



## **PART I: FREQUENTLY ASKED QUESTIONS IN POLITICAL LAW**

### **STATE IMMUNITY FROM SUIT**

**Q:** “X” filed a case against the Republic of the Philippines for damages caused his yacht, which was rammed by a navy vessel.

The solicitor general moved to dismiss the case invoking state immunity from suit. Decide.

**A:** The government cannot be sued for damages considering that the agency which caused the damages was the Philippine Navy. Under Art. 2180 of the Civil Code, the state consents to be sued for a quasi delict only when the damage is caused by its special agents. Hence, the Solicitor General’s motion should be granted and the suit brought by “X” be dismissed.

**Q:** A property owner filed an action directly in court against the Republic of the Philippines seeding payment for a parcel of land which the national government utilized for a road widening project.

- 1.) Can the government invoke the doctrine of non-suability of the state?
- 2.) In connection with the preceding question, can the property owner garnish public funds to satisfy his claim for payment?

**A:** 1.) No, the government cannot invoke the doctrine of state immunity from suit. As held in *Ministerio v. CFI of Cebu*, when the government expropriates property for public use without paying just compensation, it cannot invoke its immunity from the suit. Otherwise, the right guaranteed in Section 9, Art. III of the 1987 Constitution that private property shall not be taken for public use without just compensation will be rendered nugatory. The doctrine of governmental immunity from suit cannot serve as an instrument for perpetrating an injustice on a citizen. If there were compliance with Section 9, Article III and observance of procedural regularity, the property owner would not have filed the action in court.

2.) No, the owner cannot garnish public funds to satisfy his claim for payment. Section 7 of Act No. 3083 prohibits execution upon any judgment against the government. As held in *Republic v. Villasor*, the universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant’s action “only up the completion of proceedings anterior to the stage of execution” and that the power of courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on considerations of public policy, the functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.

**Q:** The Northern Luzon irrigation Authority (NLIA) was established by a legislative charter to strengthen the irrigation systems that supply water to farms and commercial growers in the area. While the NLIA is able to generate revenues through its operation, it receives an annual appropriation from congress. The NLIA is authorized to “exercise all the powers of a corporation under the Corporation Code.”

Due to miscalculation by some of its employees, there was a massive irrigation overflow causing a flash flood in Barrio Zanjera. A child drowned in the incident and his parents now file suit against the NLIA for damages.

May the NLIA validly invoke the immunity of the State from suit?

**A:** No, the NLIA may not invoke the immunity of the State from suit, because, as held in *Fontanilla vs. Maliaman*, irrigation is a proprietary function. Besides, the NLIA has a juridical personality separate and distinct form the government, a suit against it is not a suit against the State. Since the waiver of the immunity from suit is without qualification, as held in *Rayo v. CFI of Bulacan*, the waiver includes an action based on a *quasi-delict*.



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**Q:** In February 1990, the Ministry of the Army, Republic of Indonesia, awarded to Marikina Shoe Corporation, a Philippine Corporation, a contract for the supply of 500,000 pairs of combat boots at U.S. \$30 PER PAIR DELIVERED IN Jakarta on or before 30 October 1990. Marikina Shoe Corp. was able to deliver only 200,000 pairs of combat boots in Jakarta by 30 October 1990 and it received payment for 100,000 pairs or a total of U.S. \$ 3,000,000. The Ministry of the Army promised to pay for the other 100,000 pairs already delivered as soon as the remaining 300,000 pairs of combat boots are delivered, at which time the said 300,000 will also be paid for.

Marikina Shoe Corporation failed to deliver any more combat boots.

On 1 June 1991, the Republic of Indonesia filed an action before the RTC of Pasig, Rizal, to compel Marikina Shoe Corp. to perform the balance of its obligations under the contract and for damages. In its Answer, Marikina Shoe Corporation sets up a counterclaim for U.S. \$3,000,000.00 representing the payment for the 100,000 pairs of combat boots already delivered but unpaid. Indonesia moved to dismiss the counterclaim, asserting that it is entitled to sovereign immunity from suit.

Decide the motion to dismiss.

**A:** The motion to dismiss the counterclaim should be denied. The counterclaim in this case is a compulsory counterclaim since it arises from the same contract involved in the complaint. As such it must be set up otherwise it will be barred. Above all, as held in *Froilan v. Pan Oriental Shipping Co.*, by filing a complaint, the state of Indonesia waived its immunity from suit. It is not right that it can sue in the courts but it cannot be sued. The defendant therefore acquires the right to set up a compulsory counterclaim against it.

**Q:** It is said that “waiver of immunity by the State does not mean a concession of its liability”. What are the implications of this phrase?

**A:** The phrase that waiver of immunity by the State does not mean a concession of liability means that by consenting to be sued, the State does not necessarily admit it is liable. As stated in *Philippine Rock Industries v. Board of Liquidators*, in such a case the State is liable but the State retains the right to raise all lawful defenses.

## POLICY OF TRANSPARENCY IN MATTERS OF PUBLIC INTEREST

**Q:** Does the 1987 Constitution provide for a policy of transparency in matters of public interest? Explain.

**A:** Yes, the 1987 constitution provides for a policy of transparency in matters of public interest. Section 28, Article II of the 1987 Constitution provides:

“Subject to reasonable conditions proscribed by law, the State adopts and implements a policy of full disclosure of all its transactions involving public interest.”

Section 7, Article III of the 1987 constitution states:

“The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded to citizen, subject to such limitations as may be provided by law.”

Section 20, Article VI of the 1987 Constitution reads:

“The records and books of account of the Congress shall be preserved and be open to the public in accordance with law, and such books shall be audited by the Commission on Audit which shall publish annually any itemized list of amounts paid to and expenses incurred for each member.”

Under Section 17, Article XI of the 1987 Constitution, the sworn statement of assets, liabilities and net worth of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commission and other constitutional offices,



and officers of the armed forces with general or flag rank filed upon their assumption office shall be disclosed to the public in the manner provided by law.

Section 21, Article XII of the Constitution declares:

“Information on foreign loans obtained or guaranteed by the government shall be made available to the public”

As held in *Valmonte v. Belmonte*, these provisions on public disclosures are intended to enhance the role of the citizenry in governmental decision-making as well as in checking abuse in government.

### PROVISIONS INSTITUTIONALIZING PEOPLE POWER

**Q:** Is the concept of People Power recognized in the Constitution?

**A:** The concept of People Power is recognized in the Constitution. Under Section 32, Article VI of the Constitution, through initiative and referendum, the people can directly propose and enact laws or approve or reject any act or law or part thereof passed by the Congress or local legislative body after the registration of a petition therefore signed by at least ten per centum of the total number of registered voters, of which every legislative district must be represented by at least three per centum of the registered voters thereof.

Under Section 16, Article XIII of the Constitution, the right of the people and their organizations to effective and reasonable participation at all levels of social, political and economic decision-making shall not be abridged. The State shall, by law, facilitate the establishment of adequate consultation mechanisms.

Under Section 2, Article XVII of the Constitution, the people may directly propose amendments to the Constitution through initiative upon a petition of at least twelve per centum of the total number of registered voters, of which every legislative district must be represented by at least three per centum of the registered voters therein.

### LEASE OF LAND BY FOREIGNER

**Q:** Can an alien be a lessee of a private agricultural land in the Philippines?

**A:** Yes, an alien can be a lessee of private agricultural land. As stated in *Krivenko v. Register of Deeds of Manila*, aliens can lease private agricultural land, because they are granted temporary rights only and this is not prohibited by the Constitution.

**Q:** Andy Lim, an ethnic Chinese, became a naturalized Filipino in 1935. But later he lost his Filipino citizenship when he became a citizen of Canada in 1971. Wanting the best of both worlds, he bought, in 1987, a residential lot in Forbes Park and a commercial lot in Binondo. Are these sales valid?

**A:** No, these sales are not valid. Under Section 8, Article XII of the Constitution, only a natural-born citizen of the Philippines who lost his Philippine citizenship may acquire private land. Since Andy Lim was a former naturalized Filipino citizen, he is not qualified to acquire private lands.

**Q:** A and B leased their residential land consisting of one thousand (1,000) square meters to Peter Co, a Chinese citizen, for a period of fifty years. In 1992, before the term of the lease expired, Co asked A and B to convey the land to him as the contract gave him the option to purchase said land if he became a naturalized Filipino citizen. Co took his oath as a Filipino in 1991.

Was the contract of lease for a period of fifty (50) years valid considering that the lessee was an alien?

**A:** As held in *Philippine Banking Corp. v. Lui She*, the lease of a parcel of land with an option to buy to an alien is a virtual transfer of ownership to the alien and falls within the



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scope of the prohibition in Section 7, Article XII of the Constitution against the acquisition of private lands by aliens.

### TERRITORY, FISHERIES (Sec. 2, Art. XII; Sec. 7, Art. XIII)

**Q:** What is the basis of the Philippines' claim to a part of the Spratly Islands?

**A:** The basis of the Philippine claim is effective occupation of a territory not subject to the sovereignty of another state. The Japanese forces occupied the Spratly Island group during the Second World War. However, under the San Francisco Peace Treaty of 1951 Japan formally renounced all right and claim to the Spratlys. The San Francisco Treaty or any other international agreement however, did not designate any beneficiary state following the Japanese renunciation of right. Subsequently, the Spratlys became terra nullius and was occupied by the Philippines in the title of sovereignty. Philippine sovereignty was displayed by open and public occupation of a number of islands by stationing of military forces, by organizing a local government unit, and by awarding petroleum drilling rights, among other political and administrative acts. In 1978, it confirmed its sovereign title by the promulgation of Presidential Decree NO. 1596, which declared the Kalayaan Island Group part of the Philippines.

### IMPEACHMENT GROUNDS

**Q:** Is cronyism a legal ground for the impeachment of the President?

**A:** Yes, cronyism is a legal ground for the impeachment of the President. Under Section 2, Article XI of the Constitution, betrayal of public trust is one of the grounds for impeachment. This refers to violation of the oath of office and includes cronyism which involves unduly favoring a crony to the prejudice of public interest.

**Q:** What is impeachment, what are the grounds therefore, and who are the high officials removable thereby?

**A:** Impeachment is a method by which persons holding government positions of high authority, prestige, and dignity and with definite tenure may be removed from office for causes closely related to their conduct as public officials.

The grounds for impeachment are culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes and betrayal of public trust. The officials removable by impeachment are the President, Vice-President, the Members of the Supreme Court, Members of the Constitutional Commissions and the Ombudsman.

### HOUSE OF REPRESENTATIVES/SENATE ELECTORAL TRIBUNAL

**Q:** Article VI, Section 17 of the constitution declares the House of Representatives Electoral Tribunal (HRET) to be the "sole judge" of all contests relating to the election returns and disqualifications of members of the House of Representatives. May the Supreme Court review decisions of the HRET?

**A:** Yes, the case is justiciable. As stated in *Lazatin v. House of Representatives Electoral Tribunal*, since judicial power includes the duty to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government, the Supreme Court has the power to review the decisions of the HRET in case of grave abuse of discretion on its part.

### APPROPRIATION LAW



**Q:** Explain how the automatic appropriation of public funds for debt servicing can be reconciled with Article VI, Section 29(1) of the Constitution. Said provision says that “no money shall be paid out of the Treasury except in pursuance of an appropriation made by law”.

**A:** As stated in *Guingona v. Carague*, the presidential decrees providing for the appropriation of funds to pay the public debt do not violate Section 29(1), Article VI of the Constitution. They provide for a continuing appropriation, there is no constitutional prohibition against this. The presidential decrees appropriate as much money as is needed to pay the principal, interest, taxes and other normal banking charges on the loan. Although no specific amounts are mentioned, the amounts are certain because they can be computed from the books of the National Treasury.

**Q:** Tawi-Tawi is a predominantly Moslem province. The Governor, the Vice-Governor, and members of its Sangguniang Panlalawigan are all Moslems. Its budget provides the Governor with a certain amount as his discretionary funds. Recently, however, the Sangguniang Panlalawigan passed a resolution appropriating P100,000 as a special discretionary fund of the Governor, to be spent by him in leading a pilgrimage of his provincemates to Mecca, Saudi Arabia, Islam’s holiest city.

Philconsa, on constitutional grounds, has filed suit to nullify the resolution of the Sangguniang Panlalawigan giving the special discretionary fund to the Governor for the stated purpose. Decide.

**A:** The resolution is unconstitutional. First, it violates article VI, section 29(2) of the Constitution which prohibits the appropriation of public money or property, directly or indirectly, for the use, benefit or support of any system of religion, and second, it contravenes article VI, sec. 25(6) which limits the appropriation of discretionary funds only for public purposes. The use of discretionary funds for purely religious purpose is thus unconstitutional, and the fact that the disbursement is made by resolution of a local legislative body and not by Congress does not make it any less offensive to the Constitution. Above all, the resolution constitutes a clear violation of the Non Establishment Clause (Art. III, Sec. 5) of the Constitution.

### **THE PRESIDENT’S POWER TO PROCLAIM MARTIAL LAW**

**Q:** Declaring a rebellion, hostile groups have opened and maintained armed conflicts on the islands of Sulu and Basilan.

- a.) To quell this, can the President place under martial law the islands of Sulu and Basilan?
- b.) What are the constitutional safeguards on the exercise of the President’s power to proclaim martial law?

**A: a.)** If public safety requires it, the President can place Sulu and Basilan under martial law since there is an actual rebellion. Under Section 18, Article VII of the Constitution, the President can place any part of the Philippines under martial law in case of rebellion, when public safety requires it.

**b.)** The following are the constitutional safeguards on the exercise of the power of the president to proclaim martial law:

- 1.) There must be actual invasion or rebellion;
- 2.) The duration of the proclamation shall not exceed sixty days;
- 3.) Within forty-eight hours, the president shall report his action to Congress. If Congress is not in session, it must convene within twenty-four hours;
- 4.) Congress may by majority vote of all its members voting jointly revoke the proclamation, and the President cannot set aside the revocation;
- 5.) By the same vote and in the same manner, upon initiative of the President, Congress may extend the proclamation if the invasion or rebellion continues and public safety requires the extension;
- 6.) The Supreme court may review the factual sufficiency of the proclamation, and the Supreme Court must decide the case within thirty days from the time it was filed;
- 7.) Martial law does not automatically suspend the privilege of the writ of habeas corpus or the operation of the Constitution. It does not supplant the functioning of



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the civil courts and of Congress. Military courts have no jurisdiction over civilians where civil courts are able to function.

### PARDONING POWER OF THE PRESIDENT

**Q:** The First Paragraph of Section 19 of Article VII of the Constitution providing for the pardoning power of the President, mentions reprieve, commutation, and pardon. Please define the three of them and differentiate one from the others.

**A:** The terms were defined and distinguished from one another in *People v. Vera* as follows:

Reprieve is a postponement of the execution of a sentence to a day certain.

Commutation is a remission of a part of the punishment, a substitution of less penalty for the one originally imposed.

A pardon, on the other hand, is an act of grace, proceeding from the power entrusted with the execution of the laws which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed.

**Q:** Lucas, a ranking member of the NDF, was captured by the police while about to board a passenger bus. Charged with rebellion he pleaded not guilty when arraigned. Before trial he was granted absolute pardon by the president to allow him to participate in the peace talks.

1.) Is the pardon of the president valid?

2.) Assuming that the pardon is valid, can Lucas reject it?

3.) Instead of a pardon, may the President grant the accused amnesty if favorably recommended by the National Amnesty Commission?

4.) May the accused avail of the benefits of amnesty despite the fact that he continued to profess innocence?

**A:** 1.) The pardon is not valid. Under Section 19, Art. VII of the Constitution, pardon may be granted only after conviction by final judgment.

2.) *First Alternative Answer:*

Yes, Lucas can reject the pardon. As held in *United States v. Wilson*, acceptance is essential to complete the pardon and the pardon may be rejected by the person to whom it is tendered, for it may inflict consequences of greater disgrace than those from which it purports to relieve.

*Second Alternative Answer:*

No, Lucas cannot reject the pardon. According to *Biddle v. Perovich*, acceptance is not necessary, for the grant of pardon involves a determination by the President that public welfare will be better served by inflicting less than what the judgment fixed.

3.) The President may grant the accused amnesty. According to *Barrioquinto v. Fernandez*, amnesty may be granted before or after the institution of the criminal prosecution, provided the amnesty proclamation is concurred in by a vote of the majority of all the members of Congress.

4.) No, the accused cannot avail of the benefits of amnesty if he continues to profess his innocence. In *Vera v. People*, since amnesty presupposes the commission of a crime, it is inconsistent for an accused to seek forgiveness for something which he claims he has not committed.

**Q:** Governor A was charged administratively with oppression and was placed under preventive suspension from office during the pendency of his case. Found guilty of the charge, the President suspended him from office for ninety days. Later, the President granted him clemency by reducing the period of his suspension to the period he has already served. The Vice-Governor questioned the



validity of the exercise of executive clemency on the ground that it could be granted only in criminal, not administrative cases. Resolve.

**A:** The argument of the Vice-Governor should be rejected. As held in *Llamas v. Orbos*, the power of executive clemency extends to administrative cases. In granting the power of executive clemency upon the President, Section 19, Article VII of the Constitution does not distinguish between criminal and administrative cases. Section 19, Article VII excludes impeachment cases, which are not criminal cases, from the scope of the power of executive clemency. If this power may be exercised only in criminal cases, it would have been unnecessary to exclude impeachment cases from this scope. If the President can grant pardons in criminal cases, with more reason he can grant executive clemency in administrative cases, which are less serious.

### INDEPENDENCE OF THE JUDICIARY

**Q:** Name at least three constitutional safeguards to maintain judicial independence.

**A:** The following are the constitutional safeguards to maintain judicial independence:

- 1.) The Supreme Court is a constitutional body and cannot be abolished by mere legislation.
- 2.) The members of the Supreme court cannot be removed except by impeachment.
- 3.) The Supreme Court cannot be deprived of its minimum jurisdiction prescribed in Section 5, Article X of the Constitution.
- 4.) The appellate jurisdiction of the Supreme Court cannot be increased by law without its advice and concurrence.
- 5.) Appointees to the Judiciary are nominated by the Judicial and Bar Council and are not subject to confirmation by the Commission on Appointments.
- 6.) The Supreme Court has administrative supervision over all lower courts and their personnel.
- 7.) The Supreme Court has exclusive power to discipline judges of lower courts.
- 8.) The Members of the Judiciary have security of tenure, which cannot be undermined by a law reorganizing the Judiciary.
- 9.) Members of the Judiciary cannot be designated to any agency performing quasi-judicial or administrative functions.
- 10.) The salaries of Members of the Judiciary cannot be decreased during their continuance in office.
- 11.) The Judiciary has fiscal autonomy.
- 12.) The Supreme Court has exclusive power to promulgate rules of pleading, practice and procedure.
- 13.) Only the Supreme Court can temporarily assign judges to other stations.
- 14.) It is the Supreme Court who appoints all officials and employees of the Judiciary.

**Q:** What do you understand by the mandate of the Constitution that the judiciary shall enjoy fiscal autonomy? Cite constitutional provisions calculated to bring about the realization of the said constitutional mandate.

**A:** Under Section 3, Article VIII of the Constitution, the fiscal autonomy of the Judiciary means that appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released.

In *Bengzon v. Drilon*, the SC explained that fiscal autonomy contemplates a guarantee of full flexibility to allocate and utilize resources with the wisdom and dispatch that the needs require. It recognizes the power and authority to deny, assess, and collect fees, fix rates of compensation not exceeding the highest rates authorized by law for compensation and pay plans of the government and allocate and disburse such sums as may be provided by law or prescribed by it in the course of the discharge of its functions.



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#### JUDICIAL POWER

**Q:** Congress is considering new measures to encourage foreign corporations to bring their investments to the Philippines. Congress has found that foreign investments are deterred by the uncertain investment climate in the Philippines. One source of such uncertainty is the heightened judicial intervention in investment matters.

One such measure provides that “no court or administrative agency shall issue any restraining order or injunction against the Central Bank: in the Bank’s exercise of its regulatory power over specific foreign exchange transactions.

Would this be a valid measure?

**A:** Yes, the measure is valid. In *Mantruste Systems v. CA*, the SC held that a law prohibiting the issuance of an injunction is valid, because under Section 2, Article VIII of the Constitution, the jurisdiction of the courts may be defined by law.

**Alternative Answer:**

Since under Sections 1 and 5(2), Article VIII of the Constitution, the courts are given the power of judicial review, the measure is void. Such power must be preserved. The issuance of restraining orders and injunctions is in aid of the power of judicial review.

#### REQUIREMENTS OF JUDICIAL REVIEW

**Q:** Give the two (2) requisites for the judicial review of administrative decision/actions, that is, when is an administrative action ripe for judicial review?

**A:** The following are the conditions for ripeness for judicial review of an administrative action:

- 1.) The administrative action has already been fully completed and, therefore, is a final agency action; and
- 2.) All administrative remedies have been exhausted.

**Q:** 1.) What is the difference, if any, between the scope of judicial power under the 1987 constitution on one hand, and the 1935 and 1973 Constitutions on the other?

2.) Assume that the constitutional question raised in a petition before the Supreme Court is the *lis mota* of the case, give at least two other requirements before the Court will exercise its power of judicial review?

**A:** 1.) The scope of judicial power under the 1987 Constitution is broader than its scope under the 1935 and 1973 Constitution because of the second paragraph of Section 1, Article VIII of the 1987 Constitution, which states that it includes the duty to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. As held in the case of *Marcos v. Manglapus*, this provision limits resort to the political question doctrine and broadens the scope of judicial inquiry into areas which the courts under the 1935 and the 1973 Constitutions would normally have left to the political departments to decide.

2.) According to *Macasiano v. National Housing Authority*, in addition to the requirement that the constitutional question raised be the *lis mota* of the case, the following requisites must be present for the exercise of the power of judicial review:

- a.) There must be an actual case or controversy involving a conflict of legal rights susceptible of judicial determination.
- b.) The constitutional question must be raised by the proper party.
- c.) The constitutional question must be raised at the earliest opportunity.
- d.) The decision of the constitutional question must be necessary to the determination of the case itself.

#### POLICE POWER





**Q:** Because of the marked increase in the incidence of labor strikes and of work stoppages in industrial establishments, Congress intending to help promote industrial peace, passed over the objections of militant labor unions, an amendment to the Labor Code, providing that no person who is or has been a member of the Communist Party may serve as an officer of any labor organization in the country. An association of former NPAs who had surrendered, availed of the amnesty, and are presently leading quiet and peaceful lives, comes to you asking what could be done against the amendment. What would you advise the association to do?

**A:** In *PAFLU v. Sec. of Labor*, the SC upheld the validity of sec. 23 of the Industrial Peace Act requiring labor unions to submit, within 60 days of the election of its officers, affidavits of the latter that they are not members of the Communist Party, against the claim that the requirement unduly curtailed freedom of assembly and association. The Court pointed out that the acquisition by a labor organization of legal personality and the enjoyment of certain rights and privileges, which the Constitution does not guarantee. On the other hand, the requirement constitutes a valid exercise of the State's police power to protect the public against abuse, fraud and impostors.

But the disqualification of members of the CPP and its military arm the NPA, from being officers of a labor union would (1) nullify the amnesty granted by the President with the concurrence, it may be assumed, of the majority of the members of Congress and (2) permit the condemnation of the former NPA members without judicial trial in a way that makes it contrary to the prohibition against the enactment of bill of attainder and ex post facto law. The amnesty granted to the former NPAs obliterated their offense and relieved them of the punishment imposed by law. The amendment would make them guilty of an act, that of having been former members of the NPA, for which they have already been forgiven by Presidential amnesty.

For these reasons, I would advise the association to work for the veto of the bill and, if it is not vetoed but becomes a law, challenge it in court.

**Q:** Undaunted by his three failures in the National Medical Admission Test (NMAT), Cruz applied to take it again but he was refused because of an order of the DECS disallowing flunkers from taking the test a fourth time. Cruz filed suit assailing this rule raising the constitutional grounds of accessible quality education, academic freedom and equal protection. The government opposes this, upholding the constitutionality of the rule on the ground of exercise of police power. Decide.

**A:** As held in *Department of Education, Culture and Sports v. San Diego*, the rule is a valid exercise of police power to ensure that those admitted to the medical profession are qualified. The arguments of Cruz are not meritorious. The right to quality education and academic freedom are not absolute. Under Section 5(3), Article XIV of the Constitution, the right to choose a profession is subject to fair, reasonable and equitable admission and academic requirements. The rule does not violate equal protection. There is a substantial distinction between medical students and other students. Unlike other professions, the medical profession directly affects the lives of the people.

### **POWER OF EMINENT DOMAIN**

**Q:** The City of Cebu passed an ordinance proclaiming the expropriation of a ten (10) hectare property of C Company, which property is already a developed commercial center. The City proposed to operate the commercial center in order to finance a housing project for city employees in the vacant portion of the said property. The ordinance fixed the price of the land and the value of the improvements to be paid C Company on the basis of the prevailing land value and cost of construction.

- 1) As counsel for C Company, give two constitutional objections to the validity of the ordinance.
- 2) As a judge, rule on the said objections.



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A: 1) As counsel for C Company, I will argue that the taking of the property is not for a public use and that the ordinance cannot fix the compensation to be paid C Company, because this is a judicial question that is for the courts to decide.

2) As a judge, I will sustain the contention that the taking of the property of C Company to operate the commercial center established within it to finance a housing project for city employees is not for a public use but for a private purpose. As the Court indicated in a dictum in *Manotok v. National Housing Authority*, the expropriation of a commercial center so that the profits derived from its operation can be used for housing projects is a taking for a private purpose.

I will also sustain the contention that the ordinance, even though it fixes the compensation for the land on the basis of the prevailing land value cannot really displace judicial determination of the price for the simple reason that many factors, some of them supervening, cannot possibly be considered by the legislature at the time of enacting the ordinance. There is a greater reason for nullifying the use of the cost of construction in the ordinance as basis for compensation for the improvements. The fair market value of the improvements may not be equal to the cost of construction. The original cost of construction may be lower than the fair market value, since the cost of construction at the time of expropriation may have increased.

Q: Madlangbayan is the owner of a 500 square meter lot which was the birthplace of the founder of a religious sect who admittedly played an important role in Philippine history and culture. The National Historical Commission (NHC) passed a resolution declaring it a national landmark and on its recommendation the lot was subjected to expropriation proceedings. This was opposed by Madlangbayan on the following grounds: a) that the lot is not a vast tract; b) that those to be benefited by the expropriation would only be the members of the religious sect of its founder, and c) that the NHC has not initiated the expropriation of birthplaces of other more deserving historical personalities. Resolve the opposition.

A: The arguments of Madlangbayan are not meritorious. According to *Manosca v. CA*, the power of eminent domain is not confined to expropriation of vast tracts of the land. The expropriation of the lot to preserve it as the birthplace of the founder of the religious sect because of his role in Philippine history and culture is for a public purpose, because public use is no longer restricted to the traditional concept. The fact that the expropriation will benefit the members of the religious sect is merely incidental. The fact that other birthplaces have not been expropriated is likewise not a valid basis for opposing the expropriation. As held in *J.M. Tuason v. Land Tenure Admin.*, the expropriating authority is not required to adhere to the policy of "all or none".

### JUST COMPENSATION

Q: In January 1984, Pasay City filed expropriation proceedings against several landowners for the construction of an aqueduct for flood control in a barangay. Clearly, only the residents of that barangay would be benefited by the project.

As compensation, the city offered to pay only the amount declared by the owners in their tax declarations which amount was lower than the assessed value as determined by the assessor. The landowners oppose the expropriation on the grounds that:

- the same is not for public use; and
- assuming it is for public use, the compensation must be based on the evidence presented in court and not, as provided in presidential decrees prescribing payment of the value stated in the owner's tax declarations or the value determined by the assessor, whichever is lower.

If you were the judge, how would you rule on the issue?

A: a) The contention that the taking of private property for the purpose of constructing an aqueduct for flood control is not for "public use" is untenable. The idea that "public use" means exclusively use by the public has been discarded. As long as the purpose of



the taking is public, the exercise of power of eminent domain is justifiable. Whatever may be beneficially employed for the general welfare satisfies the requirement of public use. (*Heirs of Juancho Ardon v. Reyes*)

b) But the contention that the Presidential Decrees providing that in determining just compensation the value stated by the owner in his tax declaration or that determined by the assessor, whichever is lower, is unconstitutional is correct. In *EPZA v. Dulay*, it was held that this method prescribed for ascertaining just compensation constitutes an impermissible encroachment on the prerogatives of the courts. It tends to render courts inutile in a matter which, under the Constitution, is reserved to them for final determination. For although under the decrees the courts still have the power to determine just compensation, their task is reduced to simply determining the lower value of the property as declared either by the owner or by the assessor. "Just compensation" means the value of the property at the time of the taking. Its determination requires that all facts as to the condition of the property and its surroundings and its improvements and capabilities must be considered, and this can only be done in a judicial proceeding.

**Q:** The City of Cebu expropriated the property of Carlos Topico for use as a municipal parking lot. The Sangguniang Panlungsod appropriated P10 million for this purpose but the Regional Trial Court fixed the compensation for the taking of the land at P15 million.

What legal remedy, if any, does Carlos Topico have to recover the balance of P5 million for the taking of his land.

**A:** The remedy of Topico is the levy on the patrimonial properties of the City of Cebu. In *Municipality of Paoay v. Manaois*, the SC held:

"Property, however, which is patrimonial and which is held by a municipality in its proprietary capacity as treated by the great weight of authority as the private asset of the town and may be levied upon and sold under an ordinary execution."

If the City of Cebu does not have patrimonial properties, the remedy of Topico is to file a petition for mandamus to compel it to appropriate money to satisfy the judgment. In *Municipality of Makati v. CA*, the SC said:

"Where a municipality fails or refuses without justifiable reason to effect payment of a final money judgment rendered against it, the claimant may avail of the remedy of mandamus in order to compel the enactment a approval of the necessary appropriation ordinance, and the corresponding disbursement of municipal funds therefore."

## DUE PROCESS

**Q:** Macabebe, Pampanga has several barrios along the Pampanga river. To service the needs of their residents, the municipality has been operating a ferry service at the same river, for a number of years already.

Sometime in 1987, the municipality was served a copy of an order from the Land Transportation Franchising and Regulatory Board (LTFRB), granting a certificate of public convenience to Mr. Macapinlac, a resident of Macabebe, to operate ferry service across the same river and between the same barrios being serviced presently by the municipality's ferry boats. A check of the records of the application of Macapinlac shows that the application was filed some months before, set for hearing, and notices of such hearing were published in two newspapers of general circulation in the town of Macabebe, and in the province of Pampanga. The municipality had never been directly served a copy of that notice of hearing nor had the Sangguniang Bayan been requested by Macapinlac for any operation. The municipality immediately filed a motion for reconsideration with the LTFRB which was denied. It went to the SC on a petition for certiorari to nullify the order granting a certificate of convenience to Macapinlac on the basis of denial of due process to the municipality. Resolve.

**A:** The petition should be granted. As a party directly affected by the operation of the ferry service, the Municipality of Macabebe was entitled to be directly notified by the LTFRB of its proceedings relative to Macapinlac's application, even if the Municipality had not notified



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the LTFRB of the existence of the municipal ferry service. Notice by publication was not enough. (*Municipality of Echague v. Abellera*)

**Q:** An ordinance of the City of Manila requires every alien desiring to obtain employment of whatever kind, including casual and part-time employment, in the city to secure an employment permit from the City Mayor and to pay a work permit fee of P500. Is the ordinance valid?

**A:** No, the ordinance is not valid. In *Villegas v. Hiu Chiong Tsai Pao Ho*, it was held that such an ordinance violates equal protection. It failed to consider the valid substantial differences among aliens required to pay the fee. The same amount is being collected from every employed alien, whether he is casual or permanent, part-time or full time. The ordinance also violates due process, because it does not contain any standard to guide the mayor in the exercise of the power granted to him by the ordinance. Thus, it confers upon him unrestricted power to allow or prevent an activity which is lawful per se.

**Q:** On July 29, 1991, the Energy Regulatory Board (ERB), in response to the public clamor, issued a resolution approving and adopting a schedule for bringing down the prices of petroleum products over a period of one (1) year starting August 15, 1991, over the objection of the oil companies which claim that the period covered is too long to prejudge and foresee. Is the resolution valid?

**A:** No, the resolution is invalid since the ERB issued the resolution without hearing. The resolution here is not a provisional order and therefore it can only be issued after appropriate notice and hearing to affected parties. The ruling in *Philippine Communications Satellite Corp. v. Alcuaz*, to the effect that an order provisionally reducing the rates which a public utility could charge, could be issued without previous notice and hearing, cannot apply.

**Q:** The Philippine Ports Authority (PPA) General Manager issued an administrative order to the effect that all existing regular appointments to harbor pilot positions shall remain valid only up to December 31 of the current year and that henceforth all appointments to harbor pilot positions shall be only for a term of one year from date of effectivity, subject to yearly renewal or cancellation by the PPA after conduct of a rigid evaluation of performance. Pilotage as a profession may be practiced only by duly licensed individuals, who have to pass five gov't professional examinations.

The Harbor Pilot Association challenged the validity of the said administrative order arguing that it violated the pilot's right to exercise their profession and their right to due process of law and that the said administrative order was issued without prior notice and hearing. The PPA countered that the administrative order was valid as it was issued in the exercise of its administrative control and supervision over harbor pilots under PPA's legislative charter; and that in issuing the order as a rule or regulation, it was performing its executive or legislative, and not a quasi-judicial function. Was there or was there no violation of the harbor pilots' right to exercise their profession and their right to due process?

**A:** The right of the harbor pilots to due process was violated. As held in *Corona v. United Harbor Pilots Assoc. of the Phil.*, pilotage as a profession is a property right protected by the guarantee of due process. The pre-evaluation cancellation of the licenses of the harbor pilots every year is unreasonable and violated their right to substantive due process. The renewal is dependent on the evaluation after the licenses have been cancelled. The issuance of the administrative order also violated procedural due process, since no prior public hearing was conducted. As held in *CIR v. CA*, when a regulation is being issued under the quasi-legislative authority of an administrative agency, the requirements of notice, hearing and publication must be observed.

#### EQUAL PROTECTION



**Q:** Marina Neptunia, daughter of a sea captain and sister to four marine officers, applied to take examination for marine officers but her application was rejected for the reason that the law regulating the practice of marine profession in the Philippines specifically prescribes that “No person shall be qualified for examination as marine officer unless he is male.

Marina feels very aggrieved over the denial and has come to you for advice. She wants to know whether the Board of Examiners had any plausible or legal basis for rejecting her application. Explain.

**A:** The disqualification of females from the practice of marine profession constitutes an invidious discrimination condemned by the Equal Protection Clause of the Constitution (Art. IV, Sec.1). In the United States, under a similar provision, while earlier decisions of the SC upheld the validity of a statute prohibiting women from bartending unless she was the wife or daughter of a male owner and denying women the right to practice law, recent decisions have invalidated statutes or regulations providing for differential treatment of females based on stereotypical and inaccurate generalizations. The Court held that “classification based on sex, like classifications based on race, alienage or national origin, are inherently suspect, and must therefore be subjected to strict judicial scrutiny. Furthermore, it violates Sec. 14 Art II, which underscores the fundamental equality of men and women before the law.

**Q:** “X” was sentenced to a penalty of 1 year and 5 months of *prision correccional* and to pay a fine of P8,000 with subsidiary imprisonment in case of insolvency. After serving his prison term, “X” asked the Director of Prisons whether he could already be released. “X” was asked to pay the fine of P8,000 and he said he could not afford it, being an indigent. The Director informed him he has to serve an additional prison term at the rate of one day per eight pesos in accordance with Article 39 of the Revised Penal Code. The lawyer of “X” filed a petition for habeas corpus contending that the further detention of his client for unpaid fines violates the equal protection clause of the Constitution. Decide.

**A:** The petition should be granted, because Article 39 of the Revised Penal Code is unconstitutional. In *Tate v. Short*, the US Supreme Court held that the imposition of subsidiary imprisonment upon a convict who is poor to pay a fine violates equal protection, because economic status cannot serve as a valid basis for distinguishing the duration of the imprisonment between a convict who is able to pay the fine and a convict who is unable to pay it.

**Q:** An ordinance of the City of Manila requires every alien desiring to obtain employment of whatever kind, including casual and part-time employment, in the city to secure an employment permit from the City Mayor and to pay a work permit fee of P500. Is the ordinance valid?

**A:** No, the ordinance is not valid. In *Villegas v. Hiu Chiong Tsai Pao Ho*, it was held that such an ordinance violates equal protection. It failed to consider the valid substantial differences among aliens required to pay the fee. The same amount is being collected from every employed alien, whether he is casual or permanent, part-time or full time. The ordinance also violates due process, because it does not contain any standard to guide the mayor in the exercise of the power granted to him by the ordinance. Thus, it confers upon him unrestricted power to allow or prevent an activity which is lawful per se.

## SEARCH AND SEIZURE

**Q:** “X” a constabulary Officer, was arrested pursuant to a lawful court order in Baguio City for murder. He was brought to Manila where a warrantless search was conducted in his official quarters at Camp Crame. The search team found and seized the murder weapon in a drawer of “X”. Can “X” claim that the search and seizure were illegal and move for exclusion from evidence of the weapon seized?

**A:** Yes, “X” can do so. The warrantless search cannot be justified as an incident of a valid arrest, because considerable time had elapsed after his arrest in Baguio before the search of his quarters in Camp Crame, Quezon City was made, and because the distance between the place of arrest and the place of search negates any claim that the place searched is within his



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“immediate control” so as to justify the apprehension that he might destroy or conceal evidence of crime before a warrant can be obtained. In *Nolasco v. Cruz Pano*, the SC said that a warrantless search made after 30 minutes from the time of arrest and, in a place several blocks away from the place of arrest is invalid. It held that a warrantless search is limited to the search of the person of the arrestee at the time and incident to his arrest and for dangerous weapons or anything which may be used as proof of the offense.

**Q:** Pursuing reports that great quantities of prohibited drugs are being smuggled at nighttime through the shores of Cavite, the Southern Luzon Command set up checkpoints at the end of the Cavite coastal road to search passing motor vehicles. A 19-year old boy, who finished fifth grade, while driving, was stopped by the authorities at the checkpoint. Without any objection from him, his car was inspected, and the search yielded marijuana leaves hidden in the trunk compartment of the car. The prohibited drug was promptly seized, and the boy was brought to the police station for questioning. Was the search without warrant legal?

**A:** No, the search was not valid, because there was no probable cause for conducting the search. As held in *Almeda v. US*, while a moving vehicle can be searched without a warrant, there must still be probable cause. In the case in question, there was nothing to indicate that marijuana leaves were hidden in the trunk of the car. The mere fact that the boy did not object to the inspection of the car does not constitute consent to the search. As ruled in *People v. Barros*, the failure to object to a warrantless search does not constitute consent.

**Alternative Answer:**

YES, the requirement of probable cause differs from case to case. In this one, since the police agents are confronted with large-scale smuggling of prohibited drugs, existence of which is of public knowledge, they can set up checkpoints at strategic places, in the same way that in a neighborhood where a child is kidnapped, it is lawful to search cars and vehicles leaving the neighborhood. This situation is also similar to warrantless searches of moving vehicles in customs areas, which have been upheld.

**Q:** Some police operatives, acting under a lawfully issued warrant for the purpose of searching for firearms in the house of X located at No. 10 Shaw Blvd, Pasig MM, found instead of firearms, ten kg of cocaine.

- 1.) May the said police operatives lawfully seize the cocaine?
- 2.) May X successfully challenge the legality of the search on the ground that the peace officers did not inform him about his right to remain silent and his right to counsel?
- 3.) Suppose the peace officers were able to find unlicensed firearms in the house in an adjacent lot, that is, No. 12 Shaw Blvd., which is also owned by X. May they lawfully seize the said unlicensed firearms?

**A: 1.) YES**, the police operatives may lawfully seize the cocaine, because it is an item whose possession is prohibited by law, it was in plainview and it was only inadvertently discovered in the course of a lawful search. The possession of cocaine is prohibited by the Dangerous Drugs Act. As held in *Magoncia v. Palacio*, an article whose possession is prohibited by law may be seized without the need of any search warrant if it was discovered during a lawful search. The additional requirement laid down in *Roan v. Gonzales*, that the discovery of the article must have been made inadvertently was also satisfied in this case.

**2.) NO**, X cannot successfully challenge the legality of the search simply because the peace officers did not inform him about his right to remain silent and his right to counsel. Section 12(1), Article III of the Constitution provides:

“Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice.”

For this provision to apply, a suspect must be under custodial investigation. There was no investigation involved in this case.



3.) The unlicensed firearms stored at 12 Shaw Blvd. may lawfully be seized since their possession is illegal. As held in *Magoncia v. Palacio*, when an individual possesses contraband, he is committing a crime and he can be arrested without warrant and the contraband can be seized.

**Alternative Answer:**

**NO.** The search warrant was specific as to the place to be searched. There was no basis to search the adjacent house.

**Q:** During the recent elections, checkpoints were set up to enforce the election period ban on firearms. During one such routine search one night, while looking through an open window with a flashlight, the police saw firearms at the backseat of a car, partially covered by papers and clothes.

- a.) Antonio, owner and driver of the car in question, was charged for violation of the firearms ban. Are the firearms admissible in evidence against him?
- b.) If, upon further inspection by the police, prohibited drugs were found inside the various compartments of Antonio's car, can the drugs be used in evidence against Antonio if he is prosecuted for possession of prohibited drugs?

**A:** a.) Yes, the firearms are admissible in evidence, because they were validly seized. In *Valmonte v. De Villa*, the SC held that checkpoints may be set up to maintain peace and order for the benefit of the public and checkpoints are a security measure against unauthorized firearms. Since the search which resulted in the discovery of the firearms was limited to a visual search of the car, it was reasonable. Because of the ban on firearms, the possession of the firearms was prohibited. Since they were found in plain view in the course of a lawful search, in accordance with *Magoncia v. Palacio*, they are admissible in evidence.

b.) No, the drugs cannot be used in evidence against Antonio if he is prosecuted for possession of prohibited drugs. The drugs were found after a more extensive search of the various compartments of the car. As held in *Valmonte v. De Villa*, for such search to be valid, there must be a probable cause. In this case, there was no probable cause, as there was nothing to indicate that Antonio had prohibited drugs inside the compartments of his car.

**Q:** a.) Crack officers of the Anti - Narcotics Unit were assigned on surveillance of the environs of a cemetery where the sale and use of dangerous drugs are rampant. A man with reddish and glassy eyes was walking unsteadily moving towards them but veered away when he sensed the presence of policemen. They approached him, introduced themselves as police officers and asked him what he had clenched in his hand. As he kept mum, the policemen pried his hand open and found a sachet of shabu, a dangerous drug. Accordingly charged in court, the accused objected to the admission in evidence of the dangerous drug because it was the result of an illegal search and seizure. Rule on the objection.

- b.) What are the instances when warrantless searches may be effected?

**A:** a.) The objection is untenable. In accordance with *Manalili v. CA*, since the accused had red eyes and was walking unsteadily and the place is a known hang-out of drug addicts, the police officers had sufficient reason to stop the accused and to frisk him. Since shabu was actually found during the investigation, it could be seized without the need for a search warrant.

- b.) A warrantless search may be effected in the following cases:

- 1.) Searches incidental to a lawful arrest;
- 2.) Searches of moving vehicles;
- 3.) Searches of prohibited articles in plain view;
- 4.) Enforcement of customs law;
- 5.) Consented searches;
- 6.) Stop and frisk
- 7.) Routing searches at borders and ports of entry;
- 8.) Searches of businesses in the exercise of visitatorial powers to enforce police regulations.



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**Q:** A is an alien. State whether in the Philippines he is entitled to the right against illegal searches and seizures and against illegal arrests.

**A:** Aliens are entitled to the right against illegal searches and seizures and illegal arrests. As applied in *People v. Chua Ho San*, these rights are available to all persons, including aliens.

**Q:** Armed with a search warrant, a team of policemen led by Inspector Trias entered a compound and searched the house described therein as No. 17 Speaker Perez St., Sta. Mesa Heights QC, owned by Ernani Pelets, for a reported cache of firearms and ammunition. However, upon thorough search of the house, they found nothing.

Then, acting on a hunch, the police proceeded to a smaller house inside the same compound with address at No. 17-A Speaker Perez St., entered it, and conducted a search therein over the objection of Mr. Pelets who happened to be the same owner of the first house. There, the police found the unlicensed firearms and ammunition they were looking for. As a result, Mr. Pelets was criminally charged in court with illegal possession of firearms and ammunition. At the trial, he vehemently objected the presentation of the evidence against him for being inadmissible. Resolve.

**A:** The contention of Ernani Pelets is valid. As held in *People v. CA*, if the place searched is different from that stated in the search warrant, the evidence seized inadmissible. The police cannot modify the place to be searched as set out in the search warrant.

### FREEDOM OF EXPRESSION

**Q:** The Secretary of Transportation and Communications has warned radio station operators against selling blocked time, on the claim that the time covered thereby are often used by those buying them to attack the present administration. Assume that the department implements this warning and orders owners and operators of radio stations not to sell blocked time to interested parties without prior clearance from the department. You are approached by an interested party affected adversely by that order of the Secretary. What would you do regarding that ban on the sale of blocked time.

**A:** I would challenge its validity in court on the ground that it constitutes a prior restraint of freedom of expression. Such a limitation is valid only in exceptional cases, such as where the purpose is to prevent actual obstruction to recruitment of service or the sailing dates of transports or the number and location of troops, or for the purpose of enforcing the primary requirements of decency or the security of community life. Attacks on the gov't, on the other hand, cannot justify prior restraints. For as has been pointed out, "the interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and an unjust accusation; the wound can be assuaged with a balm of a clear conscience."

### LIBERTY OF ABODE

**Q:** Juan Casanova contracted Hansen's disease (leprosy) with open lesions. A law requires that lepers be isolated upon petition of the City Health Officer. The wife of Juan wrote a letter to the City Health Officer to have her formerly philandering husband confined in some isolated leprosarium. Juan challenged the constitutionality of the law as violating his liberty of abode. Will the suit prosper?

**A:** No, the suit will not prosper. Section 6, Article III of the Constitution provides:  
"The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court."

The liberty of abode is subject to the police power of the State. Requiring the segregation of lepers is a valid exercise of police power. In *Lorenzo v. Dir. Of Health*, the SC held:





**“Judicial notice will be taken of the fact that leprosy is commonly believed to be an infectious disease tending to cause one afflicted with it to be shunned and excluded from society, and that compulsory segregation of lepers as a means of preventing the spread of the disease is supported by high scientific authority.”**

**Q:** The military commander-in-charge of the operation against rebel groups directed the inhabitants of the island which would be the target of attack by gov’t forces to evacuate the area and offered the residents temporary military hamlet. Can the military commander force the residents to transfer their places of abode without court order?

**A:** No, the military commander cannot compel the residents to transfer their places of abode without a court order. Under Section 6, Article III of the Constitution, a lawful order of the court is required before the liberty of abode and of changing the same can be impaired.

### **PRIVACY OF COMMUNICATION AND CORRESPONDENCE**

**Q:** While serving sentence in Muntinlupa for the crime of theft, X stabbed dead one of his guards. X was charged with murder. During trial, the prosecution introduced as evidence a letter written in prison by X to his wife tending to establish that the crime of murder was the result of premeditation. The letter was written voluntarily. In the course of inspection, it was opened and read by a warden pursuant to the rules of discipline of the Bureau of Prisons and considering its contents, the letter was turned over to the prosecutor. The lawyer of X objected to the presentation of the letter and moved for its return on the ground that it violates the right of X against unlawful search and seizure. Decide.

**A:** The objection of the lawyer must be sustained. Section 3(1), Article IV of the 1987 Constitution provides:

**“The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.”**

There was no court order which authorized the warden to read the letter of X. neither is there any law specifically authorizing the Bureau of Prisons to read the letter of X. Under Section 3(1), Art. III, to interfere with any correspondence when there is no court order, there must be a law authorizing it in the interest of public safety or order. Hence the letter is inadmissible.

**Q:** The police had suspicions that Juan Samson, member of the subversive New Proletarian Army, was using the mail for propaganda purposes in gaining new adherents to its cause. The Chief of Police of Bantolan, Lanao del Sur ordered the Postmaster of the town to intercept and open all mail addressed to and coming from Juan Samson in the interest of the national security. Was the order of the Chief of Police valid?

**A:** NO, the order was not valid because there is no law which authorizes him to order the Postmaster to open the letters addressed to and coming from Juan Samson. An official in the Executive Department cannot interfere with the privacy of correspondence and communication in the absence of a law authorizing him to do so or a lawful order of the court.

**Q:** A has a telephone line with an extension. One day, A was talking to B over the phone. A conspired with his friend C, who was at the end of the extension line listening to A’s conversation with B in order to overhear and tape-record the conversation wherein B confidentially admitted that with evident premeditation, he (B) killed D for having cheated him in their business partnership. B was not aware that the phone conversation was being tape-recorded.

In the criminal case against B for murder, is the tape-recorded conversation containing his admission admissible in evidence?



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**A:** The tape-recorded admission is not admissible in evidence. As held in *Salcedo-Ortañez v. CA*, Republic Act No. 4200 makes the tape-recording of a telephone conversation done without the authorization of all the parties to the conversation, inadmissible in evidence. In addition, the taping of the conversation violated the guarantee of privacy of communications enunciated in Section 3, Art. III of the Constitution.

### MIRANDA RIGHTS, RIGHT TO COUNSEL

**Q:** On October 1, 1985, Ramos was arrested by a security guard because he appeared to be “suspicious” and brought to a police precinct where in the course of the investigation he admitted he was the killer of an unsolved homicide committed a week earlier. The proceedings of his investigation were put in writing and dated October 1, 1985, and the only participation of counsel assigned to him was his mere presence and signature on the statement. The admissibility of the statement of Ramos was placed in issue but the prosecution claims that the confession was taken on October 1, 1985 and the 1987 Constitution providing for the right to counsel of choice and opportunity to retain, took effect only on February 2, 1987 and cannot be given retroactive effect. Rule on this.

**A:** The confession of Ramos is not admissible, since the counsel assigned to him did not advise him of his rights. The fact that his confession was taken before the effectivity of the 1987 Constitution is of no moment. Even prior to the effectivity of the 1987 Constitution, the SC has already laid down strict rules on waiver of the rights during investigation in the case of *Morales v. Ponce Enrile* (April 26, 2003)

### CITIZENSHIP

**Q:** A was born in 1951 in the United States of a Chinese father and a Filipina mother. Under Chinese laws, A’s mother automatically became a Chinese national by her marriage. In 1973, upon reaching the age of majority, A elected Philippine citizenship. However, A continued to reside in California and to carry an American passport. He also paid allegiance to the Taipei government. In the 1987 Philippine national elections, he was elected Senator. His opponent moved to disqualify him on the grounds:

- 1) That he was not a natural born citizen; and
- 2) That he had “dual allegiance” not only to the US but also to the Rep. of China.

**A:** The Electoral contest must be dismissed.

- 1) A is a natural born citizen. Art. IV, Sec. 2 of the 1987 Constitution provides that “those who elect Philippine citizenship in accordance with par. 3, sec. 1 hereof shall be deemed natural born citizens.” The purpose of this provision is to equalize the status of those who elected Philippine citizenship before and those who did so after January 17, 1973 when the previous Constitution took effect.
- 2) The “dual allegiance” declared inimical to national interest in Art. VI, Sec. 5 refers to the dual allegiance of some such as naturalized Filipino citizens who maintain allegiance to the Nationalist China as shown in some cases by their membership in the legislative Yuan after their naturalization as citizens of the Philippines. The prohibition does not apply in situations brought about by dual citizenship such as the one involved in the problem. What constitutes “dual allegiance” inimical to national interest is and what the sanctions for such dual allegiance will be, still have to be defined by law pending adoption of such legislation, objection based on dual allegiance will be premature.

**Q:** Edwin Nicasio, born in the Philippines of Filipino parents and raised in the province of Nueva Ecija, ran for Governor of his home province. He won and he was sworn into office. It was recently revealed however, that Nicasio is a naturalized American citizen.

- 1) Does he still possess Philippine citizenship?



- 2) If, instead, Nicasio had been born (of the same set or parents) in the United States and he thereby acquired American citizenship by birth, would your answer be different?

**A:**

- 1) **NO**, Nicasio no longer possesses Philippine citizenship. As held in *Frivaldo v. Comelec*, by becoming a naturalized American citizen, Nicasio lost his Philippine citizenship. Under Section 1(1) of Commonwealth Act No. 63, Philippine citizenship is lost by naturalization in a foreign country.
- 2) If he was born in the US, he would still be a citizen of the Philippines, since his parents are Filipinos. Under section 1(2), those whose fathers or mothers are citizens of the Philippines are citizens of the Philippines. As held in *Aznar v. Comelec*, a person who possesses both Philippine and American citizenship is still a Filipino and does not lose it unless he renounces the same.

**Q:** Ferdie immigrated to the United States in the 1980's. thereafter, he visited his hometown, Makahoy, every other year during town fiestas. In January 1993, Ferdie came home and filed his certificate of candidacy for mayor of Makahoy. He won the elections. Joe, the defeated candidate, learned that Ferdie is a greencard holder which on its face identifies Ferdie as a "resident alien" and on the back thereof is clearly printed:

"Person identified by this card is entitled to reside permanently and work in the United States." Joe filed a case to disqualify Ferdie from assuming the mayorship of Makahoy.

- 1) Whether or not a green card is proof that the holder is a permanent resident of the US.
- 2) Whether or not Ferdie's act of filing his certificate of candidacy constitutes waiver of his status as a permanent resident of the US.

**A: 1)** According to the ruling in *Caasi v. CA*, a green card is proof that the holder is a permanent resident of the US, for it identifies the holder as a resident of the US and states that the holder is entitled to reside permanently and work in the US.

**2)** The filing of a certificate of candidacy does not constitute waiver of the status of the holder of a green card as a permanent resident of the US. As held in *Caasi v. CA*, the waiver should be manifested by an act independent of and prior to the filing of his certificate of candidacy.

### **PRE-PROCLAMATION CONTROVERSY**

**Q:** In election law, what is a pre-proclamation controversy? Where may it be litigated with finality? After the ultimate winner has been duly proclaimed, does the loser still have any remedy to the end that he may finally obtain the position he aspired for in the election?

**A:** A pre-proclamation controversy refers to any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the COMELEC, or any matter raised under Secs. 233-236 of the Omnibus Election Code in relation to the preparation, transmission, receipt, custody or appreciation of the election returns.

The COMELEC has exclusive jurisdiction of all pre-proclamation controversies. Its decisions become executory after the lapse of 5 days from receipt by the losing party of the decision, unless restrained by the SC.

A loser may still bring an election contest concerning the election, returns, and qualifications of the candidate proclaimed. In the case of elective *barangay* officials, it may be filed in the MTC; in the case of municipal officials, in the RTC; in the case of elective provincial and city officials, in the COMELEC; in the case of Senators or Congressmen, in the House or Senate Electoral Tribunal; and in the case of the President and Vice president, in the Presidential Electoral Tribunal.

### **ADMINISTRATIVE DUE PROCESS**

**Q:** State whether the following city ordinances are valid and give reasons in support of your answers:



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- a) An ordinance prescribing the use of the local dialect as medium of instruction in the primary grades.
- b) An ordinance on business establishments to raise funds for the construction and maintenance of roads in private subdivisions, which roads are open for use by segments of the public who may have business inside the subdivision.
- c) An ordinance prohibiting barbershop operators from rendering massage service to their customers in a separate room.

A:

- a) The ordinance is invalid. The Constitution provides in Art. XIV, Sec. 7 for the use of regional dialect as auxiliary medium of instruction. If the ordinance prescribes the use of local dialect not as auxiliary but as exclusive language of instruction, then it is violative of the Constitution.
- b) The ordinance is valid. The charge on the business establishments is not a tax but a special assessment. Hence, the holding in *Pascual v. Sec. of Public Works* that public funds cannot be appropriated for the construction of roads in a private subdivision does not apply. As held in *Apostolic Prefect v. City Treas. Of Baguio*, special assessments may be charged to property owners benefited by public works, because the essential difference between a tax and such assessment is precisely that the latter is based wholly on benefits received.
- c) The ordinance is valid. In *Velasco v. Villegas*, such ordinance was upheld on the ground that it is a means of enabling the City of Manila to collect a fee for operating massage clinics and of preventing immorality.

## DOCTRINE OF PRIMARY JURISDICTION AND EXHAUSTION OF ADMINISTRATIVE REMEDIES

Q:

- 1) Distinguish the doctrine of primary jurisdiction from the doctrine of exhaustion of administrative remedies.
- 2) Does the failure to exhaust administrative remedies before filing a case in court oust said court of jurisdiction to hear the case?

A:

- 1) The doctrine of primary jurisdiction and the doctrine of exhaustion of administrative remedies both deal with the proper relationships between the courts and administrative agencies. The doctrine of exhaustion of administrative remedies applies where a claim is cognizable in the first instance by an administrative agency alone. Judicial interference is withheld until the administrative process has been complete. As stated in *Industrial Enterprises v. CA*, the doctrine of primary jurisdiction applies where a case is within the concurrent jurisdiction of the court and an administrative agency but the determination of the case requires the technical expertise of the administrative agency. In such case, although the matter is within the jurisdiction of the court, it must yield to the jurisdiction of the administrative agency.
- 2) No, the failure to exhaust administrative remedies before filing a case in court does not oust the court of jurisdiction to hear the case. As held in *Rosario v. CA*, the failure to exhaust administrative remedies does not affect the jurisdiction of the court but results in the lack of a cause of action, because the condition precedent that must be satisfied before the action can be filed was not fulfilled.

## PART II: SUGGESTED ANSWERS TO THE 2004 POLITICAL LAW BAR EXAM



I

A. The 1935, 1973 and 1987 Constitutions commonly provide that: "The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law."

What is the effect of the addition in the 1978 Constitution of the ff. provision: "Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government"?

The effect of the addition broadened the judicial power to enable the courts of justice to review what was before forbidden territory, the discretion of the political departments of the government. The extended power of the Court includes the power to review even the political decisions of the executive and legislature and to declare their acts invalid for lack or excess of jurisdiction for being tainted with grave abuse of discretion.

In the illustrative case of *Tanada vs. Angara*, which was a petition to annul the Senate concurrence to the World Trade Organization Agreement, the Supreme Court declared through Justice Panganiban: "In seeking to nullify an act of the Senate, on the ground that it contravenes the Constitution, the petition no doubt raises a justiciable controversy. Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. The question thus interposed is judicial rather than political. The duty of the Constitution is upheld"...this Court will not shirk, digress from or abandon its sacred duty and authority to uphold the Constitution in matters that involve grave abuse of discretion brought before it appropriate cases...

B. SDO was elected Congressman. Before the end of his first year in office, he inflicted physical injuries on a colleague, ETI, in the course of a heated debate. Charges were filed in court against him as well as in the House Ethics Committee. Later, the House of Representatives, dividing along party lines, voted to expel him. Claiming that his expulsion was railroaded and tainted by bribery, he filed a petition seeking a declaration by the Supreme Court that the House gravely abused its discretion and violated the Constitution. He prayed that his expulsion be annulled and that he should be restored by the Speaker to his position as Congressman. Is SDO's petition before the Supreme Court justiciable? Cite pertinent issues for consideration.

The answer must be qualified. The petition of SDO is generally a political one for it deals with an action by the separate branch of the government, which is the legislative character. However, because of the extended power of the Supreme Court of verifying if there has been any grave abuse of discretion amounting to a lack or excess of jurisdiction on the part of the officer, agency or branch of the government then an issue originally political becomes justiciable. In the case at bar, if there is any truth to the allegation that the expulsion of SDO has been railroaded and therefore has not been conducted with the requisite due process, then it becomes a justiciable issue cognizable by the Court. As stated in the case of *Daza vs. Singson*, where the issue presented to the Supreme Court is *justiciable* rather than political where it involves the *legality* and not the wisdom of the act complained of .... "Even if the question were political in nature, it would still come within the Court's powers of review under the expanded jurisdiction conferred upon it by Article VIII, Sec. 1 of the Constitution, which includes the authority to determine whether grave abuse of discretion amounting to lack or excess of jurisdiction..."

II

A. Distinguish briefly but clearly between:

- 1) The territorial sea and the internal waters of the Philippines.
- 2) The contiguous zone and exclusive economic zone.
- 3) The flag state and the flag of convenience.



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- 4) The constitutive theory and the declaratory theory concerning recognition of states.
- 5) The Wilson doctrine and the Estrada doctrine regarding recognition of governments.

1. Territorial water is defined by historic right or treaty limits while internal water is defined by the archipelago doctrine. The territorial waters, as defined in the Convention on the Law of the Sea, has a uniform breadth of 12 miles measured from the lower water mark of the coast; while the outermost points of our archipelago which are connected with baselines and all waters comprised therein are regarded as internal waters.
2. The contiguous zone is the area which is known as the protective jurisdiction and starts from 24th nautical mile from low water mark, while the EEZ is the area which starts from 200th nautical mile from the low water mark. In the latter, no state really has exclusive ownership of it but the state which has a valid claim on it according to the UN Convention on the Law of the Seas agreement has the right to explore and exploit its natural resources; while in the former the coastal state may exercise the control necessary to a) prevent infringement of its customs, fiscal immigration or sanitary regulations within its territory b) punish infringement of the above regulations within its territory or territorial sea.
3. Flag state means a ship has the nationality of the flag state it flies, but there must be a genuine link between the state and the ship. (*Article 91 of the Convention of the Law of the Sea.*) Flag of convenience refers to a state with which a vessel is registered for various reasons such as low or non-existent taxation or low operating costs although the ship has no genuine link with that state. (*Harris, Cases and Materilas on International Law, 5<sup>th</sup> ed., 1998, p. 425.*)
4. The constitutive theory is the minority view which holds that recognition is the last element that converts or constitutes the entity being recognized into an international person; while the declaratory theory is the majority view that recognition affirms the pre-existing fact that the entity being recognized already possesses the status of an international person. In the former recognition is regarded as mandatory and legal and may be demanded as a matter of right by any entity that can establish its possession of the four essential elements of a state; while the latter recognition is highly political and discretionary.
5. In the Wilson or Tobar doctrine, a government established by means revolution, civil war, coup d' etat or other forms of internal violence will not be recognized until the freely elected representatives of the people have organized a constitutional government, while in the Estrada doctrine any diplomatic representatives in a country where an upheaval has taken place will deal or not deal with whatever government is in control therein at the time and either action shall not be taken as a judgment on the legitimacy of the said government.

B. En route to the tuna fishing grounds in the Pacific Ocean, a vessel registered in Country TW entered the Balintang Channel north of Babuyan Island and with special hooks and nets dragged up red corals found near Batanes. By International Convention certain corals are protected species. Just before the vessel reached the high seas, the Coast Guard patrol intercepted the vessel and seized its cargo including tuna. The master of the vessel and the owner of the cargo protested, claiming the rights of transit passage and innocent passage, and sought recovery of the cargo and the release of the ship. Is the claim meritorious or not? Reason briefly.

The claim of the master of the vessel and the owner of the cargo is not meritorious. Although their claim of transit passage and innocent passage through the Balintang Channel is tenable under the 1982 Convention on the Law of the Sea, the fact that they attached special hooks and nets to their vessel which dragged up red corals is reprehensible. The Balintang Channel is considered part of our internal waters and thus is within the absolute jurisdiction of the Philippine government. Being so, no foreign vessel, merchant or otherwise, could exploit or explore any of our natural resources in any manner of doing so without the consent of our government.



A. JAR faces a dilemma: should he accept a Cabinet appointment now or run later for Senator? Having succeeded in law practice as well as prospered in private business where he and his wife have substantial investments, he now contemplates public service but without losing the flexibility to engage in corporate affairs or participate in professional activities within ethical bounds.

Taking into account the prohibitions and inhibitions of public office whether Senator or Secretary, he turns to you for advice to resolve his dilemma. What is your advice? Explain briefly.

I shall advise JAR to run for Senator. As a senator, he can retain his investments in his business, although he must make a full disclosure of his business and financial interests and notify the Senate of a potential conflict of interest if he authors a bill. (*Section 12, Article VI of the 1987 Constitution.*) He can continue practicing law, but he cannot personally appear as counsel before any court of justice, the Electoral Tribunals, or quasi-judicial or other administrative bodies. (*Section 14, Article VI of the 1987 Constitution.*)

As a member of the Cabinet, JAR cannot directly or indirectly practice or participate in any business. He will have to divest himself of his investments in his business. (*Section 13, Article VII of the 1987 Constitution.*) In fact, the Constitutional prohibition imposed on members of the Cabinet covers both public and private office or employment. (*Civil Liberties Union v. Executive Secretary, 194 SCRA 317 [1991]*).

B. CTD, a Commissioner of the NLRC sports a No. 10 car plate. A disgruntled litigant filed a complaint against him for violation of the Anti-Graft and Corrupt Practices Act before the Ombudsman. CTD now seeks to enjoin the Ombudsman in a petition for prohibition, alleging that he could be investigated only by the Supreme Court under its power supervision granted by the Constitution. He contends that under the law creating the NLRC, he has the rank of a Justice of the court of Appeals, and entitled to the corresponding privileges. Hence, the Ombudsman has no jurisdiction over the complaint against him.

Should CTD's petition be granted or dismissed? Reason briefly.

CTD's petition should be dismissed. Section 21 of the Ombudsman Act vests the Office of the Ombudsman with disciplinary authority over all elective and appointive officials of the government, except officials who may be removed only by impeachment, Members of Congress, and the Judiciary. While CTD has the rank of a Justice of the Court of Appeals, he does not belong to the Judiciary but to the Executive Department. This simply means that he has the same compensation and privileges as a Justice of the Court of Appeals. If the Supreme Court were to investigate CTD, it would be performing a non-judicial function. This will violate the principle of separation of power. (*Noblejas v. Teehankee, 23 SCRA 405 [1968]*).

#### IV

A. TCA, a Filipina medical technologist, left in 1975 to work in ZOZ State. In 1988 she married ODH, a citizen of ZOZ. Pursuant to ZOZ's law, by taking an oath of allegiance, she acquired her husband's citizenship.

ODH died in 2001, leaving her financially secure. She returned home in 2002, and sought elective office in 2004 by running as Mayor of APP, her hometown. Her opponent sought to have her disqualified because of her ZOZ citizenship. She replied that although she acquired ZOZ's citizenship because of her marriage, she did not lose her Filipino citizenship. Both her parents, she said, are Filipino citizens.

Is TCA qualified to run as Mayor?

TCA is NOT qualified to run as Mayor. Although she was a natural-born Filipino, her marriage to ODH and her act of taking an oath of allegiance to ZOZ State made her lose her Filipino citizenship (C.A. No 63). Therefore, she is not a Filipino citizen and is disqualified from running for Mayor.

B. An amendment or revision of the present Constitution may be proposed by a Constitutional Convention or by Congress upon a vote of three-fourths of all its members.

Is there third way of proposing revisions of or amendments to the Constitution? If so, how?



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There is no third way of proposing revisions to the present Constitution. As for amendments, according to ART XVII, Sec 2 of the 1987 Constitution, amendments to the Constitution may be directly proposed by the people through initiative upon petition of at least twelve (12) *per centum* of the total number registered voters, of which every legislative district must be represented by at least three (3) *per centum* of the registered voters therein. However, an attempt to use this method was struck down by the Supreme Court in the case of *Santiago vs. COMELEC* for lack of the necessary implementing law.

## V

- A. The STAR, a national daily newspaper, carried an exclusive report stating that Senator XX received a house and lot located at YY Street, Makati, in consideration for his vote cutting cigarette taxes by 50%. The Senator sued the STAR, its reporter, editor and publisher for libel, claiming the report was completely false and malicious. According to the Senator, there is no YY Street in Makati, and the tax cut was only 20%. He claimed one million in damages.

The defendants denied "actual malice," claiming privileged communication and absolute freedom of the press to report on public officials and matters of public concern. If there was any error, the STAR said it would publish the correction promptly.

Is there "actual malice" in STAR's reportage? How is "actual malice" defined? Are the defendants liable for damages?

### FIRST ALTERNATIVE ANSWER

Since Senator XX is a public person and the questioned imputation is directed against him in his public capacity, in this case actual malice means the statement was made with knowledge that it was false or with reckless disregard of whether it was false or not (*Borjal v. Court of Appeals*, 301 SCRA 1 [1991]). Since there is no proof that the report was published with knowledge that it is false or with reckless disregard of whether it was false or not, the defendants are not liable for damages.

### SECOND ALTERNATIVE ANSWER

Since Senator XX is a public person and the questioned imputation is directed against him in his public capacity, in this case actual malice means the statements was made with knowledge that it was false or with reckless disregard of whether it was false or not (*Borjal v. Court of Appeals*, 301 SCRA 1 [1991]). Since it is a matter off public knowledge that there is no YY Street in Makati, the publication was made with reckless disregard of whether or not it was false. The defendants may be held liable for damages.

- B. OZ lost five head of cattle which he reported to the police as stolen from his barn. He requested several neighbors, including RR, for help in looking for the missing animals. After an extensive search, the police found two head in RR's farm. RR could not explain to the police how they got hidden in a remote area of his farm.

Insisting on his innocence, RR consulted a lawyer who told him he has a right to be presumed innocent under the Bill of Rights. But there is another presumption - of theft arising from his unexplained possession of stolen cattle - under the penal law.

Are the two presumptions capable of reconciliation in this case? If so, how can they be reconciled? If not, which should prevail?

The two presumptions can be reconciled. The presumption of innocence stands until the contrary is proved. It may be overcome by a contrary presumption founded on human experience. The presumption that RR is the one who stole the cattle of OZ is logical, since he was found in possession of the stolen cattle. RR can prove his innocence by presenting evidence to rebut the presumption. The burden of evidence is shifted to RR, because how he came into possession of the cattle is peculiarly within his knowledge. (*Dizon-Pamintuan v. People*, 234 SCRA 63 [1994]).

## VI





Director WOW failed a lifestyle check conducted by the Ombudsman's Office because WOW's assets were grossly disproportionate to his salary and allowances. Moreover, some assets were not included in his Statement of Assets and Liabilities. He was charged of graft and corrupt practices and pending the completion of investigations, he was suspended from office for six months.

- A. Aggrieved, WOW petitioned the Court of the Appeals to annul the preventive suspension order on the ground that the Ombudsman could only recommend but not impose the suspension. Moreover, according to WOW, the suspension was imposed without any notice and hearing, in violation of due process.

Is the petitioner's contention meritorious? Discuss briefly.

The contention of Director WOW is not meritorious. The suspension meted out to him is preventive and not punitive. Section 24 of Republic Act No. 6770 grants the Ombudsman the power to impose preventive suspension up to six months. Preventive suspension may be imposed without any notice and hearing. It is merely a preliminary step in an administrative investigation and is not the final determination of the guilt of the officer concerned. (*Garcia v. Mojica*, 314 SCRA 207 [1999]).

- B. For his part, the Ombudsman moved to dismiss WOW's petition. According to the Ombudsman the evidence of guilt is strong, and petitioner failed to exhaust administrative remedies. WOW admitted he filed no motion for reconsideration, but only because the order suspending him immediately executory.

Should the motion to dismiss be granted or not? Discuss briefly.

The motion to dismiss should be denied. Since the suspension of Director WOW was immediately executory, he would have suffered irreparable injury had he tried to exhaust administrative remedies before filing a petition in Court (*University of the Philippines Board of Regents v. Rasl*, 200 SCRA 685 [1991]). Besides, the question involved was purely legal. (*Azarxon v. Bunagan*, 399 SCRA 365 [2003]).

## VII

MADAKO is a municipality composed of 80 barangays, 30 west of Madako River and 50 east thereof. The 30 western barangays, feeling left out of economic initiatives, wish to constitute themselves into a new and separate town to be called Masigla.

- A. Granting Masigla's proponents succeed to secure a law in their favor, would a plebiscite be necessary or not? It is necessary, who should vote or participate in the plebiscite? Discuss briefly.

A plebiscite is necessary, because it is required for the creation of a new municipality. (*Section 10, Article X of the 1987 Constitution*.)

The voters of both Madako and Masigla should participate in the plebiscite, because both are directly affected by the creation of Masigla. The territory of Madako will be reduced. (*Tan v. Commission on Elections*, 142 SCRA 727 [1986]).

- B. Suppose that one year after Masigla was constituted as a municipality, the law creating it was voided because of defects. Would that invalidate the acts of the municipality and/or its municipal officers? Explain briefly.

Although the municipality cannot be considered a de facto corporation, because there is no valid law under which it was created, the acts of the municipality and of its officers will not be invalidated, because the existence of the law creating is an operative fact before it was declared unconstitutional. Hence, the previous acts of the municipality and its officers should be given effect as a matter of fairness and justice. (*Municipality of Malabang v. Benito*, 27 SCRA [1969]).

## VIII



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A. MBC, an alien businessman dealing in carpets and caviar, filed a suit against policemen and YZ, an attache of XX Embassy, for damage because of malicious prosecution. MBC alleged that YZ concocted false and malicious charges that he was engaged in drug trafficking, whereupon narcotics policemen conducted a "buy-bust" operation and without a warrant arrested him, searched his house, and seized his money jewelry, then detained and tortured him in violation of his civil and human rights as well as causing him, his family and business serious damages amounting to two million pesos. MBC added that the trial court acquitted him of the drug him of the drug charges.

Assailing the court's jurisdiction: YZ now moves to dismiss the complaint, on the ground that (1) he is an embassy officers entitled to diplomatic immunity; and that (2) the suit is really against his home state without its consent. He presents diplomatic notes from XX Embassy certifying that he is an accredited embassy officer recognized by the Philippine Government. He performs official duties, he says, on a mission to conduct surveillance on drug exporters and then inform local police officers who make the actual arrest of the suspects.

Are the two grounds cited by YZ to dismiss the suit tenable?

While the notes presented by YZ are not enough to establish his diplomatic status and diplomatic immunity, the suit against him is a suit against XX without its consent. In *Municher v. Court of Appeals* (G.R. No. 142369, February 11, 2003) it was held that if the acts giving rise to a suit are those of a foreign government done by its foreign agent, although not necessarily a diplomatic personage, but acting in his official capacity, the complaint could be barred by the immunity of the foreign sovereign from suit without its consent. In the case at bar, YZ was performing his official function when he conducted surveillance on drug exporters and informed the local police who arrested MBC. He was further performing his duties with the consent of the Philippine government therefore the suit against YZ is indeed against XX without its consent.

B. EAP is a government corporation created for the purpose of reclaiming lands, including foreshore and submerged areas, as well as to develop, improve, acquire, lease and sell any and all kinds of lands. A law was passed transferring title to EAP of lands already reclaimed in the foreshore and offshore areas of MM Bay, particularly the so-called Liberty Islands, as alienable and disposable lands of the public domain. Titles were duly issued in EAP's name.

Subsequently, EAP entered into a joint venture agreement (JVA) with ARI, a private foreign corporation, to develop Liberty Islands. Additionally, the JVA provided for the reclamation of 250 hectares of submerged land in the area surrounding Liberty Islands and a portion of the area to be reclaimed as the consideration for ARI's role and participation in the joint venture, upon the approval by the Office of the President.

In there any constitutional obstacle to the sale and transfer by EAP to ARI of both portions as provided for in the JVA?

ARI cannot acquire a portion of the Liberty Islands because, although EAP has title to Liberty Islands and thus lands are alienable and disposable land, they cannot be sold, only leased, to private corporations. The portion of the area to be reclaimed cannot be sold and transferred to ARI because the seabed is inalienable land of the public domain. (*Section 3, Article XII of the 1987 Constitution; Chavez v. Public Estates Authority, 384 SRA 152 [2002]*).

## IX

A. Former Governor PP of ADS province had dismissed several employees to scale down the operations of his office. The employees complained to the Merit Systems Protection Board, which ruled that the Civil Service rules were violated when the employees were dismissed. The Civil Service Commission affirmed the MPSB decision. ADS did not appeal and the order became final.

Instead of complying immediately, BOP, the incumbent Governor of ADS, referred the matter to the Commission on Audit, which ruled that the amounts due are the personal liabilities of the former Governor who dismissed the employees in bad faith. Thus, ADS refused to pay. The final CSC decision, however, did not find the former Governor in bad faith. The former Governor was likewise not heard on the question of his liability.



Is ADS' refusal justified? Can the COA disallow the payment of backwages by ADS to the dismissed employees due under a final CSC decision? Decide.

**NO**, the refusal of ADS is not justified, and the Commission on Audit cannot disallow the payment of backwages by ADS to the dismissed employees. The COA cannot make a ruling that it is the former governor who should be personally liable since the former was not given the opportunity to be heard. In addition, the COA cannot set aside a final decision of the Civil Service Commission. The payment of backwages to illegally dismissed government employee is not an irregular, unnecessary, excessive, extravagant, or unconscionable expenditure. (*UY V. COMMISSION ON AUDIT, 328 SCRA 607*)

B. The city of San Rafael passed an ordinance authorizing the City mayor, assisted by the police, to remove all advertising signs displayed or exposed to public view in the main city street, for being offensive to sight or otherwise a nuisance. AM, whose advertising agency owns and rents out many of the billboards ordered removed by the City Mayor, claims that the City should pay for the destroyed billboards at their current market value since the City has appropriated them for the public purpose of city beautification. The Mayor refuses to pay, so AM is suing the City and the Mayor for damages arising from the taking of his property without due process nor just compensation. Will AM's suit prosper?

**NO**. The removal of the billboards is not an exercise of the power of eminent domain but of police power. As enunciated in the case of *CHURHILL & TAIT V. RAFFERTY, 33 Phil 580*, billboards offensive to sight or distracting the attention of motorists may be prohibited. Moreover, the abatement of a nuisance pursuant to the exercise of police power does not constitute taking of property and does not entitle the owner of the property to compensation. (*ASSOCIATION OF SMALL LANDOWNERS IN THE PHILIPPINES, INC. V. SECRETARY OF AGRARIAN REFORM, 175 SCRA 343 [1989]*)

## X

A. BNN Republic has a defense treaty with EVA Federation. According to the Republic's Secretary of Defense, the treaty allows exercises for the war on terrorism. The Majority Leader of the Senate contends that whether temporary or not, the basing of foreign troops however friendly is prohibited by the Constitution of BNN which provides that, "No foreign bases shall be allowed in BNN territory." In case there is indeed an irreconcilable conflict between a provision of the treaty and a provision of the Constitution, in a jurisdiction and legal system like our, which should prevail: the provision of the treaty or the Constitution? Why?

**THE CONSTITUTION**. In the case of *Gonzales v. Hechanova 9 SCRA 230*, municipal law was upheld as against international law in view of the separation of powers. Moreover, Section 592) (a), Article VIII of the 1987 Constitution authorizes the nullification of a treaty when it conflicts with the Constitution.

B. AVE ran for Congressman of QU province. However, his opponent, BART, was the one proclaimed and seated as the winner of the election by the COMELEC. AVE filed seasonably a protest before HRET. After two years, HET reversed the COMELEC's decision and AVE was proclaimed finally as the duly elected Congressman. Thus he had only one year to serve in Congress.

1. Can AVE collect salaries and allowances from the government for the first two ears of his term as Congressman?
2. Should BART refund the government the salaries and allowances he had received as Congressman?
3. What will happen to the bills that the de facto officer alone authored and were approved by the House of the Representative while he was seated as Congressman?

**1. NO**. The right to salary is based on the right to the office itself and accrues from the date of actual commencement. Since AVE had not occupied the position prior to his proclamation as the real winner of the election, the salary, allowances, and other emoluments must go to the person who occupied the same. (*RODRIGUEZ V. TAN, 91 Phil 724*)



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2. NO. There is no question that BART acted as a *de facto* officer during the time he held the office of Congressman; having thus duly proclaimed as Congressman, and having assumed office as required by law, it cannot be disputed that BART is entitled to compensation, emoluments and allowances which our Constitution provides for the position. (*RODRIGUEZ V. TAN*, 91 Phil 724)

3. Lawful acts of an officer *de facto*, so far as the rights of third persons are concerned, are, if done within the scope & by the apparent authority of the office, considered as valid and binding as if he were the officer legally elected and qualified for the office and full possession thereof. Therefore, the bills which BART alone authored and were approved by the House of Representatives are valid. (*TAYKO V. CAPISTRANO*, 53 Phil 866; *PEOPLE V. GARCIA*, 313 SCRA 279 [1999])

## PART III: BAR TYPE QUESTIONS

### BILL OF RIGHTS

1. The Migrant Workers and Overseas Filipinos Act of 1995, took effect on July 15, 1995. The Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipino Act of 1995 was, thereafter, published in the Manila Bulletin. However, even before the law took effect, the Asian Recruitment Council Philippine Chapter, Inc. (ARCO-Phil.) filed, a petition for declaratory relief under Rule 63 of the Rules of Court with the Regional Trial Court to declare as unconstitutional Section 6(g) and (i).

According to the respondent, Section 6(g) and (i) discriminated against unskilled workers and their families and, as such, violated the equal protection clause, as well as Article II, Section 12 and Article XV, Sections 1 and 3(3) of the Constitution. As the law encouraged the deployment of skilled Filipino workers, only overseas skilled workers are granted rights. The respondent stressed that unskilled workers also have the right to seek employment abroad. Is the assailed order unconstitutional as it violated the equal protection clause?

NO. Respondent suggests that the singling out of entertainers and performing artists under the assailed department orders constitutes class legislation which violates the equal protection clause of the Constitution. We do not agree.

The equal protection clause is directed principally against undue favor and individual or class privilege. It is not intended to prohibit legislation which is limited to the object to which it is directed or by the territory in which it is to operate. It does not require absolute equality, but merely that all persons be treated alike under like conditions both as to privileges conferred and liabilities imposed. We have held, time and again, that the equal protection clause of the Constitution does not forbid classification for so long as such classification is based on real and substantial differences having a reasonable relation to the subject of the particular legislation. If classification is germane to the purpose of the law, concerns all members of the class, and applies equally to present and future conditions, the classification does not violate the equal protection guarantee. (*EXECUTIVE SECRETARY vs. COURT OF APPEALS and ARCO-PHIL.), INC.*, G.R. No. 131719, May 25, 2004)

2. A Summary Deportation Order was issued against respondent Herbert Markus Emil Scheer, a German citizen holding a permanent resident status in the Philippines, on the basis of Note Verbale No. 369/95 sent by the German Embassy to the Department of Foreign Affairs, informing the latter that Scheer was wanted by the German Federal Police; that a warrant of arrest had been issued against him; and that the respondent will be served with an official document requesting him to turn over his German passport to the Embassy which was invalidated. Scheer filed an Urgent Motion for Reconsideration of the Order of the BOC but the latter did not resolve Scheer's motion and he was neither arrested nor deported. Meanwhile, the criminal case against the respondent for physical injuries was dismissed by the German court and subsequently, the German Embassy issued to the respondent a regular passport. The BOC still failed to resolve the respondent's Motion and he remained and maintained his business in Palawan, Philippines. Petitioner Commissioner Andrea



Domingo assumed office. Despite information from the German Embassy that Scheer was not wanted by the German police, Scheer was apprehended by the Marine operatives and BID agents in his residence on orders of the petitioner. He was held in custody in the BID Manila Office, and petitioner commissioner refused to release him. Scheer filed a petition for certiorari, prohibition and mandamus in the Court of Appeals against petitioner and the court ruled in his favor. Petitioner now contests this decision claiming inter alia that [a] BOC did not commit grave abuse of discretion in issuing the Summary Deportation Order and [b] that Scheer's arrest and detention was not premature, unwarranted or arbitrary. Are the contentions of petitioner correct?

**NO. [a]** The BOC committed grave abuse of discretion in issuing the Summary Deportation Order. The settled rule is that the entry or stay of aliens in the Philippines is merely a privilege and a matter of grace; such privilege is not absolute nor permanent and may be revoked. However, aliens may be expelled or deported from the Philippines only on grounds and in the manner provided for by the Constitution, the Immigration Act of 1940, as amended, and administrative issuances pursuant thereto. In this case, the BOC ordered the private respondent's deportation on September 27, 1995 without even conducting summary deportation proceedings. Section 37(c) of Commonwealth Act No. 613, as amended, provides that "no alien shall be deported without being informed of the specific grounds for deportation or without being given a hearing under rules of procedure to be prescribed by the Commissioner of Immigration." The respondent was not afforded any hearing at all nor was he afforded a chance to refute the charges. He cannot, thus, be arrested and deported without due process of law as required by the Bill of Rights of the Constitution.

**[b]** The Court agrees that the Immigration Commissioner is mandated to implement a legal and valid Summary Deportation Order within a reasonable time. But in this case, the arrest of the respondent in his house, at near midnight, and his subsequent detention was premature, unwarranted and arbitrary. Under the basic rudiments of fair play and due process, the petitioner was required to first resolve the respondent's Urgent Motion for Reconsideration of the said Order, which was filed more than six years before or on December 5, 1995. The BOC should have set the respondent's motion for hearing to afford him a chance to be heard and adduce evidence in support thereon. (*Domingo vs. Scheer*, G.R. No. 154745. January 29, 2004)

3. Before the Court is the petitioners' Motion for Reconsideration of the Resolution dated May 28, 2002, remanding this case to the Regional Trial Court (RTC) of Quezon City, Branch 81, for the determination of several factual issues relative to the application of Section 8 of Rule 117 of the Revised Rules of Criminal Procedure on the dismissal of Criminal Cases Nos. Q-99-81679 to Q-99-81689 filed against the respondent and his co-accused with the said court. In the aforesaid criminal cases, the respondent and his co-accused were charged with multiple murder for the shooting and killing of eleven male persons bandied as members of the Kuratong Baleleng Gang. The respondent opposed petitioners' motion for reconsideration.

The Court ruled in the Resolution sought to be reconsidered that the provisional dismissal of Criminal Cases Nos. Q-99-81679 to Q-99-81689 were with the express consent of the respondent as he himself moved for said provisional dismissal when he filed his motion for judicial determination of probable cause and for examination of witnesses. The Court also held therein that although Section 8, Rule 117 of the Revised Rules of Criminal Procedure could be given retroactive effect, there is still a need to determine whether the requirements for its application are attendant.

The Court further held that the reckoning date of the two-year bar had to be first determined whether it shall be from the date of the order of then Judge Agnir, Jr. dismissing the cases, or from the dates of receipt thereof by the various offended parties, or from the date of effectivity of the new rule. Petitioners however argue that the time bar stated in the aforementioned rule should not be applied retroactively in the present case. May the time-bar in Section 8, Rule 117 of the Revised Rules on Criminal Procedure be applied retroactively?

**NO.** In this case, the Court agrees with the petitioners that the time-bar of two years under the new rule should not be applied retroactively against the State.

In the new rule in question, as now construed by the Court, it has fixed a time-bar of one year or two years for the revival of criminal cases provisionally dismissed with the express consent of the accused and with a priori notice to the offended party. The time-bar may appear, on first impression, unreasonable compared to the periods under Article 90 of the



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Revised Penal Code. However, in fixing the time-bar, the Court balanced the societal interests and those of the accused for the orderly and speedy disposition of criminal cases with minimum prejudice to the State and the accused. It took into account the substantial rights of both the State and of the accused to due process. The Court believed that the time limit is a reasonable period for the State to revive provisionally dismissed cases with the consent of the accused and notice to the offended parties.

The Court agrees with the petitioners that to apply the time-bar retroactively so that the two-year period commenced to run on March 31, 1999 when the public prosecutor received his copy of the resolution of Judge Agnir, Jr. dismissing the criminal cases is inconsistent with the intendment of the new rule. Instead of giving the State two years to revive provisionally dismissed cases, the State had considerably less than two years to do so. Thus, Judge Agnir, Jr. dismissed Criminal Cases Nos. Q-99-81679 to Q-99-81689 on March 29, 1999. The new rule took effect on December 1, 2000. If the Court applied the new time-bar retroactively, the State would have only one year and three months or until March 31, 2001 within which to revive these criminal cases. The period is short of the two-year period fixed under the new rule. On the other hand, if the time limit is applied prospectively, the State would have two years from December 1, 2000 or until December 1, 2002 within which to revive the cases. This is in consonance with the intendment of the new rule in fixing the time-bar and thus prevent injustice to the State and avoid absurd, unreasonable, oppressive, injurious, and wrongful results in the administration of justice. (*PEOPLE vs. LACSON*, G.R. No. 149453. April 1, 2003.)

4. After being terminated from work, Elenito Lariosa 's former employer discovered that he had lost P45,000.00 in cash. He suspected that Lariosa was the culprit because the latter, as a former employee, had a duplicate key to the side door of the United Products Enterprise Store. In search of evidence for the crime of robbery with force upon things, the accuser, together with two men who claimed to be policemen, drew out their guns and barged into the house of Paulina Matillano, Elenito's aunt. Over her vehement protests, Paulina Matillano consented to the accuser's entry into her house, as well as to the taking of the clothes, shoes and pieces of jewelry owned by her and her family. Was the search and seizure valid?

NO. Under Article III, Section 2 of the Constitution, "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable." This provision protects not only those who appear to be innocent but also those who appear to be guilty, who must nevertheless be presumed innocent until the contrary is proved. The general rule is that a search and seizure must be carried through or with judicial warrant; otherwise, such a search and seizure becomes unconstitutional within the context of the constitutional provision. Peace officers who effect a warrantless search cannot invoke regularity in the performance of official functions.

The right against unreasonable searches and seizures is a personal right which may be waived expressly or impliedly. But a waiver by implication cannot be presumed. There must be clear and convincing evidence of an actual intention to relinquish the right to constitute a waiver of a constitutional right. There must be proof of the following: (a) that the right exists; (b) that the person involved had knowledge, either actual or constructive, of the existence of such right; and, (c) that the said person had an actual intention to relinquish the right. The waiver must be made voluntarily, knowingly and intelligently. The Court indulges every reasonable presumption against any waiver of fundamental constitutional rights. The fact that the aggrieved person did not object to the entry into her house by the police officers does not amount to a permission to make a search therein. A peaceful submission to search and seizure is not a consent or an invitation thereto, but is merely a demonstration of regard for the supremacy of the law. (*ELI LUI, ET AL vs. MATILLANO*, G.R. NO. 141176, May 27, 2004)

5. NBI Agent Franklin M. Javier filed a sworn application for search warrant before the RTC of Iligan, Isabela, for the purpose of seizing "undetermined number of fake land titles," "blank forms of land titles kept inside the drawers of every table of employees of the Registry of Deeds," and "undetermined number of land transfer transactions without the corresponding payment of documentary stamps and capital gains tax," all of which documents are being used or intended to



be used in the commission of a felony that is falsification of land titles under Article 171 RPC, Article 213 RPC and R.A. 3019. Petitioner Ariel Vallejo, a lawyer in the Register of Deeds of Isabela, filed a motion to quash the search warrant on the ground that the questioned search warrant was in the form of a general warrant for failure to describe the persons or things to be seized and was violative of the Constitution hence, null and void. It was denied for lack of merit. Vallejo filed a notice of appeal to the Court of Appeals but such was denied on the ground that the appealed order denying a motion to quash the search warrant is interlocutory and not appealable. May the technical rules be relaxed in the case at bar and if so, was the warrant issued by the RTC valid?

**YES, the technical rules may be relaxed in the case at bar. This is in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice and that strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided.**

**NO, the warrant issued by the RTC is not valid. The Constitution guarantees the right to be free from unreasonable searches and seizures. The things to be seized must be described with particularity. Technical precision of description is not required. It is only necessary that there be reasonable particularity and certainty as to the identity of the property to be searched for and seized, so that the warrant shall not be a mere roving commission. The terms expressly used in the warrant were too all embracing, with the obvious intent of subjecting all the records pertaining to all the transactions of the petitioner's office at the Register of Deeds to search and seizure. Such tenor of a seizure warrant contravenes the explicit command of the Constitution that there be a particular description of the things to be seized. Moreover, the questioned warrant in this case is a scatter-shot warrant for having been issued for more than one offense— Falsification of Land Titles under Article 171 and Article 213 of the Revised Penal Code, and violation of Rep. Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. A warrant must be issued upon probable cause in connection with one specific offense. (Vallejo vs. Court of Appeals, et al, G.R. No. 156413 April 14, 2004)**

6. Before the Court are two petitions for certiorari filed by petitioner Edward Serapio, assailing the resolutions of the Third Division of the Sandiganbayan denying his petition for bail, motion for a reinvestigation and motion to quash, and a petition for habeas corpus, all in relation to Criminal Case No. 26558 for plunder wherein petitioner is one of the accused together with former President Joseph E. Estrada, Jose "Jinggoy" P. Estrada and several others.

In the latter part of the year 2000, Gov. Singson publicly accused then President Joseph E. Estrada and his cohorts of engaging in several illegal activities, including its operation on the illegal numbers game known as jueteng. This triggered the filing with the Office of the Ombudsman of several criminal complaints against Joseph Estrada, Jinggoy Estrada and petitioner, together with other persons. The Office of the Ombudsman conducted a preliminary investigation of the complaints and on April 4, 2001, issued a joint resolution recommending, inter alia, that Joseph Estrada, petitioner and several others be charged with the criminal offense of plunder. On April 4, 2001, the Ombudsman filed with the Sandiganbayan several Informations against former President Estrada, who earlier had resigned from his post as President of the Republic of the Philippines. On April 18, 2001, the Ombudsman filed an amended Information in said case charging Estrada and several co-accused, including petitioner, with said crime. No bail was recommended for the provisional release of all the accused, including petitioner. On July 20, 2001, petitioner filed with the Court a Petition for Certiorari, docketed as G.R. No. 148769, alleging that the Sandiganbayan acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its July 9, 2001 Resolution denying his motion to quash, notwithstanding the fact that material inculpatory allegations of the amended Information against him do not constitute the crime of plunder; and that he is charged, under the said amended Information, for more than one offense. ; Petitioner asserts that he is charged under the amended information of bribery and illegal gambling and others. Petitioner claims that the Sandiganbayan committed grave abuse of discretion in denying his omnibus motion to hold in abeyance the issuance of a warrant for his arrest as well as the proceedings in Criminal Case No. 26558; to conduct a determination of probable cause; and to direct the Ombudsman to conduct a reinvestigation of the charges him. Petitioner asseverates that the Ombudsman had totally disregarded exculpatory evidence and committed grave abuse of discretion in charging him with plunder. (a) Does the amended Information against Serapio constitute the crime of plunder; and that he is charged, under the said amended Information, for more than one offense? (b) Is it



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proper that the SC order the Ombudsman to conduct a reinvestigation of the case? (c) Should petitioner should first be arraigned before the hearings of his petition for bail may be conducted;

(a) No. The acts alleged in the information are not charged as separate offenses but as predicate acts of the crime of plunder. It should be stressed that the Anti-Plunder law specifically Section 1(d) thereof does not make any express reference to any specific provision of laws, other than R.A. No. 7080, as amended, which coincidentally may penalize as a separate crime any of the overt or criminal acts enumerated therein. The said acts which form part of the combination or series of act are described in their generic sense. Thus, aside from 'malversation' of public funds, the law also uses the generic terms 'misappropriation', 'conversion' or 'misuse' of said fund. The fact that the acts involved may likewise be penalized under other laws is incidental. The said acts are mentioned only as predicate acts of the crime of plunder and the allegations relative thereto are not to be taken or to be understood as allegations charging separate criminal offenses punished under the Revised Penal Code, the Anti-Graft and Corrupt Practices Act and Code of Conduct and Ethical Standards for Public Officials and Employees."

This Court agrees with the Sandiganbayan. It is clear on the face of the amended Information that petitioner and his co-accused are charged only with one crime of plunder and not with the predicate acts or crimes of plunder. It bears stressing that the predicate acts merely constitute acts of plunder and are not crimes separate and independent of the crime of plunder. Resultantly then, the petition is dismissed.

(b) Case law has it that the Supreme Court does not interfere with the Ombudsman's discretion in the conduct of preliminary investigations. The Court ruled that in the performance of his task to determine probable cause, the Ombudsman's discretion is paramount. The Court has adopted a policy of non-interference in the conduct of preliminary investigations, and leaves to the investigating prosecutor sufficient latitude of discretion in the exercise of determination of what constitutes sufficient evidence as will establish 'probable cause' for filing of information against the supposed offender." The Court has furthermore stated that the Ombudsman's findings are factual in nature. the Supreme Court is not a trier of facts, more so in the consideration of the extraordinary writ of certiorari where neither question of fact nor even of law are entertained, but only questions of lack or excess of jurisdiction or grave abuse of discretion. The Sandiganbayan pointed out that petitioner filed a motion for reconsideration of the Ombudsman's resolution, but failed to show in his motion that there were newly discovered evidence, or that the preliminary investigation was tainted by errors of law or irregularities, which are the only grounds for which a reconsideration of the Ombudsman's resolution may be granted. It bears stressing that the right to a preliminary investigation is not a constitutional right, but is merely a right conferred by statute. The absence of a preliminary investigation does not impair the validity of the Information or otherwise render the same defective and neither does it affect the jurisdiction of the court over the case or constitute a ground for quashing the Information. If the lack of a preliminary investigation does not render the Information invalid nor affect the jurisdiction of the court over the case, with more reason can it be said that the denial of a motion for reinvestigation cannot invalidate the Information or oust the court of its jurisdiction over the case. Neither can it be said that petitioner had been deprived of due process. He was afforded the opportunity to refute the charges against him during the preliminary investigation. The purpose of a preliminary investigation is merely to determine whether a crime has been committed and whether there is probable cause to believe that the person accused of the crime is probably guilty thereof and should be held for trial. (SERAPIO vs. SANDIGANBAYAN; G.R. No. 149116. January 28, 2003)

(c). NO. The arraignment of an accused is not a prerequisite to the conduct of hearings on his petition for bail. A person is allowed to petition for bail as soon as he is deprived of his liberty by virtue of his arrest or voluntary surrender. An accused need not wait for his arraignment before filing a petition for bail. In *Lavides vs. Court of Appeals*, this Court ruled on the issue of whether an accused must first be arraigned before he may be granted bail. . We held therein that "in cases where it is authorized, bail should be granted before arraignment, otherwise the accused may be precluded from filing a motion to quash." However, the foregoing pronouncement should not be taken to mean that the hearing on a petition for bail should at all times precede arraignment, because the rule is that a person deprived of his liberty by virtue of his arrest or voluntary surrender may apply for bail as soon as he is deprived of his liberty,





even before a complaint or information is filed against him. (*SERAPIO vs. SANDIGANBAYAN*; G.R. No. 148769. January 28, 2003.)

7. Information charging Juan Gonzales Escote, Jr. and Victor Acuyan with robbery with homicide which took place on a passenger bus was filed with the Regional Trial Court. The trial court rendered its Decision judgment finding Juan and Victor guilty beyond reasonable doubt of the crime charged and meted on each of them the penalty of death. Juan and Victor contend that the trial court committed a reversible error in relying on the testimony of Rodolfo, the bus conductor, for convicting them of the crime charged. They aver that although their counsel was able to initially cross-examine Rodolfo, the former failed to continue with and terminate his cross-examination of the said witness through no fault of his as the witness failed to appear in subsequent proceedings. Is petitioners' contention correct?

**NO.** There is no factual and legal basis for their claim that they were illegally deprived of their constitutional and statutory right to fully cross-examine Rodolfo. The Court agrees that the right to cross-examine is a constitutional right anchored on due process. However, the right has always been understood as requiring not necessarily an actual cross-examination but merely an opportunity to exercise the right to cross-examine if desired. What is proscribed by statutory norm and jurisprudential precept is the absence of the opportunity to cross-examine. The right is a personal one and may be waived expressly or impliedly. There is an implied waiver when the party was given the opportunity to confront and cross-examine an opposing witness but failed to take advantage of it for reasons attributable to himself alone. If by his actuations, the accused lost his opportunity to cross-examine wholly or in part the witnesses against him, his right to cross-examine is impliedly waived. The testimony given on direct examination of the witness will be received or allowed to remain in the record. (*PEOPLE vs. ESCOTE*, G.R. No. 140756, April 4, 2003)

8. Quirico Dagpin was accused of murder in killing Nilo Caemare using a homemade shotgun. The lower court found the accused guilty of murder and was sentenced to Reclusion Perpetua. Dagpin now questions the decision of the trial court and averred that the trial court erred in convicting him of the crime charged on the basis mainly of his having been identified by Randy, Rona and Rena at the police station on March 27, 1996. He was not assisted by counsel when the three pointed to him as the culprit in the police station. Hence, according to the appellant, such identification is inadmissible in evidence. Was the accused Dagpin's contention meritorious?

**NO.** The appellant was not deprived of his right under the Constitution to be assisted by counsel because the appellant was not subjected to a custodial investigation where he was identified by the prosecution's witnesses in a police line-up. Indeed, the appellant even denied that there was no police line-up and that he was merely with the police officers when the prosecution's witnesses arrived in the police station. (*PEOPLE OF THE PHIL. vs. QUIRICO E. DAGPIN*, G.R. No. 149560. June 10, 2004)

## CITIZENSHIP

9. Petitioners Hubert Tan Co and Arlene Tan Co filed with the RTC of Manila a petition for correction of entries in their certificates of birth, to correct and change the entries in their respective birth certificates as to the citizenship of their father Co Boon Peng, from "Chinese" to "Filipino." The court dismissed the petition outright on the ground that the petition was insufficient, solely because the petitioners' father Co Boon Peng applied for naturalization under LOI No. 270 and was conferred Philippine citizenship by naturalization under PD No. 1055 and not under Commonwealth Act (CA) No. 473, reasoning out that the application of the so-called "pari materia" rule of construction made by the petitioners is misplaced, as what should be applied in the instant case is the rule on strict construction of legislative grants or franchise. The court stressed that legislative grants, whether they be of property, rights or privileges, whether granted to corporations or individuals, must be strictly construed against the grantee and in favor of the grantor. Was the court correct in dismissing the petition?



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NO. The rule on statutory construction provides that, “Statutes in *pari materia* should be read and construed together because enactments of the same legislature on the same subject are supposed to form part of one uniform system; later statutes are supplementary or complementary to the earlier enactments and in the passage of its acts the legislature is supposed to have in mind the existing legislations on the subject and to have enacted its new act with reference thereto.” Statutes in *pari materia* should be construed together to attain the purpose of an expressed national policy. While they provide for different procedures, both statutes have the same purpose and objective: to enable aliens permanently residing in the Philippines, who, having demonstrated and developed love for and loyalty to the Philippines, as well as affinity to the culture, tradition and ideals of the Filipino people, and contributed to the economic, social and cultural development of our country, to be integrated into the national fabric by being granted Filipino citizenship. Clearly, LOI No. 270 and CA No. 473 are, as the petitioners correctly posit, statutes in *pari materia*. Absent any express repeal of Section 15 of CA No. 473 in LOI No. 270, the said provision should be read into the latter law as an integral part thereof, not being inconsistent with its purpose. (*Co et al. vs. Civil Register of Manila*, G.R. No. 138496. February 23, 2004)

#### LEGISLATIVE DEPARTMENT

10. Congress enacted RA 9006, entitled An Act to Enhance the Holding of Free, Orderly, Honest, Peaceful and Credible Elections through Fair Election Practices, with section 14 thereof repealing Section 67 of BP 881 or the Omnibus Election Code, which provides for the ipso facto resignation of an elective official upon filing of a Certificate of Candidacy. RA 9006 was duly signed by then Senate President Aquilino Pimentel, Jr. and then Speaker of the House of Representatives Feliciano R. Belmonte, Jr. and was duly certified by the Secretary of the Senate and the Secretary General of the House of Representatives and finally passed by both Houses on February 7, 2001. President Gloria Macapagal-Arroyo signed Rep. Act No. 9006 into law on February 12, 2001.

- a. Is the law unconstitutional insofar as it repeals Section 67 of the Omnibus Election Code; hence in violation of the Constitution requiring every law to have only one subject which should be expressed in its title?
- b. Was there a violation of the equal protection clause?

a. NO. The proscription is aimed against the evils of the so-called omnibus bills and log-rolling legislation as well as surreptitious and/or unconsidered encroaches. The provision merely calls for all parts of an act relating to its subject finding expression in its title. To determine whether there has been compliance with the constitutional requirement that the subject of an act shall be expressed in its title, the Court laid down the rule that Constitutional provisions relating to the subject matter and titles of statutes should not be so narrowly construed as to cripple or impede the power of legislation. The requirement that the subject of an act shall be expressed in its title should receive a reasonable and not a technical construction. It is sufficient if the title be comprehensive enough reasonably to include the general object which a statute seeks to effect, without expressing each and every end and means necessary or convenient for the accomplishing of that object. Mere details need not be set forth. The title need not be an abstract or index of the Act.

b. The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation which is limited either in the object to which it is directed or by territory within which it is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not.

Substantial distinctions clearly exist between elective officials and appointive officials. The former occupy their office by virtue of the mandate of the electorate. They are elected to an office for a definite term and may be removed therefrom only upon stringent conditions. On the other hand, appointive officials hold their office by virtue of their designation thereto by



an appointing authority. Some appointive officials hold their office in a permanent capacity and are entitled to security of tenure while others serve at the pleasure of the appointing authority. Another substantial distinction between the two sets of officials is that under Section 55, Chapter 8, Title I, Subsection A. Civil Service Commission, Book V of the Administrative Code of 1987 (Executive Order No. 292), appointive officials, as officers and employees in the civil service, are strictly prohibited from engaging in any partisan political activity or take part in any election except to vote. Under the same provision, elective officials, or officers or employees holding political offices, are obviously expressly allowed to take part in political and electoral activities. (*FARINAS vs. EXECUTIVE SECRETARY*, G.R. NO. 147387, December 10, 2003)

### **CIVIL SERVICE COMMISSION**

11. Acting Secretary Jose S. Brillantes of the DOLE designated the petitioner Director Benedicto Ernesto R. Bitonio to be the DOLE representative to the Board of Directors of PEZA. As representative, the petitioner was receiving a per diem for every board meeting he attended during the years 1995 to 1997. After a post audit of the PEZA's disbursement transactions, the COA disallowed the payment of per diems to the petitioner. The uniform reason for the disallowance was that, Cabinet members, their deputies and assistants holding other offices in addition to their primary office and receiving compensation therefore was declared unconstitutional by the Supreme Court in the *Civil Liberties Union vs. Executive Secretary*. The petitioner filed his motion for reconsideration to the COA, positing that officials given the rank equivalent to a Secretary, Undersecretary or Assistant Secretary and other appointive officials below the rank of Assistant Secretary are not covered by the prohibition. Did the COA correctly disallow the per diems received by the petitioner?

**YES.** It must be noted that the petitioner's presence in the PEZA Board meetings is solely by virtue of his capacity as representative of the Secretary of Labor. Since the Secretary of Labor is prohibited from receiving compensation for his additional office or employment, such prohibition likewise applies to the petitioner who sat in the Board only in behalf of the Secretary of Labor. The ex-officio position being actually and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive additional compensation for his services in the said position. The reason is that these services are already paid for and covered by the compensation attached to his principal office. Whatever laws and rules the member in the Board is covered, so is the representative; and whatever prohibitions or restrictions the member is subjected, the representative is, likewise, not exempted. (*BITONIO VS. COA*, G.R. NO. 147392. MARCH 12, 2004)

12. Petitioner Bernardo is an officer of the Land Bank of the Philippines, Baliuag Branch. During that time he deposited P500,000 in his savings account in the said bank. However on the same day he withdrew the same amount. Coincidentally, during that time he was also an officer and one of the alleged incorporators of Mackay Trading and Manpower Services Inc. He likewise executed in his capacity as treasurer in trust of the said company, falsely certifying that "... at least 25% of the authorized capital stock of the corporation has been subscribed and 25% of the total subscription has been paid and received by me in cash or property..." Because of such action, LBP President Vistan filed a formal charge against Bernardo charging him of gross neglect, grave misconduct, conduct prejudicial to the best interest of the bank and serious violation of CSC rules and regulations. Petitioner was found guilty of said charges. The LBP, MSPB, CSC, Court of Appeals all affirmed the said decision. However petitioner appealed to the SC that he did not violate CSC Rules and Regulation pertaining to the prohibition of an official of GOCC in acting as an incorporator of another corporation which had some transaction with the same GOCC without any permit or authorization from the GOCC (which in this case is LBP). He likewise argued that the constitutional right of due process was denied in his case. Does Bernardo fall under the above stated prohibition? Was he denied of the right of due process?



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YES. The evidence on record shows that he was not only an incorporator, but was also a member of the Board of Directors and was, in fact, the treasurer of MTMSI. Even after the incorporation of the MTMSI, the petitioner remained as a stockholder and a member of the Board of Directors. He was even elected treasurer of the corporation. He and his wife signed check vouchers of the corporation during the period of November 16, 1986 to August 24, 1987. Thus he violated the CSC Rules and Regulation on the said prohibition.

NO. As held in *T. H. Valderama & Sons, Inc. v. Drilon* (181 SCRA 308), denial of due process cannot be successfully invoked where a party was given the chance to be heard on his motion for reconsideration. In the case at bar, assuming, *in gratia argumenti*, that the CSC's initial decision was defective as argued by petitioner, such defect was nevertheless cured when petitioner filed a Motion for Reconsideration and Supplemental Motion for Reconsideration. (BERNARDO V. CA, CSC, LBP, G.R. No. 124261, May 27, 2004)

### COMMISSION ON ELECTIONS

13. Resolution No. 6712 "Instructions for the Electronic Transmission and Consolidation of Advanced Results in the May 2004 Elections" has been issued by respondent and which herein petitioners seek to nullify. Petitioners, voters and taxpayers, aside from alleging that there has been a grave abuse of discretion amounting to a lack or excess of jurisdiction pray for the issuance of a TRO and a writ of prohibition to permanently enjoin said respondent from enforcing and implementing the said resolution. The petitioner assails said implementation of the said resolution on the following grounds: First, that any quick count with the use of the said automated system and conducted by the COMELEC would in effect constitute a canvass of the votes of the President and Vice-President, which not only would be pre-emptive of the authority of the Congress, but also would be lacking of any Constitutional authority. Second, there would be constitutional violations with regard to financing the said project and its operations including personnel. Third, the petitioner and petitioners-in-intervention contend that the assailed resolution encroaches upon the authority of NAMFREL, as the citizens' accredited arm, to conduct the "unofficial" quick count as provided under pertinent election laws. Are grounds for nullification as set forth by the petitioners tenable? But preliminarily, do the petitioners have *locus standi*?

YES. Since the implementation of the assailed resolution obviously involves the expenditure of funds, the petitioner and the petitioners-in-intervention, as taxpayers, possess the requisite standing to question its validity as they have sufficient interest in preventing the illegal expenditure of money raised by taxation. In essence, taxpayers are allowed to sue where there is a claim of illegal disbursement of public funds, or that public money is being deflected to any improper purpose, or where the petitioners seek to restrain the respondent from wasting public funds through the enforcement of an invalid or unconstitutional law.

YES. Speaking in a nutshell, the nullification of the said resolution must be upheld in pursuance of the provisions of the Constitution, the Omnibus Election Code and other signification statutes. First, the assailed resolution usurps, under the guise of an "unofficial" tabulation of election results based on a copy of the election returns, the sole and exclusive authority of Congress to canvass the votes for the election of President and Vice-President. Article VII, Section 4 of the Constitution. Second, The assailed COMELEC resolution contravenes the constitutional provision that "no money shall be paid out of the treasury except in pursuance of an appropriation made by law." Third, the assailed resolution disregards existing laws which authorize solely the duly-accredited citizens' arm to conduct the "unofficial" counting of votes. Under Section 27 of Rep. Act No. 7166, as amended by Rep. Act No. 8173, 49 and reiterated in Section 18 of Rep. Act No. 8436, 50 the accredited citizen's arm — in this case, NAMFREL — is exclusively authorized to use a copy of the election returns in the conduct of an "unofficial" counting of the votes, whether for the national or the local elections. No other entity, including the respondent COMELEC itself, is authorized to use a copy of the election returns for purposes of conducting an "unofficial" count. (SIXTO S. BRILLANTES, JR., et al. vs. COMELEC, G.R. No. 163193, June 15, 2004)



## **NATIONAL ECONOMY AND PATRIMONY**

14. AF, an Australian citizen of German descent, met EC, a Filipina. AF bought a building in Ermita, Manila for P20,000. since AF knew that he was disqualified from owning lands in the Philippines, he agreed that only the name of EC would appear in the deed of sale as the buyer of the property as well as in the title covering the same. The relationship began to deteriorate. Shortly thereafter, AF filed a complaint for recovery of real and personal properties. Will the action prosper?

**NO.** Section 14, Article XIV of the 1973 Constitution provides that save in cases of hereditary succession, no private land shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands in the public domain. Lands of the public domain, which include private lands, may be transferred or conveyed only to individuals or entities qualified to acquire or hold private lands or lands of the public domain. Aliens, whether individuals or corporations, have been disqualified from acquiring lands of the public domain. Hence, they have also been disqualified from acquiring private lands.

Even if, as claimed by the petitioner, the sales in question were entered into by him as the real vendee, the said transactions are in violation of the Constitution; hence, are null and void *ab initio*. A contract that violates the Constitution and the law, is null and void and vests no rights and creates no obligations. It produces no legal effect at all. The petitioner, being a party to an illegal contract, cannot come into a court of law and ask to have his illegal objective carried out. One who loses his money or property by knowingly engaging in a contract or transaction which involves his own moral turpitude may not maintain an action for his losses. To him who moves in deliberation and premeditation, the law is unyielding. The law will not aid either party to an illegal contract or agreement; it leaves the parties where it finds them. Under Article 1412 of the New Civil Code, the petitioner cannot have the subject properties deeded to him or allow him to recover the money he had spent for the purchase thereof. Equity as a rule will follow the law and will not permit that to be done indirectly which, because of public policy, cannot be done directly. Where the wrong of one party equals that of the other, the defendant is in the stronger position . . . it signifies that in such a situation, neither a court of equity nor a court of law will administer a remedy. The rule is expressed in the maxims: *EX DOLO ORITUR ACTIO* and *IN PARI DELICTO POTIOR EST CONditio DEFENDENTIS*. (*FRENZEL vs. CATITO*, G.R.NO. 143958, July 11,2003)

15. Royal Cargo Corporation is a stock corporation duly organized and existing under and by virtue of Philippine laws, seventy percent (70%) of which is owned by Filipino citizens and thirty percent (30%) by foreigners. The President of the petitioner company is a foreign. On April 11, 1990, the petitioner applied for a renewal to operate thereof for another five years. The Air Carrier Accounts System and Field Audit Division of the respondent Board recommended the granting of the petition, provided that the position of president was transferred within thirty days from notice thereof, otherwise the permit would be cancelled. During the pendency of the case, the petitioner's authority to operate as an international airfreight forwarder as applied for under the permit in question expired in 1995. The petitioner likewise affirmed to this Court that the respondent Board had already renewed the petitioner's authority to operate as an International Airfreight Forwarder for a period of five (5) years up to April 12, 2005. Was the Filipinization requirement complied with when the Board renewed the petitioner's authority to operate in our country?

**YES.** Clearly, the instant petition has become moot and academic. This is evident from the fact that the permit to operate as an international airfreight forwarder the respondent Board sought to withhold from the petitioner for failing to meet the constitutional Filipinization requirement had already lapsed in 1995. Also, with the current renewal of the petitioner's authority to operate, it is to be assumed that it has finally decided to comply with the citizenship requirement mandated by the constitution for its line of business. Under the circumstances, the dismissal of the case is clearly warranted as the petitioner no longer has any legal interest in the present case. (*ROYAL CARGO CORP. vs. CIVIL AERONAUTICS BOARD*, G.R. Nos. 103055-56. January 26, 2004)

16. Respondent CAI undertook to develop its 75-hectare property into a residential and industrial estate. The CAI filed an application under Republic Act No. 3844 with the Office of the Minister of Agrarian Reform for the conversion of a portion of the 75-hectare property consisting of 35.80



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hectares covered by TCT No. 62972 from agricultural to residential. On July 3, 1979, then Minister of Agrarian Reform Conrado F. Estrella issued an Order granting the petition. The PBFAI-KASAMA, representing the farmers-tenants, filed a complaint for Maintenance of Peaceful Possession and Cultivation with Damages with Prayer for the Issuance of a Temporary Restraining Order and Preliminary Injunction before the Department of Agrarian Reform Adjudication Board (DARAB), against the CAI. The plaintiffs therein alleged that since 1961, its members had been in actual possession of the 27-hectare property. Is the property subject of the suit covered by RA 6657, the Agrarian Reform Law (CARL)?

NO. The petitioners contend that the property subject of the suit is agricultural land; hence, covered by the CARL. The contention of the petitioners has no merit. Under the said law, agricultural lands refer to lands devoted to agriculture as conferred in the said law and not classified as industrial land. Agricultural lands are only those lands which are arable or suitable lands that do not include commercial, industrial and residential lands; it covers all private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon. But long before the law took effect, the property subject of the suit had already been reclassified and converted from agricultural to non-agricultural or residential land by the several administrative agencies. Lands not devoted to agricultural activity are outside the coverage of CARL. These include lands previously converted to non-agricultural uses prior to the effectivity of CARL by government agencies other than respondent DAR. The power of the local government to convert or reclassify lands to residential lands to non-agricultural lands reclassified is not subject to the approval of the Department of Agrarian Reform. When Agrarian Reform Minister Conrado F. Estrella confirmed the reclassification of the property by the Municipal Council of Carmona to non-agricultural land when he approved, on July 3, 1979, the application of the private respondent/LDC for the conversion of 35.80 hectares of the property covered by TCT No. 62972 into non-agricultural land, he did so pursuant to his authority under Rep. Act No. 3844, as amended, by P.D. No. 815 and P.D. No. 946. (*PASONG BAYABAS FARMERS ASSOC. ET AL. VS. COURT OF APPEALS ET AL.*, GR NOS. 142359 & 142980, MAY 25, 2004)

### OFFICE OF THE OMBUDSMAN

17. After conducting a preliminary investigation, the Graft Investigator prepared a Resolution dated July 28, 1997 stating that there was probable cause for violation of Section 3(g) of Republic Act 3019, and recommending the filing of an Information against the malefactors for said crime. On October 22, 1997, the corresponding Information was filed against said respondents with the SB. The SB found probable cause for the issuance of warrants for the arrest of respondents and accordingly, arrest warrants were issued against them. On the same day, respondents filed with the Office of the Ombudsman a Motion for Reconsideration of its resolution dated July 28, 1997 but the latter denied the motion for reconsideration filed by respondents with the ratiocination that the filing of an Information before the SB precluded said Office from still taking cognizance of said motion. Undaunted, respondents filed with the SB on November 24, 1997 a "Joint Motion for Reconsideration/Reinvestigation" with respect to the findings of the Office of the Ombudsman in its Resolution dated July 28, 1997. Petitioner Salmingo opposed the said motion and contended that it was in effect and for all intents and purposes a second motion for reconsideration of the resolution of the Office of the Ombudsman dated July 28, 1997. He averred that the filing of a second motion for reconsideration was proscribed by Section 27 of Republic Act 6770 and Administrative Order No. 07 issued by the Office of the Ombudsman implementing said law. Is petitioner Salmingo's contention correct?

NO. Contrary to the contention of Salmingo, the SB did not violate Section 27 of Republic Act 6770 when it treated the Motion for Reconsideration/Reinvestigation of respondents as a motion for reconsideration under Section 27 of Republic Act 6770. The records show that the Office of the Ombudsman approved the resolution prepared by the Graft Investigator finding probable cause against respondents for violation of Section 3(e) of Republic Act 3019 on October 17, 1997. Consequently, respondents had five days from notice of said resolution within which to file their motion for reconsideration. Even assuming that respondents received



the aforesaid resolution on October 17, 1997, they had until October 22, 1997 within which to file their motion for reconsideration. However, the Office of the Ombudsman filed the Information against respondents with the SB on October 22, 1997, the last day for respondents to file their motion for reconsideration. Patently, the Office of the Ombudsman filed the Information prematurely, thus depriving respondents of their right to file their motion for reconsideration as provided for in Section 27 of Republic Act 6770. By its agreement, the Office of the Ombudsman merely corrected itself when it curtly denied the motion for reconsideration/reinvestigation filed by respondents with the Office of the Ombudsman after receiving the resolution of the Office of the Ombudsman dated July 28, 1997 on the sole ground that the Information had already been filed with the SB. While the Office of the Ombudsman has the discretion to determine whether an Information should be withdrawn and a criminal case should be dismissed, and to move for the withdrawal of such Information or dismissal of a criminal case, the final disposition of the said motion and of the case is addressed to the sound discretion of the SB subject only to the caveat that the action of the SB must not impair the substantial rights of the accused and of the right of the People to due process of law. (*PEOPLE OF THE PHILIPPINES AND IGNACIO SALMINGO VS. VELEZ ET AL.*, G.R. No. 138093. February 19, 2003)

### **PUBLIC OFFICERS**

18. NR was arrested without a warrant of arrest and charged in the Office of the City Prosecutor with violation of PD No. 1866 (possession of unlicensed firearm). Public Prosecutor ZCI conducted an inquest investigation of the case and issued a resolution recommending that the case be dismissed for lack of probable cause. However, Regional State Prosecutor A decided to assume jurisdiction over the case and to order the conduct of a new preliminary investigation thereof. RSP A designated the assistant regional state prosecutor to conduct the new preliminary investigation. The Assistant Regional State Prosecutor issued a subpoena notifying NR of the preliminary investigation not only for violation of PD 1866 but also for the crimes of "Violation of COMELEC Resolution No. 2323 (gun ban), possession of deadly weapon and Malicious Mischief.

When served with the subpoena barely a week before the scheduled preliminary investigation, NR counsel forthwith filed with the RTC a petition for prohibition with prayer for a temporary restraining order or a writ of preliminary injunction. NR alleged that under the 1987 Revised Administrative Code and PD 1275, a regional state prosecutor was vested only with administrative supervision over the city prosecutor and had no power to *motu proprio* review, revise, or modify the resolution of the city prosecutor on the latter's conduct of a preliminary or inquest investigation of a criminal complaint filed directly therewith. Is RSP A empowered to *motu proprio* take over and conduct a preliminary investigation of a case after the inquest investigation thereof had already been terminated and approved by city prosecutor.

NO. RSP A acted without authority and with grave abuse of discretion amounting to excess or lack of jurisdiction when he took over *motu proprio* the preliminary investigation of I.S. No. 95-043 and ordered a new preliminary investigation thereof; hence, his actuations were a nullity. In this case, when RSP A *motu proprio* took over the preliminary investigation of the case after the same had already been dismissed by the city prosecutor and ordered the assistant regional state prosecutor to conduct a preliminary investigation of the case, he exercised not only administrative supervision but control over the city prosecutor in the performance of the latter's quasi-judicial functions. The office of the regional state prosecutor does not conduct any preliminary investigation or prosecute any criminal case in court at all. The bulk of the work of the office of the regional state prosecutor consists of administrative supervision over city or provincial or city fiscals and their assistants. The authority of the regional state prosecutors to prosecute or investigate specific criminal cases within the region pursuant to DO No. 318 can be exercise only upon the directives of the Secretary of Justice. No directive has been issued in this case. (*AURILLO, JR. vs NOEL RABI*, G.R. No. 120014. November 26, 2002).

### **ELECTION LAW**

19. JS filed a petition with the COMELEC against SM and the proclaimed Vice-Mayor and Municipal Councilors, as well as the members of the Municipal Board of Canvassers, to annul the elections and the proclamation of candidates in the Municipality of Saguwaran. JS alleged that there was a



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massive substitution of voters, rampant and pervasive irregularities in voting procedures in Precincts Nos. 19, 20, 28 and 29, and a failure of the Board of Election Inspectors (BEI) to comply with Sections 28 and 29 of COMELEC Resolution No. 3743 and Section 193 of the Omnibus Election Code, thus rendering the election process in those precincts a sham and a mockery and the proclamation of the winning candidates a nullity. In his answer, SM denied the truth of the material allegations in the petition and averred that it raised a pre-proclamation controversy. SM further alleged that the grounds relied upon by JS would be proper in an election protest but not in a pre-proclamation controversy. The COMELEC En Banc took cognizance of the petition and issued an order directing the Election Officer of Saguiran, to bring to and produce before the COMELEC Office in Manila the original VRRs of the questioned precincts for technical examination. In the same order, the COMELEC declared that contrary to petitioner's claims, the petition did not allege a pre-proclamation controversy. The Commission characterized the petition as one for the annulment of the election or declaration of failure of election in the municipality, a special action covered by Rule 26 of the COMELEC Rules of Procedure. Accordingly, the COMELEC set aside the docketing of the petition as a Special Case (SPC) and ordered the re-docketing thereof as a Special Action (SPA). After its examination of the evidence submitted by JS, the COMELEC concluded that there was convincing proof of massive fraud in the conduct of the elections in the four (4) precincts that necessitated a technical examination of the original copies of the VRRs and their comparison with the voters' signatures and fingerprints. SM filed with the SC the instant special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, praying for the reversal of the order of the COMELEC En Banc. (a) whether or not SM's recourse to SC under Rule 65 is in order; and (b) whether or not the petition filed by JS with the COMELEC is a pre-proclamation controversy or a petition for the declaration of failure of election.

(a) YES. The assailed order of the COMELEC declaring JS's petition to be one for annulment of the elections or for a declaration of a failure of elections in the municipality and ordering the production of the original copies of the VRRs for the technical examination is administrative in nature. Rule 64, a procedural device for the review of final orders, resolutions or decision of the COMELEC, does not foreclose recourse to this Court under Rule 65 from administrative orders of said Commission issued in the exercise of its administrative function.

As a general rule, an administrative order of the COMELEC is not a proper subject of a special civil action for certiorari. But when the COMELEC acts capriciously or whimsically, with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing such an order, the aggrieved party may seek redress from this Court via a special civil action for certiorari under Rule 65 of the Rules.

(b) NO. The petition before the COMELEC does not pose a pre-proclamation controversy. Pre-proclamation controversies are properly limited to challenges directed against the Board of Canvassers and proceedings before said Board relating to particular election returns to which private respondent should have made specific verbal objections subsequently reduced to writing. The proceedings are summary in nature; thus, the reception of evidence *aliunde*, e.g. the original copies of the VRRs, is proscribed. In fine, in pre-proclamation proceedings, the COMELEC is not to look beyond or behind election returns which are on their face regular and authentic returns. Issues such as fraud or terrorism attendant to the election process, the resolution of which would compel or necessitate the COMELEC to pierce the veil of election returns which appear to be prima facie regular, on their face, are anathema to a pre-proclamation controversy. Such issues should be posed and resolved in a regular election protest within the original jurisdiction of the Regional Trial Court. For, whenever irregularities, such as fraud, are asserted, the proper course of action is an election protest. Neither is private respondent's petition before the COMELEC one for declaration of a failure of elections. While fraud is a ground to declare a failure of election, such fraud must be one that prevents or suspends the holding of an election, including the preparation and transmission of the election returns. "Failure to elect" must be understood in its literal sense — which is, nobody emerges as a winner. (*MACABAGO vs. COMELEC*, G.R. No. 152163. November 18, 2002)

20. On May 9, 1996, B filed an election protest with the 13th MCTC Loay, Bohol. However, B failed to append to her election protest a certification of non-forum shopping as mandated by Supreme Court Administrative Circular No. 04-94. On May 20, 1996, petitioner submitted to the court the requisite Certification of Non-Forum Shopping and filed an opposition to the motion to dismiss filed





by C claiming that her failure to comply with Supreme Court Administrative Circular No. 04-94 was merely a technical deficiency. The MCTC granted the motion to dismiss of C and dismiss the election protest of B. The latter filed a motion for reconsideration of said order, insisting that the failure to submit the requisite certification on non-forum shopping had already been cured when the requisite certification was filed on May 20, 1996 but the MCTC denied the motion. B filed with the RTC a Petition for Certiorari, Prohibition and Mandamus, for the nullification of the aforesaid orders of the MCTC. RTC dismissed the petition and denied the motion for reconsideration. 1) Did MCTC err in dismissing the election protest because it has substantially comply with the requirements of Administrative Circular 04-09. 2) Was the proper remedy from the assailed orders of the MCTC a petition for certiorari, prohibition and mandamus under Rule 65 of the Rules of Court instead of an appeal to the COMELEC.

1. NO. Petitioner's reliance of the pronouncement of this Court in *Loyola vs. Court of Appeals, et al.*, is misplaced. In said case, the protestant submitted the requisite certification within the ten-day period for the filing of an election protest. In this case, petitioner submitted to the MCTC the requisite certification only on May 20, 1996, long after the lapse of the ten-day period for her to file an election protest. The submission by petitioner of the requisite certificate after the reglementary ten-day period for the filing of an election protest did not operate as a substantial compliance with the Circular.

2. NO. The RTC correctly dismissed the petition for certiorari for the added reason that it had no appellate jurisdiction over said petition. Section 49 of Resolution No. 2824 of the COMELEC governing the barangay elections on May 6, 1996, promulgated on February 6, 1996, provides that the COMELEC has appellate jurisdiction over decisions of the MCTC or MTC on election protests. MCTC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the protest for her failure to comply with Administrative Circular 04-09. (*BATOY vs RTC, G.R. No. 126833. February 17, 2003*).

21. A criminal complaint for violation of Section 261 (a) of the Omnibus Election Code (vote selling) was filed against the witnesses of Florentino A. Bautista. The Office of the Cavite Provincial Prosecutor conducted a preliminary investigation of the complaint, in his capacity as a deputy of the petitioner. On April 10, 2000, the Office of the Cavite Provincial Prosecutor issued a resolution finding probable cause against the respondents for violations of Section 261 (a) and (b) of the Omnibus Election Code, and filed separate Informations against them with the RTC of Cavite. COMELEC, after due deliberation, resolved to defer the action and referred the same to the Law Department for comment and recommendation. However, the Provincial Prosecutor refused to give way to the Legal Officer of the petitioner and even opposed the said motion. Was the action of the Provincial Prosecutor correct?

NO. Under Article IX, Section 2(b) of the Constitution, the petitioner is empowered to investigate and, when appropriate, prosecute election offenses. The grant by the Constitution to the petitioner of the express power to investigate and prosecute election offenses is intended to enable the petitioner to assure the people of a fine, orderly, honest, peaceful and credible election. Under Section 265 of the Omnibus Election Code, the petitioner, through its duly authorized legal officers, has the exclusive power to conduct preliminary investigation of all election offenses punishable under the Omnibus Election Code, and to prosecute the same. The petitioner may avail of the assistance of the prosecuting arms of the government.

The prosecutors deputized by the petitioner are subject to its authority, control and supervision in respect of the particular functions covered by such deputation. The acts of such deputies within the lawful scope of their delegated authority are, in legal contemplation, the acts of the petitioner itself. Such authority may be revoked or withdrawn any time by the petitioner, either expressly or impliedly, when in its judgment such revocation or withdrawal is necessary to protect the integrity of the process to promote the common good, or where it believes that successful prosecution of the case can be done by the petitioner. Moreover, being mere deputies or agents of the petitioner, provincial or city prosecutors deputized by the petitioner are expected to act in accord with and not contrary to or in derogation of the resolutions, directives or orders of the petitioner in relation to election cases such prosecutors are deputized to investigate and prosecute. Otherwise, the only option of such provincial or city prosecutor is to seek relief from the petitioner as its deputy. (*COMELEC vs. HON. ESPANOL, G.R. NO. 149164-73, December 10, 2003*)



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22. Arsenio Latasa was elected mayor of the Municipality of Digos, Davao del Sur in the elections of 1992, 1995 and 1998. During his third term, the Municipality of Digos was declared a component city, to be known as the City of Digos. This event also marked the end of petitioner's tenure as mayor of the Municipality of Digos. However, under Section 53, Article IX of the Charter, petitioner was mandated to serve in a hold-over capacity as mayor of the new City of Digos. Hence, he took his oath as the city mayor.

On February 28, 2001, petitioner filed his certificate of candidacy for city mayor for the May 14, 2001 elections. He stated therein that he is eligible therefor, and likewise disclosed that he had already served for three consecutive terms as mayor of the Municipality of Digos and is now running for the first time for the position of city mayor. Private respondent Romeo M. Sunga, also a candidate for city mayor in the said elections, filed before the COMELEC a Petition to Deny Due Course, Cancel Certificate of Candidacy and/or For Disqualification against petitioner Latasa Sunga alleging therein that petitioner falsely represented in his certificate of candidacy that he is eligible to run as mayor of Digos City since petitioner had already been elected and served for three consecutive terms as mayor from 1992 to 2001.

- a. Is petitioner Latasa disqualified from running as City Mayor?
- b. Who must be proclaimed City Mayor?

a. YES. Although the new city acquired a new corporate existence separate and distinct from that of the municipality. This does not mean, however, that for the purpose of applying the subject Constitutional provision, the office of the municipal mayor would now be construed as a different local government post as that of the office of the city mayor. As stated earlier, the territorial jurisdiction of the City of Digos is the same as that of the municipality. Consequently, the inhabitants of the municipality are the same as those in the city. These inhabitants are the same group of voters who elected petitioner Latasa to be their municipal mayor for three consecutive terms. These are also the same inhabitants over whom he held power and authority as their chief executive for nine years.

b. This Court has consistently ruled that the fact that a plurality or a majority of the votes are cast for an ineligible candidate at a popular election, or that a candidate is later declared to be disqualified to hold office, does not entitle the candidate who garnered the second highest number of votes to be declared elected. The same merely results in making the winning candidate's election a nullity. In the present case, moreover, 13,650 votes were cast for private respondent Sunga as against the 25,335 votes cast for petitioner Latasa. The second placer is obviously not the choice of the people in that particular election. In any event, a permanent vacancy in the contested office is thereby created which should be filled by succession. (*LATASA vs. COMELEC, G.R. NO. 154829, December 10, 2003*)

23. AT filed a petition to declare failure of elections in all the precincts in the Municipality of Luuk, Province of Sulu. Acting on said motion, COMELEC issued an order suspending the proclamation of the winning candidates. However, the Provincial Board of Canvassers was not served with a copy of the order. Consequently, the respondents were proclaimed as the winning candidates for the position of Governor, Vice-Governor and Board Members. Is there a basis for filing an action for failure of elections?

NO. In their amended petitions before the public respondent, it was substantially alleged that the respondents were the duly proclaimed winning candidates; that the elections in the Municipalities of Luuk, Parang and Indanan, Province of Sulu, were marred by massive substitution of voters, fraud, terrorism and other anomalies, impelling them to file their petitions pursuant to Section 4 of Rep. Act No. 7166 in relation to Section 6, Omnibus Election Code, and reiterated in Section 2, Rule 26 of the 1993 COMELEC Rules of Procedure, as amended. But Section 6 of the Omnibus Election Code lays down three instances where a failure of election may be declared, namely, (1) the election in any polling place has not been held on the date fixed on account of *force majeure*, violence, terrorism, fraud or other analogous causes; (2) the election in any polling place has been suspended before the hour fixed by law for the closing of the voting on account of *force majeure*, violence, terrorism, fraud or other analogous causes; or (3) after the voting and during the preparation and transmission of the election returns or in the custody or canvass thereof, such election results in a failure to elect on account of *force majeure*, violence, terrorism, fraud or other analogous



cases. In all instances there must have been a failure to elect. This is obvious in the first two scenarios, where the election was not held and where the election was suspended. As to the third scenario, the preparation and the transmission of the election returns, which give rise to the consequence of failure to elect, must as aforesaid be literally interpreted to mean that "nobody emerged as a winner."

Hence, before the COMELEC can act on a verified petition seeking to declare a failure of elections, two conditions must concur, namely, (1) no voting took place in the precinct or precincts on the date fixed by law, or even if there was voting, the election resulted in a failure to elect; and (2) the votes not cast would have affected the result of the election. Note that the cause of such failure of election could only be any of the following: force majeure, violence, terrorism, fraud or other analogous causes. (*TAN vs. COMELEC*, G.R. NO. 148575-76, December 10, 2003)

24. During the May 14, 2001 elections, Bai Susan A. Samad, Salipongan I. Dagloc and Kennedy Dilangalen were among the mayoralty candidates in the Municipality of Kabuntalan, Province of Maguindanao. During the canvassing of the election returns for the Municipality of Kabuntalan, Samad, Dagloc and Dilangalen filed their respective objections and oppositions to the inclusion or exclusion from the canvass of certain election returns from several precincts. Samad contested the inclusion of the election returns from all of Brgy. Bagumbayan, on the grounds that: (a) the returns were tampered and falsified, and (b) the returns were prepared under duress, threats, coercion and intimidation. COMELEC in its resolution invalidated the Certificate of Canvass. Is the action of COMELEC proper?

**NO.** The policy consideration underlying the delimitation of both substantive ground and legal procedure is the policy to determine as quickly as possible the result of the election on the basis of the canvass. The prevailing doctrine in this jurisdiction, therefore, is that as long as the returns appear to be authentic, and duly accomplished on their face, the Board of Canvassers cannot look beyond or behind them to verify allegations of irregularities in the casting and counting of the votes.

Outright exclusion of election returns on the ground that they were fraudulently prepared by some members or non-members of the BEI disenfranchises the voters. Hence, when election returns are found to be spurious or falsified, Section 235 of the Omnibus Election Code provides the procedure which enables the COMELEC to ascertain the will of the electorate.

The COMELEC, therefore, gravely abused its discretion when it excluded outright the subject election returns after finding that they were fraudulent returns. Instead, the COMELEC should have followed the procedure laid down in Section 235 of the Omnibus Election Code: ". . . The Commission shall then, after giving notice to all candidates concerned and after satisfying itself that nothing in the ballot box indicate that its identity and integrity have been violated, order the opening of the ballot box and, likewise after satisfying itself that the integrity of the ballots therein has been duly preserved shall order the board of election inspectors to recount the votes of the candidates affected and prepare a new return which shall then be used by the board of canvassers as basis of the canvass." (*DAGLOC vs. COMELEC*, GR NO 154442-47, December 10, 2003)

25. The petitioners and the private respondents in the case are candidates for the members of the Sangguniang ng Bayan elections in Palimbang, Sultan, Kudarat. On May 20, 2001, the Municipal Board of Canvasser of Palimbang issued Certificate of Canvass of Votes and Proclamation (COCVP) No. 8031108 which contained, inter alia, the petitioners as winners. The said candidates took their oath, and assumed their offices on June 30, 2001 4 as members of the Sangguniang Bayan of Palimbang.

The next day, May 21, 2001, the Municipal Board of Canvassers of Palimbang issued COCVP No. 8031109 which listed the private respondents as winners. The matter was then investigated and resolved the issue finding that the private respondents were the winning candidates. The COMELEC approved it. Petitioners' questioned this contending that they were not afforded due process. COMELEC on the other hand asserted that the twin requirement of notice and hearing in annulment of proclamation is not applicable since the proclamation is null and void, citing Utto vs. Commission on Elections. Was the COMELEC correct in dispensing notice and hearing since the proclamation was null and void?



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NO. While it is true that the COMELEC is vested with a broad power to enforce all election laws, the same is subject to the right of the parties to due process. In this case, the petitioners had been proclaimed as the winning candidates and had assumed their office. Since then, they had been exercising their rights and performing their duties as members of the Sangguniang Bayan of Palimbang, Sultan Kudarat. Their proclamation on May 20, 2001 enjoys the presumption of regularity and validity since no contest or protest was even filed assailing the same. The petitioners cannot be removed from office without due process of law. Due process in the proceedings before the public respondent exercising its quasi-judicial functions, requires due notice and hearing, among others. Thus, although the COMELEC possesses, in appropriate cases, the power to annul or suspend the proclamation of any candidate, we also ruled in *Fariñas vs. Commission on Elections*, *Reyes vs. Commission on Elections* and *Gallardo vs. Commission on Elections* that the COMELEC is without power to partially or totally annul a proclamation or suspend the effects of a proclamation without notice and hearing. (NAMIL, et.al. vs. COMELEC, et.al. G.R. No. 150540. October 28, 2003)

### **PART IV: BAR-TYPE QUESTIONS: BASED ON LOWER COURT POLITICAL LAW DECISIONS THAT HAVE BEEN AFFIRMED BY THE SC**

#### REGIONAL TRIAL COURT:

1. Mr. Marti, a foreigner, delivered a package to the cargo forwarding business of Mr. Reyes so that it can be sent to the former's friend in Switzerland. Mr. Reyes sought to inspect the package but Mr. Marti refused. However before the package was delivered to the Bureau of Customs, Mr. Reyes conducted a final inspection of the packages in his possession, and he found marijuana in the package of Mr. Marti. He then informed the NBI of what he found and invited them to his place of business. Upon the NBI agents arrival he open in their presence Mr. Marti's package and it was confirmed that it contained marijuana leaves. Mr. Marti was charged of a violation of the Dangerous Drugs Act. He was later convicted by then Judge Callejo, Sr.(now Supreme Court Justice). Mr. Marti contends that he was wrongfully convicted of the crime, because the contraband was obtained in violation of his constitutional right against unreasonable search and seizure.

- A. Was the search conducted by Mr. Reyes, a private person, a violation of Mr. Marti's right?
- B. Was the search conducted converted into an illegal search by the mere presence of NBI agents when the box was opened?
- C. Does the Bill of Rights govern the relationships between individuals?

A. NO. The constitutional proscription against unlawful searches and seizures could only be invoked against the State to whom the restraint against arbitrary and unreasonable exercise of power is imposed.

If the search is made upon the request of law enforcers, a warrant must generally be first secured if it is to pass the test of constitutionality. However, if the search is made at the behest or initiative of the proprietor of a private establishment for its own and private purposes, as in the case at bar, and without the intervention of police authorities, the right against unreasonable search and seizure cannot be invoked for only the act of private individual, not the law enforcers, is involved. In sum, the protection against unreasonable searches and seizures cannot be extended to acts committed by private individuals so as to bring it within the ambit of alleged unlawful intrusion by the government.

B. NO. The mere presence of the NBI agents did not convert the reasonable search effected by Reyes into a warrantless search and seizure proscribed by the Constitution. Merely to observe and look at that which is in plain sight is not a search. Having observed that which is open, where no trespass has been committed in aid thereof, is not search. Where the contraband articles are identified without a trespass on the part of the arresting officer, there is not the search that is prohibited by the Constitution.



C. NO. The Bill of Rights governs the relationship between the individual and the state. Its concern is not the relation between individuals, between a private individual and other individuals. What the Bill of Rights does is to declare some forbidden zones in the private sphere inaccessible to any power holder. (*PEOPLE VS. MARTI*, G.R. No. 81561. January 18, 1991)

2: Marlo was immediately subjected to an interrogation upon his arrest in the house of his friend in Tayabas, Quezon. He was then brought to the Tayabas Police Station where he was further questioned. And while on their way to Manila, the arresting agents again elicited incriminating information. In all three instances, he confessed to the commission of the crime and admitted his participation therein. In all those instances, he was not assisted by counsel. He now questions the admissibility of his extrajudicial confession contending that he was not apprised of his constitutional right to remain silent and to counsel. On the other hand the prosecution contends that the constitutional infirmity was cured by the fact that the Marlo's lawyer was there when the extra judicial confession was signed.

A. Would the failure to inform Marlo of his constitutional rights and absence of his lawyer render the extra judicial confession inadmissible?

B. Are the constitutional infirmities cured by the belated arrival of Marlo's lawyer?

A. Yes. At the time a person is arrested, it shall be the duty of the arresting officer to inform him of the reason for the arrest and he must be shown the warrant of arrest, if any. He shall be informed of his constitutional rights to remain silent and to counsel, and that any statement he might make could be used against him. The person arrested shall have the right to communicate with his lawyer, a relative, or anyone he chooses by the most expedient means – by telephone if possible – or by letter or messenger. It shall be the responsibility of the arresting officer to see to it that this is accomplished. No custodial investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested, by any person on his behalf, or appointed by the court upon petition either of the detainee himself or by anyone on his behalf . . . Any statement obtained in violation of the procedure herein laid down, whether exculpatory or inculpatory, in whole or in part, shall be inadmissible in evidence.

B. NO. The belated arrival of the Marlo's lawyer the following day even if prior to the actual signing of the uncounseled confession does not cure the defect for the investigators were already able to extract incriminatory statements from accused-appellant. The operative act, it has been stressed, is when the police investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect who has been taken into custody by the police to carry out a process of interrogation that lends itself to eliciting incriminatory statements, and not the signing by the suspect of his supposed extrajudicial confession. Admissions obtained during custodial interrogations without the benefit of counsel although later reduced to writing and signed in the presence of counsel are still flawed under the Constitution. (*PEOPLE VS. COMPIL*, G.R. No. 95028. May 15, 1995)

3. Based on a confidential information that Pedro is engaged in selling shabu, and in possession of firearms and ammunitions without the necessary license NBI Agent Tim, conducted a surveillance on the vicinity of Pedro's residence. After confirming said confidential information, Agent Tim applied for the issuance of search warrants before the Regional Trial Court of Manila. The court issued the search warrant applied for and the same was served. Illegal drugs and unlicensed firearms were seized from Pedro's house. He now questions the legality of the search warrant, claiming that the applicant, Agent Tim, does not have personal knowledge of his alleged illegal activities and hence his testimony is not sufficient for the issuance of the said warrants. Can it be said that Agent Tim has personal knowledge sufficient to justify the issuance of the search warrant?

YES. In determining probable cause in the issuance of a search warrant, the oath required must refer to the truth of the facts within the personal knowledge of the applicant or his witnesses, because the purpose thereof is to convince the committing magistrate, not the individual, making the affidavit and seeking the issuance of the warrant, of the existence of probable cause.

In the case at bar, NBI Agent Tim who applied for the issuance of Search Warrant, had personal knowledge of the circumstances on which the warrants were based. Admittedly,



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Rejano's knowledge of petitioner's illegal possession of firearms and prohibited drugs came from a confidential informant, and therefore, initially hearsay. Nevertheless, the surveillance and investigation he conducted on the basis of said confidential information enabled him to gain personal knowledge of the illegal activities of Pedro. Hence, his testimony was sufficient justification for the examining judge to conclude that there was probable cause for the issuance of a search warrant. (*CUPCUPIN VS. PEOPLE*, G.R. No. 132389. November 19, 2002)

## COURT OF APPEALS

4. The NHA sought to expropriate the land owned by Isidro and the trial court found that it has the right to expropriate the land. Socialized housing has been recognized as public use for purposes of exercising the power of eminent domain. The trial court fixed in an order that the just compensation for the subject property to be P11,200.00 per square meter. However after sometime NHA moved that the expropriation proceedings be dismissed citing that the implementation of its socialized housing project was rendered impossible by the unconscionable value of the land sought to be expropriated, which the intended beneficiaries can not afford.

- A. What are the stages in expropriation proceedings?
- B. Can the State be compelled or coerced by the courts to exercise the power of eminent domain in the case at bar?
- C. Are the funds of the NHA subject to garnishment?

A. Expropriation proceedings consists of two stages: first, condemnation of the property after it is determined that its acquisition will be for a public purpose or public use and, second, the determination of just compensation to be paid for the taking of private property to be made by the court with the assistance of not more than three commissioners.

B. Yes. The right of the plaintiff to dismiss an action with the consent of the court is universally recognized with certain well-defined exceptions. The dismissal of an action for eminent domain at the instance of the plaintiff during the pendency of the case is permissible. However the rule is different where the case had been decided and the judgment had already become final and executory.

Respondent landowners had already been prejudiced by the expropriation case. Petitioner NHA cannot be permitted to institute condemnation proceedings against respondents only to abandon it later when it finds the amount of just compensation unacceptable. It is arbitrary and capricious for a government agency to initiate expropriation proceedings, seize a person's property, allow the judgment of the court to become final and executory and then refuse to pay on the ground that there are no appropriations for the property earlier taken and profitably used. We condemn in the strongest possible terms the cavalier attitude of government officials who adopt such a despotic and irresponsible stance.

C. Yes. The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action "only up to the completion of proceedings anterior to the stage of execution" and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law.

However, if the funds belong to a public corporation or a government-owned or controlled corporation which is clothed with a personality of its own, separate and distinct from that of the government, then its funds are not exempt from garnishment. This is so because when the government enters into commercial business, it abandons its sovereign capacity and is to be treated like any other corporation.

The NHA having a juridical personality separate and distinct from the government, the funds of such government-owned and controlled corporations and non-corporate agency, although considered public in character, are not exempt from garnishment. (*NHA VS. HEIRS OF GUIVELONDO & CA*, G.R. NO. 154411. JUNE 19, 2003)



## **PART V: DOCTRINES OF LANDMARK CASES**

### **CONSTITUTIONAL LAW**

#### **CONSTITUTION OF THE PHILIPPINES**

The grant to Congress as a Constituent Assembly of such plenary authority to call a constitutional convention includes, by virtue of the doctrine of necessary implication, all other powers essential to the effective exercise of the principal power granted, such as the power to fix the qualifications, number, apportionment, and compensation of the delegates, as well as appropriation of funds to meet expenses for the election of delegates and for the operation of the Constitutional Convention itself, as well as all other implementing details indispensable to a fruitful convention.

While the authority to call a constitutional convention is vested by the present Constitution solely and exclusively in Congress acting as a Constituent Assembly, the power to enact the implementing details does not exclusively pertain to Congress acting as a Constituent Assembly. Such implementing details are matters within the competence of Congress in the exercise of its comprehensive legislative power, which power encompasses all matters not expressly or by necessary implication withdrawn or removed by the Constitution from the ambit of legislative action.

Consequently, when Congress, acting as a Constituent Assembly, omits to provide for such implementing details after calling a constitutional convention, Congress, acting as a legislative body, can enact the necessary implementing legislation to fill in the gaps. (*IMBONG V. COMELEC (35 SCRA 28 [1970])*)

#### **CONCEPT OF THE STATE**

The absolute and permanent allegiance of the inhabitants of a territory occupied by the enemy to their legitimate government or sovereign is not abrogated or severed by the enemy occupation, because the sovereignty of the government or sovereign *de jure* is not transferred thereby to the occupier, and if it is not transferred to the occupant, it must necessarily remain vested in the legitimate government. The sovereignty vested in the titular government (which is the supreme power which governs a body politic or society which constitute the state) must be distinguished from the exercise of the rights inherent thereto, and may be destroyed or severed and transferred to another, but it cannot be suspended without putting it out of existence or divesting the possessor thereof at least during the so-called period of suspension. What may be suspended is the exercise of the rights of sovereignty with the control and government of the territory occupied by the enemy passes temporarily to the occupant. As a corollary of the conclusion that the sovereignty itself is not suspended and subsists during the enemy occupation, the allegiance of the inhabitants to their legitimate government or sovereign subsists, and therefore, there is no such thing as suspended allegiance. (*LAUREL V. MISA (77 Phil 856 [1947])*)

#### **DOCTRINE OF STATE IMMUNITY**

There seems to be a failure to distinguish between suability and liability and a misconception that the two terms are synonymous. Suability depends on the consent of the state to be sued, liability on the applicable law and the established facts. The circumstance that a state is suable does not necessarily mean that it is liable; on the other hand, it can never be held liable if it does not first consent to be sued. Liability is not conceded by the mere fact that the state has allowed itself to be sued. When the state does waive its sovereign immunity, it is only giving the plaintiff the chance to prove, if it can, that the defendant is liable.

The said article (Article 2180, NCC) establishes a rule of liability, not suability. The government may be held liable under this rule only if it first allows itself to be sued through any of the accepted forms of consent. (*USA V. GUINTO (182 SCRA 644 [1990])*)

The traditional rule of State immunity exempts a State from being sued in the courts of another State without its consent or waiver. This rule is a necessary consequence of the principles of independence and equality of States. However, the rules of International Law are not petrified;



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they are constantly developing and evolving. And because the activities of states have multiplied, it has been, necessary to distinguish them-between sovereign and governmental acts (*jure imperii*) and private, commercial and proprietary acts (*jure gestionis*).

The restrictive application of State immunity is proper only when the proceedings arise out of commercial transactions of the foreign sovereign, its commercial activities or economic affairs. Stated differently, a State may be said to have descended the level of an individual and can thus be deemed to have tacitly given its consent to be sued only when it enters into business contracts It does not apply where the contract relates to the exercise of its sovereign functions. (**USA V. RUIZ (136 SCRA 487 [1985])**)

The Labor Code, in relation to Act No. 3083, provides the legal basis for the State liability but the prosecution, enforcement or satisfaction thereof must still be pursued in accordance with the rules and procedures laid down in C.A. 327, as amended by P.D. 1445. (**DEPARTMENT OF AGRICULTURE V. NLRC (227 SCRA 693 [1993])**)

Municipal corporations, for example, like provinces and cities, are agencies of the State when they are engaged in governmental functions and therefore should enjoy the sovereign immunity from suit. Nevertheless, they are subject to suit even in the performance of such functions because their charter provided that they can sue and be sued.

A distinction should first be made between suability and liability. "Suability depends on the consent of the state to be sued, liability on the applicable law and the established facts. The circumstance that a state is suable does not necessarily mean that it is liable; on the other hand. it can never be held liable if it does not first consent to be sued. Liability is not conceded by the mere fact that the state has allowed itself to be sued. When the state does waive its sovereign immunity, it is only giving the plaintiff the chance to prove, if it can, that the defendant is liable." (United States of America v. Guinto, supra, p. 659-660) (**MUNICIPALITY OF SAN FERNANDO, LA UNION V. FIRME (195 SCRA 692 [1991])**)

### FUNDAMENTAL PRINCIPLES AND STATE POLICIES

As regards the question whether an international agreement may be invalidated by our courts, suffice it to say that the Constitution of the Philippines has clearly settled it in the affirmative, by providing, in Section 2 of Article VIII thereof, that the Supreme Court may not be deprived "of its jurisdiction to review, revise, reverse, modify, or affirm on appeal, certiorari, or writ of error, as the law or the rules of court may provide, final judgments and decrees of inferior courts in - (1) All cases in which the constitutionality or validity of any treaty, law, ordinance, or executive order or regulation is in question". In other words, our Constitution authorizes the nullification of a treaty, not only when it conflicts with the fundamental law, but, also, when it runs counter to an act of Congress. (**GONZALES V. HECHANOVA (9 SCRA 230 [1963])**)

Social justice is "neither communism, nor despotism, nor atomism, nor anarchy," but the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all the competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*.

Social justice, therefore, must be founded on the recognition of the necessity of interdependence among divers and diverse units of a society and of the protection that should be equally and evenly extended to all groups as a combined force in our social and economic life, consistent with the fundamental and paramount objective of the state of promoting the health, comfort, and quiet of all persons, and of bringing about "the greatest good to the greatest number." (**CALALANG V. WILLAMS (70 Phil 726 [1940])**)

Petitioners minors assist that they represent their generation as well as generations yet unborn. We find no difficulty in ruling that they can, for themselves, the others of generation and





for proceedings class sum of their personality to sue in behalf of the succeeding generations can only be based on the concept intergenerational responsibility insofar as the right to and healthful ecology is concerned. Such a right, as hereinafter expounded, considers the "rhythm and harmony of nature." Nature means the created world in its entirety. Such rhythm and harmony indispensably include, inter alia, the judicious disposition, utilization, management, renewal and conservation of the country's forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come. (*OPOSA V. FACTORAN (224 SCRA 792 [1993])*)

Now, autonomy is either decentralization of administration or decentralization of power. There is decentralization of administration when the central government delegates administrative powers to political subdivisions in order to broaden the base of government power and in the process to make local governments "more responsive and accountable," and "ensure their fullest development as self-reliant communities and make them more effective partners in the pursuit of national development and social progress." At the same time, it relieves the central government of the burden of managing local affairs and enables it to concentrate on national concerns. The President exercises "general supervision" over them, but only to "ensure that local affairs are administered according to law." He has no control over their acts in the sense that he can substitute their judgments with his own.

Decentralization of power, on the other hand, involves an abdication of political power in the favor of local governments units declared to be autonomous. In that case, the autonomous government is free to chart its own destiny and shape its future with minimum intervention from central authorities. According to a constitutional author, decentralization of power amounts to "self-immolation," since in that event, the autonomous government becomes accountable not to the central authorities but to its constituency. *LIMBONAS V. MANGELIN (170 SCRA 786 [1989])*

The authority to regulate the manner of examining public records does not carry with it the power to prohibit. A distinction has to be made between the discretion to refuse outright the disclosure of or access to a particular information and the authority to regulate the manner in which the access is to be afforded. The first is a limitation upon the availability of access to the information sought, which only the Legislature may impose (Art. III, Sec. 6, 1987 Constitution). The second pertains to the government agency charged with the custody of public records. Its authority to regulate access is to be exercised solely to the end that damage to, or loss of, public records may be avoided, undue interference with the duties of said agencies may be prevented, and more importantly, that the exercise of the same constitutional right by other persons shall be assured. (*LEGASPI V. CIVIL SERVICE COMMISSION (150 SCRA 530 [1987])*)

## SEPARATION OF POWERS

While the doctrine of separation of powers is a relative theory not to be enforced with pedantic rigor, the practical demands of government precluding its doctrinaire application, it cannot justify a member of the judiciary being required to assume a position or perform a duty nonjudicial in character. That is implicit in the principle. Otherwise there is a plain departure from its command. The essence of the trust reposed in him is to decide. Only a higher court, as was emphasized by Justice Barredo, can pass on his actuation. He is not a subordinate of an executive or legislative official, however eminent. It is indispensable that there be no exception to the rigidity of such a norm if he is, as expected, to be confined to the task of adjudication. Fidelity to his sworn responsibility no less than the maintenance of respect for the judiciary can be satisfied with nothing less. (*IN RE MANZANO (166 SCRA 248 [1988])*)

The term "political question" connotes, in legal parlance, what it means in ordinary parlance, namely, a question of policy. In other words, . . . it refers "to those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the Government." It is concerned with issues dependent upon the wisdom, not legality, of a particular measure. (*TANADA V. CUENCO (103 Phil 1051 [1965])*)



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#### DELEGATION OF POWERS

Although Congress may delegate to another branch of the government the power to fill in the details in the execution, enforcement or administration of a law, it is essential, to forestall a violation of the principle of separation of powers, that said law: (a) be complete in itself - it must set forth therein the policy to be executed, carried out or implemented by the delegate - and (b) fix a standard - the limits of which are sufficiently determinate or determinable - to which the delegate must conform in the performance of his functions. Indeed, without a statutory declaration of policy, the delegate would, in effect, make or formulate such policy, which is the essence of every law; and, without the aforementioned standard, there would be no means to determine, with reasonable certainty, whether the delegate has acted within or beyond the scope of his authority. Hence, he could thereby arrogate upon himself the power, not only to make the law, but, also - and this is worse - to unmake it, by adopting measures inconsistent with the end sought to be attained by the Act of Congress, thus nullifying the principle of separation of powers and the system of checks and balances, and, consequently undermining the very foundation of our Republican system. (*PELAEZ V. AUDITOR GENERAL (15 SCRA 569 [1965])*)

#### LEGISLATIVE DEPARTMENT

Residence, in its ordinary conception, implies the factual relationship of an individual to a certain place. It is the physical presence of a person in a given area, community or country. The essential distinction between residence and domicile in law is that residence involves the intent to leave when the purpose for which the resident has taken up his abode ends. One may seek a place for purposes such as pleasure, business, or health. If a person's intent be to remain, it becomes his domicile; if his intent is to leave as soon as his purpose is established it is residence. It is thus, quite perfectly normal for an individual to have different residences in various places. However, a person can only have a single domicile, unless, for various reasons, he successfully abandons his domicile in favor of another domicile of choice. In *Uytengsu vs. Republic*, we laid this distinction quite clearly.

"There is a difference between domicile and residence. 'Residence' is used to indicate a place of abode, whether permanent or temporary; 'domicile' denotes a fixed permanent residence to which, when absent, one has the intention of returning. A man may have a residence in one place and a domicile in another. Residence is not domicile, but domicile is residence coupled with the intention to remain for an unlimited time. A man can have but one domicile for the same purpose at any time, but he may have numerous places of residence. His place of residence is generally his place of domicile, but it is not by any means necessarily so since no length of residence without intention of remaining will constitute domicile."

For political purposes the concepts of residence and domicile are dictated by the peculiar criteria of political laws. As these concepts have evolved in our election law, what has clearly and unequivocally emerged is the fact that residence for election purposes is used synonymously with domicile. (*ROMUALDEZ-MARCOS V. COMELEC (248 SCRA 300 [1995])*)

In case of vacancy in the Senate or in the House of Representatives, a special election may be called to fill such vacancy in the manner prescribed by law, but the Senator or Member of the House of Representatives thus elected shall serve only for the unexpired term.

In case a vacancy arises in Congress at least one year before the expiration of the term, Section 2 of R.A. No. 6645, as amended, requires COMELEC: (1) to call a special election by fixing the date of the special election, which shall not be earlier than sixty (60) days nor later than ninety (90) after the occurrence of the vacancy but in case of a vacancy in the Senate, the special election shall be held simultaneously with the next succeeding regular election; and (2) to give notice to the voters of, among other things, the office or offices to be voted for.

An election held at the time thus prescribed is not invalidated by the fact that the body charged by law with the duty of calling the election failed to do so.

The test in determining the validity of a special election in relation to the failure to give notice of the special election is whether the want of notice has resulted in misleading a sufficient number of voters as would change the result of the special election. If the lack of official notice



misled a substantial number of voters who wrongly believed that there was no special election to fill a vacancy, a choice by a small percentage of voters would be void. (*ARTURO TOLENTINO VS. COMMISSION ON ELECTIONS, G.R. No. 14334, January 21, 2004*)

The Constitution expressly grants to the House of Representatives the prerogative, within constitutionally defined limits, to choose from among its district and party-list representatives those who may occupy the seats allotted to the House in the HRET and the CA. Section 18, Article VI of the Constitution explicitly confers on the Senate and on the House the authority to elect among their members those who would fill the 12 seats for Senators and 12 seats for House members in the Commission on Appointments. Under Section 17, Article VI of the Constitution, each chamber of Congress exercises the power to choose, within constitutionally defined limits, who among their members would occupy the allotted 6 seats of each chamber's respective electoral tribunal. Thus, even assuming that party-list representatives comprise a sufficient number and have agreed to designate common nominees to the HRET and the CA, their primary recourse clearly rests with the House of Representatives and not with this Court. Under Sections 17 and 18, Article VI of the Constitution, party-list representatives must first show to the House that they possess the required numerical strength to be entitled to seats in the HRET and the CA. Only if the House fails to comply with the directive of the Constitution on proportional representation of political parties in the HRET and the CA can the party-list representatives seek recourse to this Court under its power of judicial review.

The discretion of the House to choose its members to the HRET and the CA is not absolute, being subject to the mandatory constitutional rule on proportional representation. However, under the doctrine of separation of powers, the Court may not interfere with the exercise by the House of this constitutionally mandated duty, absent a clear violation of the Constitution or grave abuse of discretion amounting to lack or excess of jurisdiction. Otherwise, 'the doctrine of separation of powers calls for each branch of government to be left alone to discharge its duties as it sees fit. Neither can the Court speculate on what action the House may take if party-list representatives are duly nominated for membership in the HRET and the CA. (*SENATOR AQUILINO Q. PIMENTEL, JR., et al. V. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL, et al. (G.R. No. 141489, November 29, 2002)*)

That the framers of the 1987 Constitution intended to restore fully to the Electoral Tribunals exclusive jurisdiction over all contests relating to the election, returns and qualifications of its Members, consonant with the return to the separation of powers of the three branches of government under the presidential system, is too evident to escape attention. The new Constitution has substantially retained the COMELEC's purely administrative powers, namely, the exclusive authority to enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall; to decide, except those involving the right to vote, all questions affecting elections; to deputize law enforcement agencies and government instrumentalities for election purposes; to register political parties and accredit citizens' arms; to file in court petitions for inclusion and exclusion of voters and prosecute, where appropriate, violations of election laws [Art. IX(C), Sec. 2(I), (3)-(6)], as well as its rule-making power. In this sense, and with regard to these areas of election law, the provisions of the Omnibus Election Code are fully applicable, except where specific legislation provides otherwise. But the same cannot be said with regard to the jurisdiction of the COMELEC to hear and decide election contests. This has been trimmed down under the 1987 Constitution. Whereas the 1973 Constitution vested the COMELEC with jurisdiction to be the sole judge of all contests relating to the elections, returns and qualifications of all Members of the Batasang Pambansa and elective provincial and city officials [Art. XII(C), Sec. 2(2)], the 1987 Constitution, while lodging in the COMELEC exclusive original jurisdiction over all contests relating to the elections, returns and qualifications of all elective regional, provincial and city officials and appellate jurisdiction over contests relating to the election of municipal and barangay officials [Art. IX(C), Sec. 2(2)], expressly makes the Electoral Tribunals of the Senate and the House of Representatives the sole judge of all contests relating to the election, returns and qualifications of their respective Members [Art. VI, Sec. 17]. (*LAZATIN V. HRET (168 SCRA 391 [1988])*)

While Article VI, Section 24 provides that all appropriation, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills must "originate exclusively in the House of Representatives," it also adds, "but the Senate may propose or concur with amendments." In the exercise of this power, the Senate may propose an entirely new bill as a substitute measure.



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As to what Presidential certification can accomplish, we have already explained in the main decision that the phrase "except when the President certifies to the necessity of its immediate enactment, etc." in Article VI, Section 26 (2) qualifies not only the requirement that "printed copies [of a bill] in its final form [must be] distributed to the members three days before its passage" but also the requirement that before a bill can become a law it must have passed "three readings on separate days."

Apparently, the members of the Senate believed that there was an urgent need for consideration of S. No. 1630, because they responded to the call of the President by voting on the bill on second and third readings on the same day. While the judicial department is not bound by the Senate's acceptance of the President's certification, the respect due coequal departments of the government in matters committed to them by the Constitution and the absence of a clear showing of grave abuse of discretion caution a stay of the Judicial hand.

The purpose for which three readings on separate days is required is said to be two-fold- (1) to inform the members of Congress of what they must vote on and (2) to give them notice that a measure is progressing through the enacting process- thus enabling them and others interested in the measure to prepare their positions with reference to it.

To require every end and means necessary for the accomplishment of the general objectives of the statute to be expressed in its title would not only be unreasonable but would actually render legislation impossible. As has been correctly explained in *Philippine Judges Association v. Prado* (227 SCRA 703 [1993]):

The details of a legislative act need not be specifically stated in its title, but matter germane to the subject as expressed in the title, and adopted to the accomplishment of the object in view, may properly be included in the act. Thus, it is proper to create in the same act the machinery by which the act is to be enforced, to prescribe the penalties for its infraction, and to remove obstacles in the way of its execution. If such matters are properly connected with the subject as expressed in the title, it is unnecessary that they should also have special mention in the title, (*Southern Pac. Co. v. Bartine*, 170 Fed. 725) (**TOLENTINO V. SECRETARY OF FINANCE** (235 SCRA 630 [1994]))

Enshrined in the 1987 Philippine Constitution is the mandate that "no money shall be paid out of the Treasury except in pursuance of an appropriation made by law." Thus, in the execution of government contracts, the precise import of this constitutional restriction is to require the various agencies to limit their expenditures within the appropriations made by law for each fiscal year.

Complementary to the foregoing constitutional injunction are pertinent provisions of law and administrative issuances that are designed to effectuate the above provision in a detailed manner (Sections 46 and 47, Chapter 8, Subtitle B, Title I, Book V, Administrative Code of 1987).

It is quite evident from the tenor of the language of the law that the existence of appropriations and the availability of funds are indispensable pre-requisites to or conditions sine qua non for the execution of government contracts. The obvious intent is to impose such conditions as a priori requisites to the validity of the proposed contract. Using this as our premise, we cannot accede to PHOTKINA's contention that there is already a perfected contract. While we held in *Metropolitan Manila Development Authority vs. Jancom Environmental Corporation* that "the effect of an unqualified acceptance of the offer or proposal of the bidder is to perfect a contract, upon notice of the award to the bidder," however, such statement would be inconsequential in a government where the acceptance referred to is yet to meet certain conditions. To hold otherwise is to allow a public officer to execute a binding contract that would obligate the government in an amount in excess of the appropriations made for the purpose for which the contract was attempted to be made. This is a dangerous precedent. (**COMMISSION ON ELECTIONS vs. QUIJANO-PADILLA** (G.R. No. 151992, September 18, 2002))

Consulting the records of the Constitutional Convention, according to Fr. Bernas S.J. , under Art. XI Sec 3 (5), the proceeding is initiated or begins when a verified complaint is filed and referred to the Committee on Justice for further action. This is the interpretation adopted by the framers of the fundamental law. Under sections 16 and 17 of Rule V of the House Impeachment Rules, impeachment proceedings are deemed initiated (1) if there is a finding by the House Committee on Justice that the verified complaint and/or resolution is sufficient in substance, or (2) once the House itself affirms or overturns the finding of the Committee on Justice that the verified complaint and/or resolution is not sufficient in substance (3) by the filing or endorsement



before the Secretary General of the House of Representatives of a verified complaint or a resolution of impeachment by at least 1/3 of the members of the House. These rules clearly contravene Section 3(5) of Article XI since the rules give the term "initiate" a different meaning.

Having concluded that the initiation takes place by the act of filing of the impeachment complaint and referral to the House Committee on Justice, the initial action taken thereon, the meaning of Section 3(5) of Article XI becomes clear. Once an impeachment complaint has been initiated in the foregoing manner, another may not be filed against the same official within a one-year period following Article XI, Section 3(5) of the Constitution.

In fine, considering that the first impeachment complaint, was filed by former President Estrada against Chief Justice Hilario G. Davide Jr., along with seven associate justices of this court on June 2003 and referred to the House Committee on Justice on August 5, 2003, the second impeachment complaint filed by Representative Gilberto C. Teodoro, Jr. and Felix William Fuentabella against the Chief Justice on October 23, 2003 violates the constitutional prohibition against the initiation of impeachment proceedings against the same impeachable officer within one year. (*FRANCISCO JR., ET AL. VS. HOUSE OF REPRESENTATIVES ET AL. (G.R. No. 161634, March 3, 2004)*)

#### **EXECUTIVE DEPARTMENT**

Since the evident purpose of the framers of the 1987 Constitution is to impose a stricter prohibition on the President, Vice-President, members of the Cabinet, their deputies and assistants with respect to holding multiple offices or employment in the government during their tenure, the exception to this prohibition must be read with equal severity. On its face, the language of Section 13, Article VII is prohibitory so that it must be understood as intended to be a positive and unequivocal negation of the privilege of holding multiple government offices or employment. Verily, wherever the language used in the constitution is prohibitory, it is to be understood as intended to be a positive and unequivocal negation. The phrase "unless otherwise provided in this Constitution" must be given a literal interpretation to refer only to those particular instances cited in the Constitution itself, to wit: the Vice-President being appointed as a member of the Cabinet under Section 3, par. (2), Article VII; or acting as President in those instances provided under Section 7, pars. (2) and (3), Article VII; and, the Secretary of Justice being ex-officio member of the Judicial and Bar Council by virtue of Section 8 (1), Article VIII.

The prohibition against holding dual or multiple offices or employment under Section 13, Article VII of the Constitution must not, however, be construed as applying to posts occupied by the Executive officials specified therein without additional compensation in an ex-officio capacity as provided by law and as required by the primary functions of said officials' office. The reason is that these posts do not comprise "any other office within the contemplation of the constitutional prohibition but are properly an imposition of additional duties and functions on said officials. To characterize these posts otherwise would lead to absurd consequences.

The term ex-officio means "from office; by virtue of office." It refers to an "authority derived from official character merely, not expressly conferred upon the individual character, but rather annexed to the official position." Ex-officio likewise denotes an "act done in an official character, or as a consequence of office, and without any other appointment or authority than that conferred by the office." An ex-officio member of a board is one who is a member by virtue of his title to a certain office, and without further warrant or appointment. (*CIVIL LIBERTIES UNION V. EXECUTIVE SECRETARY (194 SCRA 317 [1991])*)

In the 1987 Constitution, however, as already pointed out, the clear and expressed intent of its framers was to exclude presidential appointments from confirmation by the Commission on Appointments, except appointments to offices expressly mentioned in the first sentence of Sec. 16, Article VII. Consequently, there was no reason to use in the third sentence of Sec. 16, Article VII the word "alone" after the word "President" in providing that Congress may by law vest the appointment of lower-ranked officers in the President alone, or in the courts, or in the heads of departments, because the power to appoint officers whom he (the President) may be authorized by law to appoint is already vested in the President, without need of confirmation by the Commission on Appointments, in the second sentence of the same Sec. 16, Article VII.

Therefore, the third sentence of Sec. 16, Article VII could have stated merely that, in the case of lower-ranked officers, the Congress may by law vest their appointment in the President, in the courts, or in the heads of various departments of the government. In short, the word "alone" in the third sentence of Sec. 16, Article-VII of the 1987 Constitution, as a literal import from the last



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part of par. 3, section 10, Article VII of the 1935 Constitution, appears to be redundant in the light of the second sentence of Sec. 16, Article VII. And, this redundancy cannot prevail over the clear and positive intent of the framers of the 1987 Constitution that presidential appointments, except those mentioned in the first sentence of Sec. 16, Article VII, are not subject to confirmation by the Commission on Appointments.

Coming now to the immediate question before the Court, it is evident that the position of Commissioner of the Bureau of Customs (a bureau head) is not one of those within the first group of appointments where the consent of the Commission on Appointments is required. As a matter of fact, as already pointed out, while the 1935 Constitution includes "heads of bureaus" among those officers whose appointments need the consent of the Commission on Appointments, the 1987 Constitution, on the other hand, deliberately excluded the position of "heads of bureaus" from appointments that need the consent (confirmation) of the Commission on Appointments. (*SARMIENTO V. MISON* (156 SCRA 549 [1987]))

An *ad interim* appointment is a permanent appointment because it takes effect immediately and can no longer be withdrawn by the President once the appointee has qualified into office. The fact that it is subject to confirmation by the Commission on Appointments does not alter its permanent character. The term "*ad interim* appointment", as used in letters of appointment signed by the President, means a permanent appointment made by the President *in the meantime that Congress is in recess*. It does not mean a temporary appointment that can be withdrawn or revoked at any time. In other words, he also enjoys the constitutional protection that "[n]o officer or employee in the civil service shall be removed or suspended except for cause provided by law."

Under the second paragraph of Section 16, Article VII of the Constitution, the President can choose either of two modes in appointing officials who are subject to confirmation by the Commission on Appointments. First, while Congress is in session, the President may nominate the prospective appointee, and pending consent of the Commission on Appointments, the nominee cannot qualify and assume office. Second, during the recess of Congress, the President may extend an *ad interim* appointment which allows the appointee to immediately qualify and assume office. Whether the President chooses to nominate the prospective appointee or extend an *ad interim* appointment is a matter within the prerogative of the President because the Constitution grants her that power. This Court cannot inquire into the propriety of the choice made by the President in the exercise of her constitutional power, absent grave abuse of discretion amounting to lack or excess of jurisdiction on her part, which has not been shown in the instant case.

There is no dispute that an *ad interim* appointee disapproved by the Commission on Appointments can no longer be extended a new appointment. The disapproval is a final decision of the Commission on Appointments in the exercise of its checking power on the appointing authority of the President. However, an *ad interim* appointment that is by-passed because of lack of time or failure of the Commission on Appointments to organize is another matter. A by-passed appointment is one that has not been finally acted upon on the merits by the Commission on Appointments at the close of the session of Congress. There is no final decision by the Commission on Appointments to give or withhold its consent to the appointment as required by the Constitution.

An *ad interim* appointment that has lapsed by inaction of the Commission on Appointments does not constitute a term of office. The period from the time the *ad interim* appointment is made to the time it lapses is neither a fixed term nor an unexpired term. To hold otherwise would mean that the President by his unilateral action could start and complete the running of a term of office in the COMELEC without the consent of the Commission on Appointments. This interpretation renders inutile the confirming power of the Commission on Appointments. (*MA. J. ANGELINA G. MATIBAG, vs. ALFREDO L. BENIPAYO, et al.* (G.R. No. 149036, April 2, 2002))

An officer in control lays down the rules in the doing of an act. If they are not followed, he may, in his discretion, order the act undone or re-done by his subordinate or he may even decide to do it himself. Supervision does not cover such authority. The supervisor or superintendent merely sees to it that the rules are followed, but he himself does not lay down such rules, nor does he have the discretion to modify or replace them. If the rules are not observed, he may order the work done or re-done but only to conform to the prescribed rules. He may not prescribe his own manner for the doing of the act. He has no judgment on this matter except to see to it that the rules are followed. (*DRILON V. LIM* (235 SCRA 135 [1994]))



Due process of law demands that in all criminal prosecutions (where the accused stands to lose either his life or his liberty), the accused shall be entitled to, among others, a trial.<sup>37</sup> The trial contemplated by the due process clause of the Constitution, in relation to the Charter as a whole, is a trial by judicial process, not by executive or military process. Military commissions or tribunals, by whatever name they are called, are not courts within the Philippine judicial system. As explained by Justice Teehankee in his separate dissenting opinion "x x x Civilians like (the) petitioner placed on trial for civil offenses under general law are entitled to trial by judicial process, not by executive or military process.

"Judicial power is vested by the Constitution exclusively in the Supreme Court and in such inferior courts as are duly established by law. Judicial power exists only in the courts, which have 'exclusive power to hear and determine those matters which affect the life or liberty or property of a citizen.'

"Since we are not enemy-occupied territory nor are we under a military government and even on the premise that martial law continues in force, the military tribunals cannot try and exercise jurisdiction over civilians for civil offenses committed by them which are properly cognizable by the civil courts that have remained open and have been regularly functioning."

Moreover, military tribunals pertain to the Executive Department of the Government and are simply instrumentalities of the executive power, provided by the legislature for the President as Commander-in-Chief to aid him in properly commanding the army and navy and enforcing discipline therein, and utilized under his orders or those of his authorized military representatives. Following the principle of separation of powers underlying the existing constitutional organization of the Government of the Philippines, the power and the duty of interpreting the laws (as when an individual should be considered to have violated the law) is primarily a function of the judiciary. It is not, and it cannot be the function of the Executive Department, through the military authorities. And as long as the civil courts in the land remain open and are regularly functioning, as they do so today and as they did during the period of martial law in the country, military tribunals cannot try and exercise jurisdiction over civilians for offenses committed by them and which are properly cognizable by the civil courts. To have it otherwise would be a violation of the constitutional right to due process of the civilian concerned. (*OLAGUER V. MILITARY COMMISSION NO. 34 (150 SCRA 144 [1987])*)

The modern trend of authorities now rejects the unduly broad language of the Garland case (reputed to be perhaps the most extreme statement which has been made on the effects of a pardon). To our mind, this is the more realistic approach. While a pardon has generally been regarded as blotting out the existence of guilt so that in the eye of the law the offender is as innocent as though he never committed the offense, it does not operate for all purposes. The very essence of a pardon is forgiveness or remission of guilt. Pardon implies guilt. It does not erase the fact of the commission of the crime and the conviction thereof. It does not wash out the moral stain. It involves forgiveness and not forgetfulness.

The better considered cases regard full pardon (at least one not based on the offender's innocence) as relieving the party from all the punitive consequences of his criminal act, including the disqualifications or disabilities based on the finding of guilt. But it relieves him from nothing more. "To say, how, ever, that the offender is a 'new mare, and' as innocent as if he had never committed the offense;" is to ignore the difference between the crime and the criminal. A person adjudged guilty of an offense is a convicted criminal, though pardoned; he may be deserving of punishment, though left unpunished; and the law may regard him as more dangerous to society than one never found guilty of crime, though it places no restraints upon him following his conviction."

A pardon looks to the future. It is not retrospective. It makes no amends for the past. It affords no relief for what has been suffered by the offender. It does not impose upon the government any obligation to make reparation for what has been suffered. "Since the offense has been established by judicial proceedings, that which has been done or suffered while they were in force is presumed to have been rightfully done and justly suffered, and no satisfaction for it can be required." (*MONSANTO V. FACTORAN (170 SCRA 190 [1989])*)

Section 18, Article VII does not expressly prohibit the President from declaring a state of rebellion. Note that the Constitution vests the President not only with Commander-in-Chief powers but, first and foremost, with Executive powers.

Section 1, Article VII of the 1987 Philippine Constitution states:



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“The executive power shall be vested in the President....” As if by exposition, Section 17 of the same Article provides: “He shall ensure that the laws be faithfully executed.”

Thus, the President’s authority to declare a state of rebellion springs in the main from her powers as chief executive and, at the same time, draws strength from her Commander-in-Chief powers.

It is not disputed that the President has full discretionary power to call out the armed forces and to determine the necessity for the exercise of such power. While the Court may examine whether the power was exercised within constitutional limits or in a manner constituting grave abuse of discretion, none of the petitioners here have, by way of proof, supported their assertion that the President acted without factual basis.

The argument that the declaration of a state of rebellion amounts to a declaration of martial law and, therefore, is a circumvention of the report requirement, is a leap of logic. There is no indication that military tribunals have replaced civil courts in the “theater of war” or that military authorities have taken over the functions of civil government. There is no allegation of curtailment of civil or political rights. There is no indication that the President has exercised judicial and legislative powers. In short, there is no illustration that the President has attempted to exercise or has exercised martial law powers.

Nor by any stretch of the imagination can the declaration constitute an indirect exercise of emergency powers, which exercise depends upon a grant of Congress pursuant to Section 23 (2), Article VI of the Constitution:

Sec. 23. (1) ....

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

The petitions do not cite a specific instance where the President has attempted to or has exercised powers beyond her powers as Chief Executive or as Commander-in-Chief. The President, in declaring a state of rebellion and in calling out the armed forces, was merely exercising a **wedding of her Chief Executive and Commander-in-Chief powers**. These are purely executive powers, vested on the President by Sections 1 and 18, Article VII, as opposed to the delegated legislative powers contemplated by Section 23 (2), Article VI. (**SANLAKAS vs. EXECUTIVE SECRETARY ANGELO REYES ET. AL (G.R. No. 159085. February 3, 2004)**)

### JUDICIAL DEPARTMENT

Our finding is that what is before us is not a discretionary act of the House of Representatives that may not be reviewed by us because it is political in nature. What is involved here is the legality, not the wisdom, of the act of that chamber in removing the petitioner from the Commission on Appointments. That is not a political question because, as Chief Justice Concepcion explained in *Tañada v. Cuenco*:

. . . the term “political question” connotes, in legal parlance, what it means in ordinary parlance, namely, a question of policy. In other words, . . . it refers “to those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the Legislature or executive branch of the Government.” It is concerned with issues dependent upon the wisdom, not legality, of a particular measure.

Even if we were to assume that the issue presented before us was political in nature, we would still not be precluded from resolving it under the expanded jurisdiction conferred upon us that now covers, in proper cases, even the political question. Article VII, Section 1, of the Constitution clearly provides:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (**DAZA V. SINGSON (180 SCRA 496 [1989])**)

In line with the liberal policy of this Court on *locus standi*, ordinary taxpayers, members of Congress, and even association of planters, and non-profit civic organizations were allowed to





initiate and prosecute actions before this Court to question the constitutionality or validity of laws, acts, decisions, rulings, or orders of various government agencies or instrumentalities.

We find the instant petition to be of transcendental importance to the public. The issues it raised are of paramount public interest and of a category even higher than those involved in many of the aforementioned cases. The ramifications of such issues immeasurably affect the social, economic, and moral wellbeing of the people even in the remotest barangays of the country and the counter-productive and retrogressive effects of the envisioned on-line lottery system are as staggering as the billions in pesos it is expected to raise. The legal standing then of the petitioners deserves recognition and, in the exercise of its sound discretion, this Court hereby brushes aside the procedural barrier which the respondents tried to take advantage of. (*KILOS BAYAN, INC. V. GUINGONA, JR. (232 SCRA 110 [1994])*)

The rule is settled that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the court unless there is compliance with the legal requisites for judicial inquiry, namely: that the question must be raised by the proper party; that there must be an actual case or controversy; that the question must be raised at the earliest possible opportunity; and, that the decision on the constitutional or legal question must be necessary to the determination of the case itself. But the most important are the first two (2) requisites.

On the first requisite, we have held that one having no right or interest to protest cannot invoke the jurisdiction of the court as party-plaintiff in an action. This is premised on Sec. 2, Rule 3, of the Rules of Court which provides that every action must be prosecuted and defended in the name of the real party-in-interest, and that all persons having interest in the subject of the action and in obtaining the relief demanded shall be joined as plaintiffs. The Court will exercise its power of judicial review only if the case is brought before it by a party who, has the legal standing to raise the constitutional or legal question. "Legal standing" means a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The term "interest" is material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. Moreover, the interest of the party plaintiff must be personal and not one based on a desire to vindicate the constitutional right of some third and unrelated party.

There are certain instances however when this Court has allowed exceptions to the rule on legal standing, as when a citizen brings a case for mandamus to procure the enforcement of a public duty for the fulfillment of a public right recognized by the Constitution, and when a taxpayer questions the validity of a governmental act authorizing the disbursement of public funds.

Not every action filed by a taxpayer can qualify to challenge the legality of official acts done by the government. A taxpayer's suit can prosper only if the governmental acts being questioned involve disbursement of public funds upon the theory that the expenditure of public funds by an officer of the state for the purpose of administering an unconstitutional act constitutes a misapplication of such funds, which may be, enjoined at the request of a taxpayer. (*JOYA V. PCGG (225 SCRA 596 [1993])*)

#### **CIVIL SERVICE COMMISSION**

Appointment is an essentially discretionary power and must be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should possess the qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. This is a political question involving considerations of wisdom which only the appointing authority can decide. (*LUEGO V. CIVIL SERVICE COMMISSION (143 SCRA 327 [1986])*)

It is well-settled that when the appointee is qualified, as in this case, and all the other legal requirements are satisfied, the Commission has no alternative but to attest to the appointment in accordance with the Civil Service Law. The Commission has no authority to revoke an appointment on the ground that another person is more qualified for a particular position. It also has no authority to direct the appointment of a substitute of its choice. To do so would be an encroachment on the discretion vested upon the appointing authority. An appointment is essentially within the discretionary power of whomsoever it is vested, subject to the only condition



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that the appointee should possess the qualifications required by law. (*CENTRAL BANK V. CIVIL SERVICE COMMISSION* (171 SCRA 744))

The view that an elective official may be appointed to another post if allowed by law or by the primary functions of his office, ignores the clear-cut difference in the wording of the two (2) paragraphs of Sec. 7, Art. IX-B, of the Constitution. While the second paragraph authorizes holding of multiple offices by an appointive official when allowed by law or by the primary functions of his position, the first paragraph appears to be more stringent by not providing any exception to the rule against appointment or designation of an elective official to other government posts, except as are particularly recognized in the Constitution itself, e.g., the President as head of the economic and planning agency; the Vice-President, who may be appointed Member of the Cabinet; and, a member of Congress who may be designated ex officio member of the Judicial and Bar Council.

The distinction between the first and second paragraphs of Sec. 7, Art. IX-B, was not accidental when drawn, and not without reason. It was purposely sought by the drafters of the Constitution as shown in their deliberation. The distinction being clear, the exemption allowed to appointive officials in the second paragraph cannot be extended to elective officials who are governed by the first paragraph.

This argument is apparently based on a wrong premise. Congress did not contemplate making the subject SBMA posts as ex officio or automatically attached to the Office of the Mayor of Olongapo City without need of appointment. The phrase "shall be appointed" unquestionably shows the intent to make the SBMA posts appointive and not merely adjunct to the post of Mayor of Olongapo City. Had it been the legislative intent to make the subject positions ex officio, Congress would have, at least, avoided the word "appointed" and, instead, "ex officio" would have been used. (*FLORES V. DRILON* (223 SCRA 568 [1993]))

### COMMISSION ON ELECTIONS

We now hold that the last paragraph of Section 50 of B. P. Blg. 697 providing as follows: "The Commission is vested with exclusive authority to hear and decide petitions for certiorari, prohibition and mandamus involving election cases," remains in full force and effect but only in such cases where, under paragraph (2), Section 1, Article IX-C of the Constitution, it has exclusive appellate jurisdiction. Simply put, the COMELEC has the authority to issue the extraordinary writs of certiorari, prohibition, and mandamus only in aid of its appellate jurisdiction. (*RELAMPAGOS V. CUMBA* (243 SCRA 690 [1995]))

The fact that decisions, final orders or rulings of the Commission on Elections in contests involving elective municipal and barangay offices are final, executory and not appealable, [Article IX, (C), Section 2(2), paragraph 2 of the Constitution] does not preclude a recourse to this Court by way of a special civil action of certiorari. (*GALIDO V. COMELEC* [1991])

It is clear from Section 3, Article IX-C of the 1987 Constitution that election cases include pre-proclamation controversies, and all such cases must first be heard and decided by a Division of the Commission. The Commission, sitting en banc, does not have the authority to hear and decide the same at the first instance. In the COMELEC RULES OF PROCEDURE, pre-proclamation cases are classified as Special Cases and, in compliance with the above provision of the Constitution, the two (2) Divisions of the Commission are vested with the authority to hear and decide these Special Cases. Rule 27 thereof governs Special Cases; specifically, Section 9 of the said Rule provides that appeals from rulings of the Board of Canvassers are cognizable by any of the Divisions to which they are assigned and not by the Commission en banc. (*SARMIENTO V. COMELEC* (212 SCRA 307 [1992]))

Conformably to those provisions of the Constitution [Art. IX-C, Sec. 2 (2) and Art. IX-A, Sec. 7] all election cases, including pre-proclamation controversies, must be decided by the COMELEC in division. Should a party be dissatisfied with the decision, he may file a motion for reconsideration before the COMELEC en banc. It is, therefore, the decision, order or ruling of the COMELEC en banc that, in accordance with Art. IX, A, Sec. 7, "may be brought to the Supreme Court on certiorari." (*REYES V. RTC OF ORIENTAL MINDORO* (244 SCRA 41 [1995]))



The COMELEC has the power to promulgate the necessary rules and regulations to enforce and administer election laws. This power includes the determination, within the parameters fixed by law, of appropriate periods for the accomplishment of certain pre-election acts like filing petitions for registration under the party-list system. This is exactly what the COMELEC did when it issued its Resolution No. 6320 declaring September 30, 2003, as the deadline for filing petitions for registration under the party-list system. Considering these, as well as the multifarious pre-election activities that the Comelec is mandated to undertake, the issuance of its Resolution No. 6320 cannot be considered tainted with grave abuse of discretion. (*AKLAT vs. COMELEC (G.R. No. 162203 April 14, 2004)*)

#### COMMISSION ON AUDIT

Both the 1973 and 1987 Constitutions conferred upon the COA a more active role and invested it with broader and more extensive powers. These were not meant to make it a toothless tiger, but a dynamic, effective, efficient and independent watch dog of the Government.

In determining whether an expenditure of a Government agency or instrumentality such as the NPC is irregular, unnecessary, excessive, extravagant or unconscionable, the COA should not be bound by the opinion of the legal counsel of said agency or instrumentality which may have been the basis for the questioned disbursement; otherwise, it would indeed be. come a toothless tiger and its auditing function would be a meaningless and futile exercise. Its beacon lights then should be nothing more than the pertinent laws and its rules and regulations.

The COA, both under the 1973 and 1987 Constitutions, is a collegial body. It must resolve cases presented to it as such. Its General Counsel cannot act for the Commission for he is not even a Commissioner thereof. He can only offer legal advice or render an opinion in order to aid the COA in the resolution of a case or a legal question. (*OROCIO V. COMMISSION ON AUDIT (213 SCRA 109 [1992])*)

The COA is clothed under Section 2(2), Article IX-D of the 1987 Constitution with the "exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefore, and promulgate accounting and auditing rules, and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures, or uses of government funds and properties." The authority granted under this constitutional provision, being broad and comprehensive enough, enables COA to adopt as its own, simply by reiteration or by reference, without the necessity of re-promulgation, already existing rules and regulations. It may also expand the coverage thereof to agencies or instrumentalities under its audit jurisdiction. (*PHILIPPINE AIR LINES V. COA (245 SCRA 39 [1995])*)

#### LOGAL GOVERNMENT

Not only historical examination but textual analysis as well supports the ruling of the COMELEC that Art. X, Section 8 contemplates service by local officials for three consecutive terms as a result of election. The first sentence speaks of "the term of office of elective local officials" and bars "such official[s]" from serving for more than three consecutive terms. The second sentence, in explaining when an elective local official may be deemed to have served his full term of office, states that "voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected." The term served must therefore be one "for which [the official concerned] was elected." The purpose of this provision is to prevent a circumvention of the limitation on the number of terms an elective local official may serve. Conversely, if he is not serving a term for which he was elected because he is simply continuing the service of the official he succeeds, such official cannot be considered to have fully served the term notwithstanding his voluntary renunciation of office prior to its expiration. (*BORJA, JR. V. COMELEC (295 SCRA 157 [1998])*)

#### NATIONAL ECONOMY AND PATRIMONY

The Philippine Mining Act of 1995 is Constitutional. From the deliberations of the Constitutional Convention, the Court concluded that agreements involving either technical or



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financial assistance are in fact service contracts, but unlike those of the 1973 variety, the new ones are between foreign corporations acting as contractors on the one hand; and the on the other, the government as the principal or "owner" of the works. As written by the framers and ratified and adopted by the people, the Constitution allows the continued use of service contracts with foreign corporations—as contractors who would invest in and operate and manage extractive enterprises, subject to full control and supervision of the State.

The concept of control adopted in Section 2 of Article XII must be taken to mean less than dictatorial, all-encompassing control; but nevertheless, sufficient to give the State the power to direct, restrain, regulate and govern the affairs of the extractive enterprises. Control by the State must be on the macro-level, through the establishment of policies, guidelines, regulations, industry standards and similar measures that would enable the government to control the conduct of affairs in various enterprises and restrain activities deemed not desirable or beneficial.

The end in view is ensuring that these enterprises contribute to the economic development and general welfare of the country, conserve the environment, and uplift the well-being of the affected local communities. Such concept would be compatible with permitting the foreign contractor sufficient and reasonable management authority over the enterprise it invested in.

The Court has weighed carefully the rights and interests of all concerned, and decided for the greater good of the greatest number. Justice for all, not just for some. Justice for the present and the future, not just for the here and now. (*LA BUGAL - B'LAAN TRIBAL ASSOCIATION, INC. VS. RAMOS* (G.R. No. 127882. December 1, 2004))

### POLICE POWER

It has been said the police power is so far - reaching in scope, that it has become almost impossible to limit its sweep. As it derives its existence from the very existence of the State itself, it does not need to be expressed or defined in its scope; it is said to be co-extensive with self-protection and survival, and as such it is the most positive and active of all governmental processes, the most essential, insistent and illimitable. Especially is it so under a modern democratic framework where the demands of society and of nations have multiplied to almost unimaginable proportions; the field and scope of police power has become almost boundless, just as the fields of public interest and public welfare have become almost all-embracing and have transcended human foresight. Otherwise stated, as we cannot foresee the needs and demands of public interest and welfare in this constantly changing and progressive world, so we cannot delimit beforehand the extent or scope of police power by which and through which the State seeks to attain or achieve interest or welfare. So it is that Constitutions do not define the scope or extent of the police power of the State; what they do is to set forth the limitations thereof. The most important of these are the due process clause and the equal protection clause. These constitutional guarantees which embody the essence of individual liberty and freedom in democracies, are not limited to citizens alone but are admittedly universal in their application, without regard to any differences of race, of color, or of nationality. (Yick Wo vs. Hopkins, 30, L. ed. 220, 226.)

Upon a consideration of all the facts and circumstances, the disputed law is not the product of racial hostility, prejudice or discrimination, but the expression of the legitimate desire and determination of the people, thru their authorized representatives, to free the nation from the economic situation that has unfortunately been saddled upon it rightly or wrongly, to its disadvantage. The law is clearly in the interest of the public, nay of the national security itself, and indisputably falls within the scope of police power, thru which and by which the State insures its existence and security and the supreme welfare of its citizens. (*ICHONG V. HERNANDEZ* (101 Phil 1155 [1957]))

PIATCO is not entitled to any compensation. Section 5.10(c), Article V of the ARCA clearly obligates the government in the exercise of its police power to compensate respondent PIATCO and this obligation is offensive to the Constitution. Police power cannot be diminished, let alone defeated by any contract for its paramount consideration is public welfare and interest.

Section 17, Article XII of the 1987 Constitution grants the State in times of national emergency the right to temporarily take over the operation of any business affected with public interest. This right is an exercise of police power which is one of the inherent powers of the State. Police power has been defined as the "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare." It consists of two essential



elements. First, it is an imposition of restraint upon liberty or property. Second, the power is exercised for the benefit of the common good. Its definition in elastic terms underscores its all-encompassing and comprehensive embrace. It is and still is the "most essential, insistent, and illimitable" of the State's powers. It is familiar knowledge that unlike the power of eminent domain, police power is exercised without provision for just compensation for its paramount consideration is public welfare. It is also settled that public interest on the occasion of a national emergency is the primary consideration when the government decides to temporarily take over or direct the operation of a public utility or a business affected with public interest. The nature and extent of the emergency is the measure of the duration of the takeover as well as the terms thereof. It is the State that prescribes such reasonable terms which will guide the implementation of the temporary takeover as dictated by the exigencies of the time. This power of the State cannot be negated by any party nor should its exercise be a source of obligation for the State. (**AGAN vs. PHILIPPINE INTERNATIONAL AIR TERMINALS CO (G.R. No. 155001. January 21, 2004)**)

The concept of police power is well-established in this jurisdiction. It has been defined as the "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare." As defined, it consists of (1) an imposition of restraint upon liberty or property, (2) in order to foster the common good. It is not capable of an exact definition but has been, purposely, veiled in general terms to underscore its all-comprehensive embrace.

"Its scope, ever-expanding to meet the exigencies of the times, even to anticipate the future where it could be done, provides enough room for an efficient and flexible response to conditions and circumstances thus assuring the greatest benefits."

It finds no specific Constitutional grant for the plain reason that it does not owe its origin to the Charter. Along with the taxing power and eminent domain, it is inborn in the very fact of statehood and sovereignty. It is a fundamental attribute of government that has enabled it to perform the most vital functions of governance. Marshall, to whom the expression has been credited, refers to it succinctly as the plenary power of the State "to govern its citizens."

"The police power of the State ... is a power coextensive with self-protection, and it is not inaptly termed the 'law of over-whelming necessity.' It may be said to be that inherent and plenary power in the State which enables it to prohibit all things hurtful to the comfort, safety, and welfare of society."

It constitutes an implied limitation on the Bill of Rights. According to Fernando, it is "rooted in the conception that men in organizing the state and imposing upon its government limitations to safeguard constitutional rights did not intend thereby to enable an individual citizen or a group of citizens to obstruct unreasonably the enactment of such salutary measures calculated to ensure communal peace, safety, good order, and welfare." Significantly, the Bill of Rights itself does not purport to be an absolute guaranty of individual rights and liberties "Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's will." It is subject to the far more overriding demands and requirements of the greater number.

Notwithstanding its extensive sweep, police power is not without its own limitations. For all its awesome consequences, it may not be exercised arbitrarily or unreasonably. Otherwise, and in that event, it defeats the purpose for which it is exercised, that is, to advance the public good. Thus, when the power is used to further private interests at the expense of the citizenry, there is a clear misuse of the power. (**PHILIPPINE ASSOCIATION OF SERVICE EXPORTERS, INC. V. DRILON (163 SCRA 386 [1988])**)

Every restriction upon the use of property imposed in the exercise of the police power deprives the owner of some right theretofore enjoyed, and is, in that sense, an abridgment by the State of rights in property without making compensation. But restriction imposed to protect the public health, safety or morals from dangers threatened is not a taking. The restriction here in question is merely the prohibition of a noxious use. The property so restricted remains in the possession of its owner. The state does not appropriate it or make any use of it. The state merely prevents the owner from making a use which interferes with paramount rights of the public. Whenever the use prohibited ceases to be noxious-as it may because of further changes in local or social conditions-the restriction will have to be removed and the owner will again be free to enjoy his property as heretofore. (**ASSOCIATION OF SMALL LANDOWNERS OF THE PHILIPPINES V. SECRETARY OF DAR (175 SCRA 343 [1989])**)

To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class,



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require such interference; and second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals.

In the light of the tests mentioned above, we hold with the Toribio Case that the carabao, as the poor man's tractor, so to speak, has a direct relevance to the public welfare and so is a lawful subject of Executive Order No. 626. The method chosen in the basic measure is also reasonably necessary for the purpose sought to be achieved and not unduly oppressive upon individuals, again following the above-cited doctrine. There is no doubt that by banning the slaughter of these animals except where they are at least seven years old if male and eleven years old if female upon issuance of the necessary permit, the executive order will be conserving those still fit for farm work or breeding and preventing their improvident depletion.

But while conceding that the amendatory measure has the same lawful subject as the original executive order, we cannot say with equal certainty that it complies with the second requirement, viz., that there be a lawful method. We note that to strengthen the original measure, Executive Order No. 626-A imposes an absolute ban not on the slaughter of the carabaos but on their movement, providing that "no carabao, regardless of age, sex, physical condition or purpose (sic) and no carabeef shall be transported from one province to another." The object of the prohibition escapes us. The reasonable connection between the means employed and the purpose sought to be achieved by the questioned measure is missing.

We do not see how the prohibition of the inter-provincial transport of carabaos can prevent their indiscriminate slaughter, considering that they can be killed anywhere, with no less difficulty in one province than in another. Obviously, retaining the carabaos in one province will not prevent their slaughter there, any more than moving them to another province will make it easier to kill them. As for the carabeef, the prohibition is made to apply to it as otherwise, so says executive order, it could be easily circumvented by simply killing the animal. Perhaps so, however, if the movement of the live animal for the purpose of preventing their slaughter cannot be prohibited, it should follow that there is no reason either to prohibit their transfer as, not to be flippant, dead meat. (*YNOT V. INTERMEDIATE APPELLATE COURT (148 SCRA 659 [1987])*)

Article XII, section 17 of the 1987 Constitution envisions a situation wherein the exigencies of the times necessitate the government to "temporarily take over or direct the operation of any privately owned public utility or business affected with public interest." It is the welfare and interest of the public which is the paramount consideration in determining whether or not to temporarily take over a particular business. Clearly, the State in effecting the temporary takeover is exercising its police power. Police power is the "most essential, insistent, and illimitable of powers." Its exercise therefore must not be unreasonably hampered nor its exercise be a source of obligation by the government in the absence of damage due to arbitrariness of its exercise. Thus, requiring the government to pay reasonable compensation for the reasonable use of the property pursuant to the operation of the business contravenes the Constitution. (*DEMOSTHENES P. AGAN, JR., et al. vs. PHILIPPINE INTERNATIONAL AIR TERMINALS CO., INC., et al. (G.R. No. 155001, May 5, 2003)*)

### POWER OF EMINENT DOMAIN

To the extent that the measures under challenge merely prescribe retention limits for landowners, there is an exercise of the police power for the regulation of private property in accordance with the Constitution. But where, to carry out such regulation, it becomes necessary to deprive such owners of whatever lands they may own in excess of the maximum area allowed; there is definitely a taking under the power of eminent domain for which Payment of just compensation is imperative. The taking contemplated is not a mere limitation of the use of the land. What is required is the surrender of the title to and the physical possession of the said excess and all beneficial rights accruing to the owner in favor of the farmer-beneficiary. This is definitely an exercise not of the police power but of the power of eminent domain.

The medium of payment of compensation is ready money or cash. The condemnor cannot compel the owner to accept anything but money, nor can the owner compel or require the condemnor to pay him on any other basis than the value of the property in money at the time and in the manner prescribed by the Constitution and the statutes. When the power of eminent domain is resorted to, there must be a standard medium of payment, binding upon both parties, and the law has fixed that standard as money in cash.



What we deal with here is a revolutionary kind of expropriation. The expropriation before us affects all private agricultural lands whenever found and of whatever kind as long as they are in excess of the maximum retention limits allowed their owners. This kind of expropriation is intended for the benefit not only of a particular community or of a small segment of the population but of the entire Filipino nation, from all levels of our society, from the impoverished farmer to the land-glutted owner. Its purpose does not cover only the whole territory of this country but goes beyond in time to the foreseeable future, which it hopes to secure and edify with the vision and the sacrifice of the present generation of Filipinos. Generations yet to come are as involved in this program as we are today, although hopefully only as beneficiaries of a richer and more fulfilling life we will guarantee to them tomorrow through our thoughtfulness today. And, finally, let it not be forgotten that it is no less than the Constitution itself that has ordained this revolution in the farms, calling for "a just distribution" among the farmers of lands that have heretofore been the prison of their dreams but can now become the key at least to their deliverance.

Such a program will involve not mere millions of pesos. The cost will be tremendous. Considering the vast areas of land subject to expropriation under the laws before us, we estimate that hundreds of billions of pesos will be needed, far more indeed than the amount of P50 billion initially appropriated, which is already staggering as it is by our present standards. Such amount is in fact not even fully available at this time. (*ASSOCIATION OF SMALL LANDOWNERS OF THE PHILIPPINES V. SECRETARY OF DAR, supra.*)

The method of ascertaining just compensation under the aforecited decrees constitutes impermissible encroachment on judicial prerogatives. It tends to render this Court inutile in a matter which under this Constitution is reserved to it for final determination.

Thus, although in an expropriation proceeding the court technically would still have the power to determine the just compensation for the property, following the applicable decrees, its task would be relegated to simply stating the lower value of the property as declared either by the owner or the assessor. As a necessary consequence, it would be useless for the court to appoint commissioners under Rule 67 of the Rules of Court. Moreover, the need to satisfy the due process clause in the taking of private property is seemingly fulfilled since it cannot be said that a judicial proceeding was not had before the actual taking. However, the strict application of the decrees during the proceedings would be nothing short of a mere formality or charade as the court has only to choose between the valuation of the owner and that of the assessor, and its choice is always limited to the lower of the two. The court cannot exercise its discretion or independence in determining what is just or fair. Even a grade school pupil could substitute for the judge insofar as the determination of constitutional just compensation is concerned. (*EPZA V. DULAY (149 SCRA 305 [1987])*)

The "public use" requirement for a valid exercise of the power of eminent domain is a flexible and evolving concept influenced by changing conditions. In this jurisdiction, the statutory and judicial trend has been summarized as follows: The taking to be valid must be for public use. There was a time when it was felt that a literal meaning should be attached to such a requirement. Whatever project is undertaken must be for the public to enjoy, as in the case of streets or parks. Otherwise, expropriation is not allowable. It is not anymore. As long as the purpose of the taking is public, then the power of eminent domain comes into play. As just noted, the constitution in at least two cases, to remove any doubt, determines what is public use. One is the expropriation of land to be subdivided into small lots for resale at cost to individuals. The other is in the transfer, through the exercise of this power, of utilities and other private enterprise to the government. It is accurate to state then that at present whatever may be beneficially employed for the general welfare satisfies the requirement of public use. (*SUMULONG V GUERRERO (154 SCRA 161 [1987])*)

## **POWER OF TAXATION**

Once it is conceded, as it must, that the protection and promotion of the sugar industry is a matter of public concern, it follows that the Legislature may determine within reasonable bounds what is necessary for its protection and expedient for its promotion. Here, the legislative discretion must be allowed full play, subject only to the test of reasonableness; and it is not contended that the means provided in section 6 of the law (above quoted) bear no relation to the objective pursued or are oppressive in character. If objective and methods are alike constitutionally valid, no reason is seen why the state may not levy taxes to raise funds for their prosecution and attainment. Taxation may be made the implement of the state's police power.



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That the tax to be levied should burden the sugar producers themselves can hardly be a ground of complaint; indeed, it appears rational that the tax be obtained precisely from those who are to be benefited from the expenditure of the funds derived from it. At any rate, it is inherent in the power to tax that a state be free to select the subjects of taxation, and it has been repeatedly held that "inequalities which result from a singling out of one particular class for taxation, or exemption infringe no constitutional limitation." (*LUTZ V. ARANETA (98 Phil 148 [1955])*)

The phrase "exclusively used for educational purposes" was further clarified by this Court in the cases of *Herrera vs. Quezon City Board of Assessment Appeals*, 3 SCRA 186 [1961] and *Commissioner of Internal Revenue vs. Bishop of the Missionary District*, 14 SCRA 991 [1965], thus "Moreover, the exemption in favor of property used exclusively for charitable or educational purposes is 'not limited to property actually indispensable' therefore (Cooley on Taxation, Vol. 2, p. 1430), but extends to facilities which are incidental to and reasonably necessary for the accomplishment of said purposes, such as in the case of hospitals, 'a school for training nurses, a nurses' home, property use to provide housing facilities for interns, resident doctors, superintendents, and other members of the hospital staff and recreational facilities for student nurses, interns, and residents' (84 CJS 6621), such as 'Athletic fields' including 'a firm used for the inmates of the institution.'" (Cooley on Taxation, Vol. 2, p. 1430).

The test of exemption from taxation is the use of the property for purposes mentioned in the Constitution (*Apostolic Prefect v. City Treasurer of Baguio*, 71 Phil. 547 [1941]).

It must be stressed however, that while this Court allows a more liberal and non-restrictive interpretation of the phrase "exclusively used for educational purposes" as provided for in Article VI, Section 22, paragraph 3 of the 1935 Philippine Constitution, reasonable emphasis has always been made that exemption extends to facilities which are incidental to and reasonably necessary for the accomplishment of the main purposes. Otherwise stated, the use of the school building or lot for commercial purposes is neither contemplated by law, nor by jurisprudence. Thus, while the use of the second floor of the main building in the case at bar for residential purposes of the Director and his family, may find justification under the concept of incidental use, which is complimentary to the main or primary educational purpose, the lease of the first floor thereof to the Northern Marketing Corporation cannot by any stretch of the imagination be considered incidental to the purpose of education. (*ABRA VALLEY COLLEGE V. AQUINO (162 SCRA 106 [1988])*)

### DUE PROCESS OF LAW

The meaning of "due process of law" is, that "every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society." To constitute "due process of law," as has been often held, a judicial proceeding is not always necessary. In some instances, even a hearing and notice are not requisite, a rule which is especially true where much must be left to the discretion of the administrative officers in applying a law to particular cases. (*See McGehee, Due Process of Law*, p. 371.) Neither is due process a stationary and blind sentinel of liberty. "Any legal proceeding enforced by public authority, whether sanctioned by age and custom, or newly devised in the discretion of the legislative power in furtherance of the public good which regards and preserves these principles of liberty and justice must be held to be due process of law." (*Hurtado vs. California [1883]*, 110 U. S., 516.) "Due process of law" means simply \* \* \* "first, that there shall be a law prescribed in harmony with the general powers of the legislative department of the Government; second, that this law shall be reasonable in its operation; third, that it shall be enforced according to the regular methods of procedure prescribed; and fourth, that it shall be applicable alike to all the citizens of the state or to all of a class." (*U. S. vs. Ling Su Fan [1908]*, 10 Phil., 104), affirmed on appeal to the United States Supreme Court.<sup>1</sup> "What is due process of law depends on circumstances it varies with the subject-matter and necessities of the situation." (*Moyer vs. Peabody [1909]*, 212 U. S., 82.) (*RUBI V. PROVINCIAL BOARD OF MINDORO (39 Phil 660 [1919])*)

The due process clause has to do with the reasonableness of legislation enacted in pursuance of the police power. Is there public interest, a public purpose; is public welfare involved? Is the Act reasonably necessary for the accomplishment of the legislature's purpose; is it not unreasonable, arbitrary or oppressive? Is there sufficient foundation or reason in connection





with the matter involved; or has there not been a capricious use of the legislative power? Can the aims conceived be achieved by the means used, or is it not merely an unjustified interference with private interest? These are the questions that we ask when the due process test is applied.

To justify the state in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals.

The law in question is deemed absolutely necessary to bring about the desired legislative objective, i.e., to free national economy from alien control and dominance. It is not necessarily unreasonable because it affects private rights and privileges (*11 Am. Jur. pp. 1080-1081.*) The test of reasonableness of a law is the appropriateness or adequacy under all circumstances of the means adopted to carry out its purpose into effect (*Id.*) Judged by this test, disputed legislation, which is not merely reasonable but actually necessary, must be considered not to have infringed the constitutional limitation of reasonableness. (*ICHONG V. HERNANDEZ, supra.*)

The fact, however, that the Court of Industrial Relations may be said to be free from the rigidity of certain procedural requirements does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character. There are cardinal primary rights which must be respected even in proceedings of this character:

(1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. In the language of Chief Justice Hughes, "the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play."

(2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented. In the language of this Court in *Edwards vs. McCoy*, 22 Phil., 598, "the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration."

(3) "While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. A decision with absolutely nothing to support it is a nullity, a place when directly attached." This principle emanates from the more fundamental principle that the genius of constitutional government is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power.

(4) Not only must there be some evidence to support a finding or conclusion, but the evidence must be "substantial." 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."

The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. But this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence.

(5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected. Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them. It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. Boards of inquiry may be appointed for the purpose of investigating and determining the facts in any given case, but their report and decision are only advisory. (Section 9, Commonwealth Act No. 103.) The Court of Industrial Relations may refer any industrial or agricultural dispute or any matter under its consideration or advisement to a local board of inquiry, a provincial fiscal, a justice of the peace or any public official in any part of the Philippines for investigation, report and recommendation, and may delegate to such board or public official such powers and functions as the said Court of Industrial Relations may deem necessary, but such delegation shall not affect the exercise of the Court itself of any of its powers. (Section 10, *ibid.*)



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(6) The Court of Industrial Relations or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision. It may be that the volume of work is such that it is literally impossible for the titular heads of the Court of Industrial Relations personally to decide all controversies coming before them. In the United States the difficulty is solved with the enactment of statutory authority authorizing examiners or other subordinates to render final decision, with right to appeal to board or commission, but in our case there is no such statutory authority.

(7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. The performance of this duty is inseparable from the authority conferred upon it. (*ANG TIBAY, et al. V. COURT OF INDUSTRIAL RELATIONS, et al. (69 Phil 635 [1940])*)

The minimum standards to be satisfied in the imposition of disciplinary sanctions in academic institutions, are as follows: (1) the students must be informed in writing of the nature and cause of any accusations against them; (2) that they shall have the right to answer the charges against them with the assistance of counsel, if desired; (3) they shall be informed of the evidence against them; (4) they shall have the right to adduce evidence in their own behalf; and (5) the evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case. (*ATENEO DE MANILA UNIVERSITY V. CAPULONG (222 SCRA 644 [1993])*)

### EQUAL PROTECTION CLAUSE

It is clear that in section 11 of the Probation Act creates a situation in which discrimination and inequality are permitted or allowed. There are, to be sure, abundant authorities requiring actual denial of the equal protection of the law before court should assume the task of setting aside a law vulnerable on that score, but premises and circumstances considered, we are of the opinion that section 11 of Act No. 4221 permits of the denial of the equal protection of the law and is on that account bad. We see no difference between a law which permits of such denial. A law may appear to be fair on its face and impartial in appearance, yet, if it permits of unjust and illegal discrimination, it is within the constitutional prohibitions. In other words, statutes may be adjudged unconstitutional because of their effect in operation. If the law has the effect of denying the equal protection of the law it is unconstitutional. Under section 11 of the Probation Act, not only may said Act be in force in one or several provinces and not be in force in other provinces, but one province may appropriate for the salary of the probation officer of a given year – and have probation during that year – and thereafter decline to make further appropriation, and have no probation in subsequent years. While this situation goes rather to the abuse of discretion which delegation implies, it is here indicated to show that the Probation Act sanctions a situation which is intolerable in a government of laws, and to prove how easy it is, under the Act, to make the guaranty of the equality clause but "a rope of sand". (*PEOPLE V. VERA (65 Phil 56 [1937])*)

The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation, which is limited either in the object to which it is directed or by territory within which it is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, *under like circumstances and conditions* both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not.

Aliens are under no special constitutional protection which forbids a classification otherwise justified simply because the limitation of the class falls along the lines of nationality. That would be requiring a higher degree of protection for aliens as a class than for similar classes than for similar classes of American citizens. Broadly speaking, the difference in status between citizens and aliens constitutes a basis for reasonable classification in the exercise of police power.

Aliens do not naturally possess the sympathetic consideration and regard for the customers with whom they come in daily contact, nor the patriotic desire to help bolster the nation's



economy, except in so far as it enhances their profit, nor the loyalty and allegiance which the national owes to the land. These limitations on the qualifications of the aliens have been shown on many occasions and instances, especially in times of crisis and emergency. (*ICHONG V. HERNANDEZ, supra.*)

The equal protection clause is directed principally against undue favor and individual or class privilege. It is not intended to prohibit legislation which is limited to the object to which it is directed or by the territory in which it is to operate. It does not require absolute equality, but merely that all persons be treated alike under like conditions both as to privileges conferred and liabilities imposed.

We have held, time and again, that the equal protection clause of the Constitution does not forbid classification for so long as such classification is based on real and substantial differences having a reasonable relation to the subject of the particular legislation. If classification is germane to the purpose of the law, concerns all members of the class, and applies equally to present and future conditions, the classification does not violate the equal protection guarantee. (*JMM PROMOTION AND MANAGEMENT, INC., et al. V. COURT OF APPEALS, et al. 260 SCRA 319 [1996]*)

## SEARCHES AND SEIZURES

The addition of the word "personally" after the word "determined" and the deletion of the grant of authority by the 1973 Constitution to issue warrants to "other responsible officers as may be authorized by law", has apparently convinced petitioner Beltran that the Constitution now requires the judge to personally examine the complainant and his witnesses in his determination of probable cause for the issuance of warrants of arrest. This is not an accurate interpretation.

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

Sound policy dictates this procedure, otherwise judges would be unduly laden with the preliminary examination and investigation of criminal complaints instead of concentrating on hearing and deciding cases filed before their courts. (*SOLIVEN V. MAKASIAR (167 SCRA 393 [1988])*)

That petitioners were not "caught in the act" does not make their arrest illegal. Petitioners were found with young boys in their respective rooms, the ones with John Sherman being naked, Under those circumstances the CID agents had reasonable grounds to believe that petitioners had committed "pedophilia" defined as "psycho-sexual perversion involving children" (Kraft-Ebbing Psychopatia Sexualis, p. 555; "Paraphilia (or unusual sexual activity) in which children are the preferred sexual object" (Webster's Third New International Dictionary, 1971 ed., p. 1665) [Solicitor General's Return of the Writ, on p. 10]. While not a crime under the Revised Penal Code, it is behavior offensive to public morals and violative of the declared policy of the State to promote and protect the physical, moral, spiritual, and social well-being of our youth (Article II, Section 13, 1987 Constitution).

At any rate, the filing by petitioners of a petition to be released on bail should be considered as a waiver of any irregularity attending their arrest and estops them from questioning its validity. (*HARVEY V. SANTIAGO (162 SCRA 840 [1988])*)

The crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, and other crimes and offenses committed in the furtherance, on the occasion thereof, or incident thereto, or in connection therewith under Presidential Proclamation No. 2045, are all in the nature of continuing offenses which set them apart from the common offenses, aside from their essentially involving a massive conspiracy of nationwide magnitude.



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The arrest of persons involved in the rebellion whether as its fighting armed elements, or for committing non-violent acts but in furtherance of the rebellion, is more an act of capturing them in the course of an armed conflict, to quell the rebellion, than for the purpose of immediately prosecuting them in court for a statutory offense. The arrest, therefore, need not follow the usual procedure in the prosecution of offenses which requires the determination by a judge of the existence of probable cause before the issuance of a judicial warrant of arrest and the granting of bail if the offense is bailable. Obviously, the absence of a judicial warrant is no legal impediment to arresting or capturing persons committing overt acts of violence against government forces, or any other milder acts but equally in pursuance of the rebellious movement. The arrest or capture is thus impelled by the exigencies of the situation that involves the very survival of society and its government and duly constituted authorities. If killing and other acts of violence against the rebels find justification in the exigencies of armed hostilities which is of the essence of waging a rebellion or insurrection, most assuredly so in case of invasion, merely seizing their persons and detaining them while any of these contingencies continues cannot be less justified. (*UMIL V. RAMOS (187 SCRA 311 [1990])*)

Accused was searched and arrested while transporting prohibited drugs (hashish). A crime was actually being committed by the accused and he was caught *in flagrante delicto*. Thus, the search made upon his personal effects falls squarely under paragraph (1) of the foregoing provisions of law, which allow a warrantless search incident to a lawful arrest.

While it is true that the NARCOM officers were not armed with a search warrant when the search was made over the personal effects of accused, however, under the circumstances of the case, there was sufficient probable cause for said officers to believe that accused was then and there committing a crime.

Probable cause has been defined as such facts and circumstances which could lead a reasonable, discreet and prudent man to believe that an offense has been committed, and that the objects sought in connection with the offense are in the place sought to be searched. The required probable cause that will -justify a warrantless search and seizure is not determined by any fixed formula but is resolved according to the facts of each case.

Warrantless search of the personal effects of an accused has been declared by this Court as valid, because of existence of probable cause, where the smell of marijuana emanated from a plastic bag owned by the accused, or where the accused was acting suspiciously, and attempted to flee. (*PEOPLE V. MALMSTEDT (198 SCRA 401 [1991])*)

We do not believe that the warrantless "arrest" or detention of petitioner in the instant case falls within the terms of Section 5 of Rule 113 of the 1985 Rules on Criminal Procedure. Petitioner's "arrest" took place six (6) days after the shooting of Maguan. The "arresting" officers obviously were not present, within the meaning of Section 5(a), at the time petitioner had allegedly shot Maguan. Neither could the "arrest" effected six (6) days after the shooting be reasonably regarded as effected . when [the shooting had] in fact just been committed" within the meaning of Section 5(b). Moreover, none of the "arresting" officers had any "personal knowledge" of facts indicating that petitioner was the gunman who had shot Maguan. The information upon which the police acted had been derived from statements made by alleged eyewitnesses to the shooting-one stated that Petitioner was the gunman; another was able to take down the alleged gunman's car's plate number which turned out to be registered in petitioner's wife's name. That information did not, however, constitute "personal knowledge." (*GO V. COURT OF APPEALS (206 SCRA 138 [1992])*)

The setting up of the questioned checkpoints in Valenzuela (and probably in other areas) may be considered as a security measure to enable the NCRDC to pursue its mission of establishing effective territorial defense and maintaining peace and order for the benefit of the public. Checkpoints may also be regarded as measures to thwart plots to destabilize the government, in the interest of public security. In this connection, the Court may take judicial notice of the shift to urban centers and their suburbs of the insurgency movement, so clearly reflected in the increased killings in cities of police and military men by NPA "sparrow units," not to mention the abundance of 5 Section 8, 79 C.J.S. 786. unlicensed firearms and the alarming rise in lawlessness and violence in such urban centers, not all of which are reported in media, most likely brought about by deteriorating economic conditions-which all sum up to what one can rightly consider, at the very



least, as abnormal times. Between the inherent right of the state to protect its existence and promote public welfare and an individual's right against a warrantless search which is however reasonably conducted, the former should prevail.

True, the manning of checkpoints by the military is susceptible of abuse by the men in uniform, in the same manner that all governmental power is susceptible of abuse. But, at the cost of occasional inconvenience, discomfort and even irritation to the citizen, the checkpoints during these abnormal times, when conducted within reasonable limits, are part of the price we pay for an orderly society and a peaceful community. (*VALMONTE V DE VILLA (185 SCRA 665 [1989])*)

The mere mobility of these vehicles, however, does not give the police officers unlimited discretion to conduct indiscriminate searches without warrants if made within the interior of the territory and in the absence of probable cause. Still and all, the important thing is that there was probable cause to conduct the warrantless search, which must still be present in such a case.

Although the term eludes exact definition, probable cause signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged; or the existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law is in the place to be searched. The required probable cause that will justify a warrantless search and seizure is not determined by a fixed formula but is resolved according to the facts of each case.

One such form of search of moving vehicles is the "stop-and-search" without warrant at military or police checkpoints which has been declared to be not illegal per se, for as long as it is warranted by the exigencies of public order and conducted in a way least intrusive to motorists. A checkpoint may either be a mere routine inspection or it may involve an extensive search.

Routine inspections are not regarded as violative of an individual's right against unreasonable search. The search which is normally permissible in this instance is limited to the following instances: (1) where the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds; (2) simply looks into a vehicle; (3) flashes a light therein without opening the car's doors; (4) where the occupants are not subjected to a physical or body search; (5) where the inspection of the vehicles is limited to a visual search or visual inspection; and (6) where the routine check is conducted in a fixed area.

None of the foregoing circumstances is obtaining in the case at bar. The police officers did not merely conduct a visual search or visual inspection of herein petitioner's vehicle. They had to reach inside the vehicle, lift the *kakawati* leaves and look inside the sacks before they were able to see the cable wires. It cannot be considered a simple routine check.

The fact that the vehicle looked suspicious simply because it is not common for such to be covered with *kakawati* leaves does not constitute "probable cause" as would justify the conduct of a search without a warrant.

Jurisprudence is to the effect that an object is in plain view if the object itself is plainly exposed to sight. Where the object seized was inside a closed package, the object itself is not in plain view and therefore cannot be seized without a warrant. However, if the package proclaims its contents, whether by its distinctive configuration, its transparency, or if its contents are obvious to an observer, then the contents are in plain view and may be seized. In other words, if the package is such that an experienced observer could infer from its appearance that it contains the prohibited article, then the article is deemed in plain view. It must be immediately apparent to the police that the items that they observe may be evidence of a crime, contraband or otherwise subject to seizure.

It is clear from the records of this case that the cable wires were not exposed to sight because they were placed in sacks and covered with leaves. The articles were neither transparent nor immediately apparent to the police authorities. They had no clue as to what was hidden underneath the leaves and branches. As a matter of fact, they had to ask petitioner what was loaded in his vehicle. In such a case, it has been held that the object is not in plain view which could have justified mere seizure of the articles without further search.

Doubtless, the constitutional immunity against unreasonable searches and seizures is a personal right which may be waived. The consent must be voluntary in order to validate an otherwise illegal detention and search, i.e., the consent is unequivocal, specific, and intelligently given, uncontaminated by any duress or coercion. Hence, consent to a search is not to be lightly inferred, but must be shown by clear and convincing evidence. The question whether a consent to a search was in fact voluntary is a question of fact to be determined from the totality of all the



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circumstances. Relevant to this determination are the following characteristics of the person giving consent and the environment in which consent is given: (1) the age of the defendant; (2) whether he was in a public or secluded location; (3) whether he objected to the search or passively looked on; (4) the education and intelligence of the defendant; (5) the presence of coercive police procedures; (6) the defendant's belief that no incriminating evidence will be found; (7) the nature of the police questioning; (8) the environment in which the questioning took place; and (9) the possibly vulnerable subjective state of the person consenting. It is the State which has the burden of proving, by clear and positive testimony, that the necessary consent was obtained and that it was freely and voluntarily given. (*RUDY CABALLES V. COURT OF APPEALS and PEOPLE OF THE PHILIPPINES* (G.R. No. 136292 January 15, 2002))

### PRIVACY OF COMMUNICATION AND CORRESPONDENCE

Petitioner's contention that the phrase "private communication" in Section I of R. A. 4200 does not include private conversations" narrows the ordinary meaning of the word "communication" to a point of absurdity. The word communicate comes from the latin word *communicare*, meaning "to share or to impart." In its ordinary signification, communication connotes the act of sharing or imparting, as in a conversation, or signifies the "process by which meanings or thoughts are shared between individuals through a common system of symbols (as language signs or gestures)." These definitions are broad enough to include verbal or non-verbal, written or expressive communications of "meanings or thoughts" which are likely to include the emotionally-charged exchange, on February 22, 1988, between petitioner and private respondent, in the privacy of the latter's office. Any doubts about the legislative body's meaning of the phrase "private communication" are, furthermore, put to rest by the fact that the terms "conversation" and "communication" were interchangeably used by Senator Tañada in his Explanatory Note to the bill.

At has been said that innocent people have nothing to fear from their conversations being overheard. But this statement ignores the usual nature of conversations as well as the undeniable fact that most, if not all. Civilized people have some aspects of their lives they do not wish to expose. Free conversations are often characterized by exaggerations, obscenity, agreeable falsehoods, and the expression of anti-social desires of views not intended to be taken seriously. The right to the privacy of Communication, among others, has expressly been assured by our Constitution, Needless to state here, the framers of our Constitution must have recognized the nature of conversations between individuals and the significance of man's spiritual nature. of his feelings and of his intellect. They must have known that part of the pleasures and satisfactions of life are to be found in the un-audited and free exchange of communication between individuals----- free from every justifiable intrusion by whatever means." (*RAMIREZ V. COURT OF APPEALS* (248 SCRA 590 [1995]))

The right to privacy is a fundamental right guaranteed by the Constitution hence, it is the burden of government to show that A.O. No. 308 is justified by some compelling state interest and that it is narrowly drawn. A.O. No. 308 is predicated on two considerations: (1) the need to provide our citizens and foreigners with the facility to conveniently transact business with basic service and social security providers and other government instrumentalities and (2) the need to reduce, if not totally eradicate, fraudulent transactions and misrepresentations by persons seeking basic services. It is debatable whether these interests are compelling enough to warrant the issuance of A.O. No. 308. But what is not arguable is the broadness, the vagueness; the overbreadth of A.O. No. 308 which if implemented will put our people's right to privacy in clear and present danger.

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



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

The right to privacy is one of the most threatened rights of man living in a mass society. The threats emanate from various sources - governments, journalists, employers, social scientists, etc. In the case at bar, the threat comes from the executive branch of government which by issuing A.O. No. 308 pressures the people to surrender their privacy by giving information about themselves on the pretext that it will facilitate delivery of basic services. Given the record-keeping power of the computer, only the indifferent will fail to perceive the danger that A.O. No. 308 gives the government the power to compile a devastating dossier against unsuspecting citizens. It is timely to take note of the well-worded warning of Calvin, Jr., "the disturbing result could be that everyone will live burdened by an unerasable record of his past and his limitations. In a way, the threat is that because of its record-keeping, the society will have lost its benign capacity to forget." (*OPLE V. TORRES (293 SCRA 141 [1998])*)

### **FREEDOM OF EXPRESSION**

Freedom of speech and of expression, like all constitutional freedoms, is not absolute and that freedom of expression needs on occasion to be adjusted and to and accommodated with the requirements of equally important public interests. One of these fundamental public interests is the maintenance of the integrity and orderly functioning of the administration of justice. There is no antimony between free expression and the integrity of the system of administering justice. For the protection and maintenance of freedom of expression itself can be secured only within the context of a functioning and orderly system of dispensing justice, within the context, in other words, of viable independent institutions for delivery of justice which are accepted by the general community. As Mr. Justice Frankfurter put it:

"A free press is not to be preferred to an independent judiciary, nor an independent judiciary to a free press. Neither has primacy over the other; both are indispensable to a free society. The freedom of the press in itself presupposes an independent judiciary through which that freedom may, if necessary, be vindicated. And one of the potent means for assuring judges their independence is a free press."

Mr. Justice Malcolm of this Court expressed the same thought in the following terms:

"The Organic Act wisely guarantees freedom of speech and press. This constitutional right must be protected in its fullest extent. The Court has heretofore given evidence of its tolerant regard for charges under the Libel Law which come dangerously close to its violation. We shall continue in this chosen path. The liberty of the citizens must be preserved in all of its completeness. But license or abuse of liberty of the press and of the citizens should not be confused with liberty in its true sense. As important as is the maintenance of an unmuzzled press and the free exercise of the rights of the citizens is the maintenance of the independence of the Judiciary. Respect for the Judiciary cannot be had if persons are privileged to scorn a resolution of the court adopted for good purposes, and if such persons are to be permitted by subterranean means to diffuse inaccurate accounts of confidential proceedings to the embarrassment of the parties and the court." (*IN RE: EMIL P. JURADO (243 SCRA 299 [1995])*)

A "public figure" is a person who, by his accomplishments, fame, mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doings, his affairs and his character, has become a 'public personage.' He is, in other words, a celebrity. Obviously, to be included in this category are those who have achieved some degree of reputation by appearing before the public, as in the case of an actor, a professional baseball player, a pugilist, or any other entertainer. The list is, however, broader than this. It includes public officers, famous inventors and explorers, war heroes and even ordinary soldiers, infant prodigy, and no less a personage than the Great Exalted Ruler of the lodge. It includes, in short, anyone who has arrived at a position where the public attention is focused upon him as a person. (*AYERS PRODUCTIONS PTY., LTD. V. CAPULONG (160 SCRA 861 [1988])*)



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

Free speech, like free press, may be identified with the liberty to discuss publicly and truthfully any matter of public concern without censorship or punishment. There is to be then no previous restraint on the communication of views or subsequent liability whether in libel suits, prosecution for sedition, or action for damages, or contempt proceedings unless there be a "clear and present danger of a substantive evil that [the State] has a right to prevent." Freedom of assembly connotes the right of the people to meet peaceably for consultation and discussion of matters of public concern. It is entitled to be accorded the utmost deference and respect. It is not to be limited, much less denied, except on a showing, as is the case with freedom of expression, of a clear and present danger of a substantive evil that the state has a right to prevent. Even prior to the 1935 Constitution, Justice Malcolm had occasion to stress that it is a necessary consequence of our republican institutions and complements the right of free speech. To paraphrase the opinion of Justice Rutledge, speaking for the majority of the American Supreme Court in *Thomas v. Collins*, it was not by accident or coincidence that the rights to freedom of speech and of the press were coupled in a single guarantee with the rights of the people peaceably to assemble and to petition the government for redress of grievances. All these rights, while not identical, are inseparable.

The sole justification for a limitation on the exercise of this right, so fundamental to the maintenance of democratic institutions, is the danger, of a character both grave and imminent of a serious evil to public safety, public morals, public health, or any other legitimate public interest.

Nowhere is the rationale that underlies the freedom of expression and peaceable assembly better expressed than in this excerpt from an opinion of Justice Frankfurter: "It must never be forgotten, however, that the Bill of Rights was the child of the Enlightenment. Back of the guaranty of free speech lay faith in the power of an appeal to reason by all the peaceful means for gaining access to the mind. It was in order to avert force and explosions due to restrictions upon rational modes of communication that the guaranty of free speech was given a generous scope. But utterance in a context of violence can lose its significance as an appeal to reason and become part of an instrument of force. Such utterance was not meant to be sheltered by the Constitution."

What was rightfully stressed is the abandonment of reason, the utterance, whether verbal or printed being in a context of violence. It must always be remembered that this right likewise provides for a safety valve, allowing parties the opportunity to give vent to their views, even if contrary to the prevailing climate of opinion. For if the peaceful means of communication cannot be availed of, resort to non-peaceful means may be the only alternative. Nor is this the sole reason for the expression of dissent. It means more than just the right to be heard of the person who feels aggrieved or who is dissatisfied with things as they are. Its value may lie in the fact that there may be something worth hearing from the dissenter. That is to ensure a true ferment of ideas. There are, of course, well-defined limits. What is guaranteed is peaceable assembly. One may not advocate disorder in the name of protest, much less preach rebellion under the cloak of dissent. The Constitution frowns on disorder or tumult attending a rally or assembly. Resort to force is ruled out and outbreaks of violence to be avoided. The utmost calm though, is not required. As pointed out in an early Philippine case, penned in 1907 to be precise, *United States v. Apurado*: "It is rather to be expected that more or less disorder will mark the public assembly of the people to protest against grievances whether real or imaginary, because on such occasions feeling is always wrought to a high pitch of excitement, and the greater the grievance and the more intense the feeling, the less perfect, as a rule, will be the disciplinary control of the leaders over their irresponsible followers." It bears repeating that for the constitutional right to be invoked, riotous conduct, injury to property, and acts of vandalism must be avoided. To give free rein to one's destructive urges is to call for condemnation. It is to make a mockery of the high estate occupied by intellectual liberty in our scheme of values. (*REYES V. BAGATSING (125 SCRA 553 [1983])*)





## ASSEMBLY AND PETITION

In the case of *Willis Cox vs. State of New Hampshire*, 312 U.S., 569, the statute of New Hampshire P.L. Chap. 145, section 2, providing that "no parade or procession upon any ground abutting thereon, shall be permitted unless a special license therefore shall first be obtained from the select men of the town or from licensing committee," was construed by the Supreme Court of New Hampshire as not conferring upon the licensing board unfettered discretion to refuse to grant the license, and held valid. And the Supreme Court of the United States in its decision (1941) penned by Chief Justice Hughes affirming the judgment of the State Supreme Court, held that "a statute requiring persons using the public streets for a parade or procession to procure a special license therefore from the local authorities is not an unconstitutional abridgement of the rights of assembly or a freedom of speech and press, where, as the statute is construed by the state courts, the licensing authorities are strictly limited, in the issuance of licenses, to a consideration, the time, place, and manner of the parade and procession, with a view to conserving the public convenience and of affording an opportunity to provide proper policing and are not invested with arbitrary discretion to issue or refuse license, ... ."

We can not construe the ordinance under consideration as conferring upon the Mayor power to grant or refuse to grant the permit, which would be tantamount to authorizing him to prohibit the use of the streets and other public places for holding of meetings, parades or processions, because such a construction would make the ordinance invalid and void or violative of the constitutional limitations. As the Municipal Board is empowered only to regulate the use of streets, parks, and the other public places, and the word "regulate," as used in section 2444 of the Revised Administrative Code, means and includes the power to control, to govern, and to restrain, but can not be construed a synonymous with construed "suppressed" or "prohibit" (*Kwong Sing vs. City of Manila*, 41 Phil., 103), the Municipal Board can not grant the Mayor a power that it does not have. Besides, the powers and duties of the Mayor as the Chief Executive of the City are executive and one of them is "to comply with and enforce and give the necessary orders for the faithful performance and execution of laws and ordinances" (section 2434 [b] of the Revised Administrative Code), the legislative police power of the Municipal Board to enact ordinances regulating reasonably the exercise of the fundamental personal rights of the citizens in the streets and other public places, can not be delegated to the Mayor or any other officer by conferring upon him unregulated discretion or without laying down rules to guide and control his action by which its impartial execution can be secured or partiality and oppression prevented. (***PRIMICIAS V. FUGOSO* (80 Phil 71 [1948])**)

It is settled law that as to public places, especially so as to parks and streets, there is freedom of access. Nor is their use dependent on who is the applicant for the permit, whether an individual or a group. If it were, then the freedom of access becomes discriminatory access, giving rise to an equal protection question. The principle under American doctrines was given utterance by Chief Justice Hughes in these words: "The question, if the rights of free speech and peaceable assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its put pose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects." There could be danger to public peace and safety if such a gathering were marked by turbulence. That would deprive it of its peaceful character. Even then, only the guilty parties should be held accountable. It is true that the licensing official, here respondent Mayor, is not devoid of discretion in determining whether or not a permit would be granted. It is not, however, unfettered discretion. While prudence requires that there be a realistic appraisal not of what may possibly occur but of what may probably occur, given all the relevant circumstances, still the assumption especially so where the assembly is scheduled for a specific public place is that the permit must be for the assembly being held there. The exercise of such a right, in the language of Justice Roberts, speaking for the American Supreme Court, is not to be "abridged on the plea that it may be exercised in some other place."

The applicants for a permit to hold an assembly should inform the licensing authority of the date, the public place where and the time when it will take place. If it were a private place, only the consent of the owner or the one entitled to its legal possession is required. Such application should be filed well ahead in time to enable the public official concerned to appraise whether there may be valid objections to the grant of the permit or to its grant but at another public place. It is an indispensable condition to such refusal or modification that the clear and present danger test be the standard for the decision reached. If he is of the view that there is such an imminent



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and grave danger of a substantive evil, the applicants must be heard on the matter. Thereafter, his decision, whether favorable or adverse, must be transmitted to them at the earliest opportunity. Thus if so minded, they can have recourse to the proper judicial authority. Free speech and peaceable assembly, along with the other intellectual freedoms, are highly ranked in our scheme of constitutional values. It cannot be too strongly stressed that on the judiciary, - even more so than on the other departments rests the grave and delicate responsibility of assuring respect for and deference to such preferred rights. No verbal formula, no sanctifying phrase can, of course, dispense with what has been so felicitously termed by Justice Holmes "as the sovereign prerogative of judgment." Nonetheless, the presumption must be to incline the weight of the scales of justice on the side of such rights, enjoying as they do precedence and primacy. (*REYES V. BAGATSING, supra.*)

### FREEDOM OF RELIGION

Respondent should not be found guilty of gross and immoral conduct without considering her right to religious freedom. In a catena of cases, the Court has ruled that government employees engaged in illicit relations are guilty of disgraceful and immoral conduct" for which he/she may be held administratively liable. However, there is a distinguishing factor that sets the case at bar apart from precedents, i.e., as a defense, respondent involves religious freedom since her religion, the Jehovah's Witnesses, has, after thorough investigation, allowed her conjugal arrangement with Quilapio based on the church's religious beliefs and practices. This distinguishing factor compels the Court to apply the religious clauses to the case at bar. The public morality expressed in the law is necessarily secular for in our constitutional order, the religion clauses prohibit the state from establishing a religion, including the morality it sanctions. The morality referred to in the law is public and necessarily secular, not religious. Expansive religious freedom therefore requires that government be neutral in matters of religion; governmental reliance upon religious justification is inconsistent with this policy of neutrality. In other words, government action, including its proscription of immorality as expressed in criminal law like concubinage, must have a secular purpose. That is, the government proscribes this conduct because it is "detrimental (or dangerous) to those conditions upon which depend the existence and progress of human society" and not because the conduct is proscribed by the beliefs of one religion or the other. Recognizing the religious nature of the Filipinos and the elevating influence of religion in society, however, the Philippine constitution's religion clauses prescribe not a strict but a *benevolent neutrality*. Benevolent neutrality recognizes that government must pursue its secular goals and interests but at the same time strives to uphold religious liberty to the greatest extent possible within flexible constitutional limits. Thus, although the morality contemplated by laws is secular, benevolent neutrality could allow for accommodation of morality based on religion, provided it does not offend compelling state interests.

Only one conduct is in question before this Court, i.e., the conjugal arrangement of a government employee whose partner is legally married to another which Philippine law and jurisprudence consider both immoral and illegal. Whether an act is immoral within the meaning of the statute is not to be determined by respondent's concept of morality. The law provides the standard. The foregoing discussion on the doctrine of religious freedom, however, shows that with benevolent neutrality as a framework, the Court cannot simply reject respondent's plea of religious freedom without even subjecting it to the "compelling state interest" test that would balance her freedom with the paramount interests of the state. *The case at bar being one of first impression*, we now subject the respondent's claim of religious freedom to the "compelling state interest" test from a benevolent neutrality stance - i.e. entertaining the possibility that respondent's claim to religious freedom would warrant carving out an exception from the Civil Service Law; necessarily, her defense of religious freedom will be unavailing should the government succeed in demonstrating a more compelling state interest. *In applying the test, the first inquiry is whether respondent's right to religious freedom has been burdened.* There is no doubt that choosing between keeping her employment and abandoning her religious belief and practice and family on the one hand, and giving up her employment and keeping her religious practice and family on the other hand, puts a burden on her free exercise of religion. *The second step is to ascertain respondent's sincerity in her religious belief.* Respondent appears to be sincere in her religious belief and practice and is not merely using the "Declaration of Pledging Faithfulness" to avoid punishment for immorality. The Declaration was issued to her by her congregation after ten years



of living together with her partner, Quilapio, and ten years before she entered the judiciary. Ministers from her congregation testified on the authenticity of the Jehovah's Witnesses' practice of securing a Declaration and their doctrinal or scriptural basis for such a practice. (*ESTRADA vs. ESCRITOR* (A.M. No. P-02-1651. August 4, 2003))

Freedom of religion has been accorded a preferred status by the framers of our fundamental laws, past and present. We have affirmed this preferred status well aware that it is "designed to protect the broadest possible liberty of conscience, to allow each man to believe as his conscience directs, to profess his beliefs, and to live as he believes he ought to live, consistent with the liberty of others and with the common good." We have also laboriously defined in our jurisprudence the intersecting umbras and penumbras of the right to religious profession and worship. To quote the summation of Mr. Justice Isagani Cruz, our well-known constitutionalist:

Religious Profession and Worship. The right to religious profession and worship has a twofold aspect, viz., freedom to believe and freedom to act on one's beliefs. The first is absolute as long as the belief is confined within the realm of thought. The second is subject to regulation where the belief is translated into external acts that affect the public welfare.

(1) Freedom to Believe. The individual is free to believe (or disbelieve) as he pleases concerning the hereafter. He may indulge his own theories about life and death, worship any god he chooses, or none at all; embrace or reject any religion: acknowledge the divinity of God or of any being that appeals to his reverence; recognize or deny the immortality of his soul - in fact, cherish any religious conviction as he and he alone sees fit. However absurd his beliefs may be to others, even if they be hostile and heretical to the majority. he has full freedom to believe as he pleases. He may not be required to prove his beliefs. He may not be punished for his inability to do so. Religion, after all, is a matter of faith. Men may believe what they cannot prove. Every one has a right to his beliefs and he may not be called to account because he cannot prove what he believes.

(2) Freedom to Act on One's Beliefs. But where the individual externalizes his beliefs in acts or omissions that affect the public, his freedom to do so becomes subject to the authority of the State. As great as this liberty may be, religious freedom, like all the other rights guaranteed in the Constitution, can be enjoyed only with a proper regard for the rights of others. It is error to think that the mere invocation of religious freedom will stalemate the State and render it impotent in protecting the general welfare. The inherent police power can be exercised to prevent religious practices inimical to society. And this is true even if such practices are pursued out of sincere religious conviction and not merely for the purpose of evading the reasonable requirements or prohibitions of the law.

The Court iterates the rule that the exercise of religious freedom can be regulated by the State when it will bring about the clear and present danger of some substantive evil which the State is duty bound to prevent, i.e., serious detriment to the more overriding interest of public health, public morals, or public welfare, A laissez faire policy on the exercise of religion can be seductive to the liberal mind but history counsels the Court against its blind adoption as religion is and continues to be a volatile area of concern in our country today.

Under our constitutional scheme, it is not the task of the State to favor any religion by protecting it against an attack by another religion. Religious dogmas and beliefs are often at war and to preserve peace among their followers, especially the fanatics, the establishment clause of freedom of religion prohibits the State from leaning towards any religion. Vis-a-vis religious differences, the State enjoys no banquet of options. Neutrality alone is its fixed and immovable stance. In fine, respondent board cannot squelch the speech of petitioner Iglesia ni Cristo simply because it attacks other religions, even if said religion happens to be the most numerous church in our country. In a State where there ought to be no difference between the appearance and the reality of freedom of religion, the remedy against bad theology is better theology. The bedrock of freedom of religion is freedom of thought and it is best served by encouraging the marketplace of dueling ideas. When the luxury of time permits, the marketplace of ideas demands that speech should be met by more speech for it is the spark of opposite speech, the heat of colliding ideas that can fan the embers of truth. (*IGLESIA NI CRISTO V. CA* (259 SCRA 529 [1996]))

The constitutional guaranty of free exercise and enjoyment of religious profession and worship carries with it the right to disseminate religious information. Any restraint of such right can be justified like other restraints on freedom of expression on the ground that there is a clear and present danger of any substantive evil which the State has the right to prevent. (*AMERICAN BIBLE SOCIETY V. CITY OF MANILA* (101 Phil 385 [1957]))



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The idea that one may be compelled to salute the flag, sing the national anthem, and recite the patriotic pledge, during a flag ceremony on pain of being dismissed from one's job or of being expelled from school, is alien to the conscience of the present generation of Filipinos who cut their teeth on the Bill of Rights which guarantees their rights to free speech\*\*and the free exercise of religious profession and worship (Sec. 5, Article III, 1987 Constitution; Article IV, Section 8, 1973 Constitution Article III, Section 1[7], 1935 Constitution). (*EBRALINAG V. DIVISION SUPERINTENDENT OF CEBU* (219 SCRA 256 [1993]))

### LIBERTY OF ABODE AND TRAVEL

Article III, Section 6 of the 1987 Constitution should be interpreted to mean that while the liberty of travel may be impaired even without Court Order, the appropriate executive officers or administrative authorities are not armed with arbitrary discretion to impose limitations. They can impose limits only on the basis of "national security, public safety, or public health" and "as may be provided by law," a limitative phrase which did not appear in the 1973 text. Apparently, the phraseology in the 1987 Constitution was a reaction to the ban on international travel imposed under the previous regime when there was a Travel Processing Center, which issued certificates of eligibility to travel upon application of an interested party.

Article III, Section 6 of the 1987 Constitution should by no means be construed as delimiting the inherent power of the Courts to use all means necessary to carry their orders into effect in criminal cases pending before them. When by law jurisdiction is conferred on a Court or judicial officer, all auxiliary writs, process and other means necessary to carry it into effect may be employed by such Court or officer (Rule 135, Section 6, Rules of Court). (*SILVERIO V. COURT OF APPEALS* (G.R No. 94284, April 8, 1991))

### RIGHT TO INFORMATION

The incorporation in the Constitution of a guarantee of access to information of public concern is a recognition of the essentiality of the free flow of ideas and information in a democracy (Baldoza v. Dimaano, Adm. Matter No. 1120-MJ, May 5, 1976, 17 SCRA 14). In the same way that free discussion enables members of society to cope with the exigencies of their time (Thornhill vs. Alabama, 310 U.S. 88, 102 119391), access to information of general interest aids the people in democratic decision-making (87 Harvard Law Review 1505 [1974]) by giving them a better perspective of the vital issues confronting the nation.

But the constitutional guarantee to information on matters of public concern is not absolute. It does not open every door to any and all information. Under the Constitution, access to official records, papers, etc., are "subject to limitations as may be provided by law" (Art. 111, Sec. 7, second sentence). The law may therefore exempt certain types of information from public scrutiny, such as those affecting national security (Journal No. 90, September 23, 1986, p. 10; and Journal No. 91, September 24, 1986, p. 32, 1986 Constitutional Commission). It follows that, in every case, the availability of access to a particular public record must be circumscribed by the nature of the information sought, i.e., (a) being of public concern or one that involves public interest, and, (b) not being exempted by law from the operation of the constitutional guarantee. The threshold question is, therefore, whether or not the information sought is of public interest or public concern.

In determining whether or not a particular information is of public concern there is no rigid test which can be applied. "Public concern" like "public interest" is a term that eludes exact definition. Both terms embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen. In the final analysis, it is for the courts to determine in a case by case basis whether the matter at issue is of interest or importance, as it relates to or affects the public. (*LEGASPI V. CIVIL SERVICE COMMISSION* (150 SCRA 530 [1987]))

With the possibility of losing not only the precious liberty but also the very life of an accused, it behooves all to make absolutely certain that an accused receives a verdict solely on the



basis of a just and dispassionate judgment, a verdict that would come only after the presentation of credible evidence testified to by unbiased witnesses unswayed by any kind of pressure, whether open or subtle, in proceedings that are devoid of histrionics that might detract from its basic aim to ferret veritable facts free from improper influence, and decreed by a judge with an unprejudiced mind, unbridled by running emotions or passions.

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

Witnesses and judges may very well be men and women of fortitude, able to thrive in hardy climate, with every reason to presume firmness of mind and resolute endurance, but it must also be conceded that "television can work profound changes in the behavior of the people it focuses on. Even while it may be difficult to quantify the influence, or pressure that media can bring to bear on them directly and through the shaping of public opinion, it is a fact, nonetheless, that, indeed, it does so in so many ways and in varying degrees. The conscious or unconscious effect that such a coverage may have on the testimony of witnesses and the decision of judges cannot be evaluated but, it can likewise be said, it is not at all unlikely for a vote of guilt or innocence to yield to it. It might be farcical to build around them an impregnable armor against the influence of the most powerful media of public opinion.

To say that actual prejudice should first be present would leave to near nirvana the subtle threats to justice that a disturbance of the mind so indispensable to the calm and deliberate dispensation of justice can create. The effect of television may escape the ordinary means of proof, but it is not far-fetched for it to gradually erode our basal conception of a trial such as we know it now.

An accused has a right to a public trial but it is a right that belongs to him, more than anyone else, where his life or liberty can be held critically in balance. A public trial aims to ensure that he is fairly dealt with and would not be unjustly condemned and that his rights are not compromised in secrete conclaves of long ago. A public trial is not synonymous with publicized trial; it only implies that the court doors must be open to those who wish to come, sit in the available seats, conduct themselves with decorum and observe the trial process. In the constitutional sense, a courtroom should have enough facilities for a reasonable number of the public to observe the proceedings, not too small as to render the openness negligible and not too large as to distract the trial participants from their proper functions, who shall then be totally free to report what they have observed during the proceedings.

The courts recognize the constitutionally embodied freedom of the press and the right to public information. It also approves of media's exalted power to provide the most accurate and comprehensive means of conveying the proceedings to the public and in acquainting the public with the judicial process in action; nevertheless, within the courthouse, the overriding consideration is still the paramount right of the accused to due process which must never be allowed to suffer diminution in its constitutional proportions. Justice Clark thusly pronounced, "while a maximum freedom must be allowed the press in carrying out the important function of informing the public in a democratic society, its exercise must necessarily be subject to the maintenance of absolute fairness in the judicial process." (*RE: REQUEST RADIO-TV COVERAGE OF THE TRIAL IN THE SANDIGANBAYAN OF THE PLUNDER CASES AGAINST THE FORMER PRESIDENT JOSEPH E. ESTRADA SECRETARY OF JUSTICE HERNANDO PEREZ, et, al. vs. JOSEPH E. ESTRADA and INTEGRATED BAR OF THE PHILIPPINES* (A.M. No. 01-4-03-SC, June 29, 2001))

The constitutional right to information includes information on on-going negotiations before final judgment as stated in Article III, Sec. 7 and in Article II, Sec 28 of the Constitution. These twin provisions of the Constitution seek to promote transparency in policy making and in operations of the government, as well as provide the people sufficient information to exercise effectively other constitutional rights. This is because a consummated contract is not a requirement for the exercise of the right to information. Otherwise, the people can never exercise the right if no contract is consummated, and if one is consummated, it may be too late for the public to expose its defects. (*FRANCISCO I. CHAVEZ V. PUBLIC ESTATES AUTHORITY and AMARI COASTAL BAY DEVELOPMENT CO.* (G.R. No. 133250, July 9, 2002))

#### **RIGHT TO FORM ASSOCIATIONS**



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Considering that under the 1987 Constitution "[t]he civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters" [Art. IX(B), Sec. 2(1); see also Sec. 1 of E.O. No. 180 where the employees in the civil service are denominated as "government employees"] and that the SSS is one such government-controlled corporation with an original charter, having been created under R.A. No. 1161, its employees are part of the civil service [NASECO v. NLRC, G.R. Nos. 69870 & 70295, November 24, 1988] and are covered by the Civil Service Commission's memorandum prohibiting strikes.

The statement of the Court in *Alliance of Government Workers v. Minister of Labor and Employment* [G.R. No. 60403, August 3, 1983, 124 SCRA 1] is relevant as it furnishes the rationale for distinguishing between workers in the private sector and government employees with regard to the right to strike:

The general rule in the past and up to the present is that "the terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof are governed by law" (Section 11, the Industrial Peace Act, RA. No. 876, as amended and Article 277, the Labor Code, P.D. No. 442, as amended). Since the terms and conditions of government employment are fixed by law, government workers cannot use the same weapons employed by workers in the private sector to secure concessions from their employers. The principle behind labor unionism in private industry is that industrial peace cannot be secured through compulsion by law. Relations between private employers and their employees rest on an essentially voluntary basis. Subject to the minimum requirements of wage laws and other labor and welfare legislation, the terms and conditions of employment in the unionized private sector are settled through the process of collective bargaining. In government employment, however, it is the legislature and, where properly given delegated power, the administrative heads of government which fix the terms and conditions of employment. And this is effected through statutes or administrative circulars, rules, and regulations, not through collective bargaining agreements. (*SSS EMPLOYEES' ASSOCIATION V. CA* (175 SCRA 686 [1989]))

### NON-IMPAIRMENT CLAUSE

While non-impairment of contracts is constitutionally guaranteed, the rule is not absolute since it has to be reconciled with the legitimate exercise of police power, i.e., "the power to prescribe regulations to promote the health, morals, peace, education, good order or safety and general welfare of the people."

The need for reconciling the non-impairment clause of the Constitution and the valid exercise of police power may also be gleaned from *Helvering v. Davis* wherein Mr. Justice Cardozo, speaking for the Court, resolved the conflict "between one welfare and another, between particular and general," thus-

"Nor is the concept of the general welfare static. Needs that were narrow or parochial a century ago may be interwoven in our day with the well-being of the nation. What is critical or urgent changes with the times."

The motives behind the passage of the questioned resolution being reasonable, and it being a "legitimate response to a felt public need," not whimsical or oppressive, the non-impairment of contracts clause of the Constitution will not bar the municipality's proper exercise of the power. Now Chief Justice Fernando puts it aptly when he declared: "Police power legislation then is not likely to succumb to the challenge that thereby contractual rights are rendered nugatory."

Furthermore, We restated in *Philippine American Life Ins. Co. v. Auditor General* that laws and reservation of essential attributes of sovereign power are read into contracts agreed upon by the parties. Thus

"Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. The policy of protecting contracts against impairments presupposes the maintenance of a government by virtue of which contractual relations are worthwhile-a government which retains adequate authority to secure the peace and good order of society."

(*ORTIGAS & CO. V. FEATI BANK* (94 SCRA 533 [1979]))

### CUSTODIAL INVESTIGATION



An out-of-court identification of an accused can be made in various ways. In a show-up, the accused alone is brought face to face with the witness for identification, while in a police line-up, the suspect is identified by a witness from a group of persons gathered for that purpose. During custodial investigation, these types of identification have been recognized as "critical confrontations of the accused by the prosecution" which necessitate the presence of counsel for the accused. This is because the results of these pre-trial proceedings "might well settle the accused's fate and reduce the trial itself to a mere formality." We have thus ruled that any identification of an uncounseled accused made in a police line-up, or in a show-up for that matter, after the start of the custodial investigation is inadmissible as evidence against him.

The inadmissibility of these out-of-court identifications does not render the in-court identification of accused-appellant inadmissible for being the "fruits of the poisonous tree." (**PEOPLE OF THE PHILIPPINES vs. ANTHONY ESCORDIAL (G.R. No. 138935-35, January 16, 2002)**)  
**CRIMINAL DUE PROCESS**

This Court has acknowledged the right of a trial judge to question witnesses with a view to satisfying his mind upon any material point which presents itself during the trial of a case over which he presides." But not only should his examination be limited to asking "clarificatory" questions, the right should be sparingly and judiciously used; for the rule is that the court should stay out of it as much as possible, neither interfering nor intervening in the conduct of the trial.' Here, these limitations were not observed. Hardly in fact can one avoid the impression that the Sandiganbayan had allied itself with, or to be more precise, had taken the cudgels for the prosecution in proving the case against Tabuena and Peralta when the Justices cross-examined the witnesses, their cross-examinations supplementing those made by Prosecutor Viernes and far exceeding the latter's questions in length. The "cold neutrality of an impartial judge" requirement of due process was certainly denied Tabuena and Peralta when the court, with its overzealousness, assumed the dual role of magistrate and advocate. In this connection, the observation made in the Dissenting Opinion to the effect that the majority of this Court was "unduly disturbed" with the number of court questions alone, is quite inaccurate. A substantial portion of the TSN was incorporated in the majority opinion not to focus on "numbers" alone, but more importantly to show that the court questions were in the interest of the prosecution and which thus depart from that common standard of fairness and impartiality. In fact, it is very difficult to be, upon review of the records, confronted with "numbers" without necessarily realizing the partiality of the Court. (**LUIS A. TABUENA VS. HONORABLE SANDIGANBAYAN, and THE PEOPLE OF THE PHILIPPINES (G.R. No. 103501-03, February 17, 1997)**)

#### **RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF ACCUSATION**

The procedural due process mandate of the Constitution requires that the accused be arraigned so that he may be informed as to why he was indicted and what penal offense he has to face, to be convicted only on a showing that his guilt is shown beyond reasonable doubt with full opportunity to disprove the evidence against him. Moreover, the sentence to be imposed in such a case is to be in accordance with a valid law. This Court, in *People v. Castillo*, speaking through Justice De Joya and following the language of the American Supreme Court, identified due process with the accused having "been heard in a court of competent jurisdiction, and proceeded against under the orderly processes of law, and only punished after inquiry, and investigation, upon notice to him, with an opportunity to be heard, and a judgment awarded with the authority of a constitutional law, \* \* \*." An arraignment thus becomes indispensable as the means "for bringing the accused into court and notifying him of the cause he is required to meet \* \* \*." Its importance was stressed by Justice Moreland as early as 1916 in the leading case of *United States v. Binayoh*. He pointed out that upon the accused being arraigned, 'there is a duty laid by the Code [now the Rules of Court] upon the court to inform [him] of certain rights and to extend to him, on his demand, certain others. This duty is an affirmative one which the court, on its own motion, must perform, unless waived.' To emphasize its importance, he added: "No such duty, however, is laid on the court with regard to the rights of the accused which he may be entitled to exercise during the trial. Those are rights which he must assert himself and the benefits of which he himself must demand. In other words, in the arraignment the court must act of its own violation, \* \* \*." In the terse and apt language of the Solicitor General: "Arraignment is an indispensable requirement in any criminal prosecution" Procedural due process demands no less.

Nor is it only the due process guarantee that calls for the accused being duly arraigned. As noted, it is at that stage where in the mode and manner required by the Rules, an accused, for the



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first time, is granted the opportunity to know the precise charge that confronts him. It is imperative that he is thus made fully aware of possible loss of freedom, even of his life, depending on the nature of the crime imputed to him. At the very least then, he must be, fully informed of why the prosecuting arm of the state is mobilized against him. An arraignment serves that purpose. Thereafter, he is no longer in the dark. It is true, the complaint or information may not be worded with sufficient clarity. He would be in a much worse position though if he does not even have such an opportunity to plead to the charge. With his counsel by his side, he is thus in a position to enter his plea with full knowledge of the consequences. He is not even required to do so immediately. He may move to quash. What is thus evident is that an arraignment assures that he be fully acquainted with the nature of the crime imputed to him and the circumstances under which it is allegedly committed. It is thus a vital aspect of the constitutional rights guaranteed him. It is not useless formality, much less an idle ceremony. (*BORJA V MENDOZA (77 SCRA 422 [1977])*)

### SUSPENSION OF THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS

The members of the Court are now unanimous in the conviction that it has the authority to inquire into the existence of said factual bases in order to determine the constitutional sufficiency thereof (the suspension of the privilege of the writ).

Indeed, the grant of power to suspend the privilege is neither absolute nor unqualified. The authority conferred by the Constitution, both under the Bill of Rights and under the Executive Department, is limited and conditional. The precept in the Bill of Rights establishes a general rule, as well as an exception thereto. What is more, it postulates the former in the negative, evidently to stress its importance, by providing that "(t)he privilege of the writ of habeas corpus shall not be suspended x x x." It is only by way of exception that it permits the suspension of the privilege "in cases of invasion, insurrection, or rebellion" - or, under Art. VII of the Constitution, "imminent danger thereof" - "when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist." Far from being full and plenary, the authority to suspend the privilege of the writ is thus circumscribed, confined and restricted, not only by the prescribed setting or the conditions essential to its existence, but, also, as regards the time when and the place where it may be exercised. These factors and the aforementioned setting or conditions mark, establish and define the extent, the confines and the limits of said power, beyond which it does not exist. And, like the limitations and restrictions imposed by the Fundamental Law upon the legislative department, adherence thereto and compliance therewith may, within proper bounds, be inquired into by courts of justice. Otherwise, the explicit constitutional provisions thereon would be meaningless. Surely, the framers of our Constitution could not have intended to engage in such a wasteful exercise in futility. (*LANSANG V. GARICA (42 SCRA 448 [1971])*)

### RIGHT AGAINST SELF-INCRIMINATION

The rights intended to be protected by the constitutional provision that no man accused of crime shall be compelled to be a witness against himself is so sacred, and the pressure toward their relaxation so great when the suspicion of guilt is strong and the evidence obscure, that it is the duty of courts liberally to construe the prohibition in favor of personal rights, and to refuse to permit any steps, tending toward their invasion. Hence, there is the well-established doctrine that the constitutional inhibition is directed not merely to giving of oral testimony, but embraces as well the furnishing of evidence by other means than by word of mouth, the divulging, in short, of any fact which the accused has a right to hold secret.

We say that, for the purposes of the constitutional privilege, there is a similarity between one who is compelled to produce a document, and one who is compelled to furnish a specimen of his handwriting, for in both cases, the witness is required to furnish evidence against himself.

And we say that the present case is more serious than that of compelling the production of documents or chattels, because here the witness is compelled to write and create, by means of the act of writing, evidence which does not exist, and which may identify him as the falsifier. (*BELTRAN V. SAMSON (53 Phil 570 [1929])*)

In the language of Justice Douglas: "We conclude... that the Self-Incrimination Clause of the Fifth Amendment has been absorbed in the Fourteenth, that it extends its protection to lawyers





as well as to other individuals, and that it should not be watered down by imposing the dishonor of disbarment and the deprivation of a livelihood as a price for asserting it." We reiterate that such a principle is equally applicable to a proceeding that could possibly result in the loss of the privilege to practice the medical profession.

The appeal apparently proceeds on the mistaken assumption by respondent Board and intervenors-appellants that the constitutional guarantee against self-incrimination should be limited to allowing a witness to object to questions the answers to which could lead to a penal liability being subsequently incurred. It is true that one aspect of such a right, to follow the language of another American decision, is the protection against "any disclosures which the witness may reasonably apprehend could be used in a criminal prosecution or which could lead to other evidence that might be so used." If that were all there is then it becomes diluted.

The constitutional guarantee protects as well the right to silence. As far back as 1905, we had occasion to declare: "The accused has a perfect right to remain silent and his silence cannot be used as a presumption of his guilt." Only last year, in *Chavez v. Court of Appeals*, speaking through Justice Sanchez, we reaffirmed the doctrine anew that is the right of a defendant "to forego testimony, to remain silent, unless he chooses to take the witness stand-with undiluted, unfettered exercise of his own free genuine will."

Why it should be thus is not difficult to discern. The constitutional guarantee, along with other rights granted an accused, stands for a belief that while crime should not go unpunished and that the truth must be revealed, such desirable objectives should not be accomplished according to means or methods offensive to the high sense of respect accorded the human personality. More and more in line with the democratic creed, the deference accorded an individual even those suspected of the most heinous crimes is given due weight. To quote from Chief Justice Warren, "the constitutional foundation underlying the privilege is the respect a government . . . must accord to the dignity and integrity of its citizens." (*PASCUAL V MEDICAL BOARD OF EXAMINERS (28 SCRA 345 [1969])*)

DNA is an organic substance found in a person's cells which contains his or her genetic code. Except for identical twins, each person's DNA profile is distinct and unique.

When a crime is committed, material is collected from the scene of the crime or from the victim's body for the suspect's DNA. This is the evidence sample. The evidence sample is then matched with the reference sample taken from the suspect and the victim.

The purpose of DNA testing is to ascertain whether an association exists between the evidence sample and the reference sample. The samples collected are subjected to various chemical processes to establish their profile. The test may yield three possible results:

- 1) The samples are different and therefore must have originated from different sources (exclusion). This conclusion is absolute and requires no further analysis or discussion;
- 2) It is not possible to be sure, based on the results of the test, whether the samples have similar DNA types (inconclusive). This might occur for a variety of reasons including degradation, contamination, or failure of some aspect of the protocol. Various parts of the analysis might then be repeated with the same or a different sample, to obtain a more conclusive result; or
- 3) The samples are similar, and could have originated from the same source (inclusion). In such a case, the samples are found to be similar, the analyst proceeds to determine the statistical significance of the similarity.

In assessing the probative value of DNA evidence, therefore, courts should consider, among others things, the following data: how the samples were collected, how they were handled, the possibility of contamination of the samples, the procedure followed in analyzing the samples, whether the proper standards and procedures were followed in conducting the tests, and the qualification of the analyst who conducted the tests. (*PEOPLE OF THE PHILIPPINES vs. GERRICO VALLEJO (G.R. No. 144656, May 9, 2002)*)

## **INVOLUNTARY SERVITUDE**

This ancient obligation of the individual to assist in the protection of the peace and good order of his community is still recognized in all well-organized governments in the "*posse comitatus*" (power of the county, *poder del condado*). (Book 1 Cooley's Blackstone's Commentaries, 343; Book 4, 122.) Under this power, those persons in the state, county, or town who were charged with the maintenance of peace and good order were bound, ex officio, to pursue and to take all persons who had violated the law. For that purpose they might command all the male inhabitants of a certain age to assist them. This power is called "*posse comitatus*" (power of the county). This



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was a right well recognized at common law. Act No. 1309 is a statutory recognition of such common-law right. Said Act attempts simply to designate the cases and the method when and by which the people of the town (pueblo) may be called upon to render assistance for the protection of the public and the preservation of peace and good order. It is an exercise of the police power of the state. (*THE UNITED STATES V. SILVESTRE POMPEYA* (G.R. No. 10255, August 6, 1915))

### PROHIBITED PUNISHMENT

What is cruel and unusual "is not fastened to the obsolete but may acquire meaning as public opinion becomes enlightened by a humane justice" and "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." Indeed, "[o]ther (U.S.) courts have focused on 'standards of decency' finding that the widespread use of lethal injections indicates that it comports with contemporary norms." The primary indicator of society's standard of decency with regard to capital punishment is the response of the country's legislatures to the sanction. Hence, for as long as the death penalty remains in our statute books and meets the most stringent requirements provided by the Constitution, we must confine our inquiry to the legality of R.A. No. 8177, whose constitutionality we duly sustain in the face of petitioner's challenge. We find that the legislature's substitution of the mode of carrying out the death penalty from electrocution to lethal injection infringes no constitutional rights of petitioner herein. (*ECHEGARAY V. SECRETARY OF JUSTICE* (297 SCRA 754 [1998]))

### NON-IMPRISONMENT FOR DEBT

A trust receipt arrangement does not involve a simple loan transaction between a creditor and a debtor- importer. Apart from a loan feature, the trust receipt arrangement has a security feature that is covered by the trust receipt itself. (*Vintola v. Insular Bank of Asia and America*, 151 SCRA 578 [1987]) That second feature is what provides the much needed financial assistance to our traders in the importation or purchase of goods or merchandise through the use of those goods or merchandise as collateral for the advancements made by a bank. (*Same v. People, supra*). The title of the bank to the security is the one sought to be protected and not the loan which is a separate and distinct agreement.

The Trust Receipts Law punishes the dishonesty and abuse of confidence in the handling of money or goods to the prejudice of another regardless of whether the latter is the owner or not. The law does not seek to enforce payment of the loan. Thus, there can be no violation of a right against imprisonment for non-payment of a debt.

Trust receipts are indispensable contracts in international and domestic business transactions. The prevalent use of trust receipts, the danger of their misuse and/or misappropriation of the goods or proceeds realized from the sale of goods, documents or instruments held in trust for entruster-banks, and the need for regulation of trust receipt transactions to safeguard the rights and enforce the obligations of the parties involved are the main thrusts of P.D. 115. As correctly observed by the Solicitor General, P.D. 115, like Batas Pambansa Blg. 22, punishes the act "not as an offense against property, but as an offense against public order. . . . The misuse of trust receipts therefore should be deterred to prevent any possible havoc in trade circles and the banking community (citing *Lozano v. Martinez*, 146 SCRA 323 [1986]; *Rollo*, p. 57) It is in the context of upholding public interest that the law now specifically designates a breach of a trust receipt agreement to be an act that "shall" make one liable for estafa.

The offense is punished as a *malum prohibitum* regardless of the existence. of intent or malice. A mere failure to deliver the proceeds of the sale or the goods if not sold, constitutes a criminal offense that causes prejudice not only to another, but more to the public interest. (*PEOPLE V. NITAFAN* (G.R. No. 81559, April 6, 1992))

### DOUBLE JEOPARDY

In *People of the Philippines versus Hon. Maximiano C. Asuncion, et al.*, G.R. Nos. 83837-42, April 22, 1992, Justice Nocon said that:

" . . . according to a long line of cases, in order that a defendant may successfully allege former jeopardy, it is necessary that he had previously been (1) convicted or (2) acquitted, or (3) in jeopardy



of being convicted of the offense charged, that is, that the former case against him for the same offense has been dismissed or otherwise terminated without his express consent, by a court of competent jurisdiction, upon a valid complaint or information, and after the defendant had pleaded to the charge."

Withal, the mere filing of two informations charging the same offense is not an appropriate basis for the invocation of double jeopardy since the first jeopardy has not yet set in by a previous conviction, acquittal or termination of the case without the consent the accused (*People vs. Miraflores*, 115 SCRA 586 [1982]; *Nierras vs. Dacuycuy*, 181 SCRA 8 [1990]).

Moreover, it appears that private respondent herein had not yet been arraigned in the previous case for estafa. Thus, there is that other missing link, so to speak, in the case at bar which was precisely the same reason utilized by Justice Davide, Jr. in *Lamera vs. Court of Appeals* (198 SCRA 186 [1991]) when he brushed aside the claim of double jeopardy of the accused therein who was arraigned in the previous case only after the judgment of conviction was promulgated in the other case. The ponente cited a plethora of cases in support of the proposition that arraignment of the accused in the previous case is a condition sine qua non for double jeopardy to attach (at page 13; *People vs. Ylagan*, 58 Phil. 851; *People vs. Consulta*, 70 SCRA 277; *Andres v. Cacdac*, 113 SCRA 216; *People vs. Bocar, et al.*, 132 SCRA 166; *Gaspar vs. Sandiganbayan*, 144 SCRA 415) and echoed the requisites of legal jeopardy as announced in *People vs. Bocar* thus:

"Legal jeopardy attaches only (a) upon a valid indictment, (b) before a competent court, (c) after arraignment, (d) a valid plea having been entered, and (e) the case was dismissed or otherwise terminated without the express consent of the accused." (***PEOPLE V. JUDGE PINEDA (G.R. No. 44205, February 11, 1993)***)

Our Bill of Rights deals with two (2) kinds of double jeopardy. The first sentence of clause 20, section 1, Article III of the Constitution, ordains that "no person shall be twice put in jeopardy of punishment for the same offense" The second sentence of said clause provides that "if an act is punishable by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." Thus, the first sentence prohibits double jeopardy of punishment for the same offense, whereas the second contemplates double jeopardy of punishment for the same act. Under the first sentence, one may be twice put in jeopardy of punishment of the same act, provided that he is charged with different offenses, or the offense charged in one case is not included in, or does not include, the crime charged in the other case. The second sentence applies, even if the offenses charged are not the same, owing to the fact that one constitutes a violation of an ordinance and the other a violation of a statute. If the two charges are based on one and the same act, conviction or acquittal under either the law or the ordinance shall bar a prosecution under the other. Incidentally, such conviction or acquittal is not indispensable to sustain the plea of double jeopardy of punishment for the same offense. So long as jeopardy has attached under one of the information charging said offense, the defense may be availed of in the other case involving the same offense, even if there has been neither conviction nor acquittal in either case.

Where the offenses charged are penalized either by different sections of the same statute or by different statutes, the important inquiry relates to the identity of offenses charged- the constitutional protection against double jeopardy is available only where an identity is shown to exist between the earlier and the subsequent offenses charged. In contrast, where one offense is charged under a municipal ordinance while the other is penalized by a statute, the critical inquiry is to the identity of the acts which the accused is said to have committed. and which are alleged to have given rise to the two offenses: the constitutional protection against double jeopardy is available so long as the acts which constitute or have given rise to the first offense under a municipal ordinance are the same acts which constitute or have given rise to the offense charged under a statute.

The question may be raised why one rule should exist where two offenses under two different sections of the same statute or under different statutes are charged, and another rule for the situation where one offense is charged under a municipal ordinance and another offense under a national statute. If the second sentence of the double jeopardy provision had not been written into the Constitution, conviction or acquittal under a municipal ordinance would never constitute a bar to another prosecution for the same act under a national statute. An offense penalized by municipal ordinance is, by definition, different from an offense under a statute. The two offenses would never constitute the same offense having been promulgated by different rule-making authorities-though one be subordinate to the other-and the plea of double jeopardy would never lie. The discussions during the 1934-1935 Constitutional Convention show that the second sentence



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was inserted precisely for the purpose of extending the constitutional protection against double jeopardy to a situation which would not otherwise be covered by the first sentence.

The question of identity or lack of identity of offenses is addressed by examining the essential elements of each of the two offenses charged, as such elements are set out in the respective legislative definitions of the offenses involved. The question of identity of the acts which are claimed to have generated liability both under a municipal ordinance and a national statute must be addressed, in the first instance, by examining the location of such acts in time and space. When the acts of the accused as set out in the two informations are so related to each other in time and space as to be reasonably regarded as having taken place on the same occasion and where those acts have been moved by one and the same, or a continuing, intent or voluntary design or negligence, such acts may be appropriately characterized as an integral whole capable of giving rise to penal liability simultaneously under different legal enactments (a municipal ordinance and a national statute).

It is perhaps important to note that the rule limiting the constitutional protection against double jeopardy to a subsequent prosecution for the same offense is not to be understood with absolute literalness. The identity of offenses that must be shown need not be absolute identity: the first and second offenses may be regarded as the "same offense" where the second offense necessarily includes the first offense or is necessarily included in such first offense or where the second offense is an attempt to commit the first or a frustration thereof.<sup>14</sup> Thus, for the constitutional plea of double jeopardy to be available, not all the technical elements constituting the first offense need be present in the technical definition of the second offense. The law here seeks to prevent harassment of an accused person by multiple prosecutions for offenses which though different from one another are nonetheless each constituted by a common set or overlapping sets of technical elements. As Associate Justice and later Chief Justice Ricardo Paras cautioned in *People vs. del Carmen, et al.*, 88 Phil. 51 (1951):

"While the rule against double jeopardy prohibits prosecution for the same offense, it seems elementary that an accused should be shielded against being prosecuted for several offenses made out from a single act. Otherwise, an unlawful act or omission may give rise to several prosecutions depending upon the ability of the prosecuting officer to imagine or concoct as many offenses as can be justified by said act or omission, by simply adding or subtracting essential elements. (*PEOPLE V. JUDGE RELOVA (148 SCRA 292 [1987])*)

Section 8, Rule 117 of the Revised Rules of Criminal Procedure reads:

Sec. 8. Provisional dismissal. - A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party.

The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both, shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived.

Having invoked said rule before the petitioners-panel of prosecutors and before the Court of Appeals, the respondent is burdened to establish the essential requisites of the first paragraph thereof, namely:

1. the prosecution with the express conformity of the accused or the accused moves for a provisional (*sin perjuicio*) dismissal of the case; or both the prosecution and the accused move for a provisional dismissal of the case;
2. the offended party is notified of the motion for a provisional dismissal of the case;
3. the court issues an order granting the motion and dismissing the case provisionally;
4. the public prosecutor is served with a copy of the order of provisional dismissal of the case.

The foregoing requirements are conditions *sine qua non* to the application of the time-bar in the second paragraph of the new rule. The *raison d'etre* for the requirement of the express consent of the accused to a provisional dismissal of a criminal case is to bar him from subsequently asserting that the revival of the criminal case will place him in double jeopardy for the same offense or for an offense necessarily included therein.

Although the second paragraph of the new rule states that the order of dismissal shall become permanent one year after the issuance thereof without the case having been revived, the provision should be construed to mean that the order of dismissal shall become permanent one year after service of the order of dismissal on the public prosecutor who has control of the prosecution



without the criminal case having been revived. The public prosecutor cannot be expected to comply with the timeline unless he is served with a copy of the order of dismissal.

Express consent to a provisional dismissal is given either *viva voce* or in writing. It is a positive, direct, unequivocal consent requiring no inference or implication to supply its meaning. Where the accused writes on the motion of a prosecutor for a provisional dismissal of the case “*No objection*” or “*With my conformity*,” the writing amounts to express consent of the accused to a provisional dismissal of the case. The mere inaction or silence of the accused to a motion for a provisional dismissal of the case or his failure to object to a provisional dismissal does not amount to express consent.

A motion of the accused for a provisional dismissal of a case is an express consent to such provisional dismissal. If a criminal case is provisionally dismissed with the express consent of the accused, the case may be revived only within the periods provided in the new rule. On the other hand, if a criminal case is provisionally dismissed without the express consent of the accused or over his objection, the new rule would not apply. The case may be revived or re-filed even beyond the prescribed periods subject to the right of the accused to oppose the same on the ground of double jeopardy or that such revival or re-filing is barred by the statute of limitations. (**PEOPLE OF THE PHILIPPINES, et al. vs. PANFILO M. LACSON (G.R. No. 149453, April 1, 2003)**)

#### **EX POST FACTO LAW AND BILLOF ATTAINDER**

In *Calder v. Bull*, an *ex post facto* law is one - (a) which makes an act done criminal before the passing of the law and which was innocent when committed, and punishes such action; or (b) which aggravates a crime or makes it greater than when it was committed; or (c) which changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed; or (d) which alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense in order to convict the defendant; or (e) Every law which, in relation to the offense or its consequences, alters the situation of a person to his disadvantage. This Court added two more to the list, namely: (f) that which assumes to regulate civil rights and remedies only but in effect imposes a penalty or deprivation of a right which when done was lawful; or (g) deprives a person accused of crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal or a proclamation of amnesty.

*Ex post facto* law, generally, prohibits retrospectively of penal laws.<sup>46</sup> R.A. 8249 is not a penal law. It is a substantive law on jurisdiction which is not penal in character. Penal laws are those acts of the Legislature which prohibit certain acts and establish penalties for their violations; or those that define crimes, treat of their nature, and provide for their punishment. R.A. 7975, which amended P.D. 1606 as regards the Sandiganbayan's jurisdiction, its mode of appeal and other procedural matters, has been declared by the Court as not a penal law, but clearly a procedural statute, i.e. one which prescribes rules of procedure by which courts applying laws of all kinds can properly administer justice. Not being a penal law, the retroactive application of R.A. 8249 cannot be challenged as unconstitutional.

Petitioner's and intervenors' contention that their right to a two-tiered appeal which they acquired under R.A. 7975 has been diluted by the enactment of R.A. 8249, is incorrect. The same contention has already been rejected by the court several times considering that the right to appeal is not a natural right but statutory in nature that can be regulated by law. The mode of procedure provided for in the statutory right of appeal is not included in the prohibition against *ex post facto* laws. R.A. 8249 pertains only to matters of procedure, and being merely an amendatory statute it does not partake the nature of an *ex post facto* law. It does not mete out a penalty and, therefore, does not come within the prohibition.

Moreover, the law did not alter the rules of evidence or the mode of trial. It has been ruled that adjective statutes may be made applicable to actions pending and unresolved at the time of their passage. (**LACSON V. EXECUTIVE SECRETARY, et al. (301 SCRA 298 [1999])**)

#### **CITIZENSHIP**

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



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

On the other hand, naturalized citizens are those who have become Filipino citizens through naturalization, generally under Commonwealth Act No. 473, otherwise known as the Revised Naturalization Law, which repealed the former Naturalization Law (Act No. 2927), and by Republic Act No. 530. To be naturalized, an applicant has to prove that he possesses all the qualifications and none of the disqualification provided by law to become a Filipino citizen. The decision granting Philippine citizenship becomes executory only after two (2) years from its promulgation when the court is satisfied that during the intervening period, the applicant has (1) not left the Philippines; (2) has dedicated himself to a lawful calling or profession; (3) has not been convicted of any offense or violation of Government promulgated rules; or (4) committed any act prejudicial to the interest of the nation or contrary to any Government announced policies.

Filipino citizens who have lost their citizenship may however reacquire the same in the manner provided by law. Commonwealth Act. No. (C.A. No. 63), enumerates the three modes by which Philippine citizenship may be reacquired by a former citizen: (1) by naturalization, (2) by repatriation, and (3) by direct act of Congress.

Naturalization is made for both acquisition and reacquisition of Philippine citizenship. As a mode of initially acquiring Philippine citizenship, naturalization is governed by Commonwealth Act No. 473, as amended. On the other hand, naturalization as a mode for reacquiring Philippine citizenship is governed by Commonwealth Act No. 63. Under this law, a former Filipino citizen who wishes to reacquire Philippine citizenship must possess certain qualifications<sup>17</sup> and none of the disqualification mentioned in Section 4 of C.A. 473.

Repatriation, on the other hand, may be had under various statutes by those who lost their citizenship due to: (1) desertion of the armed forces; services in the armed forces of the allied forces in World War II; (3) service in the Armed Forces of the United States at any other time, (4) marriage of a Filipino woman to an alien; and (5) political economic necessity.

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

In *Angat v. Republic*, we held:

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

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

As correctly explained by the HRET in its decision, the term "natural-born citizen" was first defined in Article III, Section 4 of the 1973 Constitution as follows:

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

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

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

The present Constitution, however, now consider those born of Filipino mothers before the effectivity of the 1973 Constitution and who elected Philippine citizenship upon reaching the majority age as natural-born. After defining who re natural-born citizens, Section 2 of Article IV adds a sentence: "Those who elect Philippine citizenship in accordance with paragraph (3), Section



1 hereof shall be deemed natural-born citizens." Consequently, only naturalized Filipinos are considered not natural-born citizens. It is apparent from the enumeration of who are citizens under the present Constitution that there are only two classes of citizens: (1) those who are natural-born and (2) those who are naturalized in accordance with law. A citizen who is not a naturalized Filipino, i.e., did not have to undergo the process of naturalization to obtain Philippine citizenship, necessarily is natural-born Filipino. Noteworthy is the absence in said enumeration of a separate category for persons who, after losing Philippine citizenship, subsequently reacquire it. The reason therefor is clear: as to such persons, they would either be natural-born or naturalized depending on the reasons for the loss of their citizenship and the mode prescribed by the applicable law for the reacquisition thereof. (**BENGZON V. HRET and CRUZ (357 SCRA 545 [2001])**)

The question whether grave abuse of discretion has been committed by the COMELEC, it is necessary to take on the matter of whether or not respondent FPJ is a natural-born citizen, which, in turn, depended on whether or not the father of respondent, Allan F. Poe, would have himself been a Filipino citizen and, in the affirmative, whether or not the alleged illegitimacy of respondent prevents him from taking after the Filipino citizenship of his putative father. Any conclusion on the Filipino citizenship of Lorenzo Pou could only be drawn from the presumption that having died in 1954 at 84 years old, Lorenzo would have been born sometime in the year 1870, when the Philippines was under Spanish rule, and that San Carlos, Pangasinan, his place of residence upon his death in 1954, in the absence of any other evidence, could have well been his place of residence before death, such that Lorenzo Pou would have benefited from the "en masse Filipinization" that the Philippine Bill had effected in 1902. That citizenship (of Lorenzo Pou), if acquired, would thereby extend to his son, Allan F. Poe, father of respondent FPJ. The 1935 Constitution, during which regime respondent FPJ has seen first light, confers citizenship to all persons whose fathers are Filipino citizens regardless of whether such children are legitimate or illegitimate.

But while the totality of the evidence may not establish conclusively that respondent FPJ is a natural-born citizen of the Philippines, the evidence on hand still would preponderate in his favor enough to hold that he cannot be held guilty of having made a material misrepresentation in his certificate of candidacy in violation of Section 78, in relation to Section 74, of the Omnibus Election Code. Petitioner has utterly failed to substantiate his case before the Court, notwithstanding the ample opportunity given to the parties to present their position and evidence, and to prove whether or not there has been material misrepresentation, which, as so ruled in *Romualdez-Marcos vs. COMELEC* 248 SCRA 300 (1995) must not only be material, but also deliberate and willful. **TECSON v. COMELEC, RONALD ALLAN KELLY POE and VICTORINO X. FORNIER (G.R. No. 161634. March 3, 2004)**

#### **ADMINISTRATIVE LAW**

It should be understandable that when an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance for it gives no real consequence more than what the law itself has already prescribed. When, upon the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially adds to or increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter, to be duly informed, before that new issuance is given force and effect of law. (**COMMISSIONER OF INTERNAL REVENUE V. COURT OF APPEALS (261 SCRA 236)**)

In recent years, it has been the jurisprudential trend to apply the doctrine of primary jurisdiction in many cases involving matters that demand the special competence of administrative agencies. It may occur that the Court has jurisdiction to take cognizance of a particular case, which means that the matter involved is also judicial in character. However, if the case is such that its determination requires the expertise, specialized skills and knowledge of the proper administrative bodies because technical matters or intricate questions of facts are involved, then relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court. This is the doctrine of primary jurisdiction. It applies "where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such case the judicial process is suspended pending referral of such issues to the administrative body for its view" (*United States v. Western Pacific Railroad Co.*, 352 U.S. 59).



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Clearly, the doctrine of primary jurisdiction finds application in this case since the question of what coal areas should be exploited and developed and which entity should be granted coal operating contracts over said areas involves a technical determination by the BED as the administrative agency in possession of the specialized expertise to act on the matter. The Trial Court does not have the competence to decide matters concerning activities relative to the exploration, exploitation, development and extraction of mineral resources like coal. These issues preclude an initial judicial determination. It behooves the courts to stand aside even when apparently they have statutory power to proceed in recognition of the primary jurisdiction of an administrative agency. (*INDUSTRIAL ENTERPRISES, INC. V. COURT OF APPEALS (184 SCRA 426 [1990])*)

This Court in a long line of cases has consistently held that before a party is allowed to seek the intervention of the court, it is a precondition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction then such remedy should be exhausted first before court's judicial power can be sought. The premature invocation of court's intervention is fatal to one's cause of action. Accordingly, absent any finding of waiver or estoppel the case is susceptible of dismissal for lack of cause of action. This doctrine of exhaustion of administrative remedies was not without its practical and legal reasons, for one thing, availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. it is no less true to state that the courts of justice for reasons of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case. However, we are not amiss to reiterate that the principle of exhaustion of administrative remedies as tested by a battery of cases is not an ironclad rule. This doctrine is a relative one and its flexibility is called upon by the peculiarity and uniqueness of the factual and circumstantial settings of a case. Hence, it is disregarded (1) when there is a violation of due process, (2) when the issue involved is purely a legal question, (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction, (4) when there is estoppel on the part of the administrative agency concerned, (5) when there is irreparable injury, (6) when the respondent is a department secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter, (7) when to require exhaustion of administrative remedies would be unreasonable, (8) when it would amount to a nullification of a claim<sup>20</sup> (9) when the subject matter is a private land in land case proceedings, (10) when the rule does not provide a plain, speedy and adequate remedy, and (11) when there are circumstances indicating the urgency of judicial intervention. (*PAAT V. COURT OF APPEALS (266 SCRA 167 [1997])*)

Equally well accepted, as a corollary rule to the control powers of the President, is the "Doctrine of Qualified Political Agency." As the President cannot be expected to exercise his control powers all at the same time and in person, he will have to delegate some of them to his Cabinet members. Under this doctrine, which recognizes the establishment of a single executive, "all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the Secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive." (*CARPIO V. EXECUTIVE SECRETARY (206 SCRA 290)*)

### LAW ON PUBLIC OFFICERS

The Civil Service Commission is not empowered to determine the kind or nature of the appointment extended by the appointing officer, its authority being limited to approving or reviewing the appointment in the light of the requirements of the Civil Service Law. When the





appointee is qualified and all other legal requirements were satisfied, the Commission has no choice but to attest to the appointment in accordance with Civil Service Laws.

Appointment is an essentially discretionary power and must be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should possess the qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. This is a political question involving considerations of wisdom which only the appointing authority can decide. (*LUEGO V. CIVIL SERVICE COMMISSION (143 SCRA 327)*)

The appointment to a government post like that of a provincial fiscal to be complete involves several steps. First, comes the nomination by the President. Then to make that nomination valid and permanent, the Commission on Appointments has to confirm said nomination. The last step thereof is the acceptance thereof by the appointee by his assumption of office. The first 2 steps, nomination and confirmation, constitute a mere offer of a post. They are acts of the Executive and Legislative departments of the Government. But the last necessary step to make the appointment complete and effective rests solely with the appointee himself. He may or may not accept the appointment or nomination. As held in the case of *Borromeo v. Mariano*, "there is no power in this country which can compel a man to accept an office." (*LACSON V. ROMERO (84 Phil 740)*)

It is the general rule "that the rightful incumbent of a public office may recover from all officer de facto the salary received by the latter during the time of his wrongful tenure, even though he entered into the office in good faith and. under color of title." The resulting hardship occasioned by the operation of this rule to the de facto officer who did actual work is recognized; but it is far more, cogently acknowledged that the de facto doctrine has been formulated not for the for the protection of the de facto officer principally, but rather for the protection of the public and individuals who get involved in the official acts of persons discharging the duties of an office without being lawful officers. The question of compensation involves different principles and concepts however. Here, It is possession of title, not of the office, that is decisive, A de facto officer, not having good title, takes the salaries at his risk and must therefore account to the de lure officer for whatever amount of salary he received during the period of his wrongful retention of the public office. (*MONROY V. COURT OF APPEALS (20 SCRA 620)*)

A public office is the right authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign function of government, to be exercised by him for the benefit of the public. The individual so invested is a public officer.

Admittedly, the act of Congress in creating a public office, defining its powers, functions and fixing the "term" or the period during which the officer may claim to hold the office as of right and the "tenure" or the term during which the incumbent actually holds the office, is a valid and constitutional exercise of legislative power (Article VI, section 1, Constitution of the Philippines; *Jover vs. Borra*, G. R. No. L6782, July 25, 1953; *Nueno vs. Angeles*, 76 Phil., 12; *Francia vs. Pecson* and *Subido*, 47 Off. Gaz., 12 Supp. p. 296). In the exercise of that power, Congress enacted Republic Act No. 603 on April 11, 1951, creating the City of Roxas and providing, among others for the position of Vice-Mayor and its tenure or period during which the incumbent Vice-Mayor holds office at the pleasure of the President (section 8, article II, Republic Act No. 603).

So, the logical inference from the above quoted excerpt of the decision of, this Court promulgated long after the decision rendered in the case of *De los Santos vs. Mallare*, supra, is that Congress can legally and constitutionally make the tenure of certain officials dependent. upon the pleasure of the President.

The pervading error of the respondents lies in the fact that they insist on the act of the President in designating petitioner Alba in the place of respondent Alajar as one of removal. The replacement of respondent Alajar is not removal, but an expiration of its tenure, which is one of the ordinary modes of terminating official relations. On this score, section 2545 of the Revised Administrative Code which was declared inoperative in the *Santos vs. Mallare* case, is different from section 8 of Republic Act No. 603, Section 2545 refers to removal at pleasure while section 8 of Republic Act No. 603 refers to holding office at the pleasure of the President.

Clearly, what is involved here is not the question of removal, or whether legal cause should precede or not that removal. What is involved here is the creation of an office and the tenure of such office, which has been made expressly dependent upon the pleasure of the President.



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Even assuming-for the moment that the act of replacing Alajar constitutes removal, the act itself is valid and lawful, for under section 8 of Republic Act No. 603, no fixity of tenure has been provided for, and the pleasure of the President has been exercised in accordance with the policy laid down by Congress therein. (*ALBA, et al. V. EVANGELISTA et al. (100 Phil 683)*)

Resignation as the "act of giving up or the act of an officer by which he declines his office and renounces the further right to use it. It is an expression of the incumbent in some form, express or implied, of the intention to surrender, renounce, and relinquish the office and the acceptance by competence and lawful authority." To constitute a complete and operative resignation from public office, the officer must show a clear intention to relinquish or surrender his position accompanied by the act of relinquishment. Resignation implies an expression of the incumbent in some form, express or implied, of the intention to surrender, renounce and relinquish the office, and its acceptance by competent and lawful authority.

Verily, a "courtesy resignation" cannot properly be interpreted as resignation in the legal sense for it is not necessarily a reflection of a public official's intention to surrender his position. Rather, it manifests his submission to the will of the appointing authority and the appointing power. (*ORTIZ V. COMELEC (162 SCRA 812)*)

Nothing is better settled in our law than that the abolition of an office within the competence of a legitimate body if done in good faith suffers from no infirmity. In *Cruz v. Primicias, Jr.*, it was held that "valid abolition of offices is neither removal nor separation of the incumbents. . . . And, of course, if the abolition is void, the incumbent is deemed never to have ceased to hold office. The preliminary question laid at rest, we pass to the merits of the case. As well-settled as the rule that. the abolition of an office does not amount to an illegal removal of its incumbent is the principle that, in order to be valid, the abolition must be made in good faith."

Removal is, of course, to be distinguished from termination by virtue of the abolition of the office. There can be no tenure to a non-existent office. After the abolition, there is in law no occupant. In case of removal, there is an office with an occupant who would thereby lose his position. It is in that sense that from the standpoint of strict law, the question of any impairment of security of tenure does not arise. Nonetheless, for the incumbents of inferior courts abolished, the effect is one of separation. As to its effect, no distinction exists between removal and the abolition of the office. Realistically, it is devoid of significance. He ceases to be a member of the judiciary. In the implementation of the assailed legislation, therefore, it would be in accordance with accepted principles of constitutional construction that as far as incumbent justices and judges are concerned, this Court be consulted and that its view be accorded the fullest consideration. (*DE LA LLANA V. ALBA (112 SCRA 294 [1982])*)

### ELECTION LAW

Sound policy dictates that public elective offices are filled by those who have received the highest number of votes cast in the election for that office, and it is a fundamental idea in all republican forms of government that no one can be declared elected and no measure can be declared carried unless he or it receives a majority or plurality of the legal votes cast in the election. (20 Corpus Juris 2nd, S 243, p. 676.)

The fact that the candidate who obtained the highest number of votes is later declared to be disqualified or not eligible for the office to which he was elected does not necessarily entitle the candidate who obtained the second highest number of votes to be declared the winner of the elective office. The votes cast for a dead, disqualified, or non-eligible person may not be valid to vote the winner into office or maintain him there. However, in the absence of a statute which dearly asserts a contrary political and legislative policy on the matter, if the votes were cast in the sincere belief that the candidate was alive, qualified, or eligible, they should not be treated as stray, void or meaningless. (*LABO V. COMELEC (G.R. No. 86564, August 1, 1989)*)

It must be noted that this is not an instance wherein one return gives to one candidate all the votes in the precinct, even as it gives exactly zero to the other. This is not a case where some senatorial candidates obtain zero exactly, while some others receive a few scattered votes. Here, all the eight candidates of one party garnered all the votes, each of them receiving exactly the same number; whereas all the eight candidates of the other party got precisely nothing.



The main point to remember is that there is no blockvoting nowadays.

What happened to the vote of the Nacionalista inspector? There was one in every precinct. Evidently, either he became a traitor to his party, or was made to sign a false return by force or other illegal means. If he signed voluntarily, but in breach of faith, the Nacionalista inspector betrayed his party; and, any voting or counting of ballots therein, was a sham and a mockery of the national suffrage.

Hence, denying *prima facie* recognition to such returns on the ground that they are manifestly fabricated or falsified, would constitute a practical approach to the Commission's mission to insure free and honest elections.

In *Mitchell vs. Stevens*, the returns showed a noticeable excess of votes over the number of registered voters, and the court rejected the returns as obviously "manufactured". Why? The excess could have been due to the fact that, disregarding all pertinent data, the election officers wrote the number of votes their fancy dictated; and so the return was literally a "manufactured", "fabricated" return. Or maybe because persons other than voters, were permitted to take part and vote; or because registered voters cast more than one ballot each, or because those in charge of the tally sheet falsified their counts.

Hence, as the *Mitchell* decision concluded, the returns were "not true returns . . . but simply manufactured evidences of an attempt to defeat the popular will." All these possibilities and/or probabilities were plain fraudulent practices, resulting in misrepresentation of the election outcome. "Manufactured" was the word used. "Fabricated" or "false" could as well have been employed.

The same *ratio decidendi* applies to the situation in the precincts herein mentioned. These returns were obviously false or fabricated-*prima facie*. Let us take for example, precinct No. 3 of Andong, Lanao del Sur. There were 648 registered voters. According to such return all the eight candidates of the Liberal Party got 648 each, and the eight Nacionalista candidates got exactly zero. We hold such return to be evidently fraudulent or false because of the inherent improbability of such a result-against statistical probabilities-specially because at least one vote should have been received by the Nacionalista candidates, i. e., the vote of the Nacionalista inspector. It is, of course, "possible" that such inspector did not like his party's senatorial line-up; but it is not probable that he disliked all of such candidates, and it is not likely that he favored all the eight candidates of the Liberal Party. Therefore, most probably, he was made to sign an obviously false return. or else he betrayed his party, in which case, the election therein- if any-was no more than a barefaced fraud and a brazen contempt of the Popular polls.

It is strongly urged that the results reported in these returns are quite "possible", bearing in mind the religious or political control of some leaders in the localities affected.

We say possible, not probable. It is possible to win the sweepstakes ten times; but not probable. Anyway, judges are not disposed to believe that such "control" has proved so powerful as to convert the electors into mere sheep or robots voting as ordered. Their reason and conscience to believe that 100%, of the voters in such precincts objectly yet lawfully surrendered their precious freedom to choose the senators of this Republic. (*LAGUMBAY V. COMELEC (16 SCRA 175 [1966])*)

Under the present state of our election laws, the COMELEC has been granted precisely the power to annul elections. Section 4 of Republic Act No. 7166, otherwise known as, "The Synchronized Elections Law of 1991," provides that the COMELEC sitting, En Banc by a majority vote of its members may decide, among others, the declaration of failure of election and the calling of special elections as provided in Section 6 of the Omnibus Election Code.

The COMELEC may exercise such power *motu proprio* or upon a verified petition. The hearing of the case shall be summary in nature, and the COMELEC may delegate to its lawyers the power to hear the case and to receive evidence. In the case of *Mitmug vs. Commission on Elections*, we held that before COMELEC can act on a verified petition seeking to declare a failure of election, two (2) conditions must concur: first, no voting has taken place in the precincts concerned on the date fixed by law or, even if there were voting, the election nevertheless resulted in a failure to elect; and second, the votes not cast would affect the result of the election.<sup>31</sup> We must add, however, that the cause of such failure of election should have been any of the following: force majeure, violence, terrorism, fraud or other analogous causes. This is an important consideration for, where the propriety of a pre-proclamation controversy ends, there may begin the realm of a special action for declaration of failure of elections.

It was held in the case of *Sanchez v. Comelec (153 SCRA 68)*, it was held that:

"The enumeration therein (Section 243, Omnibus Election Code) of the issues that may be raised in pre-proclamation controversy, is restrictive and exclusive. In the absence of any clear showing or



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proof that the election returns canvassed are incomplete or contain material defects (Sec. 234), appear to have been tampered with, falsified or prepared under duress (Sec. 235) and/or contain discrepancies in the votes credited to any candidate, the difference of which affects the result of the election (Sec. 236), which are the only instances where a pre-proclamation recount may be resorted to, granted the preservation of the integrity of the ballot box and its contents x x x. The complete election returns whose authenticity is not in question, must be prima facie considered valid for the purpose of canvassing the same and proclamation of the winning candidates.

"x x x To expand the issues beyond those enumerated under Sec. 243 and allow a recount/reappreciation of votes in every instance where a claim of misdeclaration of stray votes is made would open the floodgates to such claims and paralyze canvass and proclamation proceedings, given the propensity of the loser to demand a recount. The law and public policy mandate that all pre-proclamation controversies shall be heard summarily by the Commission after due notice and hearing and just as summarily decided x x x."

The policy consideration underlying the delimitation both of substantive ground and procedure is the policy to determine as quickly as possible the result of the election on the basis of canvass. Thus, in the case of *Dipatuan vs. Commission on Elections*, we categorically ruled that in a pre-proclamation controversy, COMELEC is not to look beyond or behind election returns which are on their face regular and authentic returns. A party seeking to raise issues resolution of which would compel or necessitate COMELEC to pierce the veil of election returns which are prima facie regular on their face, has his proper remedy in a regular election protest. By their nature, and given the obvious public interest in the speedy determination of the results of elections, pre-proclamation controversies are to be resolved in summary proceedings without the need to present evidence aliunde and certainly without having to go through voluminous documents and subjecting them to meticulous technical examinations which take up considerable time.

The prevailing doctrine in this jurisdiction, therefore, is that as long as the returns appear to be authentic and duly accomplished on their face, the Board of Canvassers cannot look beyond or behind them to verify allegations of irregularities in the casting or the counting of the votes. Corollarily, technical examination of voting paraphernalia involving analysis and comparison of voters' signatures and thumbprints thereon is prohibited in pre-proclamation cases which are mandated by law to be expeditiously resolved without involving evidence aliunde and examination of voluminous documents which take up much time and cause delay in defeat of the public policy underlying the summary nature of pre-proclamation controversies.

While, however, the COMELEC is restricted, in pre-proclamation cases, to an examination of the election returns on their face and is without jurisdiction to go beyond or behind them and investigate election irregularities, the COMELEC is duty bound to investigate allegations of fraud, terrorism, violence and other analogous causes in actions for annulment of election results or for declaration of failure of elections, as the Omnibus Election Code denominates the same. Thus, the COMELEC, in the case of actions for annulment of election results or declaration of failure of elections, may conduct technical examination of election documents and compare and analyze voters' signatures and fingerprints in order to determine whether or not the elections had indeed been free, honest and clean. Needless to say, a pre-proclamation controversy is not the same as an action for annulment of election results or declaration of failure of elections. (*LOONG V. COMELEC* (257 SCRA 2))

### LAW ON PUBLIC CORPORATIONS

After three consecutive terms, an elective local official cannot seek immediate reelection for a fourth term. The prohibited election refers to the next regular election for the same office following the end of the third consecutive term. Any subsequent election, like a recall election, is no longer covered by the prohibition for two reasons. First, a subsequent election like a recall election is no longer an immediate reelection after three consecutive terms. Second, the intervening period constitutes an involuntary interruption in the continuity of service. In the case of *Hagedorn*, his candidacy in the recall election is not an immediate reelection after his third consecutive term. The immediate reelection that the Constitution barred *Hagedorn* from seeking referred to the regular elections. (*VICTORINO DENNIS M. SOCRATES vs. COMELEC, et al.* (G.R. No. 154512, November 12, 2002))

It can be plainly seen that the aforecited constitutional provision makes it imperative that there be first obtained "the approval of a majority of votes in the plebiscite in the unit or units



affected" whenever a province is created, divided or merged and there is substantial alteration of the boundaries. It is thus inescapable to conclude that the boundaries of the existing province of Negros Occidental would necessarily be substantially altered by the division of its existing boundaries in order that there can be created the proposed new province of Negros del Norte. Plain and simple logic will demonstrate that two political units would be affected. The first would be the parent province of Negros Occidental because its boundaries would be substantially altered. The other affected entity would be composed of those in the area subtracted from the mother province to constitute the proposed province of Negros del Norte.

We find no way to reconcile the holding of a plebiscite that should conform to said constitutional requirement but eliminates the participation of either of these two component political units. No amount of rhetorical flourishes can justify exclusion of the parent province in the plebiscite because of an alleged intent on the part of the authors and implementors of the challenged statute to carry out what is claimed to be a mandate to guarantee and promote autonomy of local government units. The alleged good intentions cannot prevail and overrule the cardinal precept that what our Constitution categorically directs to be done or imposes as a requirement must first be observed, respected and complied with. No one should be allowed to pay homage to a supposed fundamental policy intended to guarantee and promote autonomy of local government units but at the same time transgress, ignore and disregard what the Constitution commands in Article XI Section 3 thereof. (**TAN V. COMELEC (142 SCRA 727)**)

The tests of a valid ordinance are well established. A long line of decisions has held that to be valid, an ordinance must conform to the following substantive requirements: 1) It must not contravene the constitution or any statute; 2) It must not be unfair or oppressive; 3) It must not be partial or discriminatory; 4) It must not prohibit but may regulate trade; 5) It must be general and consistent with public policy; 6) It must not be unreasonable.

The rationale of the requirement that the ordinances should not contravene a statute is obvious. Municipal governments are only agents of the national government. Local councils exercise only delegated legislative powers conferred on them by Congress, is the national lawmaking body. The delegate cannot be superior to the principal or exercise powers higher than those of the latter. It is a heresy to suggest that the local government units can undo the acts of Congress, from which they have derived their power in the first place, and negate by mere ordinance the mandate of the statute.

Municipal corporations owe their origin to, and derive their powers and rights wholly from the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. As it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, and if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations in the state, and the corporation could not prevent it. We know of no limitation on the right so far as to the corporation themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature.

This basic relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that policy, we here confirm that Congress retains control of the local government units although in significantly reduced degree now than under our previous Constitutions. The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall. True, there are certain notable innovations in the Constitution, like the direct conferment on the local government units of the power to tax,<sup>12</sup> which cannot now be withdrawn by mere statute. By and large, however, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it. (**MAGTAJAS V. PRYCE PROPERTIES CORPORATION (G.R. No. 111097, July 20, 1994)**)

There is no denying that Sections 85 and 86 of P.D. 1445 (Auditing Code of the Philippines) provide that contracts involving expenditure of public funds: 1) can be entered into only when there is an appropriation therefore; and 2) must be certified by the proper accounting official/agency that funds have been duly appropriated for the purpose, which certification shall be attached to and become an integral part of the proposed contract.

However, the very same Presidential Decree No. 1445, which is the cornerstone of petitioner's arguments, does not provide that the absence of an appropriation law ipso facto makes a contract entered into by a local government unit null and void. Section 84 of the statute specifically provides:



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Revenue funds shall not be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority.

Consequently, public funds may be disbursed not only pursuant to an appropriation law, but also in pursuance of other specific statutory authority, i.e., Section 84 of PD 1445. Thus, when a contract is entered into by a city mayor pursuant to specific statutory authority, the law, i.e., PD 1445 allows the disbursement of funds from any public treasury or depository therefore. It can thus be plainly seen that the law invoked by petitioner Quezon City itself provides that an appropriation law is not the only authority upon which public funds shall be disbursed.

Furthermore, then Mayor Brigido Simon, Jr. did not enter into the subject contract without legal authority. The Local Government Code of 1983, or B.P. Blg. 337, which was then in force, specifically and exclusively empowered the city mayor to "represent the city in its business transactions, and sign all warrants drawn on the city treasury and all bonds, contracts and obligations of the city." Such power granted to the city mayor by B.P. Blg. 337 was not qualified nor restricted by any prior action or authority of the city council. We note that while the subsequent Local Government Code of 1991, which took effect after the execution of the subject contracts, provides that the mayor's representation must be "upon authority of the sangguniang panlungsod or pursuant to law or ordinance," there was no such qualification under the old code. (*QUEZON CITY V. LEXBER INCORPORATED* (G.R. No. 141616, March 15, 2001))

Anent the issue of whether or not the municipality is liable for the torts committed by its employee, the test of liability of the municipality depends on whether or not the driver, acting in behalf of the municipality, is performing governmental or proprietary functions. As emphasized in the case of *Torio v. Pontanilla* (G.R. No. L-29993, October 23, 1978. 85 SCRA 599, 606), the distinction of powers becomes important for purposes of determining the liability of the municipality for the sets of its agents which result in an injury to third persons.

It has already been remarked that municipal corporations are suable because their charters grant them the competence to sue and be sued. Nevertheless, they are generally not liable for torts committed by them in the discharge of governmental functions and can be held answerable only if it can be shown that they were acting in a proprietary capacity. In permitting such entities to be sued, the State merely gives the claimant the right to show that the defendant was not acting in its governmental capacity when the injury was committed or that the case comes under the exceptions recognized by law. Failing this, the claimant cannot recover. (Cruz, *supra*, p. 44.)

In the case at bar, the driver of the dump truck of the municipality insists that "he was on his way to the Naguilian river to get a load of sand and gravel for the repair of San Fernando's municipal streets." (Rollo, p. 29.)

In the absence of any evidence to the contrary, the regularity of the performance of official duty is presumed pursuant to Section 3(m) of Rule 131 of the Revised Rules of Court. Hence, We rule that the driver of the dump truck was performing duties or tasks pertaining to his office.

We already stressed in the case of *Palafox, at. al. v. Province of Ilocos Norte, the District Engineer, and the Provincial Treasurer* (102 Phil 1186) that "the construction or maintenance of roads in which the truck and the driver worked at the time of the accident are admittedly governmental activities." (*MUNICIPALITY OF SAN FERNANDO, LA UNION V. FIRME, supra*.)

### PUBLIC INTERNATIONAL LAW

The precept that a State cannot be sued in the courts of a foreign state is a long-standing rule of customary international law then closely identified with the personal immunity of a foreign sovereign from suit and, with the emergence of democratic states, made to attach not just to the person of the head of state, or his representative, but also distinctly to the state itself in its sovereign capacity. If the acts giving rise to a suit are those of a foreign government done by its foreign agent, although not necessarily a diplomatic personage, but acting in his official capacity, the complaint could be barred by the immunity of the foreign sovereign from suit without its consent. Suing a representative of a state is believed to be, in effect, suing the state itself. The proscription is not accorded for the benefit of an individual but for the State, in whose service he is, under the maxim – *par in parem, non habet imperium* – that all states are sovereign equals and cannot assert jurisdiction over one another. The implication, in broad terms, is that if the judgment against an official would require the state itself to perform an affirmative act to satisfy the award, such as the appropriation of the amount needed to pay the damages decreed against



him, the suit must be regarded as being against the state itself, although it has not been formally impleaded.

A foreign agent, operating within a territory, can be cloaked with immunity from suit but only as long as it can be established that he is acting within the directives of the sending state. The consent of the host state is an indispensable requirement of basic courtesy between the two sovereigns. (*KHOSROW MINUCHER vs. HON. COURT OF APPEALS, et. al. (G.R. No. 142396, February 11, 2003)*)

The mere entering into a contract by a foreign State with a private party cannot be construed as the ultimate test of whether or not it is an act *jure imperii* or *jure gestionis*. Such act is only the start of the inquiry. Is the foreign State engaged in the regular conduct of business? If the foreign State is not engaged regularly in business or commercial activity, and in this case it has not been shown to be so engaged, the particular act or transaction must then be tested by its nature. If the act is in pursuit of a sovereign activity, or an incident thereof, then it is an act *jure imperii*.

Hence, the existence alone of a paragraph in a contract stating that any legal action arising out of the agreement shall be settled according to the laws of the Philippines and by a specified court of the Philippines is not necessarily a waiver of sovereign immunity from suit. The aforesaid provision contains language not necessarily inconsistent with sovereign immunity. On the other hand, such provision may also be meant to apply where the sovereign partly elects to sue in the local courts, or otherwise waives its immunity by any subsequent act. The applicability of the Philippine laws must be deemed to include Philippine laws in its totality, including the principle recognizing sovereign immunity.

Submission by the foreign State to local jurisdiction must be clear and unequivocal. It must be given explicitly or by necessary implication. (*REPUBLIC OF INDONESIA vs. VINZON (G.R. No. 154705, June 26, 2003)*)

Ut In Omnibus Glorificetur Deus