What are Examples of Statutory Methods of Review?

- 1) Judicial Review of Decisions of COMELEC
 - May be brought to SC on certiorari {*Sec. 11, Art. XII-C of 1973 Consti [now Art. IX-A, 1987 Consti]*}
- 2) Judicial Review of Decisions of COA
 - Brought to SC on certiorari {*Sec. 2(2) of Art. XII-D of 1973 Consti [now Art. IX-A, 1987 Consti]*}
- 3) Judicial Review of Decision of the Court of Agrarian Relations
 - Brought to SC on questions of law and may be brought to SC for findings of fact, only when the decision is not supported by substantial evidence. (*RA 1267, as amended by RA 1409, Sec. 13*)
- 4) Judicial Review of Decisions of the Public Service Commission
 - By Certiorari or by Petition for Review (*CA 146, Sec. 36*)
- 5) Judicial Review of Decisions of the SEC
 - Brought to SC on a petition for review after the objection to the order of SEC has first been urged before the latter. (*CA 83, Sec. 35, (Rule 43, Sec. 4, Rules of Court)*)
- 6) Judicial Review of Decisions of the Phil. Patent Office
 - Appeal to the SC for decisions on registration of a design, cancellation of a patent, obtaining compulsory licenses. (*Sec. 61, RA 165*)

- Appeal to SC for denial of registration of a mark or trade name, or renewal of registration or any cancellation proceeding (*Sec. 33, RA 165*)

- 7) Judicial Review of Decisions of the Collector of Internal Revenue, Commissioner of Customs or Provincial or City Board of Assessment Appeals
 - Appeal in CTA within 30 days. (*Sec. 11, RA 1125*)
 - Appeal decision of CTA in a Petition for Review to the SC

Where the Statute provides the Method of review is that to the exclusion of other methods?

- ❖ Where the statute setting up the admin agency makes specific methods for judicial review of the agency's determination, that method is ordinarily exclusive.
- ❖ If statutory methods of direct judicial review are available, the use of non-statutory methods is not likely to be permitted by the Court.
- ❖ **EXCEPTION:** Where under a statute providing for direct review of the decision of a specified admin agency, orders of a certain type are not reviewable, judicial review may be available by non-statutory review proceedings, particularly where exceptional circumstances exist.

What are Examples of Non-Statutory Methods?

- ❖ Where no specific statutory method is provided or where the method provided does not cover the particular situation desired to be judicially reviewed or resolved, relief may be had in appropriate cases by means of *common-law or prerogative writs* of: (*a.k.a special civil actions*)
 - a) Certiorari
 - b) Mandamus
 - c) Habeas Corpus
 - d) Quo Warranto
 - e) Prohibition.

What are some of the non-statutory methods of review of admin determinations in the Phil?

- 1) Judicial Review of Decisions of Immigration Authorities
 - SC asserted that courts have jurisdiction to review decisions of immigration authorities on the *exclusion of aliens ONLY* when there has been an abuse on their part such as:
 - a) When a person who does not belong to the excluded class has been denied admission;
 - b) When a person seeking admission has not been given a fair, full and free hearing; or
 - c) When there is no proof at all against the right of the applicant for admission.

- When the applicants are under detention, *habeas corpus* may be utilized to test its legality.
- 2) Judicial Review of Decisions of Deportation Authorities
- Decisions of deportation authorities are final, unless:
 - a) There has been an abuse of discretion or power, or
 - b) Where they have acted in open violation of the law;
 - c) There has been no fair hearing.
 - A person sought to be deported is entitled to a fair, full and impartial hearing and must be informed of the ground of deportation.
 - If the evidence presented relates to grounds other than that on which the proceeding is based, he cannot be deported.
 - When the persons sought to be deported are under detention, *habeas corpus proceedings* is the proper remedy.
- 3) Judicial Review of Determination of Land Authorities
- Decisions of Sec of Agriculture and Natural Resources upon a question of fact is conclusive and NOT subject to judicial review unless:
 - a) It is shown that such was rendered in consequence of fraud, imposition or mistake other than error of judgment in estimating the value or effect of evidence.
 - This is regardless of whether or not such is consistent with the preponderance of evidence so long as there is some evidence upon which the finding in question could be made.
 - Ex: Decisions rendered as a consequence of fraud and misrepresentations and are thus rendered with grave abuse of discretion in that they were based upon fictitious facts or mere inferences from an alleged investigation which the parties were not heard and of which there is no record, and contrary to the findings made in other investigation to which they were parties, may be judicially reviewed.
 - b) The decision relates to a question of law.

- Such action when based upon a misconstruction of the law can be corrected by the courts.

4) Judicial Review of Decisions of Examining Boards

- The powers of gov't boards of examination to pass upon the qualifications of applicants to various professions are in some respects quasi-judicial.
 - In the performance of their duties, they may have to consider and finally determine questions of a purely legal character.
 - If a remedy is granted, such as appeal to higher admin authorities, the law creating such boards will be valid, even though no appeal to the courts is provided.
 - ◆ Where the law provides that the results of the examination are to be submitted for confirmation to the Dept. Sec., it is not the ministerial function of the latter to blindly confirm the results and he may set aside the examination if he finds that it was attended by irregularities.
 - ◆ The decision of the Dept. Sec will not be set aside by the court UNLESS it appears that such was exercised with manifest injustice or grave abuse.

5) Judicial Review of Decisions of Postal Authorities

- The performance of the duty of determining whether a publication contains printed matter of a libelous character as to be excluded from the mail rests with the Director of Posts and involves the exercise of his judgment and discretion.
 - Courts will not interfere UNLESS: the court is clearly of the opinion that it was patently wrong.

What are Examples of Collateral Methods?

- ❖ Some of the usual methods of review of a collateral nature are:
 - (1) By injunction
 - (2) By declaratory judgments
 - (3) By damage suits against administrative officers
 - (4) By actions for restitution

In General, What are Grounds for Review in the absence of valid statutory provisions or other affecting the scope and extent of judicial review?

- 1) Where the determination is beyond the powers which could constitutionally be vested in or exercised by an administrative authority;

- 2) Where the determination is without or in excess of the statutory powers and jurisdiction of the administrative authority;
- 3) Where the determination is an exercise of powers so arbitrary or unreasonable as virtually to transcend the authority conferred, or is otherwise an abuse of discretion, or in disregard of the fundamental rules of due process of law, as required by constitutional or statutory directions, or in an otherwise irregular proceeding, or is tainted with matters which disclose fraud, mistake, bad faith, corruption or collusion; or
- 4) Where the determination is based upon an error of law.

What is the Scope of Judicial Review?

- ❖ Judicial Review of executive or admin decisions does not import a trial *de novo*.
 - It is only the ascertainment of whether the executive findings are:
 - Not in violation of the Constitution or of the laws,
 - Free from fraud or imposition, and
 - Whether they find reasonable support in the evidence.
- ❖ So long as the findings of fact are supported by substantial evidence, even if not overwhelming or preponderant, the administrative decision should be respected.
 - It is not for the reviewing court to weigh the conflicting evidence, determine the credibility of the witness or otherwise substitute its own judgment for that of the admin agency on the sufficiency of evidence.
- ❖ These principles negate the power of a reviewing court to re-examine the sufficiency of evidence in an admin case as if originally instituted therein and do not authorize the court to receive additional evidence that was not submitted to the admin agency concerned.

What are Questions Subject to Review?

- ❖ **Questions of Law**
 - Subject to judicial review upon which the courts may substitute their own judgment for the administrative determination where:
 - An error of the administrative agency upon a question of law results, or is likely to result in the miscarriage of justice, or is a material error, or
 - Administrative action is clearly or palpably wrong, or

- The reason and the justice of the case is clear and plain.
- The ruling of an admin authority on questions of law, while not as conclusive as its findings of fact, it is nevertheless ***persuasive*** and given weight and carries with it a strong presumption of correctness, especially where:
 - A system of law has been built up in one administrative agency, or
 - The opinion of an administrative board in which there are professional men is fortified by judgment and experience.

❖ Questions of Fact

- **GEN Rule:** In the absence of statutory directions to the contrary, and of any vital defect such as with respect to jurisdiction and procedure, Administrative findings of fact are conclusive upon the courts, if supported by substantial or competent evidence.
- Courts may be ***expressly or impliedly precluded*** from reviewing the findings of facts of an administrative agency.
 - Examples of statutes that expressly preclude such review:
 - a) *Minimum Wage Law* – review of the SC of findings of order of Sec. of Labor is limited to questions of law and the findings of fact by Sec supported by substantial evidence is conclusive. (*Sec. 7(a) RA 602*)
 - b) *Public Land Act* – Decision of Dir of Lands approved by Sec. of Agriculture and Natural Resources as to questions of fact is conclusive. (*Sec. 4, CA 141*)
 - Ex of statutes that impliedly preclude such review:
 - a) *Court of Industrial Relations Act* – confines review of the decisions of the industrial court to questions of law (*Sec. 15, CA 103*)
 - **However**, A judicial review of the findings of fact even in the above instances may be made when there is:
 - Fraud,
 - Imposition
 - Mistake other than error of judgment in estimating the value or effect of evidence
 - Error in appreciation of the pleadings and in the interpretation of the documentary evidence presented by the parties.

- A review of the findings of fact of administrative agency may be **expressly allowed** by statute.
 - Ex: SC is given jurisdiction to review the determinations of the Public Service Commission when it clearly appears that there was no **evidence** before the Commission to **support** reasonably such determination.
 - However, SC is bound by the findings of fact of the Commission and, although it can modify such decision, the SC is not authorized to weigh the conflicting evidence and substitute its conclusion.
 - SC can only ascertain whether there was evidence to reasonably support the decision.
- ❖ **Mixed Questions of Law and Fact**
 - This arises where there is difficulty in separating reviewable questions of law from non-reviewable questions of fact.
 - An Admin finding on a mixed question of fact and **law is subject to judicial review**, on which the court may substitute its judgment for that of the admin agency.
 - It is to be noted that Admin determinations upon such mixed questions of fact and law carries a strong presumption of its correctness and courts will not ordinarily review it.
 - Courts usually apply **Brandeis Doctrine of Assimilation of Facts** w/ respect to mixed questions of law and fact.
 - Where what purports to be a finding upon a question of fact is so involved with and depended upon a question of law as to be in substance and effect a decision of the latter, the Court will, order to decide the legal question, examine the entire record, including the evidence if necessary as it does in cases coming from the highest court of the State. (Justice Brandeis, *St. Joseph Stock Yards Co. v. US*)
 - Under this doctrine, the more important question assimilates the other.

What is the Substantial Evidence Rule when applied to Judicial Review?

- ❖ This is a compromise between theories of broad or *de novo* review and restricted review or complete abstention.

- ❖ It is broad enough and capable of sufficient flexibility in its application to enable the reviewing court to correct whatever ascertainable abuses may arise in the admin adjudication.
 - On the other hand, it is review of such breadth as is entirely consistent with effective administration.
- ❖ This rule provides for review of rationality of a determination and is a test of reasonableness and not of rightness of agency findings of fact.
 - It does not mean that the reviewing court will weigh the evidence or substitute its judgment for the considered judgment of the administrative tribunal.
- ❖ It means that the:
 - a. Court will apply the only available objective test to determine whether the admin tribunal did in truth exercise such considered judgment; and that the
 - b. Court will insist upon such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
- ❖ The rule requires that the determinations of fact should be upheld unless arbitrary or clearly wrong, and ruling supported by substantial evidence should be sustained unless they rest on erroneous legal foundations.
- ❖ *Insular Life Assurance Co., Ltd, Employees Association – NATU v. Insular Life Assurance Co., Ltd.*
 - Findings of fact of the Court of Industrial Relations if supported by substantial evidence bind the SC.
 - **RATIO**: Rule of substantial evidence, rather than the rule of preponderance of evidence applicable in ordinary civil cases, governs the Court of Industrial Relations in its findings of fact.
 - Substantial evidence refers to such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
 - Substantiality of the evidence depends on its **quantitative** as well as its **qualitative aspects**. To be considered as substantial, said evidence should primarily be **credible**.
 - Findings of fact NOT supported by substantial and credible evidence DO NOT bind SC.

Is Judicial Review Considered Trial de Novo?

- ❖ Judicial Review of executive or admin decisions does not import a trial *de novo*.

- It is only the ascertainment of whether the executive findings are:
 - Not in violation of the Constitution or of the laws,
 - Free from fraud or imposition, and
 - Whether they find reasonable support in the evidence.

- ❖ To assume that after administrative decision has been rendered the courts are free to retry the case *de novo* is to misconceive the fundamental mission of judicial review.

- ❖ It is not for the reviewing court to weigh the conflicting evidence, determine the credibility of the witnesses, or otherwise substitute its own judgment for that of the admin agency on the sufficiency of evidence.
 - As stated countless of times, Admin decision in matters within the executive jurisdiction can only be set aside on proof of gross abuse of discretion, fraud or error of law.

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Godbless! La na time to encode the digests... Sensya na mejo mahaba reviewer... ☺