

MANGUERA OUTLINE 2010
CONSTITUTIONAL LAW I
PART I
VERSION 3.0

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I. POLITICAL LAW

A. Definition of Political Law

Branch of public law¹ which deals with the organization and operation of the governmental

¹ **Public law** is understood as dealing with matters affecting the state, the act of state agencies, the protection of state interests. **Private law** deals with the regulation of the conduct of private individuals in their relation with one another.

organs of the state and defines the relations of the state with the inhabitants of its territory.²

B. Subdivisions of Political Law

- 1. Law of public administration
- 2. Constitutional law
- 3. Administrative law
- 4. Law of public corporations³

C. Basis of Philippine Political Law

The principles of government and political law of the Philippines are fundamentally derived from American jurisprudence. This conditions was the inevitable outcome of the establishment of the American rule in the Philippines. When Spain ceded the Phils. to the US, the Spanish Political laws were automatically displaced by those of the US.⁴

II. CONSTITUTION

A. Definition of Constitution

Comprehensive Definition: That body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised.⁵ (Cooley)

American sense: A constitution is a written instrument by which the fundamental powers of government are established, limited, and defined and by which these powers are distributed among several departments, for their more safe and useful exercise, for the benefit of the body politic. (Justice Miller quoted by Bernas)

With particular reference to the Philippine Constitution: That written instrument enacted by direct action of the people by which the fundamental powers of the government are **established, limited and defined**, and by which those powers are **distributed** among several

As thus conceived public law consists of political law, criminal law and public international law. Private law includes civil and commercial law.

² Vicente Sinco, Philippine Political Law 1, 10th ed., 1954.

³ Vicente Sinco, Philippine Political Law 1, 10th ed., 1954.

⁴ Vicente Sinco, Philippine Political Law 2, 10th ed., 1954.

⁵ This definition is comprehensive enough to cover written and unwritten constitutions. (Cruz, Constitutional Law)

departments for their safe and useful exercise for the benefit of the body politic. (Malcolm, Philippine Constitutional Law, p. 6)

In other words: It is the supreme written law of the land.⁶

B. Philosophical View of the Constitution

The Constitution is a social contract. (Marcos v. Manglapus)

Viewed in the light of the Social Contract Theories, the Constitution may be considered as the Social Contract itself in the sense that it is the very basis of the decision to constitute a civil society or State, breathing life to its juridical existence, laying down the framework by which it is to be governed, enumerating and limiting its powers and declaring certain fundamental rights and principles to be inviolable.

The Constitution as a political document may be considered as the concrete manifestation or expression of the Social Contract or the decision to abandon the 'state of nature' and organize and found a civil society or State.

According to Dean Baustista, "the Constitution is a social contract between the government and the people, the governing and the governed."⁷ (ASM: *I don't necessarily agree with this statement. As a social contract, the Constitution, I think is a contract between and among the people themselves and not between the government and the people. The government is only an "effect" or consequence of the social contract of the people. In other words, the government is only a creature of the Constitution. Hence, the government cannot be a party to a contract that creates it. In the 1987 Philippine Constitution, it reads, "We the sovereign Filipino people...in order to build a ...society and establish a government... ordain and promulgate this Constitution."*)

According to Dean Bautista, "the Constitution reflects majoritarian values but defends minoritarian rights."⁸

See *Constitution as Compact of the People* by Chief Justice Puno in his Separate Concurring

⁶See People v. Pomar, 46 Phil 440. Bernas Commentary xxxvii (2003 ed).

⁷ Andres D. Bautista, Introduction to Constitutional Law 1, Slide 3 June 16, 2007.

⁸ Andres D. Bautista, Introduction to Constitutional Law 1, Slide 3 June 16, 2007.; Majoritarianism is a traditional political philosophy which asserts that a majority of the population is entitled to a certain degree of primacy in the society, and has the right to make decisions that affect the society.

Opinion in the case of Province of North Cotabato v. GRP

C. Purpose of the Constitution

To prescribe the permanent framework of a system of government, to assign to the several departments their respective powers and duties, and to establish certain first principles on which the government is founded.⁹ (11 Am. Jur. 606 cited in Cruz)

Why would a society generally committed to majority rule choose to be governed by a document that is difficult to change?

- To prevent tyranny of the majority
- Society's attempt to protect itself from itself.
- Protecting long term values from short term passions.¹⁰

D. Constitution as a Municipal Law

A constitution is a municipal law. As such, it is binding only within the territorial limits of the sovereignty promulgating the constitution.¹¹

E. Classification

- (1) Rigid¹²
(2) Flexible
- (1) Written¹³
(2) Unwritten
- (1) Evolved¹⁴
(2) Enacted
- (1) Normative- adjusts to norms
(2) Nominal –not yet fully operational
(3) Semantic-perpetuation of power

⁹

¹⁰ Andres D. Bautista, Introduction to Constitutional Law 1, Slide 4 June 16, 2007.

¹¹ Bernas Commentary, p 5(2003 ed).

¹² **Rigid constitution** is one that can be amended only by a formal and usually difficult process; while a **flexible constitution** is one that can be changed by ordinary legislation. (Cruz, Constitutional Law p 5)

¹³ A **written constitution** is one whose precepts are embodied in one document or set of documents; while an **unwritten constitution** consists of rules which have not been integrated into a single, concrete form but are scattered in various sources, such as statutes of a fundamental character, judicial decisions, commentaries of publicists, customs and traditions, and certain common law principles. (Cruz, Constitutional Law pp 4-5)

¹⁴ An **enacted or conventional** constitution is enacted, formally struck off at a definitive time and place following a conscious or deliberate effort taken by a constituent body or ruler; while a **cumulative or evolved** is the result of political evolution, not inaugurated at any specific time but changing by accretion rather than by systematic method. (Cruz, Constitutional Law p 5)

The Constitution of the Philippines is written, conventional and rigid.

It has been said that the term 'constitution' implies an instrument of a permanent nature.²⁵

F. Qualities of good written constitution

1. Broad¹⁵
2. Brief¹⁶
3. Definite¹⁷

J. Brief Constitutional History

1. Malolos Constitution
2. The American Regime and the Organic Acts
3. The 1935 Constitution
4. The Japanese (Belligerent) Occupation
5. The 1973 Constitution
6. The 1987 Constitution

G. Essential parts of a good written constitution

1. Constitution of government¹⁸
2. Constitution of liberty¹⁹
3. Constitution of sovereignty²⁰
[Social and economic rights]

K. The 1987 Constitution

The 1987 Constitution is the 4th fundamental law to govern the Philippines since it became independent on July 4, 1946.

H. Interpretation/Construction of the Constitution²¹

In *Francisco v HR*, the SC made reference to the use of well-settled principles of constitutional construction, namely:

1. Verba Legis²²
2. Ratio legis et anima²³
3. Ut magis valeat quam pereat²⁴

Background of the 1987 Constitution

1. Proclamation of the Freedom Constitution
 - a. *Proclamation No. 1*, February 25, 1986, announcing that she (Corazon Aquino) and VP Laurel were assuming power.
 - b. *Executive Order No. 1*, (February 28, 1986)
 - c. *Proclamation No. 3*, March 25, 1986, announced the promulgation of the Provisional (Freedom) Constitution, pending the drafting and ratification of a new Constitution. It adopted certain provisions in the 1973 Constitution, contained additional articles on the executive department, on government reorganization, and on existing laws. It also provided of the calling of a Constitutional Commission to be composed of 30-50 members to draft a new Constitution.
2. Adoption of the Constitution
 - a. *Proclamation No. 9*, creating the Constitutional Commission of 50 members.
 - b. Approval of the draft Constitution by the Constitutional Commission on October 15, 1986
 - c. Plebiscite held on February 2, 1987
 - d. *Proclamation No. 58*, proclaiming the ratification of the Constitution.
3. Effectivity of the 1987 Constitution: **February 2, 1987**

I. Permanence and Generality of constitutions

A constitution differs from a statute, it is intended not merely to meet existing conditions, but to govern the future.

Features of 1987 Constitution²⁶

1. The new Constitution consists of 18 articles and is excessively long compared to the 1935 and 1973 constitutions.
2. The independence of the judiciary has been strengthened with new provisions for appointment thereto and an increase in its authority, which now covers even political questions formerly beyond its jurisdiction.

¹⁵ **Broad.** Because it provides for the organization of the entire government and covers all persons and things within the territory of the State and also because it must be comprehensive enough to provide for every contingency. (Cruz, Constitutional Law pp 5-6)

¹⁶ **Brief.** It must confine itself to basic principles to be implemented with legislative details more adjustable to change and easier to amend. (Cruz, Constitutional Law pp 4-5)

¹⁷ **Definite.** To prevent ambiguity in its provisions which could result in confusion and divisiveness among the people. (Cruz, Constitutional Law pp 4-5)

¹⁸ **Constitution of Government.** The series of provisions outlining the organization of the government, enumerating its powers, laying down certain rules relative to its administration and defining the electorate. (ex. Art VI, VII, VIII and IX)

¹⁹ **Constitution of Liberty.** The series of proscriptions setting forth the fundamental civil and political rights of the citizens and imposing limitations on the powers of government as a means of securing the enjoyment of those rights. (Ex. Article III)

²⁰ **Constitution of Sovereignty.** The provisions pointing out the mode or procedure in accordance with which formal changes in the fundamental law may be brought about. (Ex. Art XVII)

²¹ Antonio B. Nachura, Outline/Reviewer in Political Law (2006 ed.)

²² **Plain meaning rule.** Whenever possible the words used in the Constitution must be given their ordinary meaning except when technical terms are employed.

²³ **Interpretation according to spirit.** The words of the Constitution should be interpreted in accordance with the intent of the framers.

²⁴ The constitution has to be interpreted as a whole.

²⁵ Ruling Case Law, vol.6, p16)

²⁶ Cruz, Political Law.



3. The Bill of Rights of the Commonwealth and Marcos constitutions has been considerably improved in the 1987 Constitution and even bolstered with the creation of a Commission of Human Rights.

III. CONSTITUTIONAL LAW

A. Concept of Constitutional Law

Constitutional law is a body of rules resulting from the interpretation by a high court of cases in which the validity, in relation to the constitutional instrument, of some act of government...has been challenged. (Bernas Commentary xxxviii)

Constitutional law is a term used to designate the law embodied in the constitution and the legal principles growing out of the interpretation and application made by courts of the constitution in specific cases. (Sinco, Phil. Political Law)

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

Constitutional law consist not only of the constitution, but also of the cases decided by the Supreme Court on constitutional grounds, i.e., every case where the ratio decidendi is based on a constitutional provision. (Defensor-Santiago, Constitutional Law)

B. Types of Constitutional law²⁷

1. English type²⁸
2. European continental type²⁹
3. American type³⁰

C. Weight of American Jurisprudence

In the case of Francisco v. HR, (2003) The Supreme Court speaking through Justice Carpio Morales opined: "American jurisprudence and authorities, much less the American Constitution, are of dubious application for these are no longer controlling within our jurisdiction and have only **limited persuasive merit insofar as Philippine constitutional law is concerned**. As held in the case of *Garcia vs. COMELEC*, "[i]n resolving constitutional disputes, [this Court]

²⁷ Vicente Sinco, Philippine Political Law 67, 10th ed., 1954.

²⁸ Characterized by the absence of a written constitution.

²⁹ There is a written constitution which gives the court no power to declare ineffective statutes repugnant to it.

³⁰ Legal provisions of the written constitution are given effect through the power of the courts to declare ineffective or void ordinary statutes repugnant to it.

should not be beguiled by foreign jurisprudence some of which are hardly applicable because they have been dictated by different constitutional settings and needs." Indeed, although the Philippine Constitution can trace its origins to that of the United States, their paths of development have long since diverged. In the colorful words of Father Bernas, "[w]e have cut the umbilical cord."

(But see the case of *Neri v. Senate Committees* where the Court cited many American cases)

IV. BASIC CONCEPTS

Constitutionalism
Philippine Constitutionalism
Doctrine of Constitutional Supremacy
Republicanism
Principle of Separation of Powers
System of Checks and Balances
Judicial Review
Due Process

A. Constitutionalism

Constitutionalism refers to the position or practice that government be **limited** by a constitution.

The doctrine or system of government in which the governing power *is limited* by enforceable rules of law, and concentration of power is *limited* by various checks and balances so that the basic rights of individuals and groups are protected.

B. Philippine Constitutionalism

Constitutionalism in the Philippines, understood in the American sense, dates back to the ratification of Treaty of Paris. Then it grew from a series of organic documents. These are:

- (1) Pres. Mc Kinley's Instruction to the Second Phil. Commission,
- (2) Phil. Bill of 1902,
- (3) Phil. Autonomy Act of 1916. (Bernas, Commentary xxxviii)

C. Doctrine of Constitutional Supremacy (2004 Bar Exam Question)

If a law violates any norm of the constitution, that law is null and void; it has no effect. (*This is an overstatement, for a law held unconstitutional is not always wholly a nullity*)

The American case of *Marbury v. Madison* laid down the classic statement on constitutional supremacy "It is a proposition too plain to be contested, that the Constitution controls any legislative act repugnant to it."

Constitutional supremacy produced judicial review.³¹

D. Republicanism

The essence of republicanism is **representation** and **renovation**, the selection by the citizenry of a corps of public functionaries who derive their mandate from the people and act on their behalf, serving for a limited period only, after which they are replaced or retained at the option of their principal.³²
(*More discussion of Republicanism under Article II*)

E. Principle of Separation of Powers

Essence. In essence, separation of powers means that legislation belongs to Congress, execution to the executive, settlement of legal controversies to the judiciary. Each is prevented from invading the domain of others. (Bernas, Commentary 656, 2003 ed.)

Division and Assignment. Its starting point is the assumption of the **division** of the functions of the government into three distinct classes—the executive, the legislative and the judicial. Its essence consists in the **assignment** of each class of functions to one of the three organs of government.³³

Theory. The theory is that “a power definitely assigned by the Constitution to one department can **neither be surrendered nor delegated** by that department, nor vested by statute in another department or agency.”³⁴

Reason. The underlying reason of this principle is the assumption that arbitrary rule and abuse of authority would inevitably result from the concentration of the three powers of government in the same person, body of persons or organ.³⁵

More specifically, according to Justice Laurel, the doctrine of separation of powers is intended to:

1. Secure action
2. To forestall overaction
3. To prevent despotism
4. To obtain efficiency³⁶

History. Separation of powers became the pith and core of the *American system of government* largely through the influence of the French political writer Montesquieu. By the establishment of the

American sovereignty in the Philippines, the principle was introduced as an inseparable feature of the governmental system organized by the United States in this country.³⁷

Limitations on the Principle

1. System of Checks and Balances
2. Existence of overlapping powers³⁸

F. Checks and Balances

The Constitution fixes certain limits on the independence of each department. In order that these limits may be observed, the Constitution gives each department certain powers by which it may definitely restrain the other from exceeding their authority. A system of checks and balances is thus formed.³⁹

To carry out the system of checks and balances, the Constitution provides:

1. The acts of the legislative department have to be presented to the executive for approval or disapproval.
2. The executive department may veto the acts of the legislature if in its judgment they are not in conformity with the Constitution or are detrimental to the interests of the people.
3. The courts are authorized to determine the validity of legislative measures or executive acts.
4. Through its pardoning power, the executive may modify or set aside the judgments of the courts.
5. The legislature may pass laws that in effect amend or completely revoke decisions of the courts if in its judgment they are not in harmony with its intention or policy which is not contrary to the Constitution.⁴⁰
6. President must obtain the concurrence of Congress to complete certain significant acts.
7. Money can be released from the treasury only by authority of Congress.⁴¹

G. Judicial Review

³⁷ US v. Bull, 15 Phil 7, 27.

³⁸ The power of appointment is one of these. Although this is executive in nature, it may however be validly exercised by any of the three departments in selecting its own subordinates precisely to protect its independence. (Vicente Sinco, Philippine Political Law 136, 10th ed., 1954).

³⁹ Vicente Sinco, Philippine Political Law 135, 10th ed., 1954.

⁴⁰ Tarlac v. Gale, 26 Phil. 338 cited in Vicente Sinco, Philippine Political Law 135, 10th ed., 1954.

⁴¹ Bernas, Commentary 656, 2003 ed.

³¹ Defensor Santiago, Constitutional Law 7.

³² Cruz, Political Law.

³³ Vicente Sinco, Philippine Political Law 131, 10th ed., 1954.

³⁴ Williams v. US, 289 US 553 (1933).

³⁵ Vicente Sinco, Philippine Political Law 131, 10th ed., 1954.

³⁶ Pangasinan Transportaion Co. v. PSC, 40 O.G., 8th Supp. 57.

Definition. Judicial review refers to the power of the courts to test the validity of governmental acts in light of their conformity with a higher norm (e.g. the constitution).

Expression of Constitutional Supremacy. Judicial review is not an assertion of superiority by the courts over the other departments, but merely an expression of the supremacy of the Constitution.⁴² Constitutional supremacy produced judicial review, which in turn led to the accepted role of the Court as “the ultimate interpreter of the Constitution.”⁴³

Judicial Review in Philippine Constitution. Unlike the US Constitution⁴⁴ which does not provide for the exercise of judicial review by their Supreme Court, the Philippine Constitution expressly recognizes judicial review in Section 5 (2) (a) and (b) of Article VIII of the Constitution. *(More discussion of Judicial Review under Article VIII)*

arbitrariness on the part of the government. Observance of both substantive and procedural rights is equally guaranteed by due process.⁴⁸ *(More discussion of Due Process under Article III)*

H. Due Process

Origin: By the 39th chapter of the Magna Carta wrung by the barons from King John, the despot promised that “*no man shall be taken, imprisoned or disseized or outlawed, or in any manner destroyed; nor shall we go upon him, nor send him, but by the lawful judgment of his peers or by the law of the land.*”

In 1335, King Edward III's Statute 28 declared that “no man, of what state or condition whoever be, shall be put out of his lands, or tenements, nor taken, nor imprisoned, nor indicted, nor put to death, without he be brought in to answer by **due process of law.**” It is this immortal phrase that has resounded through the centuries as the formidable champion of life, liberty and property in all-freedom loving lands. (Cruz)

Definition⁴⁵: Embodiment of the sporting idea of **fair play.**⁴⁶ It is the responsiveness to the supremacy of reason, obedience, to the dictates of justice.⁴⁷ Due process is a guaranty against

⁴² Angara v. Electoral Commission, 63 Phil 139.

⁴³ See Cooper v. Aaron, 358 US 1 (1956)

⁴⁴ The case of *Marbury v. Madison* established the doctrine of judicial review as a core legal principle in American constitutional system: “So if a law be in opposition to the constitution; of both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is the very essence of judicial duty.”

⁴⁵ The idea that laws and legal proceedings must be fair. Due process is best defined in one word- **fairness.**

⁴⁶ Frankfurter, Mr. Justice Holmes and the Supreme Court pp 32-33

⁴⁷ Ermita-Malate Hotel & Motors Association v. City of Manila

⁴⁸ (Tupas v. CA)

PREAMBLE

- I. *Meaning*
- II. *Function*
- III. *Social Contract Theory*

I. Meaning

Preamble means “to walk before.” (*Praeambulus: Walking in front*)

II. Function

Function
Origin/Authorship
Scope and Purpose

A. Functions

1. It sets down the origin, scope and purpose of the Constitution.⁴⁹
2. It enumerates the primary aims and expresses the aspirations of the framers in drafting the Constitution.⁵⁰
3. Useful as an aid in the construction and interpretation of the text of the Constitution.⁵¹

Thus, Preamble is a source of light.⁵² It is not a source of rights or obligations. (*Jacobson v. Massachusetts*, 197 U.S. 11, 22 (1905).

B. Origin/Authorship

Its origin, or authorship, is the will of the “sovereign Filipino people.”

The identification of the Filipino people as the author of the constitution also calls attention to an important principle: that the document is not just the work of representatives of the people but of the people themselves who put their mark of approval by ratifying it in a plebiscite.⁵³

C. Scope and Purpose

“To build a just and humane society as to establish a government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity the blessings of

independence and democracy under the rule of law and the regime of truth, justice, freedom, love, equality and peace.”

III. Social Contract Theory

ASM: I submit that the Preamble is somehow a manifestation of the Social Contract Theory as it states: “*We the sovereign Filipino people...in order to build a...society and establish a government... do ordain and promulgate this constitution.*”

⁴⁹ Bernas Primer at 1 (2006 ed.)

⁵⁰ Cruz, *Philippine Political Law*, p. 49 (1995 ed).

⁵¹ Cruz, *Philippine Political Law*, p. 49 (1995 ed).

⁵² Bernas Primer at 1 (2006 ed.)

⁵³ Bernas Commentary, p 4(2003 ed).

ARTICLE I: NATIONAL TERRITORY

- I. **Territory**
- II. **Archipelago**
- III. **Archipelagic Principle**

I. Territory

A. What is Territory

Territory is the fixed portion of the surface of the earth inhabited by the people of the state.⁵⁴

Territory as an element of a state means an area over which a state has **effective control**.⁵⁵

(Read Province of Cotabato v. GRP. October 14, 2008)

B. What does territory include?

Territory includes land, maritime areas, airspace and outer space.⁵⁶

Airspace

- o Each state has exclusive jurisdiction over the air above its territory.
- o The consent for transit must be obtained from the subject nation.
- o Aircrafts not engaged in international air service, shall have the right to make flights into or in transit non-stop across its territory and to make steps for non-traffic purposes without the necessity of obtaining prior permission and subject to the right of the State flown over to require landing. (Chicago Convention on International Civil Action)

Outerspace

- o Sovereignty over airspace extends only until where outerspace begins. (50-100 miles from earth)

Different areas beyond the land territory

- o Territorial Seas (12 N.mi from baseline)
- o Contiguous Zone (24 N.mi from baseline)

⁵⁴ Cruz, Philippine Political Law, p. 16 (1995 ed).

⁵⁵ Bernas, An Introduction to Public International Law, 97 (2002 ed).

⁵⁶ Bernas, An Introduction to Public International Law, 97 (2002 ed).

- o Exclusive Economic Zone/Patrimonial Sea (200 N.mi from baseline)
- o High seas (Waters beyond territorial sea)

C. Significance of Territory

Control over territory is of the essence of a state (Las Palmas case). Certain rights and authority are exercised within the state's territory.

1. State's sovereignty is over its:
 - o Land territory (and airspace above it)
 - o Internal Waters (and airspace above it and seabed under it)
 - o Archipelagic Waters(and airspace above it and seabed under it)
 - o Territorial Sea (and airspace above it and seabed under it)
2. The coastal state has a right against innocent passage⁵⁷ in its internal waters.
3. The coastal state exercises authority over the area (contiguous zone) to the extent necessary to prevent infringement of customs, fiscal, immigration or sanitation authority over its territorial waters or territory and to punish such infringement.
4. The coastal state has rights over the economic resources of the sea, seabed and subsoil.

D. Scope of Philippine National Territory Defined in Article I, Section 1.

It includes:

- (1) The Philippine archipelago;
- (2) All other territories over which the Philippines has sovereignty or jurisdiction;
- (3) The territorial sea, seabed, subsoil, insular shelves and other submarine areas corresponding to (1) and (2). Moreover, (1) and (2) consist of terrestrial, fluvial and aerial domains.⁵⁸

E. Territories Covered under the Definition of Article 1

1. Those ceded to the US by virtue of the **Treaty of Paris** on December 10, 1898.
2. Those defined in the treaty concluded between the US and Spain (**Treaty of Washington**) on November 7, 1900, which were not defined in the Treaty of Paris, specifically the islands of Cagayan, Sulu and Sibuto.
3. Those defined in the treaty concluded on January 2, 1930, between the US and Great Britain (**Treaty with Great Britain**), specifically the Turtle and Mangsee islands.

⁵⁷ Passage that is not prejudicial to the peace, good order or security of the coastal state.

⁵⁸ Bernas Primer at 4 (2006 ed).

4. The island of Batanes, which was covered under a general statement in the 1935 Constitution.
5. Those contemplated in the phrase “belonging to the Philippines by historic right or legal title” in the 1973 Constitution.⁵⁹

E. “All other territories which the Philippines has sovereignty and jurisdiction.”

This includes any territory which presently belongs or might in the future belong to the Philippines through any of the internationally modes of acquiring territory.

- o Batanes islands
- o Those belonging to the Philippines by historic right or legal title (Sabah, the Marianas, Freedomland)

II. Archipelago

Archipelago Archipelagic State Archipelagic Waters Philippine Archipelago

A. Archipelago

Archipelago is a body of water studded with islands.⁶⁰

Q: Do you consider the Spratlys Group of Islands as part of Philippine Archipelago?

A: No. It is far from the three main islands of the Philippines and it is not covered by what was ceded in the Treaty of Paris.

Q: Do you consider the Spratlys group of Islands as part of the National Territory?

A: Yes. Under the 2nd phrase, “...and all other territories over which the Philippines has sovereignty and jurisdiction...” *Basis: Discovery of Tomas Cloma in the 1950s.* Cloma waived his rights over the islands in favor of the Philippine government. Philippine troops then occupied the islands. Marcos issued PD 1956 constituting Spratlys islands as a regular municipality (Municipality of Kalayaan) under the Province of Palawan. In May 20, 1980, the Philippines registered its claim with the UN Secretariat.

B. Archipelagic State

Archipelagic state means a state constituted wholly by one or more archipelagos and may include other islands. (Article 46 (a) of UNCLOS)

⁵⁹ Cruz, Philippine Political Law, p. 18 (1995 ed).

⁶⁰ Bernas Primer at 4 (2006 ed.)

C. Archipelagic Waters

According to UNCLOS, Archipelagic waters refers to areas enclosed as internal waters by using the baseline method **which had not been previously considered as internal waters.** (See Article 53 of UNCLOS)

Article 8(2) of UNCLOS: *Where the establishment of a straight baseline in accordance with the method set forth in Article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters.*

According to UNCLOS, in “archipelagic waters”, a right of innocent passage shall exist in these waters. **But**, the Philippines made a reservation, thus, “The concept of archipelagic waters is similar to the concept of internal waters under the Constitution of the Philippines, and removes straits connecting these waters with the economic zone or high sea from the rights of foreign vessel to transit passage for international navigation.”

Bernas: The reservation is *ad cautelam*. The claim made in the Constitution took effect in 1973 before the 1982 Law of the Sea Convention was formulated. Article 8(2) of the Convention itself says that the new rule on archipelagic waters applies only to “areas which had not previously been considered as” internal waters.⁶¹

D. Philippine Archipelago

The Philippine archipelago is that body of water studded with islands which is delineated in the Treaty of Paris, modified by the Treaty of Washington and the Treaty of Great Britain.

III. Archipelagic Principle

Archipelagic Doctrine Archipelago Doctrine of Article I Elements of Archipelagic Doctrine Purpose of Archipelagic Doctrine

A. Archipelagic Doctrine

(1989 Bar Question)

It is the principle whereby the body of water studded with islands, or the islands surrounded with water, is **viewed as a unity** of islands and waters together forming **one integrated unit**. For this purpose, it requires that baselines be drawn by connecting the appropriate points of the “outermost islands to encircle the islands within the

⁶¹ Bernas Commentary, p 28(2003 ed).

archipelago. We consider all the waters enclosed by the straight baselines as internal waters.⁶²

B. Elements of Archipelagic Doctrine

1. Definition of internal waters⁶³
2. The straight line method of delineating the territorial sea.

Straight Baseline Method- drawn connecting selected points on the coast without departing to any appreciable extent from the general direction of the coast. RA 3046 and RA 5446 have drawn straight baselines around the Philippines.

(The problem with the straight baseline method is that it conflicts with the Law of the Sea because it recognizes the right of innocent passage in archipelagic waters. That is why we made a reservation. However, as Bernas pointed out, the reservation is *ad cautelam*)

C. Purposes of Archipelagic Doctrine

1. Territorial Integrity
2. National Security
3. Economic reasons

It is said that the purpose of archipelagic doctrine is to protect the territorial integrity of the archipelago. Without it, there would be “pockets of high seas” between some of our islands and islets, thus foreign vessels would be able to pass through these “pockets of seas” and would have no jurisdiction over them.

D. Archipelago Doctrine in Article I, Section 1

(1989 Bar Question)

“The waters around, between and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of internal waters of the Philippines”

Q: Differentiate archipelagic waters, territorial sea and internal waters. (2004 Bar Question)

A:

According to UNCLOS, Archipelagic waters refers to areas enclosed as internal waters by using the baseline method **which had not been previously considered as internal waters.** (See Article 53 of UNCLOS)

Territorial sea is an adjacent belt of sea with a breadth of 12 nautical miles measured from the

baselines of a state and over which the state has sovereignty. (Article 2, 3 of UNCLOS)

Internal waters refer to “all waters landwards from the baseline of the territory.” Is from which the breadth of territorial sea is calculated. (Brownlie, Principles of PIL) No right of innocent passage for foreign vessels exist in the case of internal waters. (Harris, Cases and Material on International Law, 5th ed., 1998, p.407)

Under Section 1, Article I of the 1987 Constitution, the internal waters of the Philippines consist of the waters around between and connecting the islands of the Philippine archipelago regardless of their breadth and dimensions including the waters in bays, rivers, and lakes.

Q: Distinguish briefly but clearly between the contiguous zone and the exclusive economic zone. (2004 Bar Question)

Contiguous zone is a zone contiguous to the territorial sea and extends up to twelve nautical miles from the territorial sea and over which the coastal state may exercise control necessary to prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea. (Article 33 of the Convention on the Law of the Sea.)

The EEZ extends 200 nautical miles from the baseline. The EEZ is recognized in the UN Convention on the Law of the Sea. Although it is not part of the national territory, exclusive economic benefit is reserved for the country within the zone.

By virtue of PD 1599, the Philippine declares that it has sovereign rights to explore, exploit, conserve and manage the natural resources of the seabed, subsoil, and superjacent waters. Other states are prohibited from using the zone except for navigation and overflight, laying of submarine cables and pipeline, and other lawful uses related to navigation and communication.

Q: Distinguish the flag state and the flag of convenience. (2004 Bar Question)

Flag state means a ship has the nationality of the flag of the state it flies, but there must be a genuine link between the state and the ship. (Article 91 of the Convention on 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 the state. (Harris, Cases and Materials on International Law, 5th ed., 1998, p. 425.)

⁶² Cruz, Philippine Political Law, p. 17 (1995 ed).

⁶³ Internal waters refer to “all waters landwards from the baseline of the territory.”

Note: The Philippines considers all waters connecting the islands as internal waters.



ARTICLE II
DECLARATION OF PRINCIPLES AND
STATE POLICIES

- I. **Principles and State Policies**
- II. **State as a Legal Concept**
- PRINCIPLES**
- III. **Republicanism** (§ 1)
- IV. **Incorporation Clause** (§2)
- V. **Supremacy of Civilian Authority**(§3)
- VI. **Defense of State** (§4)
- VII. **Peace and Order**(§5)
- VIII. **Separation of Church and State** (§6)
- STATE POLICIES**
- IX. **Independent Foreign Policy**(§7)
- X. **Freedom from Nuclear Weapons**(§8)
- XI. **Just and Dynamic Social Order** (§9)
- XII. **Promotion of Social Justice** (§10)
- XIII. **Respect for Human Dignity**(§11)
- XIV. **Family, Rearing the Youth** (§§ 12-13)
- XV. **Women**(§14)
- XVI. **Health** (§15)
- XVII. **Balanced and healthful Ecology**(§-16)
- XVIII. **Education, Science and Technology**(§17)
- XIX. **Labor**(§18)
- XX. **Economy**(§19)
- XXI. **Private Sector and Private Enterprise** (§20)
- XXII. **Comprehensive Rural Development** (§21)
- XXIII. **Indigenous Cultural Communities** (§22)
- XXIV. **Sectoral Organizations** (§23)
- XXV. **Communication and Information** (§24)
- XXVI. **Local Autonomy** (§25)
- XXVII. **Equal Access to Opportunities** (§26)
- XXVIII. **Public Service** (§27)

XXIX.

Full Public Disclosure (§28)

I. Principles and State Policies

A. Description

This portion of the Constitution (Article II) might be called the **basic political creed of the nation**.⁶⁴

By its very title, Article II of the Constitution is a declaration of principles and state policies. x x x. These principles in Article II are not intended to be self-executing principles ready for enforcement through the courts. They are used by the judiciary as aids or as guides in the exercise of its power of judicial review, and by the legislature in its enactment of laws. (Tanada v. Angara cited in Tondo Medical Center Employees Association v. CA, July 17, 2007)

B. Function of the “Declaration of Principles and State Policies” in the Constitution

It is the statement of the basic ideological principles and policies that underlie the Constitution. As such, the provisions shed light on the meaning of the other provisions of the Constitution and they are a **guide for all departments** of the government in the implementation of the Constitution.⁶⁵

C. What are Principles? What are Policies?

Principles are binding rules which must be observed in the conduct of the government.⁶⁶

Policies are guidelines for the orientation of the state.⁶⁷

Note: The distinction between principles and polices is of little significance because not all of the six “principles” are self-executory and some of the “policies” already anchor justiciable rights.⁶⁸

- Section 5 (maintenance of peace and order...promotion of general welfare...) is a mere guideline.
- (Section 16 (right of the people to a balanced and healthful ecology is right-conferring provisions. (Oposa vs. Factoran)
- Section 28 is self-executory (Province of North Cotabato v. GRP)

⁶⁴ See Tanada v. Angara. See Vicente Sinco, Philippine Political Law 116 (11th ed., 1962).

⁶⁵ Bernas Primer at 7(2006 ed.)

⁶⁶ See IV RECORD OF THE CONSTITUTIONAL COMMISSION 768 and 580.

⁶⁷ See IV RECORD OF THE CONSTITUTIONAL COMMISSION 768 and 580.

⁶⁸ Bernas Commentary, p 37(2003 ed).

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

II. State as a Legal Concept

Definition of a State
Elements of a State
Government
Acts of State
State Immunity

A. Definition of a State

A state refers to a community of persons, more or less numerous, permanently occupying a definite portion of territory, independent of external control, and possessing an organized government to which the great body of inhabitants render habitual obedience.⁶⁹

B. Elements of a State

1. People
2. Territory
3. Sovereignty
4. Government

1. People

A community of persons sufficient in number and capable of maintaining the continued existence of the community and held together by a common bond of law.⁷⁰

Different Meanings of “People” as used in the Constitution:

1. Inhabitants⁷¹
2. Electors⁷²
3. Citizens⁷³
4. Sovereign. The people organized collectively as a legal association is the state which sovereignty resides.⁷⁴

2. Territory

Territory is the fixed portion of the surface of the earth inhabited by the people of the state.⁷⁵

⁶⁹ Bernas Commentary, p 39 (2003 ed).

⁷⁰ Bernas Commentary, p 40 (2003 ed).

⁷¹ Article II, Section 15, 16; Article III, Section 2; Article XIII, Section 1.

⁷² Article VII, Section 4; Article XVI, Section 2; Article XVIII, Section 25)

⁷³ Article II, Section 4; Article III, Section 7.

⁷⁴ Preamble; Article II, Section 1.

⁷⁵ Cruz, Philippine Political Law, p. 16 (1995 ed).

Territory as an element of a state means an area over which a state has **effective control**.⁷⁶

Read *Province of North Cotabato v. Government of the Republic of the Philippines*

3. Sovereignty

Definition
Kinds
Characteristics
Effects of Belligerent Occupation
Effects of Change in Sovereignty
Dominium v. Imperium
Jurisdiction
 “Sovereignty resides in the people”

a. Sovereignty

The supreme and uncontrollable power inherent in a State by which that State is governed.⁷⁷

In auto-limitation terms: It is the property of a State-force due to which it has *the exclusive capacity of legal determination and restriction*.

b. Kinds:

1. Legal
2. Political
3. Internal
4. External

Legal Sovereignty.

Cruz: Legal sovereignty is the authority which has the power to issue final commands. In our country, the Congress is the legal sovereign.⁷⁸

Bernas: Legal sovereignty is the supreme power to affect legal interests either by legislative, executive or judicial action. This is lodged in the people but is normally exercised by state agencies⁷⁹

(Bernas: Political writers distinguish between legal sovereignty and political sovereignty. The former is described as the supreme power to make laws and the latter as the sum total of all influences in a state, legal or non-legal,

⁷⁶ Bernas, An Introduction to Public International Law, 97 (2002 ed).

⁷⁷ Garner cited in Cruz, Philippine Political Law, p. 26 (1995 ed).

⁷⁸ Cruz, Philippine Political Law, p. 26 (1995 ed).

⁷⁹ Bernas Primer at 8 (2006 ed.); Section 1 of Article II says: “Sovereignty resides in the people an all government authority emanates from them.” Sovereignty in this sentence therefore can be understood as the source of ultimate legal authority. Since the ultimate law in the Philippine system is the constitution, sovereignty, understood as legal sovereignty, means the power to adapt or alter a constitution. This power resides in the “people” understood as those who have a direct hand in the formulation, adoption, and amendment or alteration of the Constitution. (Bernas Commentary, p 55 (2003 ed).

which determine the course of law. *Sinco* prefers not to make the distinction and places legal sovereignty in the state itself considered as a juridical person.)

Political Sovereignty

Sum total of all the influences of a State, legal and non-legal which determine the course of law.

Internal Sovereignty

It refers to the power of the State to control its domestic affairs. It is the supreme power over everything within its territory.

External Sovereignty

Also known as **Independence**, which is freedom from external control. It is the power of State to direct its relations with other States.⁸⁰

c. Characteristics of Sovereignty

It is permanent, exclusive, comprehensive, *absolute*, indivisible, inalienable, and imprescriptible.⁸¹

But wait, in the case of *Tanada v. Angara*, it was held that sovereignty of a state **cannot be absolute**. It is subject to limitations imposed by membership in the family of nations and limitations imposed by treaties. The Constitution did not envision a hermit-type isolation of the country from the rest of the world. (2000 Bar Question)

(*Read Province of Cotabato v. GRP. October 14, 2008*)

d. Effects of Belligerent Occupation

As to political laws. No change of sovereignty during a belligerent occupation, the political laws of the occupied territory are **merely suspended**, subject to revival under the *jus postliminium* upon the end of the occupation.

Note that the rule suspending political laws affects only the **civilian inhabitants** of the occupied territory and is not intended to bind the enemies in arms. Also, the rule does not apply to the law on treason although decidedly political in character.

As to non-political laws. The non-political laws are **deemed continued unless changed** by the belligerent occupant since they are intended to govern the relations of individuals as among themselves and are not generally affected by changes in regimes of rulers.

⁸⁰ Cruz, Philippine Political Law, p. 26 (1995 ed).

⁸¹ *Laurel v. Misa*, 77 Phil 856.

As for judicial decisions. As for judicial decisions the same are valid during the occupation and even beyond except those of a political complexion, which are automatically annulled upon the restoration of the legitimate authority.⁸²

e. Effects of Change in Sovereignty

As to political laws. Where there is a change in sovereignty, the political laws of the former sovereign are not merely suspended but **abrogated** unless they are retained or re-enacted by positive act of the new sovereign.

As to non-political laws. Non-political laws, continue in operation.

f. Imperium v. Dominium

Imperium. State's authority to govern. Covers such activities as passing laws, governing territory, maintaining peace and order over it, and defending against foreign invasion. This is the authority possessed by the State embraced in the concept of sovereignty.

Dominium. Capacity of the State to own property. Covers such rights as title to land, exploitation and use of it, and disposition or sale of the same.

g. Jurisdiction

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

Kinds of Jurisdiction:

1. **Territorial jurisdiction**- authority of the state to have all persons and things within its territorial limits to be completely subject to its control and protection.⁸³
2. **Personal jurisdiction**- authority of the state over its nationals, their persons, property, and acts whether within or outside its territory (e.g. Art. 15,CC)

⁸² Cruz, Philippine Political Law, p. 28 (1995 ed)

⁸³ Exempt are:

1. Foreign states, heads of state, diplomatic representatives, and consuls to a certain degree;
2. Foreign state property, including embassies, consulates, and public vessels engaged in non-commercial activities;
3. Acts of state;
4. Foreign merchant vessels exercising the rights of innocent passage or involuntary entry, such as the arrival under stress;
5. Foreign armies passing through or stationed in its territory with its permission;
6. Such other persons or property, including organizations like the United Nations, over which it may, by agreement, waive jurisdiction.

3. **Extra-territorial jurisdiction-** authority of the State over persons, things, or acts, outside its territorial limits by reason of their effect to its territory.

Examples:

1. Assertion of its personal jurisdiction over its nationals abroad; or the exercise of its rights to punish certain offenses committed outside its territory against its national interests even if the offenders are non-resident aliens;
2. By virtue of its relations with other states or territories, as when it establishes a colonial protectorate, or a condominium, or administers a trust territory, or occupies enemy territory in the course of war;
3. When the local state waives its jurisdiction over persons and things within its territory, as when a foreign army stationed therein remains under the jurisdiction of the sending states;
4. by the principle of extra territoriality, as illustrated by the immunities of the head of state in a foreign country;
5. Through the enjoyment or easements or servitudes, such as the easement of innocent passage or arrival under stress;
6. The exercise of jurisdiction by the state in the high seas over its vessels; over pirates; in the exercise of the right to visit and search; and under the doctrine of hot pursuit;
7. The exercise of limited jurisdiction over the contiguous zone and the patrimonial sea, to prevent infringement of its customs, fiscal, immigration or sanitary regulations.

h. Juristic Theory of Sovereignty

The legalistic and analytical view of sovereignty considers the **state as a corporate entity**, a juridical person.⁸⁴ It takes the state purely as a legal organism. It does not have anything to do at all with its social and historical background.

i. "Sovereignty resides in the PEOPLE"

The "people" in the sense in which it is used here refers to the **entire citizenry considered as a unit**.⁸⁵

4. Government

Government. That institution or aggregate of institutions by which an independent society makes and carries out those rules of action which are necessary to enable men to live in a social state, or which are imposed upon the people forming that society by those who possess the power or authority of prescribing them.⁸⁶

C Government

1. Government of the Republic of the Philippines

The Government of the Republic of the Philippines is a term which refers to the **corporate governmental entity** through which the functions of government are exercised throughout the Philippine Islands, including, save as the contrary appears from context, the various arms through which political authority is made effective in said Islands, whether pertaining to the central Government or to the provincial or municipal branches or other form of local government. (Section 2 of the Revised Administrative Code (1917).

On the national scale, the term "government of the Philippines" refers to the three great departments. On the local level, it means the regional provincial, city municipal and barangay governments.

It does not include government entities which are given a corporate personality separate and distinct for the government and which are governed by the corporation law.

2. Government v. Administration

Government is the institution through which the state exercises power. Administration consists of the set of people currently running the institution.⁸⁷

3. Functions of Government

- (1) **Governmental** (Constituent)- are the compulsory functions which constitute the very bonds of society.
- (2) **Proprietary** (Ministerial)—optional functions of the government for achieving a better life for the community. (Bacani v. NACOCO)

Governmental Function

- Implementation of the land reform may not strictly be "constituent" in the sense of *Bacani* but the compelling urgency with which the Constitution speaks of social justice does not leave any doubt that **land reform is not an optional but a compulsory function of sovereignty.** (ACCFA v. CUGCO)
- The functions of the Veterans Federation of the Philippines fall within the category of sovereign functions. (Veterans Federation of the Phils. V. Reyes 483 SCRA 526)
- The Manila International Airport Authority is a governmental instrumentality vested with corporate powers to perform its governmental function. It performs government functions essential to the operation of an international airport. (MIAA v. CA)
- Housing is a governmental function since housing is considered an essential service. (PHHC v. CIR)

⁸⁴ Sinco, Philippine Political Law, p 18 (1954ed).

⁸⁵ Sinco, Philippine Political Law, p 19 (1954ed).

⁸⁶ US v. Dorr, 2 Phil 332 cited in Bacani v. NACOCO, 100 Phil. 468 (1956).

⁸⁷ Bernas Commentary, p 44(2003 ed).

- The NHA is tasked with implementing the governmental program of providing mass housing to meet the needs of Filipinos for decent housing. The NHA is exempt from paying docket fees in suits in relation to its governmental functions. (*Badillo v. Tayag*)
- The (RCA) Rice and Corn Administration is a government machinery to carry out declared government policy to stabilize the price of palay, rice, and corn and making it within the reach of average consumers. Its activity of buying and selling corn is only an incident to its **government function**. Hence, it is exempt from posting an appeal bond. (*Republic v. CFI*)
- The “AFP Retirement and Benefits System” is a government entity and its funds are in the nature of public funds (*People v. Sandiganbayan*)

Proprietary Function

- Undertaking to supply water for a price is considered a trade and not a governmental activity. (*Spouses Fontanilla v. Maliaman*)
- Civil Aeronautics Administration is in charge of the administration of MIA, it is performing proprietary functions, hence it can be sued even when the claim is based on a quasi-delict. (*CAA v. CA*)

4. Doctrine of Parens Patriae

Literally, “parent of the people.” One of the important tasks of the government is to act for the State as *parens patriae*, or guardian of the rights of the people.⁸⁸

5. Classification of Government on the Basis of Legitimacy

1. De Jure Government
2. De Facto Government

De Jure Government. One established by authority of the legitimate sovereign.⁸⁹

De Facto Government. One established in defiance of the legitimate sovereign.⁹⁰ It actually exercises power or control without legal title.⁹¹

3 Kinds of De Facto Government:

1. **The government that gets possession and control or, or usurps, by force or by the voice of majority**, the rightful legal government and maintains itself against the will of the latter. (Such as the government of England under the Commonwealth, first by Parliament and later by Cromwell as Protector.)
2. **Established and maintained by invading military forces.** That established as an independent

government by the inhabitants of a country who rise in insurrection against the parent state (Such as the government of the Southern Confederacy in revolt against the Union during the war of secession in the United States.)

3. **Government of paramount force.** That which is established and maintained by military forces who invade and occupy a territory of enemy in the course of war.⁹² (Such as the cases of Castine in Maine, which was reduced to a British possession in the war of 1812, and Tampico, Mexico, occupied during the war with Mexico by the troops of the US.) (*Co Kim Chan v. Valdez*, 75 Phil 113)

Note:

The government under Cory Aquino and the Freedom Constitution is a *de jure* government. It was established by authority of the legitimate sovereign, the people. It was a revolutionary government established in defiance of the 1973 Constitution. (In *Re Letter of Associate Justice Puno*, 210 SCRA 589 (1992).

The government under President Gloria Macapagal Arroyo established after the ouster of President Estrada is *de jure* government.⁹³

Sinco on Revolution or Direct State Action:

“It sometimes happens that the people rise in revolt against the existing administration [government] and through force or threats succeed in altering the constituted organs of the government. From the point of view of the

⁹² It has been held that the Second Republic of the Philippines was a *de facto* government of paramount force, having been established by the Japanese belligerent during the occupation of the Philippines in World War II.

The characteristics of this kind of *de facto* government are:

1. Its existence is maintained by active military power within the territories, and against the rightful authority of an established and lawful government.
2. During its existence, it must necessarily be obeyed in civil matters by private citizens who, by acts of obedience rendered in submission to such force, do not become responsible, as wrongdoers, for those acts, though not warranted by the laws of the rightful government. Actual governments of this sort are established over districts differing greatly in extent and conditions. They are usually administered by military authority, supported more or less directly by military force. (*Co Kim Chan v. Valdez*, 75 Phil 113)

By contrast, the Supreme Court unanimously held in *Lawyers League for a Better Philippines v. Corazon Aquino* that “the people have made the judgment; they have accepted the government of President Corazon Aquino which is in effective control of the entire country so that it is not merely a *de facto* government but in fact and law a *de jure* government. Moreover, the community of nations has recognized the legitimacy of the present government.”

⁹³ *Bernas Primer* at 9 (2006 ed.)

⁸⁸ Cruz, *Philippine Political Law*, p. 23 (1995 ed.)

⁸⁹ *Bernas Primer* at 9 (2006 ed.)

⁹⁰ *Bernas Primer* at 9 (2006 ed.)

⁹¹ Cruz, *Philippine Political Law*, p. 23 (1995 ed.)

existing constitutional plan, that act is illegal; but considered from the point of view of the state as a distinct entity not necessarily bound to employ a particular government or administration to carry out its will, it is the direct act of the state itself because it is successful. As such, it is legal, for whatever is attributable to the state is lawful. This is the legal and political basis of the **doctrine of revolution.**⁹⁴

5. Presidential v. Parliamentary form of government (2006 Bar Exam Question)

The **presidential** form of government's identifying feature is what is called the "separation of powers."⁹⁵

The essential characteristics of a **parliamentary** form of government are:

1. The members of the government or cabinet or the executive arm are, as a rule, simultaneously members of the legislature;
2. The government or cabinet consisting of the political leaders of the majority party or of a coalition who are also members of the legislature, is in effect a committee of the legislature;
3. The government or cabinet has a pyramidal structure at the apex of which is the Prime Minister or his equivalent;
4. The government or cabinet remains in power only for so long as it enjoys the support of the majority of the legislature;
5. Both government and legislature are possessed of control devices which each can demand of the other immediate political responsibility. In the hands of the legislature is the vote of non-confidence (censure) whereby government may be ousted. In the hands of the government is the power to dissolve the legislature and call for new elections.⁹⁶

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

A: Presidential and presidential only.⁹⁷

C. Acts of State

⁹⁴ Sinco, Philippine Political Law, p 7 (1954ed).

⁹⁵ Bernas Primer at 10 (2006 ed.)

⁹⁶ Bernas Primer at 11 (2006 ed.)

⁹⁷ Bernas Primer at 11 (2006 ed.)

An act of State is done by the sovereign power of a country, or by its delegate, within the limits of the power vested in him.⁹⁸

Within particular reference to Political Law, an act of State is an act done by the political departments of the government and not subject to judicial review. An illustration is the decision of the President, in the exercise of his diplomatic power, to extend recognition to a newly-established foreign State or government.⁹⁹

D. State Immunity

"The State cannot be sued without its consent."
(Article XVI, Section 3)

(State immunity will be discussed under Article XVI, Section 3)

PRINCIPLES

III. Republicanism

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

A. Republic

Republic is a representative government run by the people and for the people.¹⁰⁰

Republican state is a state wherein all government authority emanates from the people and is exercised by representatives chosen by the people.¹⁰¹

⁹⁸ Cruz, Philippine Political Law, p. 29 (1995 ed).

⁹⁹ Cruz, Philippine Political Law, p. 29 (1995 ed).

¹⁰⁰ Cruz, Philippine Political Law, p. 50 (1995 ed).

¹⁰¹ Bernas Primer at 11 (2006 ed.)

B. Essential Features of Republicanism

The essence of republicanism is **representation** and **renovation**. The citizenry selects a corps of public functionaries who derive their mandate from the people and act on their behalf, serving for a limited period only, after which they are replaced or retained at the option of their principal.¹⁰²

C. Manifestations of Republicanism

1. Ours is a government of laws and not of men. (Villavicencio v. Lukban, 39 Phil 778)
2. Rule of Majority (Plurality in elections)
3. Accountability of public officials
4. Bill of Rights
5. Legislature cannot pass irrevocable laws
6. Separation of powers

D. "Democratic State"

In the view of the new Constitution, the Philippines is not only a representative or republican state but also shares some aspects of direct democracy such as "initiative and referendum". The word democratic is also a monument to the February Revolution which re-won freedom through direct action of the people.

E. Constitutional Authoritarianism

Constitutional authoritarianism as understood and practiced in the Marcos regime under the 1973 Constitution, was the assumption of extraordinary powers by the President, including legislative and judicial and even constituent powers.¹⁰³

Q: Is constitutional authoritarianism compatible with a republican state?

A: Yes if the Constitution upon which the Executive bases his assumption of power is a legitimate expression of the people's will and if the Executive who assumes power received his office through a valid election by the people.¹⁰⁴

IV. Renunciation of War/ Incorporation Clause/ Policy of PEJ-FCA with All Nations

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

¹⁰² Cruz, Philippine Political Law, p. 50 (1995 ed).

¹⁰³ Bernas Primer at 12 (2006 ed.)

¹⁰⁴ Bernas Primer at 12 (2006 ed.)

A. Renunciation of War

"The Philippines renounces war as an instrument of national policy..."
(Read along Preamble, Article II Secs. 7 & 8; Article XVIII Sec. 25)

1. Aggressive War

The Philippines only renounces AGGRESSIVE war as an instrument of national policy. It does not renounce defensive war.

2. Philippines Renounces Not Only War

As member of United Nations, the Philippines does not merely renounce war but adheres to Article 2(4) of the UN charter which says: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with Purposes of the United Nations."

3. Historical Development of the Policy Condemning or Outlawing War in the International Scene:

1. **Covenant of the League of Nations**- provided conditions for the right to go to war.
2. **Kellogg-Briand Pact of 1928**- also known as the General Treaty for the Renunciation of War, ratified by 62 states, which forbade war as "an instrument of national policy."
3. **Charter of the United Nations**- Prohibits the threat or use of force against the territorial integrity or political independence of a State.

B. Incorporation Clause

"The Philippines...adopts the generally accepted principles of international law as part of law of the land..."

1. Acceptance of Dualist View

Implicit in this provision is the acceptance of the **dualist view** of legal systems, namely that *domestic law is distinct from international law*. Since dualism holds that international law and municipal law belong to different spheres, international law becomes part of municipal law only if it is incorporated in to municipal law.¹⁰⁵

2 Doctrine of Incorporation (1997 Bar Question)

Every state is, by reason of its membership in the family of nations, bound by the **generally accepted principles of international law**, which

¹⁰⁵ Bernas Commentary, p 61 (2003 ed).

are considered to be automatically part of its own laws. This is the doctrine of incorporation.¹⁰⁶

3. International Law

International Law

Traditional definition: It is a body of rules and principles of action which are binding upon civilized states in their relation to one another.

Restatement: The law which deals with the conduct of states and of international organizations and with their relations inter se, as well as with some other relations with persons, natural or juridical.

4. To What Elements of International Law does the principle of incorporation apply?

Since treaties become part of Philippine law only by ratification, the principle of incorporation applies only to **customary law and to treaties which have become part of customary law.**¹⁰⁷

5. Effect of Incorporation Clause

International law therefore can be used by Philippine courts to settle domestic disputes in much the same way that they would use the Civil Code or the Penal Code and other laws passed by Congress.¹⁰⁸

C. Policy of PEJ-FCA with All Nations

"The Philippines...adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations."

Q: Does the affirmation of amity will all nations mean automatic diplomatic recognition of all nations?

A: No. Amity with all nations is an ideal to be aimed at. Diplomatic recognition, however, remains a matter of executive discretion.¹⁰⁹

V. Supremacy of Civilian Authority

Section 3. Civilian Authority is, at all times supreme over the military. The Armed Forces of the Philippines is the protector of the people and the State. Its goal is to secure the sovereignty of the State and integrity of the national territory.

A. Civilian Authority

That *civilian authority is at all times supreme over the military* is implicit in a republican system.¹¹⁰

¹⁰⁶ Cruz, Philippine Political Law, p. 55 (1995 ed).

¹⁰⁷ Bernas Commentary, p 61 (2003 ed).

¹⁰⁸ Bernas Commentary, p 61 (2003 ed).

¹⁰⁹ Bernas Primer at 13 (2006 ed).

¹¹⁰ Cruz, Philippine Political Law, p. 67 (1995 ed).

Still, it was felt advisable to expressly affirm this principle in the Constitution to allay all fears of a military take-over of our civilian government.¹¹¹

It was also fittingly declared that the President, who is a civilian official, shall be the commander-in-chief of all the armed forces of the Philippines.¹¹²

Q: Does this mean that civilian officials are superior to military officials?

A: Civilian officials are superior to military official only when a law makes them so.¹¹³

B. Armed Forces of the Philippines

1. Reasons [in the constitution] for the existence of the armed forces

- (1) As protector of the people and the State
- (2) To secure the sovereignty of the State and the integrity of the national territory.¹¹⁴
- (3) They may be called to prevent or suppress lawless violence, invasion or rebellion.¹¹⁵
- (4) All Members of the armed forces shall take an oath or affirmation to uphold and defend the Constitution.¹¹⁶

2. Composition

The Armed Forces of the Philippines shall be composed of a citizen armed force which shall undergo military training and serve as may be provided by law. (Article XVI, Section 4)

3. On Politics

The armed forces shall be insulated from partisan politics. No member of the military shall engage directly or indirectly in any partisan political activity, except to vote. (Article XVI, Section 5)

Q: Is the provision an assertion of the political role of the military?

A: No. The phrase "**protector of the people**" was not meant to be an assertion of the political role of the military. The intent of the phrase "protector of the people" was rather to make it as corrective to military abuses experienced during martial rule.¹¹⁷

¹¹¹ Cruz, Philippine Political Law, p. 67 (1995 ed).

¹¹² Article VII, Section 18.

¹¹³ Bernas Primer at 13 (2006 ed).

¹¹⁴ Article II, Section 3.

¹¹⁵ Article VII, Section 18. See *IBP v. Zamora*.

¹¹⁶ Article XVI, Section 5.

¹¹⁷ Bernas Commentary, p 66 (2003 ed).

Q: Does this mean that the military has no political role?

A: Bernas: The military exercise of political power can be justified as a last resort—when civilian authority has lost its legitimacy.¹¹⁸
(*This is dangerous.*)

4. Bar Question (2003)

Q: Is the PNP covered by the same mandate under Article II, Section 3?

A: No. This provision is specifically addressed to the AFP and not to the PNP, because the latter is separate and distinct from the former. (Record of the Constitutional Commission, Volume V, p. 296; *Manalo v. Sistoza*, 312 SCRA 239)

VI. Defense of State

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

VII. Peace and Order

Section 5. The maintenance of peace and order, the protection of life, liberty and property, and the promotion of general welfare are essential for the enjoyment by all the people of the blessings of democracy.

Section 5 is not a self-executing provision. It is merely a guideline for legislation. (*Kilosbayan v. Morato*)

Right to bear arms. The right to bear arms is a statutory, not a constitutional right. The license to carry a firearm is neither a property nor a property right. Neither does it create a vested right. Even if it were a property right, it cannot be considered absolute as to be placed beyond the reach of police power. The maintenance of peace and order, and the protection of the people against violence are constitutional duties of the State, and the right to bear arms is to be construed in connection and in harmony with these constitutional duties. (*Chavez v. Romulo*, 2004)

VIII. Separation of Church and State

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

A. Rationale

“Strong fences make good neighbors.” The idea is to delineate boundaries between the two institutions and thus avoid encroachments by one against the other because of a misunderstanding of the limits of their respective exclusive jurisdictions.¹¹⁹

B. Who is Prohibited from Interfering

Doctrine cuts both ways. It is not only the State that is prohibited from interfering in purely ecclesiastical affairs; the Church is likewise barred from meddling in purely secular matters.¹²⁰(Cruz)

C. Separation of Church and State is Reinforced by:

1. Freedom of Religion Clause (Article III, Section 5)
2. Religious sect cannot be registered as a political party (Article IX-C, Section 2(5))
3. No sectoral representatives from the religious sector. (Article VI, Section 5 (2))
4. Prohibition against appropriation against sectarian benefit. (Article VI, 29(2)).

D. Exceptions

1. Churches, parsonages, etc. actually, directly and exclusively used for religious purposes shall be exempt from taxation. (Article VI, Section 28(3)).
2. When priest, preacher, minister or dignitary is assigned to the armed forces, or any penal institution or government orphanage or leprosarium, public money may be paid to them. (Article VI, Section 29(2))
3. Optional religious instruction for public elementary and high school students. (Article XIV, Section 3(3)).
4. Filipino ownership requirement for education institutions, except those established by religious groups and mission boards. (Article XIV, Section 4(2)).

STATE POLICIES

IX. Independent Foreign Policy

Section 7. The State shall pursue an independent foreign policy. In its relations with other states the paramount consideration shall be national sovereignty, territorial

¹¹⁸ Bernas Commentary, p 66 (2003 ed).

¹¹⁹ Cruz, Philippine Political Law, p. 65 (1995 ed).

¹²⁰ Cruz, Philippine Political Law, p. 65 (1995 ed).

integrity, national interest, and the right to self-determination.

The word “relations” covers the whole gamut of treaties and international agreements and other kinds of intercourse.¹²¹

X. Freedom from Nuclear Weapons

Section 8. The Philippines consistent with the national interest, adopts and pursues a policy of freedom from nuclear weapons in its territory.

A. Scope of Policy

The policy includes the prohibition not only of the possession, control, and manufacture of nuclear weapons but also nuclear arms tests.

B. Exception to the Policy

Exception to this policy may be made by the political department but it must be justified by the demands of the national interest.¹²²

The policy does not prohibit the peaceful use of nuclear energy.¹²³

C. Implication of the Policy for the Presence of American Troops

Any new agreement on bases or the presence of the troops, if ever there is one, must embody the basic policy of freedom from nuclear weapons. Moreover, it would be well within the power of government to demand ocular inspection and removal of nuclear arms.¹²⁴

XI. Just and Dynamic Social Order

Section 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a raising standard of living, and an improved quality of life for all.

¹²¹ Bernas Commentary, p 72 (2003 ed).

¹²² Bernas Primer at 15 (2006 ed.)

¹²³ Bernas Primer at 15 (2006 ed.)

¹²⁴ Bernas Primer at 15 (2006 ed.)

XII. Social Justice

Section 10. The State shall promote social justice in all phases of national development

A. Definition of Social Justice

Social Justice is neither communism, nor despotism, nor atomism, nor anarchy, but the **humanization of the laws and the equalization of the social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated.** (Calalang v. Williams)

Social justice simply means the equalization of economic, political, and social opportunities with special emphasis on the duty of the state to tilt the balance of social forces by favoring the disadvantaged in life.¹²⁵

XIII. Respect for Human Dignity

Section 11. The State values the dignity of every human person and guarantees full respect for human rights.

The concretization of this provision is found principally in the Bill of Rights and in the human rights provision of Article XIII.¹²⁶

Facts: Petitioners questioned the constitutionality of PD 1869, which created the PAGCOR and authorized it to operate gambling casinos, on the ground that it violated Sections 11, 12 and 13 of Article II of the Constitution.

Held: These provisions are merely statements of policies which are not self-executing. A law has to be passed to implement them. (Basco v. PAGCOR, 197 DCRA 52)¹²⁷

XIV. Family; Rearing the Youth

Section 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the **life of the unborn from conception.** The natural and primary

¹²⁵ Bernas Primer at 16 (2006 ed.)

¹²⁶ Bernas Commentary, p 83 (2003 ed).

¹²⁷ Jacinto Jimenez, Political Law Compendium, 4 (2006 ed.)

right and duty of parents in rearing of the youth for civic efficiency and the development of moral character shall receive the support of the government.

Section 13. The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.

A. Family

Family” means a stable heterosexual relationship. The family is not a creature of the State.¹²⁸

B. Effect of the Declaration of Family Autonomy

It accepts the principle that the family is anterior to the State and not a creature of the State. It protects the family from instrumentalization by the State.¹²⁹

C. Purpose of Assertion of Protection of the Unborn

The purpose of the assertion that the protection begins from the time of conception is **to prevent the State from adopting the doctrine in *Roe v. Wade*** which liberalized abortion laws up to the sixth month of pregnancy by allowing abortion any time during the first six months of pregnancy provided it can be done without danger to the mother.

D. Legal Meaning of the Protection Guaranteed for the Unborn.

1. This is not an assertion that the unborn is a legal person.
2. This is not an assertion that the life of the unborn is placed exactly on the level of the life of the mother. (When necessary to save the life of the mother, the life of the unborn may be sacrificed; but not when the purpose is merely to save the mother from emotional suffering, for which other remedies must be sought, or to spare the child from a life of poverty, which can be attended to by welfare institutions.)¹³⁰

E. Education

In the matter of education, the primary and natural right belongs to the parents. The State has a secondary and supportive role.

Foreign Language. The State cannot prohibit the teaching of foreign language to children before they reach a certain age. Such restriction does violence both to the letter and the spirit of the Constitution. (*Meyer v. Nebraska*)

Public School. The State cannot require children to attend **only** public schools before they reach a certain age. The child is not a mere creature of the State. Those who nurture him and direct his destiny have the right to recognize and prepare him. (*Pierce v. Society of Sisters*)

Religious Upbringing. The State cannot require children to continue schooling beyond a certain age in the honest and sincere claim of parents that such schooling would be harmful to their religious upbringing. Only those interests of the State “of the highest order and those not otherwise served can overbalance” the primary interest of parents in the religious upbringing of their children. (*Wisconsin v. Yoder*)

Parents Patriae. However, as *parents patriae*, the State has the authority and duty to step in where parents fail to or are unable to cope with their duties to their children.

XV. Women

Section 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

The provision is so worded as not to automatically dislocate the Civil Code and the civil law jurisprudence on the subject. What it does is to give impetus to the removal, through statutes, of existing inequalities. The general idea is for the law to ignore sex where sex is not a relevant factor in determining rights and duties. Nor is the provision meant to ignore customs and traditions.¹³¹

In *Philippine Telegraph and Telephone Co. v. NLRC, 1997*, the Supreme Court held that the petitioner’s policy of not accepting or considering as disqualified from work any woman worker who contracts marriage, runs afoul of the test of, and the right against discrimination, which is guaranteed all women workers under the Constitution. While a requirement that a woman employee must remain unmarried may be justified as a “bona fide qualification” where the particular

¹²⁸ Bernas Commentary, p 84 (2003 ed).

¹²⁹ Bernas Primer at 16 (2006 ed.)

¹³⁰ Bernas Primer at 17 (2006 ed.)

¹³¹ Bernas Primer at 18 (2006 ed.)

requirements of the job would demand the same, discrimination against married women cannot be adopted by the employer as a general principle.

XVI. Health

Section 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.

The provisions which directly or indirectly pertain to the duty of the State to protect and promote the people's right to health and well-being are not self-executory. They await implementation by Congress.¹³²

XVII. Balanced and Healthful Ecology

Section 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

Section 16 provides for enforceable rights. Hence, appeal to it has been recognized as conferring "standing" on minors to challenge logging policies of the government. (*Oposa v. Factoran*)

While the **right to a balanced and healthful ecology** is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights for it concerns nothing less than *self-preservation* and *self-perpetuation*. These basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. (*Oposa v. Factoran*, 1993)

On this basis too, the SC upheld the empowerment of the Laguna Lake Development Authority (LLDA) to protect the inhabitants of the Laguna Lake Area from the deleterious effects of pollutants coming from garbage dumping and the discharge of wastes in the area as against the local autonomy claim of local governments in the area. (*LLDA v. CA*, 1995)

See Rule of Procedure on Environmental Cases.

See Writ of Kalikasan under Article VIII.

XVIII. Education, Science and Technology

¹³² *Tondo Medical Center Employees v. CA*. G.R. No. 167324, July 17, 2007.

Section 17. The State shall give priority to education, science and technology, arts, culture and sports to foster patriotism, nationalism, accelerate social progress, and promote total human liberation and development.

(See Article XIV, Section 2)

This does not mean that the government is not free to balance the demands of education against other competing and urgent demands. (*Guingona v. Carague*)

In *Philippine Merchant Marine School Inc. v. CA*, the Court said that the requirement that a school must first obtain government authorization before operating is based on the State policy that educational programs and/or operations shall be of good quality and, therefore, shall at least satisfy minimum standards with respect to curricula, teaching staff, physical plant and facilities and administrative and management viability.

While it is true that the Court has upheld the constitutional right of every citizen to select a profession or course of study subject to fair, reasonable and equitable admission and academic requirements, the exercise of this right may be regulated pursuant to the police power of the State to safeguard health, morals, peace, **education**, order, safety and general welfare.

Thus, persons who desire to engage in the learned professions requiring scientific or technical knowledge may be required to take an examination as a prerequisite to engaging in their chosen careers. This regulation assumes particular pertinence in the field of medicine, in order to protect the public from the potentially deadly effects of incompetence and ignorance. (*PRC v. De Guzman*, 2004)

XIX. Labor

Section 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

"A primary social economic force" means that the human factor has primacy over non-human factors of production.

Protection to labor does not indicate promotion of employment alone. Under the welfare and social justice provisions of the Constitution, the promotion of full employment, while desirable, cannot take a backseat to the government's constitutional duty to provide mechanisms for the protection of our

workforce, local or overseas. (JMM Promotion and Management v. CA, 260 SCRA 319)

What concerns the Constitution more paramountly is employment be above all, decent, just and humane. It is bad enough that the country has to send its sons and daughters to strange lands, because it cannot satisfy their employment needs at home. Under these circumstances, the Government is duty bound to provide them adequate protection, personally and economically, while away from home. (Philippine Association of Service Exporters v. Drilon, 163 SCRA 386)

XX. Self-Reliant and Independent Economy

Section 19. The State shall develop a self-reliant and independent national economy effectively controlled by Filipinos.

This is a **guide** for interpreting provisions on national economy and patrimony. Any doubt must be resolved in favor of self-reliance and independence and in favor of Filipinos.

A petrochemical industry is not an ordinary investment opportunity, it is essential to national interest. (The approval of the transfer of the plant from Bataan to Batangas and authorization of the change of feedstock from naphtha only to naphtha and/or LPG do not prove to be advantageous to the government. This is a repudiation of the **independent** policy of the government to run its own affairs the way it deems best for national interest.) (Garcia v. BOI)

The WTO agreement does not violate Section 19 of Article II, nor Sections 10 and 12 of Article XII, because said sections should be read and understood in relation to Sections 1 and 3, Article XII, which requires the pursuit of a trade policy that “serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity.” (Tanada V. Angara)

XXI. Private Sector and Private Enterprise

Section 20. The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.

Section 20 is an acknowledgment of the importance of private initiative in building the nation. However, it is not a call for official abdication of duty to citizenry. (Marine Radio Communications Association v. Reyes)

Although the Constitution enshrines free enterprise as a policy, it nevertheless reserves to the Government the power to intervene whenever necessary for the promotion of the general welfare, as reflected in Sections 6 and 19 of Article XII.

XXII. Comprehensive Rural Development

Section 21. The State shall promote comprehensive rural development and agrarian program.

(See Article XIII, Sections 4-10)

Comprehensive rural development includes not only agrarian reform. It also encompasses a broad spectrum of social, economic, human, cultural, political and even industrial development.

XXIII. Indigenous Cultural Communities

Section 22. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.

(See Article VI Section 5(2); Article XII, Section 5; Article XIV, Section 17; See Cruz v. DENR)

Read Province of North Cotabato v. GRP

XXIV. Independent People's Organizations; Volunteerism

Section 23. The State shall encourage non-governmental, community-bases, or sectoral organizations that promote the welfare of the nation.

(See Article XIII, Sections 15-16)

The provision recognizes the principle that volunteerism and participation of non-governmental organizations in national development should be encouraged.¹³³

XXV. Communication and Information

Section 24. The State recognizes the vital role of communication and information in nation-building.

(See Article XVI, Sections 10-11; Article XVIII, Section 23)

¹³³ Bernas Commentary, p 96(2003 ed).

The NTC is justified to require PLDT to enter into an interconnection agreement with a cellular mobile telephone system. The order was issued in recognition of the vital role of communications in nation-building and to ensure that all users of the public telecommunications service have access to all other users of service within the Philippines. (PLDT v. NTC)

XXVI. Local Autonomy

Section 25. The State shall ensure the autonomy of local governments.

(See Article X)

Local autonomy under the 1987 Constitution simply means “decentralization” and does not make the local governments sovereign within the State or an imperium in imperio. (Basco v. PAGCOR)

Decentralization of administration is merely a delegation of administrative powers to the local government unit in order to broaden the base of governmental powers. Decentralization of power is abdication by the national government of governmental powers.

Even as we recognize that the Constitution guarantees autonomy to local government units, the exercise of local autonomy remains subject to the power of control by Congress and the power of general supervision by the President. (Judge Dadole v. Commission on Audit, 2002)

XXVII. Equal Access to Opportunities

Section 26. The State shall guarantee equal access to opportunities for public service, and prohibit political dynasties as may be defined by law.

(See Article VII, Section 13; Article XIII, Sections 1-2)

Purpose. The thrust of the provision is to impose on the state the obligation of guaranteeing equal access to public office.¹³⁴

There is no constitutional right to run for or hold public office. What is recognized is merely a privilege subject to limitations imposed by law. Section 26 of the Constitution neither bestows such right nor elevates the privilege to the level of an enforceable right. (Pamatong v. COMELEC)

XXVIII. Public Service

¹³⁴ Bernas Commentary, p 99 (2003 ed).

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

(See Article IX-D; Article XI, Sections 4-15)

XXIV. Full Public Disclosure

(1989 and 2000 Bar Question)

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

(Article III, Section 7; Article VI Sections 12 and 20; Article VII, Section 20; Article XI, Section 17; Article XII, Section 21)

It is well established in jurisprudence that neither the right to information nor the policy of full public disclosure is absolute, there being matters which, albeit of public concern or public interest, are recognized as privileged in nature. (Akayan v. Aquino, 2008)

Section 28 is self executory. (Province of North Cotabato v. GRP)

Read *JPEPA, NERI and NORTH COTABATO cases.*

xxx

(1996 Bar Question)

A law was passed dividing the Philippines into three regions (Luzon, Visayas and Mindanao) each constituting an independent state except on matters of foreign relations, national defense and national taxation, which are vested in the Central Government. Is the law valid?

The law dividing the Philippines into three regions each constituting an independent state and vesting in a central government matters of foreign relations, national defense and national taxation is unconstitutional.

1. It violates **Article I**, which guarantees the integrity of the national territory of the Philippines because it divided the Philippines into three states.
2. It violates **Section 1, Article II** of the Constitution which provides for the establishment of democratic and republic states by replacing it with three states organized as a confederation.
3. It violates **Section 22, Article II** of the Constitution, which, while recognizing and promoting the rights of indigenous cultural

- communities, provides for national unity and development.
4. It violates **Section 15, Article X** of the Constitution, which, provides for autonomous regions in Muslim Mindanao and in the cordilleras within the framework of national sovereignty as well as territorial integrity of the Republic of the Philippines.
 5. It violates the **sovereignty** of the Republic of the Philippines.

Province of North Cotabato v. Government of the Republic of the Philippines
October 14, 2008, GR 183591

FACTS:

Peace negotiations between the **GRP**¹³⁵ and **MILF**¹³⁶ began in 1996. Formal peace talks between the parties were held in Tripoli, Libya in 2001, the outcome of which was the GRP-MILF Tripoli Agreement on Peace (**Tripoli Agreement 2001**) containing the basic principles and agenda on the following aspects of the negotiation: *Security Aspect, Rehabilitation Aspect, and Ancestral Domain Aspect*. In 2005, several exploratory talks were held between the parties in Kuala Lumpur, eventually leading to the crafting of the draft **MOA-AD**¹³⁷ in its final form, which was set to be signed on August 5, 2008. Several petitions were filed seeking, among others, to restrain the signing of the MOA-AD. Petitions allege, among others, that the provisions of the MOA-AD violate the Constitution.

The MOA-AD mentions the "**Bangsamoro Juridical Entity**" (BJE) to which it grants the authority and jurisdiction over the Ancestral Domain and Ancestral Lands of the Bangsamoro. The territory of the Bangsamoro homeland is described as the land mass as well as the maritime, terrestrial, fluvial and alluvial domains, including the aerial domain and the atmospheric space above it, embracing the Mindanao-Sulu-Palawan geographic region.

The Parties to the MOA-AD stipulate that:

- The BJE shall have jurisdiction over all natural resources within its "internal waters," defined as extending fifteen (15) kilometers from the coastline of the BJE area;
- The BJE shall also have "*territorial waters,*" which shall stretch beyond the BJE internal waters up to the baselines of the Republic of the Philippines (RP) south east and south west of mainland Mindanao;

- Within these territorial waters, the BJE and the "Central Government" (used interchangeably with RP) shall exercise **joint** jurisdiction, authority and management over all natural resources.
- The BJE is free to enter into any economic cooperation and trade relations with foreign countries and shall have the option to establish trade missions in those countries. Such relationships and understandings, however, are not to include aggression against the GRP. The BJE may also enter into environmental cooperation agreements.
- The *external* defense of the BJE is to remain the duty and obligation of the Central Government. The Central Government is also bound to "take necessary steps to ensure the BJE's participation in international meetings and events" like those of the ASEAN and the specialized agencies of the UN.
- The BJE is to be entitled to participate in Philippine official missions and delegations for the negotiation of border agreements or protocols for environmental protection and equitable sharing of incomes and revenues involving the bodies of water adjacent to or between the islands forming part of the ancestral domain.

The MOA-AD further provides for the **sharing of minerals on the territorial waters between the Central Government and the BJE, in favor of the latter,** through production sharing and economic cooperation agreement. The activities which the Parties are allowed to conduct on the *territorial waters* are enumerated, among which are the exploration and utilization of natural resources, regulation of shipping and fishing activities, and the enforcement of police and safety measures.

The MOA-AD describes the relationship of the Central Government and the BJE as "**associative,**" characterized by shared authority and responsibility. And it states that the structure of governance is to be based on executive, legislative, judicial, and administrative institutions with defined powers and functions in the Comprehensive Compact. The BJE is granted the power to build, develop and maintain its own institutions inclusive of civil service, electoral, financial and banking, education, legislation, legal, economic, police and internal security force, judicial system and correctional institutions, the details of which shall be discussed in the negotiation of the comprehensive compact.

Paragraph 1 on CONCEPTS AND PRINCIPLES of MOA-AD states:

1. ***It is the birthright of all Moros and all Indigenous peoples of Mindanao to identify themselves and be accepted as "Bangsamoros". The Bangsamoro people refers to those who are natives or original inhabitants of***

¹³⁵ Government of the Republic of the Philippines

¹³⁶ Moro Islamic Liberation Front: The MILF is a rebel group which was established in March 1984 when, under the leadership of the late Salamat Hashim, it splintered from the Moro National Liberation Front (MNLF) then headed by Nur Misuari, on the ground, among others, of what Salamat perceived to be the manipulation of the MNLF away from an Islamic basis towards Marxist-Maoist orientations.

¹³⁷ Memorandum of Agreement on Ancestral Domain

Mindanao and its adjacent islands including Palawan and the Sulu archipelago at the time of conquest or colonization of its descendants whether mixed or of full blood. Spouses and their descendants are classified as Bangsamoro. The freedom of choice of the Indigenous people shall be respected.

ISSUE :

Whether MOA-AD is constitutional.

HELD:

Main Opinion, J. Carpio-Morales:

No. The MOA-AD is inconsistent with the Constitution and laws as presently worded:

1. **The concept of association is not recognized under the present Constitution.**
2. The MOA-AD would not comply with Article X Section 20 of the Constitution
3. **Article II, Section 22 of the Constitution must also be amended if the scheme envisioned in the MOA-AD is to be effected.**
4. The MOA-AD is also inconsistent with R.A. No. 9054 (The Organic Act of the ARMM)
5. **The MOA-AD is also inconsistent with IPRA**
6. **Even if the UN DRIP were considered as part of the law of the land pursuant to Article II, Section 2 of the Constitution, it would not suffice to uphold the validity of the MOA-AD so as to render its compliance with other laws unnecessary.**

The concept of association is not recognized under the present Constitution.

No province, city, or municipality, not even the ARMM, is recognized under our laws as having an "associative" relationship with the national government. Indeed, the concept implies powers that go beyond anything ever granted by the Constitution to any local or regional government. It also implies the recognition of the associated entity as a state. The Constitution, however, does not contemplate any state in this jurisdiction other than the Philippine State, much less does it provide for a transitory status that aims to prepare any part of Philippine territory for independence.

It is not merely an expanded version of the ARMM, the status of its relationship with the national government being fundamentally different from that of the ARMM. Indeed, BJE is a state in all but name as it meets the criteria of a state laid down in the Montevideo Convention, namely, a permanent population, a defined territory, a government, and a capacity to enter into relations with other states.

Even assuming arguendo that the MOA-AD would not necessarily sever any portion of Philippine territory,

the spirit animating it – which has betrayed itself by its use of the concept of association – runs counter to the national sovereignty and territorial integrity of the Republic.

The defining concept underlying the relationship between the national government and the BJE being itself contrary to the present Constitution, it is not surprising that many of the specific provisions of the MOA-AD on the formation and powers of the BJE are in conflict with the Constitution and the laws.

Article X, Section 18 of the Constitution provides that "[t]he creation of the autonomous region shall be effective when approved by a majority of the votes cast by the constituent units in a plebiscite called for the purpose, provided that only provinces, cities, and geographic areas voting favorably in such plebiscite shall be included in the autonomous region."

The BJE is more of a state than an autonomous region. But even assuming that it is covered by the term "autonomous region" in the constitutional provision just quoted, the MOA-AD would still be in conflict with it. Under paragraph 2(c) on TERRITORY in relation to 2(d) and 2(e), the present geographic area of the ARMM and, in addition, the municipalities of Lanao del Norte which voted for inclusion in the ARMM during the 2001 plebiscite – *Baloi, Munai, Nunungan, Pantar, Tagoloan and Tangkal* – are automatically part of the BJE without need of another plebiscite, in contrast to the areas under Categories A and B mentioned earlier in the overview. That the present components of the ARMM and the above-mentioned municipalities voted for inclusion therein in 2001, however, does not render another plebiscite unnecessary under the Constitution, precisely because what these areas voted for then was their inclusion in the ARMM, not the BJE.

Article II, Section 22 of the Constitution must also be amended if the scheme envisioned in the MOA-AD is to be effected.

That constitutional provision states: "The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development." (Underscoring supplied) An associative arrangement does not uphold national unity. While there may be a semblance of unity because of the associative ties between the BJE and the national government, the act of placing a portion of Philippine territory in a status which, in international practice, has generally been a preparation for independence, is certainly not conducive to national unity.

The MOA-AD is also inconsistent with IPRA.

IPRA lays down the prevailing procedure for the delineation and recognition of ancestral domains. The MOA-AD's manner of delineating the ancestral domain of the Bangsamoro people is a clear departure from that procedure. By paragraph 1 of TERRITORY of the MOA-AD, Parties simply agree that, subject to the delimitations in the agreed Schedules, "[t]he

Bangsamoro homeland and historic territory refer to the land mass as well as the maritime, terrestrial, fluvial and alluvial domains, and the aerial domain, the atmospheric space above it, embracing the Mindanao-Sulu-Palawan geographic region.”

International law has long recognized the right to self-determination of “peoples,” understood not merely as the entire population of a State but also a portion thereof. The people’s right to self-determination should not, however, be understood as extending to a unilateral right of secession.

In a historic development last September 13, 2007, the UN General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples (UN DRIP) through General Assembly Resolution 61/295 the Philippines being included among those in favor, The Declaration clearly recognized the right of indigenous peoples to self-determination, encompassing the right to autonomy or self-government. Self-government, as used in international legal discourse pertaining to indigenous peoples, has been understood as equivalent to “internal self-determination.”

Assuming that the UN DRIP, like the Universal Declaration on Human Rights, must now be regarded as embodying customary international law— still, the obligations enumerated therein do not strictly require the Republic to grant the Bangsamoro people, through the instrumentality of the BJE, the particular rights and powers provided for in the MOA-AD. Even the more specific provisions of the UN DRIP are general in scope, allowing for flexibility in its application by the different States.

There is, for instance, no requirement in the UN DRIP that States now guarantee indigenous peoples their own police and internal security force. Indeed, Article 8 presupposes that it is the State which will provide protection for indigenous peoples against acts like the forced dispossession of their lands – a function that is normally performed by police officers. If the protection of a right so essential to indigenous people’s identity is acknowledged to be the responsibility of the State, then surely the protection of rights less significant to them as such peoples would also be the duty of States. Nor is there in the UN DRIP an acknowledgement of the right of indigenous peoples to the aerial domain and atmospheric space. What it upholds, in Article 26 thereof, is the right of indigenous peoples to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Moreover, the UN DRIP, while upholding the right of indigenous peoples to autonomy, does not obligate States to grant indigenous peoples the near-independent status of an associated state.

Even if the UN DRIP were considered as part of the law of the land pursuant to Article II, Section 2 of the Constitution, it would not suffice to uphold the validity of the MOA-AD so as to render its compliance with other laws unnecessary.

Separate Opinion, J. Carpio:

The incorporation of the Lumads, and their ancestral domains, into the Bangsamoro violates the Constitutional and legislative guarantees recognizing and protecting the Lumads’ distinct cultural identities as well as their ancestral domains. The violation of these guarantees makes the MOA-AD **patently unconstitutional**.

The incorporation of the Lumads, and their ancestral domains, into the Bangsamoro without the Lumads’ knowledge and consent also violates Article 8 of the *United Nations Declaration on the Rights of Indigenous Peoples*. The provisions of Article 8 were designed to prevent **cultural genocide** of indigenous peoples. This will happen if the Lumads are identified from birth as Bangsamoros and their ancestral domains are absorbed into the ancestral domain of the Bangsamoros.

Issue :

Did respondents violate constitutional and statutory provisions on public consultation and the right to information when they negotiated and later initialed the MOA-AD?

Held:

Main Opinion, J. Carpio-Morales: YES. As regards this issue, the respondents violated the following legal provisions:

- Article II, Section 28**
- Article III Section 7
- Executive Order No. 3
- Local Government Code
- IPRA**

The **policy of full public disclosure** enunciated in above-quoted Section 28 *complements* the right of access to information on matters of public concern found in the Bill of Rights. The right to information guarantees the right of the people to demand information, while Section 28 recognizes the duty of officialdom to give information even if nobody demands. the effectivity of the policy of public disclosure need not await the passing of a statute.

IPRA

The ICCs/IPs have, under the IPRA, the right to participate fully at all levels of decision-making in matters which may affect their rights, lives and destinies. The MOA-AD, an instrument recognizing ancestral domain, failed to justify its non-compliance with the clear-cut mechanisms ordained in IPRA, which entails, among other things, the observance of the free and prior informed consent of the ICCs/IPs. The IPRA does **not** grant the Executive Department or any government agency the power to delineate and recognize an ancestral domain claim *by mere agreement or compromise*. In proceeding to make a sweeping declaration on ancestral domain, without complying with the IPRA, which is cited as one of the TOR of the MOA-AD, **respondents clearly**

transcended the boundaries of their authority. (J.
Carpio-Morales)

LEGISLATIVE DEPARTMENT

OUTLINE OF ARTICLE VI

- I. **Legislative Power** (§1)
- II. **Powers of Congress**
- III. **Congress** (§§ 2-10)
- IV. **Privileges of Members** (§ 11) (1)
- V. **Duty to Disclose, Disqualifications and Prohibitions** (§§ 12-14) (2)
- VI. **Internal Government of Congress** (§§ 15-16)
- VII. **Electoral Tribunal, CA** (§§17-19) (3)
- VIII. **Records and Books of Accounts** (§ 20) (4)
- IX. **Inquiries/ Oversight function** (§§ 21-22)
- X. **Emergency Powers** (§ 23)
- XI. **Bills/ Legislative Process** (§ 24,26,27)
- XII. **Power of the Purse/Fiscal Powers** (§§ 28,29,25)
- XIII. **Other Prohibited Measures** (§§30-31)
- XIV. **Initiative and Referendum** (§ 32)

I. LEGISLATIVE POWER

- Definition of Legislative Power**
- Where Vested**
- Classification of Legislative Power**
- Scope of Legislative power**
- Limitations on Legislative Power**
- Non-delegability of Legislative power**
- Rationale of the Doctrine of Non-delegability**
- Valid delegation of legislative powers**
- Delegation of rule-making power**
- Requisites for a valid delegation of rule-making power**
- Sufficient Standards**
- Examples of Invalid of Delegation**

Section 1. The Legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.

A. Definition of Legislative Power

Legislative power is the authority to make laws and to alter or repeal them.

B. Where Vested

Legislative power is vested in Congress except to the extent reserved to the people by the provision on initiative and referendum.

C. Classification of legislative power

Original legislative power- possessed by the sovereign people.

Derivative legislative power- that which has been delegated by the sovereign people to the legislative bodies. (Kind of power vested in Congress)

Constituent- The power to amend or revise the constitution

Ordinary- Power to pass ordinary laws.

Legislative power exercised by the people. The people, through the amendatory process, exercise constituent power, and through initiative and referendum, ordinary legislative power.

D. Scope of Legislative power.

Congress may legislate on any subject matter. (Vera v. Avelino) In other words, the legislative power of Congress is **plenary**.

E. Limitations on legislative power:

- 1. Substantive limitations¹³⁸
- 2. Procedural limitations¹³⁹

1. Substantive limitations:

a. Express Limitations

- i. Bill of Rights¹⁴⁰
- ii. On Appropriations¹⁴¹

¹³⁸ Refer to the subject matter of legislation. These are limitations on the content of laws.

¹³⁹ Formal limitations refer to the procedural requirements to be complied with by Congress in the passage of the bills. (Sinco, Phil. Political Law)

¹⁴⁰ Bill of Rights

- o No law shall be passed abridging freedom of speech, of expression etc (art. 3 §4)
- o No law shall be made respecting an establishment of religion (art. 3 §5)
- o No law impairing the obligation of contracts shall be passed. (art 3 §10)
- o No ex post facto law or bill of attainder shall be enacted. (art. 3 §22)

¹⁴¹ On Appropriations

- o Congress cannot increase appropriations by the President (art. 6 §25)
- o (art. 6 29(2))

- iii. On Taxation¹⁴²
- iv. On Constitutional Appellate jurisdiction of SC¹⁴³
- v. No law granting a title of royalty or nobility shall be enacted (art. 6 §31)
- b. Implied limitations**
 - i. Congress cannot legislate irrevocable laws
 - ii. Congress cannot delegate legislative powers
 - iii. Non-encroachment on powers of other departments

- (1) Delegation of tariff power to the President
- (2) Delegation of emergency powers to the President
- (3) Delegation to LGU's

Note:

Some commentators include (a) delegation to the people at large and (b) delegation to administrative bodies to the exceptions. (See Cruz, Philippine Political Law p 87, 1995 ed.) However, I submit this is not accurate.

I submit that legislative power is not delegated to the people because in the first place they are the primary holder of the power; they only delegated such power to the Congress through the Constitution. (See Preamble and Article II Section 1) Note that Article VI Section 1 does not delegate power to the people. It **reserves** legislative power to the people. -asm

What is delegated to administrative bodies is not legislative power but rule-making power or law execution.

2. Procedural limitations:

- a. Only one subject
- b. Three readings on separate days
- c. Printed copies in its final form 3 days before passage of the bill. (art 6 § 26)

F. Non-delegability of Legislative power

Doctrine of Non-delegation of legislative powers: The rule is *delegata potestas non potest delegari*-what has been delegated cannot be delegated. The doctrine rests on the ethical principle that a delegated power constitutes not only a right but duty to be performed by the delegate by the instrumentality of his own judgment and not through the intervening mind of another.

G. Rationale of the Doctrine of Non-delegability:

- (1) Based on the **separation of powers**. (Why go to the trouble of separating the three powers of government if they can straightaway remerge on their own notion?)
- (2) Based on **due process of law**. Such precludes the transfer of regulatory functions to private persons.
- (3) And, based on the maxim, "**delegata potestas non potest delegari**" meaning what has been delegated already cannot be further delegated.

H. Valid delegation of legislative powers

General Rule: Legislative power cannot be delegated
 Exceptions:

I. Delegation of rule-making powers

What is delegated to administrative bodies is not legislative power but rule-making power or law execution. Administrative agencies may be allowed either to:

- Fill up the details on otherwise complete statute or
- Ascertain the facts necessary to bring a "contingent" law or provision into actual operation.

Power of Subordinate Legislation. It is the authority of the administrative body tasked by the legislature to implement laws to promulgate rules and regulations to properly execute and implement laws.

Contingent Legislation

The standby authority given to the President to increase the value added tax rate in the VAT Law, R.A. 9337 was upheld as an example of contingent legislation where the effectivity of the law is made to depend on the verification by the executive of the existence of certain conditions.¹⁴⁴

In *Gerochi v. DENR*¹⁴⁵ the power delegated to the Energy Regulator Board to fix and impose a universal charge on electricity end-users was challenged as an undue delegation of the power to tax. The Court said that, since the purpose of the law was not revenue generation but energy

¹⁴² On Taxation
 ○ (art. 6 §28 and 29(3))
 ○ (art. 14 §4(3))

¹⁴³ No law shall be passed increasing the appellate jurisdiction of the SC without its advice and concurrence (art. 6 §30)

¹⁴⁴ *Abakada Guru Party List Officers v. Executive Secretary*, G.R. 168056, September 1, 2005. Reconsidered October 18, 2005.

¹⁴⁵ G.R. No. 159796, July 17, 2007

regulation, the power involved was more police power than the power to tax. Moreover the Court added that the power to tax can be used for regulation. As to the validity of the delegation to an executive agency, the Court was satisfied that the delegating law was complete in itself and the amount to be charged was made certain by the parameters set by the law itself.

J. Requisites for a valid delegation of rule-making power or execution: (2005 Bar Question)

- (1) The delegating law must be **complete in itself** – it must set therein the policy to be carried out or implemented by the delegate.
- (2) The delegating law must fix a **sufficient standard**- the limits of which are sufficiently determinate or determinable, to which the delegate must conform in the performance of his functions.

Importance of Policy. Without a statutory declaration of policy, the delegate would, in effect, make or formulate such policy, which is the essence of every law.

Importance of Standard. Without 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 law, but also to unmake it, by adopting measures inconsistent with the end sought to be attained by the Act of Congress. (Pelaez v. Auditor General)

K. Standards

1. Need not be explicit
2. May be found in various parts of the statute
3. May be embodied in other statutes of the same statute

1. A legislative standard **need not be explicit** or formulated in precise declaratory language. It can be drawn from the declared policy of the law and from the totality of the delegating statute. (Osmena v. Orbos) It can be implied from the policy and purpose of the law (Agustin v. Edu)

2. A legislative standard may **be found in various parts of the statute.** (Tablarin v. Gutierrez)

3. A legislative standard need not be found in the law challenged and **may be embodied in other statues on the same subject.** (Chiongbayan v Orbos)

Q: Petitioners questioned the grant of the powers to mayors to issue permits for public assemblies in the Public Assembly Act on

the ground that it constituted an undue delegation of legislative power. There is however a reference to “imminent and grave danger of a substantive evil: in Section 6(c). Decide.

A: The law provides a precise and sufficient standard, the clear and present danger test in Section 6(a). The reference to imminent and grave danger of a substantive evil in Section 6(c) substantially means the same. (Bayan v. Ermita)

4. Examples of sufficient standards

- o “Necessary or advisable in the public interest” as a standard. Public interest in this case is sufficient standard pertaining to the issuance or cancellation of certificates or permits. And the term “public interest” is not without a settled meaning. (People vs. Rosenthal)
- o “Necessary in the interest of law and order” as a standard. An exception to the general rule, sanctioned by immemorial practice, permits the central legislative body to delegate legislative powers to local authorities. (Rubi vs. Provincial Board of Mindoro)
- o “To promote simplicity, economy and efficiency” as a standard. (Cervantes vs. Auditor General)
- o “Of a moral, educational, or amusing and harmless character” as a standard. (Mutual Film Co. vs. Industrial Commission of Ohio)
- o “To maintain monetary stability promote a rising level of production, employment and real income” as a standard. (People vs. Jollife)
- o “Adequate and efficient instruction” as standard. (Philippine Association of Colleges and Universities vs. Sec. of Education.
- o “Justice and equity and substantial merits of the case” as a standard. The discretionary power thus conferred is judicial in character and does not infringe upon the principle of separation of powers the prohibition against the delegation of legislative function (International Hardwood and Veneer Co. vs. Pangil Federation of Labor)
- o “Fair and equitable employment practices” as a standard. The power of the POEA in requiring the model contract is not unlimited as there is a sufficient standard guiding the delegate in the exercise of the said authority. (Eastern Shipping Lines Inc. vs. POEA)
- o “As far as practicable”, “decline of crude oil prices in the world market” and “stability of the peso exchange rate to the US dollar” as standards. The dictionary meanings of these words are well settled and cannot confuse men of reasonable intelligence. (However, by considering another factor to hasten full deregulation, the Executive Department rewrote the standards set forth in the statute. The Executive is bereft of any right to alter either by subtraction or addition the standards set in the statute.) (Tatad vs. Sec of Energy)

L. Examples of invalid delegation

- o Where there is no standard that the officials must observe in determining to whom to distribute the confiscated carabaos and carabeef, there is thus

an invalid delegation of legislative power. (Ynot v. IAC)

- Where a provision provides that the penalty would be a fine or 100 pesos OR imprisonment in the discretion of the court without prescribing the minimum and maximum periods of imprisonment, a penalty imposed based thereon is unconstitutional. It is not for the courts to fix the term of imprisonment where no points of reference have been provided by the legislature. (People v. Dacuycuy)
- Where the statute leaves to the sole discretion of the Governor-General to say what was and what was not "any cause" for enforcing it, the same is an invalid delegation of power. The Governor-General cannot by proclamation, determine what act shall constitute a crime or not. That is essentially a legislative task. (US vs. Ang Tang)
- Where a statute requires every public utility "to furnish annually a detailed report of finances and operations in such form and containing such matter as the Board may, from time to time, by order, prescribe", it seems that the legislature simply authorized the Board to require what information the Board wants. Such constitutes an unconstitutional delegation of legislative power. (Compana General de Tabacos de Filipinas vs. Board of Public Utility Commissioners)
- Where the legislature has not made the operation (execution) of a statute contingent upon specified facts or conditions to be ascertained by the provincial board but in reality leaves the entire matter for the various provincial boards to determine, such constitute an unconstitutional delegation of legislative power. A law may not be suspended as to certain individuals only, leaving the law to be enjoyed by others. (People vs. Vera)
- The authority to CREATE municipal corporations is essentially legislative in nature.

- (3) Power of Taxation (art. 6 §28(3), art. 14 §4(3), art 6, §29(4))
- (4) Investigatory Power (art. 6 §21)
- (5) Oversight function (art. 6 §22)
- (6) Power to declare the existence of state of war (art. 6 §23(1))
- (7) Power to act as Board of Canvassers in election of President¹⁴⁹ (art 7 §4)
- (8) Power to call a special election for President and Vice-President. (art. 7 §10)
- (9) Power to judge President's physical fitness to discharge the functions of the Presidency (art. 7§11)
- (10) Power to revoke or extend suspension of the privilege of the writ of habeas corpus or declaration of martial law. (art. 7 §18)
- (11) Power to concur in Presidential amnesties. Concurrence of majority of all the members of Congress. (art.7 §19)
- (12) Power to concur in treaties or international agreements. Concurrence of at least 2/3 of all the members of the Senate.(art.7 §21)
- (13) Power to confirm certain appointments/nominations made by the President (art.7 §9, art.7§16)
- (14) Power of Impeachment (art.11§2)
- (15) Power relative to natural resources¹⁵⁰ (art. 12 §2)
- (16) Power of internal organization
 - Election of officers
 - Promulgate internal rules
 - Disciplinary powers (art.6 §16)

Note: Members of Congress have immunity from arrest and parliamentary immunity.¹⁵¹ (art 6 §§11&12)

II. POWERS OF CONGRESS

A. Inherent Powers B. Express Powers

A. INHERENT POWERS

- (1) Police power
- (2) Power of eminent domain
- (3) Power of taxation
- (4) Implied Powers (Contempt Power)¹⁴⁶

B. EXPRESS POWERS

- (1) Legislative Power (art 6 sec1)
 - (a) Ordinary- power to pass ordinary laws
 - (b) Constituent¹⁴⁷- power to amend and or revise the Constitution
- (2) Power of the Purse¹⁴⁸ (art. 6§25)

¹⁴⁶ Page 12 of 2008 UP Bar Ops Reviewer.

¹⁴⁷ Propose amendment to or revision of the Constitution (art 17 §1) Call for a constitutional convention (art 17 §3)

¹⁴⁸ No money shall be paid out of the Treasury except in pursuance of an appropriation made by law. (art 6 §29(1)) The form, content,

III. Congress

- Composition of Congress**
- Bicameralism v. Unicameralism**
- Composition of Senate**
- Qualification of Senators**
- Senators' Term of Office / Staggering of Terms**
- Composition of HR**
- Qualification of Members of HR**
- Domicile**
- Property Qualification**
- Term of Office of Representatives**
- Party-List System**
- Legislative Districts**

and manner of preparation of budget shall be prescribed by law. (art 6 §25)

¹⁴⁹ This function is non-legislative. (Pimentel v. Joint Committee on Congress. June 22, 2004)

¹⁵⁰ Antonio B. Nachura, Outline/Reviewer in Political Law (2006 ed.)

¹⁵¹ Privilege from attest is not given to Congress as a body, but rather one that is granted particularly to each individual member of it. (Coffin v. Coffin, 4 Mass 1)

**Election
Salaries**

A. Composition of Congress

The Congress of the Philippines which shall consist of a Senate and a House of Representatives. (art 6 §1)

B. Bicameralism v. Unicameralism

The Congress of the Philippines is a **bicameral body** composed of a Senate and House of Representatives, the first being considered as the upper house and the second the lower house.

Advantages of Unicameralism.

1. Simplicity of organization resulting in economy and efficiency
2. Facility in pinpointing responsibility for legislation
3. Avoidance of duplication.

Advantages of Bicameralism.

1. Allows for a body with a national perspective to check the parochial tendency of representatives elected by district.
2. Allows for more careful study of legislation
3. Makes the legislature less susceptible to control by executive
4. Serves as training ground for national leaders.¹⁵²

C. Composition of Senate

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

Elected at large, reason. By providing for a membership elected at large by the electorate, this rule intends to make the Senate a training ground for national leaders and possibly a springboard for the Presidency. The feeling is that the senator, having national rather than only a district constituency, will have a broader outlook of the problems of the country instead of being restricted by parochial viewpoints and narrow interests. With such a perspective, the Senate is likely to be more circumspect and broad minded than the House of Representatives.¹⁵³

D. Qualifications of a Senator

¹⁵² Bernas, Primer p 224, 2006 ed.

¹⁵³ Cruz, Philippine Political Law.

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

Qualifications of a senator

- (1) Natural-born citizen of the Philippines
- (2) At least 35 years of age on the day of the election
- (3) Able to read and write
- (4) Registered voter
- (5) Resident of the Philippines for not less than 2 years immediately preceding the day of election.

“On the day of the election” means on the day the votes are cast. (Bernas Primer)

E. Senators’ Term of Office

Term

Commencement of Term

Limitation

Effect of Voluntary Renunciation

Staggering of Terms

Reason for Staggering

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

1. Term. The term of office of the Senators shall be 6 years.

2. Commencement of term. The term of office of the Senators shall commence on 12:00 noon of June 30 next following their election. (unless otherwise provided by law)

3. Limitation. A Senator may not serve for more than two **consecutive** terms. However, they may serve for more than two terms provided that the terms are not consecutive.

4. Effect of Voluntary Renunciation. Voluntary renunciation of 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. (art. 6 § 4)

5. Staggering of Terms. The Senate shall not at any time be completely dissolved. One-half of the membership is retained as the other half is replaced or reelected every three years.

6. Reason for Staggering. The continuity of the life of the Senate is intended to encourage the maintenance of Senate policies as well as guarantee that there will be experienced members who can help and train newcomers in the discharge of their duties.¹⁵⁴

F. Composition of House of Representatives

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

Composition. The composition of the House of Representatives shall be composed of not more than 250 members unless otherwise fixed by law.

Representatives shall be elected from legislative districts and through party-list system.

- a) District representatives
- b) Party-list representatives
- c) Sectoral representatives (these existed only until 1998)

G. Qualification of Representatives

Section 6. No person shall be a member of the House of Representatives unless he is a natural born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, able to read and write, and except the party-list representatives, a registered voter in the district in which he shall be elected, and a resident thereof for a

period of not less than one year immediately preceding the day of the election.

Qualifications of District Representatives:

- (1) Natural-born citizen of the Philippines
- (2) At least 25 years of age on the day of the election
- (3) Able to read and write
- (4) A registered voter in the district in which he shall be elected
- (5) A resident of the district in which he shall be elected for a period not less than 1 year immediately preceding the day of the election.

H. Domicile

Domicile

Residence as a qualification means "domicile". Normally a person's domicile is his domicile of origin.

If a person never loses his or her domicile, the one year requirement of Section 6 is not of relevance because he or she is deemed never to have left the place. (Romualdez-Marcos v. COMELEC)

A person may lose her domicile by voluntary abandonment for a new one or by marriage to a husband (who under the Civil Code dictates the wife's domicile).

Change of domicile

To successfully effect a change of domicile, there must be:

- **Physical Presence**-Residence or bodily presence in the new locality (The change of residence must be voluntary)
- **Animus manendi** -Intention to remain in the new locality (The purpose to remain in or at the domicile of choice must be for an indefinite period of time)
- **Animus non revertendi**-Intention to abandon old domicile

A lease contract does not adequately support a change of domicile. The lease does not constitute a clear animus manendi. (Domino v. COMELEC) However a lease contract coupled with affidavit of the owner where a person lives, his marriage certificate, birth certificate of his daughter and various letter may prove that a person has changed his residence. (Perez v. COMELEC)

I. Property Qualification

Property qualifications are contrary to the social justice provision of the Constitution. Such will also

¹⁵⁴ Cruz, Philippine Political Law.

be adding qualifications provided by the Constitution.

J. Term of Office of Representatives

Section 7. The members of the House of Representatives shall be elected for a term of three years which shall begin, unless otherwise provided by law, at noon on the thirtieth day of June next following their election.
 No member of the House Representatives shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

Term v. Tenure. Term refers to the period during which an official is entitled to hold office. Tenure refers to the period during which the official actually holds the office.

The term of office of Representatives shall be 3 years. The term of office of Representatives shall commence on 12:00noon of June 30 next following their election. (unless otherwise provided by law)

A Representative may not serve for more than 3 consecutive terms. However, he may serve for more than 3 terms provided that the terms are not consecutive. (1996 Bar Question)

Why three years? One purpose in reducing the term for three years is to synchronize elections, which in the case of the Senate are held at three-year intervals (to elect one-half of the body) and in the case of the President and Vice-President every six years.¹⁵⁵

Voluntary renunciation of 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.

Abandonment of Dimaporo. The case of *Dimaporo v. Mitra* which held that “filing of COC for a different position is a voluntary renunciation” has been abandoned because of the Fair Elections Act.

The filing of COC is not constitutive of voluntary renunciation. (*Farinas v. Executive Secretary; Quinto v. COMELEC, December 1, 2009*)

K. Party List System

Party-list system

¹⁵⁵ Cruz, Philippine Political law.

Number of Party-list Representatives
Manner of Allocating seats for Party list representatives
Guidelines
Parties or organizations disqualified
Qualifications of a party-list nominee

Section 5.
 (2) The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party-list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as may be provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

1. Party-list System. (RA 7941) The party-list system is a mechanism of proportional representation in the election of representatives of the House of Representatives from national, regional, and sectoral parties or organizations or coalitions thereof registered with the Commission on Elections.

Reason for party-list system. It is hoped that the system will democratize political power by encouraging the growth of a multi-party system.

2. Number of Party-list representatives Ceiling. “The party-list representatives shall constitute 20% of the total number of representatives.” Section 5(2) of Article VI is not mandatory. It merely provides a ceiling for party-list seats in Congress. (*Veterans Federation Party v. COMELEC; BANAT v. COMELEC*)

$$\frac{\text{No. of seats available to legislative district}}{\text{Total seats}} \times 0.20 = \text{Number of seats available to party-list representatives}$$

.80

3. Manner of Allocating Seats for Party List Representatives

The Constitution left to Congress the determination of the manner of allocating the seats for party-list representatives. Congress enacted **R.A. 7491**.

Procedure in Allocation of Seats for Party-List Representatives Under Section 11 of RA 7941:

1. The parties, organizations and coalitions shall be ranked from highest to the lowest based on the number of votes they garnered during the elections.
2. The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one guaranteed seat each.¹⁵⁶
3. Those garnering ~~more than two percent (2%) of the~~ **sufficient number of** votes shall be entitled to additional seats in proportion to their total number of votes **until all the additional seats are allocated.** (*changed part was declared unconstitutional by BANAT v. COMELEC*)¹⁵⁷
4. Each party, organization, or coalition shall be entitled to not more than three (3) seats.

Veterans Doctrine (Old): The 2% threshold requirement and the 3 seat-limit provided in RA 7941 are valid. Congress was vested with broad power to define and prescribe the mechanics of the party-list system of representation. Congress wanted to ensure that only those parties, organizations and coalitions having sufficient number of constituents deserving of representation are actually represented in Congress. (*Veterans Federation Party v. COMELEC*)

BANAT Doctrine (2009): The 2% threshold in the distribution of **additional** party-list seat is unconstitutional. The 2% threshold in the distribution of additional seats makes it mathematically impossible to achieve the maximum number of available party list seats when the number of available party list seats exceeds 50. The continued operation of the two percent

¹⁵⁶ The **percentage** of votes garnered by each party-list candidate is arrived at by dividing the number of votes of each party by the total number of votes cast for party-list candidates. (*BANAT v. COMELEC*)

¹⁵⁷ There are two steps in the second round of seat allocation. *First*, the **percentage** is multiplied by the remaining available seats (which is the difference between the maximum seats reserved under the party-list system and the guaranteed seats of the two-percenters. The whole integer of the product of the percentage and of the remaining available seats corresponds to a party's share in the remaining available seats. *Second*, we assign one seat to each of the parties next in rank until all available seats are completely distributed. (*BANAT v. COMELEC*)

threshold in the distribution of the additional seats frustrates the attainment of the permissive ceiling that 20% of the members of the House of Representatives shall consist of party-list representatives. (*BANAT v. Comelec*, G.R. No. 179295, April 21, 2009) In other words, the two percent threshold in relation to the distribution of the additional seats presents an unwarranted obstacle to the full implementation of Section 5(2), Article VI of the Constitution and prevents the attainment of the "broadest possible representation of party, sectoral or group interest in the House of Representatives." (*BANAT v. Comelec*, G.R. No. 179295, April 21, 2009)

3. Guidelines on what organizations may apply in the party-list system:

- (1) The parties or organizations must represent the marginalized and underrepresented in Section 5 of RA 7941;
- (2) Political parties who wish to participate must comply with this policy;
- (3) The religious sector may not be represented;
- (4) The party or organization must not be disqualified under Section 6 of RA 7941;
- (5) The party or organization must not be an adjunct of or a project organized or an entity funded or assisted by the government;
- (6) Its nominees must likewise comply with the requirements of the law;
- (7) The nominee must likewise be able to contribute to the formulation and enactment of legislation that will benefit the nation. (*Ang Bagong Bayani v. COMELEC*, June 26, 2001)

4. Parties or organizations disqualified

The COMELEC may motu proprio or upon verified complaint of any interested party, remove or cancel after due notice and hearing the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:

5. It is a religious sect or denomination, organization or association organized for religious purposes;
6. It advocates violence or unlawful means to seek its goal;
7. It is a foreign party or organization;
8. It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;
9. It violates or fails to comply with laws, rules or regulations relating to elections.
10. It declares untruthful statements in its petition;
11. It has ceased to exist for at least one (1) year;
12. It fails to participate in the last two (2) preceding elections or fails to obtain at least

two per centum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered.

Ang Ladlad v. COMELEC, April 8, 2010

Facts: Ang Ladlad is an organization composed of men and women who identify themselves as lesbians, gays, bisexuals, or trans-gendered individuals (LGBTs). Ang Ladlad argued that the LGBT community is a marginalized and under-represented sector that is particularly disadvantaged because of their sexual orientation and negative societal attitudes, LGBTs are constrained to hide their sexual orientation. Ang Ladlad applied for registration with COMELEC, but the latter refused to accredit the former as a party list organization based on moral grounds. According to the COMELEC Chairman, the party list system is not a tool to advocate tolerance and acceptance of misunderstood persons or group of persons.

Issue: Should Ang Ladlad be granted accreditation?

Ruling: Yes.

Ang Ladlad complies with the requirement of the Constitution and RA 7941. The enumeration of marginalized and under-represented sectors is not exclusive. Ang Ladlad sufficiently demonstrated its compliance with the legal requirements for accreditation. COMELEC has not identified any specific over immoral act performed by Ang Ladlad.

5. Qualifications of a party-list nominee in RA 7941:

- (1) Natural-born citizen of the Philippines;
- (2) Registered Voter;
- (3) Resident of the Philippines for a period of not less than 1 year immediately preceding the day of election
- (4) Able to read and write
- (5) A bona fide member of the party or organization which he seeks to represent for at least 90 days preceding the day of election
- (6) At least 25 years of age. (Ang Bagong Bayani v. COMELEC)

Political Parties. Political parties may participate in the party-list system (as long as they comply with the guidelines in Section 5 of RA 7941.) (Ang Bagong Bayani v. COMELEC) Major political parties are disallowed from participating in party-list elections. (BANAT v. COMELEC, G.R. No. 179295, April 21, 2009)

Section 10 of RA 7941 provides that the votes cast for a party which is not entitled to be voted for the party-list system should not be counted. The votes they obtained should be deducted from the canvass of the total number of votes cast for the party-list system. (Ang Bagong Bayani v. COMELEC)

Religious sectors v. Religious leaders. There is a prohibition of religious sectors. However, there is no prohibition from being elected or selected as sectoral representatives.

L. Legislative Districts

Apportionment

Reason for the Rule

Reapportionment

Gerrymandering

Aquino v. COMELEC (April 7, 2010)

Section 5

(3) Each legislative district shall comprise, as far as practicable, contiguous, compact and adjacent territory. Each city with a population of at least two hundred fifty thousand, or each province, shall have at least one representative.

(4) Within three years following the return of every census, the Congress shall make a reapportionment of legislative districts based on the standards provided in this section.

1. Apportionment

Legislative districts are apportioned among the provinces, cities, and the Metropolitan Manila area.

Legislative districts are apportioned in accordance with the number of their respect inhabitants and on the basis of a uniform and progressive ratio. (art. 6 § 5)

Each city with a population of at least 250,000 shall have at least one representative.

Each province shall have at least one representative.

The question of the validity of an apportionment law is a justiciable question. (Macias v. Comelec)

2. Reason for the rule. The underlying principle behind the rule for apportionment (that representative districts are apportioned among provinces, cities, and municipalities *in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ration.*) is the **concept of equality of representation** which is a basic principle of republicanism. One man's vote should carry as much weight as the vote of every other man.

Section 5 provides that the House shall be composed of not more than 250 members unless otherwise provided by law. Thus, Congress itself may by law increase the composition of the HR. (Tobias v. Abalos)

When one of the municipalities of a congressional district is converted to a city large enough to entitle it to one legislative district, the incidental effect is the splitting of district into two. The incidental arising of a new district in this manner need not be preceded by a census. (Tobias v. Abalos)

3. Reapportionment

Reapportionment can be made thru a special law. (Mariano v. COMELEC)

Correction of imbalance as a result of the increase in number of legislative districts must await the enactment of reapportionment law. (Montejo v. COMELEC)

4. Gerrymandering

Gerrymandering is the formation of one legislative district out of separate territories for the purpose of favoring a candidate or a party.

Gerrymandering is not allowed. The Constitution provides that each district shall comprise, as far as practicable, contiguous, compact and adjacent territory.

5. Aquino v. COMELEC (2010)

Main Opinion, J. Perez: A population of 250,000 is not an indispensable constitutional requirement **for the creation** of a new legislative district in a province. (Aquino v. COMELEC, GR No. 189793; April 7, 2010)

Dissenting Opinion, J. Carpio: Although textually relating to cities, this minimum population requirement applies equally to legislative districts apportioned in provinces and the Metropolitan Manila area because of the constitutional command that "legislative districts [shall be] apportioned among the **provinces, cities**, and the Metropolitan Manila area *in accordance with the number of their respective inhabitants, and on the basis of a **uniform and progressive ratio.***"

In short, the constitutional "standards" in the apportionment of legislative districts under Section 5 of Article VI, as far as population is concerned, are: (1) proportional representation; (2) a minimum "population of at least two hundred fifty thousand" per legislative district; (3) progressive ratio in the increase of legislative districts as the population base increases; and (4) uniformity in the apportionment of legislative districts in "provinces, cities, and the Metropolitan Manila area."

The directive in Section 5(3) of Article VI that "each province, shall have at least one representative" means only that when a province is created, a legislative district must also be created with it. Can this district have a population below 250,000? To answer in the affirmative is to ignore the constitutional mandate that districts in provinces be apportioned "in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio." (Aquino v. COMELEC, GR No. 189793; April 7, 2010)

M. Election

1. Regular Election
2. Special Election

Section 8. Unless otherwise provided by law, the regular election of the Senators and the Members of the House of Representatives shall be held on the second Monday of May.

Regular election

A person holding office in the House must yield his or her seat to the person declared by the COMELEC to be the winner. The Speaker shall administer the oath to the winner. (Codilla v. De Venecia)

Disqualified "winner"

The Court has also clarified the rule on who should assume the position should the candidate who received the highest number of votes is disqualified. The second in rank does not take his place. The reason is simple: "It is of no moment that there is only a margin of 768 votes between protestant and protestee. Whether the margin is ten or ten thousand, it still remains that protestant did not receive the mandate of the majority during the elections. Thus, to proclaim him as the duly elected representative in the stead of protestee would be anathema to the most basic precepts of republicanism and democracy as enshrined within our Constitution."¹⁵⁸

¹⁵⁸ *Ocampo v. HRET*, G.R. No. 158466. June 15, 2004.

Section 9. 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.

Special election

A special election to fill in a vacancy is not mandatory.

In a special election to fill a vacancy, the rule is that a statute that expressly provides that an election to fill a vacancy shall be held at the next general elections, fixes the date at which the special election is to be held and operates as the call for that election. Consequently, 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. This is because the right and duty to hold the election emanate from the statute and not from any call for election by some authority and the law thus charges voters with knowledge of the time and place of the election. (Tolentino v. COMELEC)

Special Election (R.A. 6645)

1. No special election will be called if vacancy occurs:
 - a. at least eighteen (18) months before the next regular election for the members of the Senate;
 - b. at least one (1) year before the next regular election members of Congress
2. The particular House of Congress where vacancy occurs must pass either a resolution if Congress is in session or the Senate President or the Speaker must sign a certification, if Congress is not in session,
 - a. declaring the existence of vacancy;
 - b. calling for a special election to be held within 45 to 90 days from the date of the resolution or certification.
3. The Senator or representative elected shall serve only for the unexpired term.

N. Salaries

When increase may take effect
Reason for the delayed effect of increased salary
Emoluments
Allowances

Section 10. The salaries of Senators and Members of the House of Representatives shall be determined by law. No increase in said compensation shall take effect until after the expiration of the full term of all the members of the Senate and

the House of Representatives approving such increase.

1. When increase may take effect. No increase in the salaries of Senators and Representatives shall take effect until after the expiration of the full term of **all** the members of the Senate and House of Representatives.

2. Reason for the delayed effect of increased salary. Its purpose is to place a "legal bar to the legislators' yielding to the natural temptation to increase their salaries. (PHILCONSA v. Mathay)

3. Emoluments. Bernas submits that, by appealing to the spirit of the prohibition, the provision may be read as an absolute ban on any form of direct or indirect increase of salary (like emoluments).

4. Allowances. A member of the Congress may receive office and necessary travel allowances since allowances take effect immediately. Nor is there a legal limit on the amount that may be appropriated. The only limit is moral, because, according to Section 20, the books of Congress are audited by the Commission on Audit 'which shall publish annually an itemized list of amounts paid and expenses incurred for each Member.¹⁵⁹

IV. PRIVILEGES OF MEMBERS

- A. Privilege from Arrest
- B. Parliamentary freedom of speech and debate

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

A. Privilege from Arrest (Parliamentary Immunity of Arrest)

Privilege
Purpose
Scope
Limitations
Privilege is Personal
Trillanes Case

1. Privilege. A member of Congress is privileged from arrest **while Congress is in session in all offenses** (criminal or civil) not punishable by more than 6 years imprisonment.

¹⁵⁹ Bernas Commentary, p700.

2. Purpose. Privilege is intended to ensure representation of the constituents of the member of Congress by preventing attempts to keep him from attending sessions.¹⁶⁰

3. Scope. Parliamentary immunity only includes the immunity from arrest, and not of being filed suit.

4. Limitations on Parliamentary Immunity

1. Crime has a maximum penalty of not more than 6 years;
2. Congress is in session, whether regular or special;
3. Prosecution will continue independent of arrest;
4. Will be subject to arrest immediately when Congress adjourns.

While in session. The privilege is available “while the Congress is in session,” whether regular or special and whether or not the legislator is actually attending a session. “Session” as here used does not refer to the day-to-day meetings of the legislature but to the entire period from its initial convening until its final adjournment.¹⁶¹ Hence the privilege is not available while Congress is in recess.

Why not available during recess. Since the purpose of the privilege is to protect the legislator against harassment which will keep him away from legislative sessions, there is no point in extending the privilege to the period when the Congress is not in session.

5. Privilege is personal. Privilege is personal to each member of the legislature, and in order that its benefits may be availed of, it must be asserted at the proper time and place; otherwise it will be considered waived.¹⁶²

Privilege not granted to Congress but to its members. Privilege from arrest is not given to Congress as a body, but rather one that is granted particularly to each individual member of it. (Coffin v. Coffin, 4 Mass 1)¹⁶³

Privilege is reinforced by Article 145 of the Revised Penal Code-*Violation of Parliamentary Immunity*.

Note: The provision says **privilege from arrest**; it does not say privilege from detention.

Q: Congressman Jalosjos was convicted for rape and detained in prison, asks that he be allowed to attend sessions of the House.

A: Members of Congress are not exempt from detention for crime. They may be arrested, even when the House in session, for crimes punishable by a penalty of more than six months.

Q: Congressman X was convicted for a crime with a punishment of less than 6 years. He asks that he be allowed to attend sessions of the House contending that the punishment for the crime for which he was convicted is less than 6 years.

A: I submit that Congressman X can be detained even if the punishment imposed is less than 6 years. The provision only speaks of privilege from arrest. It does not speak of exemption from serving sentence after conviction. Members of Congress are not exempt from detention for crime.-asm

Q: Can the Sandiganbayan order the preventive suspension of a Member of the House of Representatives being prosecuted criminally for violation of the Anti-Graft and Corrupt Practices Act?

A: Yes. In *Paredes v. Sandiganbayan*, the Court held that the accused cannot validly argue that only his peers in the House of Representatives can suspend him because the court-ordered suspension is a preventive measure that is different and distinct from the suspension ordered by his peers for disorderly behavior which is a penalty.

6. Trillanes Case (June 27, 2008)

In a unanimous decision penned by Justice Carpio Morales, the SC en banc junked Senator Antonio Trillanes’ petition seeking that he be allowed to perform his duties as a Senator while still under detention. SC barred Trillanes from attending Senate hearings while has pending cases, affirming the decision of Makati Judge Oscar Pimentel.

The SC reminded Trillanes that “election to office does not obliterate a criminal charge”, and that his electoral victory only signifies that when voters elected him, they were already fully aware of his limitations.

The SC did not find merit in Trillanes’ position that his case is different from former representative Romeo Jalosjos, who also sought similar privileges before when he served as Zamboanga del Norte congressman even while in detention.

Quoting parts of the decision on Jalosjos, SC said that “allowing accused-appellant to attend congressional sessions and committee meetings five days or more a week will virtually make him a free man... Such an aberrant situation not only elevates accused appellant’s status to that of a special class, it would be a mockery of the purposes of the correction system.”

The SC also did not buy Trillanes’ argument that he be given the same liberal treatment accorded to certain detention prisoners charged with non-bailable offenses, like former President Joseph Estrada and former Autonomous Region in

¹⁶⁰ Cruz, Philippine Political Law.

¹⁶¹ Cruz, Philippine Political Law.

¹⁶² Sinco, Philippine Political Law, p. 187, 10th ed.

¹⁶³ Sinco, Philippine Political Law, p. 187, 10th ed.

Muslim Mindanao (ARMM) governor Nur Misuari, saying these emergency or temporary leaves are under the discretion of the authorities or the courts handling them.

The SC reminded Trillanes that he also benefited from these “temporary leaves” given by the courts when he was allowed to file his candidacy and attend his oath-taking as a senator before.

The SC also believes that there is a “slight risk” that Trillanes would escape once he is given the privileges he is asking, citing the Peninsula Manila incident last November.

B. Privilege of Speech and Debate

Requirements

Purpose

Scope

Privilege Not Absolute

1. Isagani Cruz: 2 Requirements for the privilege to be availed of:

1. That the remarks must be made while the legislature or the legislative committee is functioning, that is in session;¹⁶⁴ (See Jimenez v. Cabangbang)
2. That they must be made in connection with the discharge of official duties.¹⁶⁵

But wait! As regards Requirement #1 provided by Cruz, Bernas Primer provides: to come under the privilege, it is not essential that the Congress be in session when the utterance is made. What is essential is that the utterance must constitute “legislative action.”¹⁶⁶

Libelous remarks not in exercise of legislative function shall not be under privilege of speech.

To invoke the privilege of speech, the matter must be oral and must be proven to be indeed privileged.

2. Purpose. It is intended to leave legislator unimpeded in the performance of his duties and free from harassment outside.¹⁶⁷

Privilege of speech and debate enables the legislator to express views bearing upon the public interest without fear of accountability outside the halls of the legislature for his inability to support his statements with the usual evidence required in the court of justice. In other words, he is given more leeway than the ordinary citizen in the ventilation of matters that ought to be divulged for the public good.¹⁶⁸

¹⁶⁴ Cruz, Philippine Political Law p. 116 (1995 ed.); See Jimenez v. Cabangbang.

¹⁶⁵ Cruz, Philippine Political Law p. 116 (1995 ed.).

¹⁶⁶ Bernas Primer, p. 245 (2006 ed.)

¹⁶⁷ Bernas Primer, p. 245 (2006).

¹⁶⁸ Cruz, Philippine Political Law.

To enable and encourage a representative of the public to discharge his public trust with firmness and success” for “it is indispensably necessary that he should enjoy the fullest liberty of speech and that he should be protected from resentment of every one, however, powerful, to whom the exercise of that liberty may occasion offense. (Osmena V. Pendatun cited in Pobre v. Defensor-Santiago, 2009)

3. Scope:¹⁶⁹

(1) The privilege is a protection only against forums other than the Congress itself. (Osmena v. Pendatun)

(2) “Speech or debate” includes utterances made in the performance of official functions, such as speeches delivered, statements made, votes cast, as well as bills introduced and other acts done in the performance of official duties. (Jimenez v. Cabangbang)

(3) To come under the privilege, it is not essential that the Congress be in session when the utterance is made. What is essential is that the utterance must constitute “legislative action”, that is, it must be part of the deliberative and communicative process by which legislators participate in committee or congressional proceedings in the consideration of proposed legislation or of other matters which the Constitution has placed within the jurisdiction of Congress. (Gravel v. US)

(4) The privilege extends to agents of assemblymen provided that the “agency” consists precisely in assisting the legislator in the performance of “legislative action” (Gravel v. US)

4. Privilege not absolute. The rule provides that the legislator may not be questioned “in any *other* place,” which means that he may be called to account for his remarks by his own colleagues in the Congress itself and, when warranted, punished for “disorderly behavior.”¹⁷⁰

5. Parliamentary Freedom of Speech v SC’s Power to Discipline

Facts: Senator Miriam Defensor-Santiago made this speech on the Senate floor. “x x x I am not angry. I am irate. I am foaming in the mouth. I am homicidal. I am suicidal. I am humiliated, debased, degraded. And I am not only that, I feel like throwing up to be living my middle years in a country of this nature. I am nauseated. I spit on the face of Chief Justice Artemio Panganiban and his cohorts in the Supreme Court, I am no longer interested in the position [of Chief Justice] if I was to be surrounded by idiots. I would rather be in

¹⁶⁹ Bernas Primer, p. 245 (2006 ed.)

¹⁷⁰ Cruz, Philippine Political Law; See Osmena v. Pendatun.

another environment but not in the Supreme Court of idiots x x x. " Pobre asks that disbarment proceedings or other disciplinary actions be taken against the lady senator.

Issue: May Senator Santiago be disbarred or be imposed with disciplinary sanction for her intemperate and highly improper speech made on the senate floor?

Held: No. A lawyer-senator who has crossed the limits of decency and good professional conduct by giving statements which were intemperate and highly improper in substance may not be disbarred or be imposed with disciplinary sanctions by the Supreme Court.

It is true that parliamentary immunity must not be allowed to be used as a vehicle to ridicule, demean, and destroy the reputation of the Court and its magistrates, nor as armor for personal wrath and disgust. However, courts do not interfere with the legislature or its members in the manner they perform their functions in the legislative floor or in committee rooms. Any claim of an unworthy purpose or of the falsity and mala fides of the statement uttered by the member of the Congress does not destroy the privilege. The disciplinary authority of the assembly and the voters, not the courts, can properly discourage or correct such abuses committed in the name of parliamentary immunity. (Pobre v. Defensor-Santiago, 2009)

V. DUTY TO DISCLOSE; PROHIBITIONS

- A. *Duty to Disclose*
- B. *Prohibitions*

A. Duty to disclose

Section 12. All members of the Senate and the House of Representative shall, upon assumption of office, make a full disclosure of their financial and business interests. They shall notify the House concerned of a potential conflict of interest that may arise from the filing of a proposed legislation of which they are authors.

This provision speaks of duty to disclose the following:

- (1) **Financial and business interest upon assumption of office**
- (2) **Potential conflict of interest** that may arise from filing of a proposed legislation of which they are authors.

B. Prohibitions (Disqualifications and Inhibitions)

Prohibitions

Disqualifications

Prohibitions on lawyer-legislators

Conflict of interests

Disqualifications

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

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

1. Prohibitions:

Disqualifications

- (1) **To hold any other office or employment** in the government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporation or their subsidiaries **during his term** without forfeiting his seat. (Incompatible office)
- (2) **To be appointed to any office** which may have been created or the emoluments thereof increased during the term for which he was elected. (Forbidden office)

Prohibitions on lawyer-legislators

(3) To personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies.

Conflict of Interests

(4) To be interested financially, directly or indirectly, in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency or instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary, during his term of office.

(5) To intervene in any matter before any office of the Government for his pecuniary benefit or intervene in any matter before any office of the Government where he may be called upon to act on account of his office.

(6) See Section 10

2. Disqualifications

Incompatible Office

Purpose. The purpose of prohibition of incompatible offices is to prevent him from owing loyalty to another branch of the government, to the detriment of the independence of the legislature and the doctrine of separation of powers.

2 Kinds of Office under Article 13

- 1) Incompatible office (1st sentence of article 13)
- 2) Forbidden office (2nd sentence of article 13)

Prohibition not absolute. The prohibition against the holding of an incompatible office is not absolute; what is not allowed is the simultaneous holding of that office and the seat in Congress.¹⁷¹ Hence, a member of Congress may resign in order to accept an appointment in the government before the expiration of his term.¹⁷²

When office not incompatible. Not every other office or employment is to be regarded as incompatible with the legislative position. For, example, membership in the Electoral Tribunals is permitted by the Constitution itself. Moreover, if it can be shown that the second office is an extension of the legislative position or is in aid of legislative duties, the holding thereof will not result in the loss of the legislator's seat in the Congress.¹⁷³

Forbidden Office.

Purpose. The purpose is to prevent trafficking in public office.¹⁷⁴ The reasons for excluding persons

from office who have been concerned in creating them or increasing the emoluments are to take away as far as possible, any improper bias in the vote of the representative and to secure to the constituents some solemn pledge of his disinterestedness.¹⁷⁵

Scope of prohibition. The provision does not apply to elective offices, which are filled by the voters themselves.

The appointment of the member of the Congress to the forbidden office is not allowed **only** during the term for which he was elected, when such office was created or its emoluments were increased. After such term, and even if the legislator is re-elected, the disqualification no longer applies and he may therefore be appointed to the office.¹⁷⁶

3. Prohibition on lawyer legislators.

Purpose. The purpose is to prevent the legislator from exerting undue influence, deliberately or not, upon the body where he is appearing.¹⁷⁷

Not a genuine party to a case. A congressman may not buy a nominal account of shares in a corporation which is party to a suit before the SEC and then appear in "intervention". That which the Constitution directly prohibits may not be done by indirection. (Puyat v. De Guzman)

Prohibition is personal. It does not apply to law firm where a lawyer-Congressman may be a member.¹⁷⁸ The lawyer-legislator may still engage in the practice of his profession except that when it come to trials and hearings before the bodies above-mentioned, appearance may be made not by him but by some member of his law office.¹⁷⁹

Pleadings. A congressman cannot sign pleadings [as counsel for a client] (Villegas case)

4. Conflict of Interests

Financial Interest

Purpose. This is because of the influence they can easily exercise in obtaining these concessions. The idea is to prevent abuses from being committed by the members of Congress to the prejudice of the public welfare and particularly of legitimate contractors with the government who otherwise might be placed at a disadvantageous position *vis-à-vis* the legislator.

¹⁷⁵ Mr. Justice Story quoted in Sinco, Philippine Political Law, p. 163 (1954).

¹⁷⁶ Cruz, Philippine Political Law.

¹⁷⁷ Cruz, Philippine Political Law.

¹⁷⁸ Bernas Primer, p.247 (2006).

¹⁷⁹ Cruz. Philippine Political Law.

¹⁷¹ Cruz, Philippine Political Law.

¹⁷² Bernas Primer, p.246 (2006).

¹⁷³ Cruz, Philippine Political Law.

¹⁷⁴ Cruz, Philippine Political Law.

Contract. The contracts referred to here are those involving "financial interest," that is, contracts from which the legislator expects to derive some profit at the expense of the government.¹⁸⁰

Pecuniary Benefit. The prohibited pecuniary benefit could be direct or indirect and this would cover pecuniary benefit for relatives. (Bernas Commentary, p. 710, 10th ed.)

VI. INTERNAL GOVERNMENT OF CONGRESS

Sessions

Adjournment

Officers

Quorum

Internal Rules

Disciplinary Powers

Legislative Journal and Congressional Record

Enrolled Bill Doctrine

A. Sessions

1. Regular
2. Special
3. Joint Sessions

Section 15. The Congress shall convene once every year on the fourth Monday of July for its regular session, unless a different date is fixed by law, and shall continue to be in session for such number of days as it may determine until thirty days before the opening of its next regular session, exclusive of Saturdays, Sundays, and legal holidays. The President may call a special session at any time.

Regular session

Congress shall convene once every year for its regular session.

Congress shall convene on the 4th Monday of July (unless a different date is fixed by law) until 30 days (exclusive of Saturdays, Sundays and legal holidays) before the opening of the next regular session.

Special session

A special session is one called by the President while the legislature is in recess.

Mandatory recess. A mandatory recess is prescribed for the thirty-day period before the opening of the next regular session, excluding Saturdays, Sundays and legal holidays. This is the minimum period of recess and may be lengthened by the Congress in its discretion. It may however, be called in special session at any time by the President.

The President's call is not necessary in some instances:

1. When the Congress meets to canvass the presidential elections
2. To call a special election when both the Presidency and Vice-Presidency are vacated
3. When it decides to exercise the power of impeachment where the respondent is the President himself.¹⁸¹

Q: May the President limit the subjects which may be considered during a special election called by him?

A: No. The President is given the power to call a session and to specify subjects he wants considered, but it does not empower him to prohibit consideration of other subjects. After all, Congress, if it so wishes, may stay in regular session almost all year round.¹⁸²

Joint Sessions

a. Voting Separately

- i) Choosing the President (art. 7 §4)
- ii) Determine President's disability (art. 7 §11)
- iii) Confirming nomination of the Vice-President (art. 7 §9)
- iv) Declaring the existence of a state of war (art. 6 §23)
- v) Proposing constitutional amendments (art. 12 §1)

b. Voting Jointly

To revoke or extend proclamation suspending the privilege of the writ of habeas corpus or placing the Philippines under martial law. (art 7 §18)

Instances when Congress votes other than majority.

- a. To suspend or expel a member in accordance with its rules and proceedings: 2/3 of all its members (Sec. 16, Art. VI).
- b. Yeas and nays entered in the Journal: 1/5 of the members present (Sec. 16(4), Art. VI)
- c. Declare the existence of a state of war: 2/3 of both houses in joint session voting separately (Sec. 23, Art. VI)

¹⁸⁰ Cruz, Philippine Political Law. Legislators cannot be members of the board of corporations with contract with the government. Such would be at least indirect financial interest. (Bernas Commentary, p. 710, 10th ed.)

¹⁸¹ Cruz, Philippine Political Law,

¹⁸² Bernas Commentary, p.711, (2003 ed.)

- d. Re-passing of a bill after Presidential veto: 2/3 of the Members of the House where it originated followed by 2/3 of the Members of the other House.
- e. Determining President's disability after submissions by both the Cabinet and the President: 2/3 of both Houses voting separately (Sec. 11, Art. VII)

B. Adjournment

Section 16
(5) Neither House during the session of the Congress shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Either House may adjourn even without the consent of the other provided that it will not be more than three days.

If one House should adjourn for more than three days, it will need the consent of the other.

Neither house can adjourn to any other place than that in which the two Houses shall be sitting without the consent of the other.

Reason. These rules prevent each house from holding up the work of legislation.¹⁸³ This coordinative rule is necessary because the two houses form only one legislative body.¹⁸⁴

C. Officers

Section 16. (1) The Senate shall elect its President and the House of Representatives its Speaker, by a majority vote of all its respective Members.
Each House shall choose such other officers as it may deem necessary.

Officers of the Congress:

- (1) Senate President
- (2) House Speaker
- (3) Such other officers as each House may deem necessary.

It is well within the power and jurisdiction of the Court to inquire whether the Senate or its officials committed a violation of the Constitution or gravely abused their discretion in the exercise of their functions and prerogatives. (Santiago v. Guingona)

¹⁸³ Sinco, Philippine Political Law, p 170 (1954).

¹⁸⁴ Bernas Commentary, p. 723, (2003 ed.)

The method of choosing who will be the other officers must be prescribed by Senate itself. In the absence of constitutional and statutory guidelines or specific rules, this Court is devoid of any basis upon which to determine the legality of the acts of the Senate relative thereto. On grounds of respect for the basic concept of separation of powers, courts may not intervene in the internal affairs of the legislature; it is not within the province of courts to direct Congress how to do its work. (Santiago v. Guingona)

D. Quorum

Section 16
(2) A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may compel the attendance of absent Members in such manner and under such penalties, as such House may provide.

Quorum to do business. A majority of each House shall constitute a quorum to do business.

Quorum is based on the proportion between those physically present and the **total membership** of the body.

A smaller number may adjourn from day to day.

A smaller number may compel the attendance of absent members in such manner and under such penalties as the House may provide.

The members of the Congress cannot compel absent members to attend sessions if the reason of absence is a legitimate one. The confinement of a Congressman charged with a non-bailable offense (more than 6 years) is certainly authorized by law and has constitutional foundations. (People v. Jalosjos)

The question of quorum cannot be raised repeatedly, especially when a quorum is obviously present, for the purpose of delaying the business of the House. (Arroyo v. De Venecia, June 26, 1998)

E. Internal Rules

Power to determine rules

Nature of the rules

Role of courts

Section 18
(3) Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and with the concurrence of two-thirds of all its Members, suspend or expel a

Member. A penalty of suspension, when imposed, shall not exceed sixty days.

1. Power to determine internal rules. Each House may determine the rules of its proceedings.

2. Nature of the Rules. The rules adopted by deliberative bodies (such as the House) are subject to revocation, modification, or waiver by the body adopting them. (Arroyo v. De Venecia)

The power to make rules is not one, once exercised is exhausted. It is a continuous power, always subject to be exercised by the House, and within the limitations suggested and absolutely beyond the challenge of any other body. (Arroyo v. De Venecia)

3. Role of Courts. The Court may not intervene in the implementation of the rules of either House except if the rule affects private rights. On matters affecting only internal operation of the legislature, the legislature's formulation and implementation of its rules is beyond the reach of the courts. When, however, the legislative rule affects private rights, the courts cannot altogether be excluded. (US v. Smith)

F. Disciplinary powers (suspension/expulsion)

Basis for punishment. Each House may punish its Members for disorderly behavior.

Preventive Suspension v. Punitive Suspension. A congressman may be suspended as a preventive measure by the Sandiganbayan. The order of suspension prescribed by the Anti-Graft and Corrupt Practices Act is distinct from the power of congress to police its own ranks under the Constitution. The suspension contemplated in the constitutional provisions is a punitive measure that is imposed upon determination by a House upon an erring member. The suspension spoken in AGCPA is not a penalty but a preventive measure. The doctrine of separation of powers by itself may not be deemed to have excluded members of Congress from AGCPA. The law did not exclude from its coverage the members of the Congress and therefore the Sandiganbayan may decree a preventive suspension order. (Santiago v. Sandiganbayan) (2002 Bar Question)

2/3 Requirement. Each House may with the concurrence of two-thirds of all its Members, suspend or expel a Member.

Period of suspension. A penalty of suspension, when imposed, shall not exceed sixty days.

Not subject to judicial review. Disciplinary action taken by Congress against a member is not subject to judicial review because each House is the sole judge of what disorderly behavior is. (Osmena v. Pendatun)

G. Legislative Journal and Congressional Record

Requirement

Journal

Purpose of Journal

What may be excluded

Matters to be entered to the journal

Journal v. Extraneous Evidence

Record

Section 18

(4) Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may, in its judgment, affect national security; and the yeas and nays on any question shall, at the request of one-fifth of the Members present, be entered in the Journal. Each House shall also keep a Record of its Proceedings.

1. Requirement. Each House shall keep a Journal of its proceedings, and from time to time publish the same.

2. What is a journal? The journal is usually an abbreviated account of the daily proceedings.¹⁸⁵ A legislative journal is defined as "the official record of what is 'done and past' in a legislative [body]. It is so called because the proceedings are entered therein, in chronological order as they occur from day to day."¹⁸⁶

3. Purpose of the requirement that a journal be kept:

- (1) To insure publicity to the proceedings of the legislature, and a correspondent responsibility of the members of their respective constituents; and
- (2) To provide proof of what actually transpired in the legislature. (Field v. Clark)

4. What may be excluded. The Constitution exempts from publication parts which in the judgment of the House affect national security.

5. Matters which, under the Constitution, are to be entered in the journal:

1. Yeas and nays on third and final reading of a bill.

¹⁸⁵ Bernas Commentary, p.723, (2003 ed.)

¹⁸⁶ Sinco, Philippine Political Law 191, (1954).

2. Veto message of the President
3. Yeas and nays on the repassing of a bill vetoed by the President
4. Yeas and nays on any question at the request of 1/5 of members present

6. Journal vs. Extraneous evidence. The Journal is conclusive upon the Courts (US v. Pons)

7. What is a Record? The Record contains a word for word transcript of the deliberation of Congress.¹⁸⁷

H. Enrolled bill doctrine

- Enrolled Bill*
- Enrolled Bill Doctrine*
- Underlying Principle*
- Enrolled Bill v. Journal Entry*
- Enrolled bill v. matters required to be entered in the journals*
- Remedy for Mistakes*

1. Enrolled Bill. One which has been duly introduced, finally passed by both houses, signed by the proper officers of each, approved by the [president]. (Black Law Dictionary)

2. Enrolled bill doctrine: The signing of a bill by the Speaker of the House and the Senate President and the certification by the secretaries of both Houses of Congress that such bill was passed are conclusive of its due enactment. (Arroyo v. De Venecia)

Where the conference committee report was approved by the Senate and the HR and the bill is enrolled, the SC may not inquire beyond the certification and approval of the bill, and the enrolled bill is conclusive upon the judiciary (Phil. Judges Association v. Prado)

3. Underlying Principle of the Doctrine. Court is bound under the **doctrine of separation of powers** by the contents of a duly authenticated measure of the legislature. (Mabanag v. Lopez Vito, Arroyo v. De Venecia)

4. Enrolled bill vs. Journal Entry: The enrolled bill is the official copy of approved legislation and bears the certification of the presiding officers of the legislative body. The respect due to a co-equal department requires the courts to accept the certification of the presiding officer as conclusive assurance that the bill so certified is authentic. (Casco Philippine Chemical Co. v. Gimenez) **However,** If the presiding officer should repudiate his signature in the "enrolled bill", the enrolled will not prevail over the Journal. This is because the

enrolled bill theory is based mainly on the respect due to a co-equal department. When such co-equal department itself repudiates the enrolled bill, then the journal must be accepted as conclusive.

5. Enrolled bill v. Matters required to be entered in the journals. The Supreme Court has explicitly left this matter an open question in Morales v. Subido.¹⁸⁸

6. Remedy for Mistakes. If a mistake was made in printing of the bill before it was certified by Congress and approved by the President, the remedy is amendment or corrective legislation, not judicial decree. (Casco (Phil) Chemical Co. Gimenez)

VII. Electoral Tribunals, CA

**Electoral Tribunal
 CA
 Constitution of ET and CA**

- A. Electoral Tribunal**
- Electoral Tribunals*
- Composition*
- Rationale*
- Independence*
- Security of Tenure*
- Power*
- Jurisdiction of ET*
- Jurisdiction of COMELEC*
- Judicial Review*

Section 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each electoral tribunal shall be composed of nine members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior justice in the Electoral tribunal shall be its Chairman.

¹⁸⁸ Bernas Primer, p. 251 (2006 ed.); Cruz in his book says: "But except only where the matters are required to be entered in the journals, the contents of the enrolled bill shall prevail over those of the journal in case of conflict. (Page 129 Philippine Political Law (1995 ed).

¹⁸⁷ Bernas Commentary, p.723, (2003 ed.)

1. Two Electoral Tribunals. The Senate and the House of Representatives shall each have an Electoral Tribunal

2. Composition of ET

Each electoral tribunal shall be composed of 9 members. 3 from the SC (to be designated by the CJ) and 6 from the respective House.

3. Why create an electoral tribunal independent from Congress. It is believed that this system tends to secure decisions rendered with a greater degree of impartiality and fairness to all parties. It also enables Congress to devote its full time to the performance of its proper function, which is legislation, rather than spend part of its time acting as judge of election contests.¹⁸⁹

Proportional Representation. The congressmen who will compose the electoral tribunal shall be chosen on the basis of proportional representation from the political and party-list parties.

Reason for Mixed Membership. The presence of justices of the Supreme Court in the Electoral Tribunal neutralizes the effects of partisan influences in its deliberations and invests its action with that measure of judicial temper which is greatly responsible for the respect and confidence people have in courts.¹⁹⁰

Chairman. The senior Justice in the electoral tribunal shall be its Chairman.

SET cannot legally function absent its entire membership of senators, and no amendment of its rules can confer on the 3 remaining justice-members alone, the power of valid adjudication of senatorial election contest. (Abbas v. SET)

4. Independence. The Congress may not regulate the actions of the electoral tribunals even in procedural matters. The tribunal is an independent constitutional body. (Angara v. Electoral Commission)

5. Security of Tenure. Members of ET have security of tenure. Disloyalty to the party is not a ground for termination. (Bondoc v. Pineda) (2002 Bar Question)

6. Power. The Electoral Tribunal shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective members. The tribunal has the power to promulgate rules relating to matters within its jurisdiction, including period for filing election protests. (Lazatin v. HET)

Electoral Tribunal has incidental power to promulgate its rules and regulations for the proper exercise of its function (Angara v. Electoral Commission)

7. Jurisdiction of Electoral Tribunal

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

The jurisdiction of HRET is not limited to constitutional qualifications. The word “qualifications” cannot be read to be qualified by the term “constitutional”. Where the law does not distinguish, the courts should likewise not. The filing of a certificate of candidacy is a statutory qualification. (Guerrero v. COMELEC)

Where a person is contesting the proclamation of a candidate as senator, it is SET which has exclusive jurisdiction to act. (Rasul v. COMELEC)

Contest **after proclamation** is the jurisdiction of HRET (Lazatin v. COMELEC)

When there is an **election contest** (when a defeated candidate challenge the qualification and claims the seat of a proclaimed winner), the Electoral Tribunal is the sole judge.

Errors that may be verified only by the opening of ballot boxes must be recurred to the electoral tribunal.

Once a winning candidate has been proclaimed, taken his oath and assumed office as a member of the House, COMELEC’s jurisdiction over election contest relating to his election, returns and qualifications ends, and the HRET’s own jurisdiction begins. (Aggabao v. COMELEC)

Nature of election contests. An election is not like an ordinary action in court. Public interests rather than purely private ones are involved in its determination.¹⁹¹ It is therefore not permissible that such a contest be settled by stipulation between the parties, nor can judgment be taken by default; but the case must be decided after thorough investigation of the evidence.¹⁹²

Absence of election contest. In the absence of an election contest, however, the electoral tribunals are without jurisdiction. Thus, the power of each House to defer oath-taking of members until final determination of election contests filed against them has been retained by each House. (Angara v. Electoral Commission)

¹⁸⁹ Sinco, Philippine Political Law, p.158 (1954).

¹⁹⁰ Sinco, Philippine Political Law, p.158 (1954).

¹⁹¹ Sinco, Philippine Political Law, p.161 (1954).

¹⁹² Reinsch, American Legislature, p 216.

Invalidity of Proclamation. An allegation of invalidity of a proclamation is a matter that is addressed to the sound discretion of the Electoral Tribunal. (*Lazatin v. COMELEC*)

Motion to Withdraw. The motion to withdraw does not divest the HRET the jurisdiction on the case. (*Robles v. HRET*)

8. Jurisdiction of COMELEC

Pre-proclamation controversies include:

- (1) Incomplete returns (omission of name or votes)
- (2) Returns with material defects
- (3) Returns which appeared to be tampered with, falsified or prepared under duress or containing discrepancies in the votes (with significant effect on the result of election)

"Where a petitioner has seasonably filed a motion for reconsideration of the order of the Second Division suspending his proclamation and disqualifying him, the COMELEC was not divested of its jurisdiction to review the validity of the order of the Second Division. The order of the Second division is unenforceable as it had not attained finality. It cannot be used as the basis for the assumption to office of respondent. The issue of the validity of the order of second division is still within the exclusive jurisdiction of the COMELEC en banc. (*Codilla v. De Venecia*)

It is the COMELEC which decides who the winner is in an election. A person holding office in the House must yield his or her seat to the person declared by the COMELEC to be the winner and the Speaker is duty bound to administer the oath¹⁹³. The Speaker shall administer the oath on the winner.

In election contests, however, the jurisdiction of the COMELEC ends once a candidate has been proclaimed and has taken his oath of office as a Member of Congress. Jurisdiction then passes to the Electoral Tribunal of either the House or the Senate.¹⁹⁴

9. Judicial Review

SC may intervene in the creation of the electoral tribunal. SC may overturn the decisions of HRET when there is **GADLJ**. (*Lerias v. HRET*)

Judicial review of decisions or final resolutions of the electoral tribunals is possible only in the exercise of the Court's so called extra-ordinary jurisdiction upon a determination that the tribunal's decision or resolution was rendered without or in

excess of jurisdiction or with **grave abuse of discretion** constituting **denial of due process**. (*Robles v. HET*)

Q: Are the decisions rendered by the Electoral Tribunals in the contests of which they are the sole judge appealable to the Supreme Court?

A: No. The decisions rendered by the Electoral Tribunals in the contests of which they are the sole judge are not appealable to the Supreme Court **except in cases of a clear showing of a grave abuse of discretion**.

B. Commission on Appointments

Function of CA

Composition

Proportional Representation

Fractional Seats

Voting

Action on Appointments

Ad Interim Appointments not acted upon

Ruling

Section 18. There shall be a Commission on Appointments consisting of the President of the Senate, as ex-officio Chairman, twelve Senators and twelve Members of the House of Representatives, elected by each House on the basis of proportional representation from the political parties and parties or organizations registered under the party-list system represented therein. The Chairman of the Commission shall not vote, except in the case of a tie. The Commission shall act on all appointments submitted to it within thirty session days of the Congress from the submission. The Commission shall rule by a majority vote of all its Members.

1. Function of CA. It acts as a legislative check on the appointing authority of the President. For the effectivity of the appointment of certain key officials, the consent of CA is needed.

2. Composition (25 members)

- (1) Senate President as chairman
- (2) 12 senators
- (3) 12 members of HR

3. Proportional Representation. The members of the Commission shall be elected by each House on the basis of proportional representation from the political party and party list.

¹⁹³ *Codilla v. de Venecia*, G.R. No. 150605. December 10, 2002.

¹⁹⁴ *Aggabao v. Comelec*, G.R. No. 163756. January 26, 2005; *Vinzons-Chato v. Comelec*, GR 172131, April 2, 2007.

The sense of the Constitution is that the membership in the Commission on Appointment must always reflect political alignments in Congress and must therefore adjust to changes. It is understood that such changes in party affiliation must be permanent and not merely temporary alliances (Daza v. Singson)

Endorsement is not sufficient to get a seat in COA. (Coseteng v. Mitra)

4. Fractional Seats. Fractional seats cannot be rounded off. The seats should be vacant. (Coseteng v. Mitra) A full complement of 12 members from the Senate is not mandatory (Guingona v. Gonzales) Holders of .5 proportion belonging to distinct parties may not form a unity for purposes of obtaining a seat in the Commission. (Guingona v. Gonzales)

5. Voting. The Chairman shall not vote except in the case of a tie.

6. Action on appointments. The Commission shall act on all appointments submitted to it within **30 session days** of the Congress from the submission.

7. Ad interim appointments not acted upon. Ad interim appointments not acted upon at the time of the adjournment of the Congress, even if the thirty-day period has not yet expired, are deemed by-passed under Article VII, Section 16.

8. Ruling. The Commission shall rule by a majority vote of all its Members.

C. Constitution of ET and CA

Organization

Reason for early organization of ETs

Reason of provision on CA

CA Meeting

Section 19. The Electoral Tribunals and the Commission on Appointments shall be constituted within thirty days after the Senate and the House of Representatives shall have been organized with the election of the President and the Speaker. The Commission on Appointments shall meet only while the Congress is in session, at the call of its Chairman or a majority of all its members, to discharge such powers and functions as are herein conferred upon it.

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

2. Reason for Early organization of ETs. In the case of Electoral Tribunals, the need for their early organization is obvious, considering the rash of election contests already waiting to be filed after, even before, the proclamation of the winners. This is also the reason why, unlike the Commission of Appointments, the Electoral Tribunals are supposed to continue functioning even during the recess.¹⁹⁵

3. Reason, provision on COA. The provision is based on the need to enable the President to exercise his appointing power with dispatch in coordination with the Commission on Appointments.

The rule that the Commission on Appointments can meet only during the session of the Congress is the reason why *ad interim* appointments are permitted under the Constitution. These appointments are made during the recess, subject to consideration later by the Commission, for confirmation or rejection.

But where the Congress is in session, the President must first clear his nominations with the Commission on Appointments, which is why it must be constituted as soon as possible. Unless it is organized, no appointment can be made by the President in the meantime.¹⁹⁶

4. COA meeting

The Commission on Appointments shall meet only while the Congress is in session to discharge its powers and functions.

The Commission on Appointments shall meet at the call of its Chairman or a majority of all its members

VIII. RECORDS AND BOOKS OF ACCOUNTS

Section 20. The records and books of accounts 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 an itemized list of amounts paid to and expenses incurred for by each Member.

Records and books of accounts

The records and books of accounts of the Congress shall be preserved and be open to the public in accordance with law.

¹⁹⁵ Cruz, Philippine Political Law.

¹⁹⁶ Cruz, Philippine Political Law.

The records and books of accounts of the Congress shall be audited by the Commission on Audit.

The Commission on Audit shall publish annually an itemized list of amounts paid to and expenses incurred for by each Member.

**IX. LEGISLATIVE HEARINGS
 (INQUIRIES AND OVERSIGHT FUNCTIONS)**

- A. Inquiries in Aid of Legislation**
- B. Oversight Functions**

There are two provisions on legislative hearing, Sections 21 and 22. Section 21 is about legislative investigations in aid of legislation.

Section 21. Legislative Investigation	Section 22. Oversight Function
Who may appear	
Any person	Department heads and others
Who may be summoned	
Anyone except the President and SC members (Senate v. Ermita)	Each house may only request the appearance of department heads.
Subject Matter	
Any matter for purpose of legislation	Matters related to the department only
Obligatory force of appearance	
Mandatory	Discretionary

A. Inquiries in Aid of Legislation

- Who has the power*
- Nature*
- Limitation of Power*
- Reason for Limitation*
- Scope of Questions*
- Who may be summoned*
- Power to Punish*
- Rights of Persons*
- Courts and Committee*
- Power of Inquiry v. Executive Privilege*
- Neri v. Senate Committee*

Section 21. The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

Power of Inquiry

1. Who has the power

The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation.

2. Nature

The power of inquiry is an **essential** and **appropriate auxiliary** to the legislative action. (Arnault v. Nazareno) It has been remarked that the power of legislative investigation may be implied from the express power of legislation and does not itself have to be expressly granted.¹⁹⁷

3. Limitations¹⁹⁸:

1. It must be in aid of legislation¹⁹⁹
2. It must be in accordance with its duly published rules of procedure²⁰⁰
3. The rights of persons appearing in or affected by such inquiries shall be respected.
4. Power of Congress to commit a witness for contempt terminates when the legislative body ceases to exist upon its final adjournment.²⁰¹

(Note: 1-3 are explicit limitations while 4 is an implicit limitation.)

4. Reason for the limitations

The reason is in the past, this power was much abused by some legislators who used it for illegitimate ends to browbeat or intimidate witnesses usually for grandstanding purposes only. There were also times when the subject of inquiry was purely private in nature and therefore outside the scope of the powers of Congress.²⁰²

5. Scope of questions

It is not necessary that every question propounded to a witness must be material to a proposed legislation. (Arnault v. Nazareno) This is because the legislative action is determined by the information gathered as a whole. (Arnault v. Nazareno)

6. Who may be summoned under Section 21

¹⁹⁷ Cruz, Philippine Political Law, p. 155 (1995 ed).

¹⁹⁸ See Concurring Opinion of Justice Corona in Neri v. Senate Committee; See also Bernas Commentary, p737 (2003 ed).

¹⁹⁹ This requirement is an essential element for establishing jurisdiction of the legislative body.

²⁰⁰ Section 21 may be read as requiring that Congress must have "duly published rules of procedure" for legislative investigations. Violation of these rules would be an offense against due process. (Bernas Commentary p. 740 (2003 ed).

²⁰¹ This must be so inasmuch as the basis of the power to impose such a penalty is the right which the Legislature has to self-preservation, and which right is enforceable during the existence of the legislative body. (CJ Avancena in Lopez v De los Reyes)

²⁰² Cruz, Philippine Political Law, p. 155 (1995 ed).

*Senate v. Ermita*²⁰³ specified who may and who may not be summoned to Section 21 hearings. Thus, under this rule, even a Department Head who is an alter ego of the President may be summoned. Thus, too, the Chairman and members of the Presidential Commission on Good Government (PCGG) are not except from summons in spite of the exemption given to them by President Cory Aquino during her executive rule.²⁰⁴ The Court ruled that **anyone, except the President and Justices of the Supreme Court may be summoned.**

7. Power to punish

Legislative Contempt. The power of investigation necessarily includes the power to punish a contumacious witness for contempt. (Arnault v. Nazareno)

Acts punished as legislative contempt. The US Supreme Court in the case of *Marshall v. Gordon*²⁰⁵ mentions:

1. Physical obstruction of the legislative body in the discharge of its duties.
2. Physical assault upon its members for action taken or words spoken in the body;
3. Obstruction of its officers in the performance of their official duties
4. Prevention of members from attending so that their duties might be performed
5. **Contumacy in refusing to obey orders to produce documents or give testimony which was a right to compel.**²⁰⁶

Power to punish for contempt and local legislative bodies. The power to punish may not be claimed by local legislative bodies (Negros Oriental Electric Cooperative v. Sangguniang Panglunsod)

Power to punish is sui generis. The exercise of the legislature of contempt power is a matter of preservation and independent of the judicial branch. Such power is *sui generis*. (Sabio v. Gordon)

Q: When may a witness in an investigation be punished for contempt?

A: When a contumacious witness' testimony is required in a matter into which the legislature or any of its committees has jurisdiction to. (In short, the investigation must be in aid of legislation.) (Arnault v. Nazareno)

²⁰³ G.R. No. 169777, April 20, 2006.

²⁰⁴ *Sabio v. Gordon*, G.R. No. 174318, October 17, 2006.

²⁰⁵ 243 US 521.

²⁰⁶ Sinco, Philippine Political Law, p 208 (1954ed).

Q: For how long may a private individual be imprisoned by the legislature for contempt?

A: *For HR*: Until final adjournment of the body. *For Senate*: Offender could be imprisoned indefinitely by the body provided that punishment did not become so long as to violate due process. (Arnault v. Nazareno)

8. Rights of persons

PhilComStat has no reasonable expectation of privacy over matters involving their offices in a corporation where the government has interest. (Sabio v. Gordon)

9. Courts and the Committee

A court cannot enjoin the appearance of a witness in a legislative investigation. (Senate Blue Ribbon Committee v. Judge Majaducon)

Bernas: The general rule of fairness, (which is what due process is about) could justify exclusion of persons from appearance before the Committee.

Q: Section 1 of EO 464 provides that "all heads of departments of the Executive Branch shall secure the consent of the President prior to appearing before House of Congress." Does this contravene the power of inquiry vested in the Congress? Is Section 1 valid?

A: Valid. The SC read Section 1 of EO 464 to mean that department heads need the consent of the president only in **question hour** contemplated in Section 22 of Article VI. (The reading is dictated by the basic rule of construction that issuances must be interpreted, as much as possible, in a way that will render it constitutional.)

Section 1 of EO 464 cannot be applied to appearances of department heads **in inquiries in aid of legislation**. Congress is not bound in such instances to respect the refusal of the department head in such inquiry, unless a **valid claim of privilege** is subsequently made, either by the President or by the Executive Secretary. (Senate v. Ermita; EO 464 case)

10. Power of Inquiry v. Executive Privilege

Senate v. Ermita: "Congress has undoubtedly has a right to information from the executive branch whenever it is sought in aid of legislation. If the executive branch withholds such information on the ground that it is privileged, **it must so assert it and state the reason therefore and why it must be respected.**" (Justice Carpio Morales in *Senate v. Ermita*)

Neri v. Senate: *Was the claim of executive privilege properly invoked in this case?* Yes according to the Justice Leonardo-De Castro's ponencia. For the claim to be properly invoked, there must be a formal claim by the President stating the "precise and certain reason" for preserving confidentiality. The grounds relied upon by Executive Secretary Ermita are specific enough, since what is required is only that an allegation be made "whether the information demanded involves military or diplomatic secrets, closed-door Cabinet meetings, etc." The particular ground must only be specified, and the following statement of grounds by Executive Secretary Ermita satisfies the requirement: "The context in which executive privilege is being invoked is that the information sought to be disclosed might impair our diplomatic as well as economic relations with the People's Republic of China."²⁰⁷

11. Neri v. Senate Committee

Background:

This case is about the Senate investigation of anomalies concerning the NBN-ZTE project. During the hearings, former NEDA head Romulo Neri refused to answer certain questions involving his conversations with President Arroyo on the ground they are covered by executive privilege. When the Senate cited him in contempt and ordered his arrest, Neri filed a case against the Senate with the Supreme Court. *On March 25, 2008, the Supreme Court ruled in favor of Neri and upheld the claim of executive privilege.*

Issues:

- (1) xxx
- (2) Did the Senate Committees commit grave abuse of discretion in citing Neri in contempt and ordering his arrest?

Ruling:

- (1) xxx
- (2) Yes. The Supreme Court said that the Senate Committees committed grave abuse of discretion in citing Neri in contempt. The following were the reasons given by the Supreme Court:
 - a. There was a legitimate claim of executive privilege.
 - b. Senate Committees did not comply with the requirement laid down in *Senate v. Ermita* that the invitations should contain the "possible needed statute which prompted the need for the inquiry" along with "usual indication of the subject of inquiry and the questions relative to and in furtherance thereof."
 - c. A reading of the transcript of the Committees' proceeding reveals that only a minority of the member of the Senate Blue Ribbon Committee was present during the deliberations. Thus, there is a cloud of doubt as to the validity of the contempt order

d. The Senate Rules of Procedure in aid of legislation were not duly published in accordance to Section 21 of Article VI.

e. The contempt order is arbitrary and precipitate because the Senate did not first rule on the claim of executive privilege and instead dismissed Neri's explanation as unsatisfactory. This is despite the fact that Neri is not an unwilling witness.

Hence, the *Senate order* citing Neri in contempt and ordering his arrest was not valid.

12. Power of Inquiry v. Commander in Chief power of the President

Since the President is commander-in-chief of the Armed Forces she can demand obedience from military officers. Military officers who disobey or ignore her command can be subjected to court martial proceeding. Thus, for instance, the President as Commander in Chief may prevent a member of the armed forces from testifying before a legislative inquiry. A military officer who disobeys the President's directive may be made to answer before a court martial. Since, however, Congress has the power to conduct legislative hearings, Congress may make use of remedies under the law to compel attendance. Any military official whom Congress summons to testify before it may be compelled to do so by the President. If the President is not so inclined, the President may be commanded by judicial order to compel the attendance of the military officer. Final judicial orders have the force of the law of the land which the President has the duty to faithfully execute.²⁰⁸

B. Oversight Function

Purpose of Section 22

Oversight Function

Appearance of Heads of Department

Why Permission of President Needed

Exemption from Summons

Appearance at the Request of Congress

Written Questions

Scope of Interpellations

Executive Session

Congress may refuse the initiative

Section 22. The Heads of Departments may upon their own initiative, with the consent of the President, or upon the request of either House as the rules of each House shall provide, appear before and be heard by such House on any matter pertaining to their departments. Written questions shall be submitted to the President of

²⁰⁷ Primer on Neri v. Senate made by Atty. Carlos Medina.

²⁰⁸ *Gudani v. Senga*, G.R. No. 170165, April 15, 2006.

Senate or the Speaker of the House of Representatives at least three days before their scheduled appearance. Interpellations shall not be limited to written questions, but may cover matters related thereto. When the security of the State or the public interest so requires and the President so states in writing, the appearance shall be conducted in executive session.

1. Purpose of Section 22

The provision formalizes the “oversight function” of Congress. Section 22 establishes the rule for the exercise of what is called the “oversight function” of Congress. Such function is intended to enable Congress to determine how laws it has passed are being implemented.

2. Oversight function

“Broadly defined, congressional oversight embraces all activities undertaken by Congress to enhance its understanding of and influence over the implementation of legislation it has enacted.”²⁰⁹ The acts done by Congress in the exercise of its oversight powers may be divided into three categories, to wit: scrutiny, investigation, and supervision.²¹⁰

3. Appearance of Heads of Departments by their own initiative

The Heads of Departments may upon their own initiative, **with the consent of the President** appear before and be heard by either House on any matter pertaining to their departments.

4. Why permission of the President needed

In deference to separation of powers, and because Department Heads are alter egos of the President, they may not appear without the permission of the President.²¹¹

5. Exemption from summons applies only to Department Heads

It should be noted, that the exemption from summons applies only to Department Heads and not to everyone who has Cabinet rank.

²⁰⁹ Macalintal v. Commission on Elections, 405 SCRA 614 (2003), at 705.

²¹⁰ Macalintal v. Commission on Elections, 405 SCRA 614 (2003), at 3.

²¹¹ This was explicitly mentioned in the deliberations of the 1935 Constitutional Convention where some Delegates had doubts about the propriety or constitutionality of Department Heads appearing in Congress. Such deference is not found, by the Court’s interpretation, in Section 21.

Q: Does Section 22 provide for a “question hour”?

A:

Bernas Primer: No. the “question hour” is proper to parliamentary system where there is no separation between the legislative and executive department. Section 22, unlike in the “question hour” under the 1973 Constitution, has made the appearance of department heads voluntary.

But wait! The SC in *Senate v. Ermita*, adopting the characterization of constitutional commissioner Hilario Davide, calls Section 22 as the **provision on “Question Hour”**: “[Section 22] pertains to the power to conduct a question hour, the objective of which is to obtain information in pursuit of Congress’ oversight function.”

Reconcile: Although the Court decision calls this exercise a “question hour,” it does so only by analogy with its counterpart in parliamentary practice.

6. Appearance at the request of Congress

The Heads of Departments may upon their own initiative, with the consent of the President, or **upon the request of either House** as the rules of each House shall provide, appear before and be heard by such House on any matter pertaining to their departments.

7. Written Questions

Written questions shall be submitted to the Senate President or the House Speaker at least 3 days before their scheduled appearance.

8. Scope of Interpellations

Interpellations shall not be limited to written questions, but may cover matters related thereto.

9. Executive Session

The appearance shall be conducted in **executive session** when:

- (1) The public interest so requires and
- (2) The President so states in writing.

10. Congress may refuse the initiative

Because of separation of powers, department secretaries may not impose their appearance upon either House.²¹² Hence, the Congress may refuse the initiative taken by the department secretary.²¹³

X. Emergency Powers

²¹² Bernas Primer at 263 (2006 ed.)

²¹³ Bernas Commentary, p 744 (2003 ed.)

- A. Declaration of the existence of a state of war
- B. Delegation of emergency power

A. War power

1. Power to declare existence of a state of war
2. Rewording of the provision

Section 23. (1) The Congress, by a vote of two-thirds of both Houses in joint session assembled, voting separately, shall have the sole power to declare the existence of a state of war.

1. Power to declare existence of a state of war²¹⁴

The Congress, by a vote of 2/3 of **both** Houses in **joint session** assembled, **voting separately**, shall have the sole power to declare the existence of a state of war.

2. Rewording of the provision

From 1935 Constitution's power to declare war²¹⁵ to power to declare the existence of a state of war under 1987.

Bernas: The difference between the two phraseologies is not substantial but merely in emphasis. The two phrase were interchangeable, but the second phrase emphasizes more the fact that the Philippines, according to Article II, Section 2, renounces aggressive war as an instrument of national policy.²¹⁶

Q: May a country engage in war in the absence of declaration of war?

A: Yes. The actual power to *make* war is lodged in the Executive. The executive when necessary may make war even in the absence of a declaration of war.²¹⁷

B. Delegation of emergency powers

1. Requisites for Delegation
2. Duration of delegation
3. Powers that may be delegated
4. Withdrawal of powers

Section 23
 (2) In times of war or other national emergency, the Congress may by law authorize the President, for a limited period and subject to such restrictions

as it may prescribe, to exercise powers necessary and proper to carry out a declared national policy. Unless sooner withdrawn by resolution of the Congress, such power shall cease upon the next adjournment thereof.

1. Requisites for the delegation: (1997 Bar Q)

- (1) There must be a war²¹⁸ or other national emergency
- (2) Law authorizing the president for a limited period and subject to such restrictions as Congress may prescribe
- (3) Power to be exercised must be necessary and proper to carry out a declared national policy.

2. Duration of the delegation:

- (1) Until withdrawn by resolution of Congress
- (2) Until the next adjournment of Congress

3. Powers that may be delegated

Congress may authorize the President, to exercise powers necessary and proper to carry out a declared national policy Note that the nature of delegable power is not specified. *It is submitted* that the President may be given emergency **legislative powers** if Congress so desires.²¹⁹

4. Withdrawal of powers

Congress may do it by a mere resolution.²²⁰ And such resolution does not need presidential approval.²²¹

XI. BILLS/ LEGISLATIVE PROCESS

- Origination Clause**
- One bill-one subject rule**
- Passage of a bill**
- Presidential Approval, Veto or Inaction; Legislative Reconsideration**
- Item Veto**
- Doctrine of inappropriate provisions**
- Executive Impoundment**
- Legislative Veto**

A. Origination Clause

- Exclusive Origination Clause*
- Bills that must exclusively originate from HR*
- Origination from the House, Meaning*
- Reason for exclusive origination*
- Senate may propose amendments*
- Scope of Senate's power to introduce amendments*

²¹⁴ War is defined as "armed hostilities between the two states. (II RECORD 169)

²¹⁵ Wording of the 1935 Constitution.

²¹⁶ Bernas Commentary, p 745 (2003 ed).

²¹⁷ Bernas Primer at 264 (2006 ed.)

²¹⁸ War is defined as "armed hostilities between the two states. (II RECORD 169)

²¹⁹ Bernas Primer at 265 (2006 ed.)

²²⁰ See concurring opinion of Justice Padilla in Rodriguez v. Gella, 49 Off. Gaz. 465, 472.

²²¹ Bernas Primer at 265 (2006 ed.)

Section 24. All appropriation, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application and private bills shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.

1. Origin of money bills, private bills and bills of local application

All appropriation²²², revenue²²³ or tariff bills²²⁴, bills authorizing increase of the public debt²²⁵, bills of local application²²⁶ and private bills²²⁷ shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.

2. Bills that must exclusively originate from the HR:

- (1) Appropriation bills
- (2) Revenue bills
- (3) Tariff bills
- (4) Bills authorizing increase of the public debt
- (5) Bills of local application
- (6) Private bills

3. Origination from the House

The exclusivity of the prerogative of the House of Representatives means simply that the House alone can initiate the passage of revenue bill, such that, if the House does not initiate one, no revenue law will be passed. (Tolentino v. Secretary of Finance)

4. Reason for exclusive origination

The district representatives are closer to the pulse of the people than senators are and are therefore in a better position to determine both the extent of the legal burden they are capable of bearing and

²²² An appropriation bill is one whose purpose is to set aside a sum of money for public use. Only appropriation bills in the strict sense of the word are comprehended by the provision; bills for other purposes which incidentally set aside money for that purpose are not included. Bernas Commentary, p 748 (2003 ed).

²²³ A revenue bill is one that levies taxes and raises funds for the government. Cruz, Philippine Political Law, p. 144 (1995 ed).

²²⁴ A tariff bill specifies the rates of duties to be imposed on imported articles. Cruz, Philippine Political Law, p. 144 (1995 ed).

²²⁵ A bill increasing public debt is illustrated by one floating bonds for public subscription redeemable after a certain period. Cruz, Philippine Political Law, p. 144 (1995 ed).

²²⁶ Bills of local application are those which is limited to specific localities, such for instance as the creation of a town. Bernas Commentary, p 748 (2003 ed).

²²⁷ Private bills are those which affect private persons, such for instance as a bill granting citizenship to a specific foreigner. Bernas Commentary, p 748 (2003 ed). Private bills are illustrated by a bill granting honorary citizenship to a distinguished foreigner. Cruz, Philippine Political Law, p. 155 (1995 ed).

the benefits that they need.²²⁸ It is more numerous in membership and therefore also more representative of the people.²²⁹

5. Senate may propose amendments

The addition of the word “exclusively” in the Constitution is not intended to limit the power of the Senate to propose amendments to revenue bills. (Tolentino v. Sec. of Finance)

6. Scope of the Senate’s power to introduce amendments

Once the House has approved a revenue bill and passed it on to the Senate, the Senate can completely overhaul it, by amendment of parts or by **amendment by substitution**, and **come out with one completely different from what the House approved**. Textually, it is the “bill” which must exclusively originate from the House; but the “law” itself which is the product of the total bicameral legislative process originates not just from the House but from both Senate and House. (Tolentino v. Secretary of Finance)

(Discussion of Section 25 can be found after Section 29(3))

B. One bill-one subject rule

Mandatory Nature of the Rule

Purpose of the Rule

Liberal Interpretation of the Rule

Germane

Not Germane

Section 26. (1) Every bill passed by the Congress shall embrace only one subject shall be expressed in the title thereof.

1. Mandatory nature of the rule

Every bill passed by the Congress shall embrace only one subject. The subject shall be expressed in the title of the bill. This rule is **mandatory**.

The requirement is satisfied when:

- (1) All parts of the law relate to the subject expressed in the title
- (2) It is not necessary that the title be a complete index of the content (PHILCONSA v. Gimenez)

2. Purpose of the Rule:

- (1) To prevent hodge-podge or log-rolling legislation
- (2) To prevent surprise or fraud upon the legislature
- (3) To fairly appraise the people. (Central Capiz v. Ramirez)

²²⁸ Bernas Commentary, p 748 (2003 ed).

²²⁹ Cruz, Philippine Political Law, p. 145 (1995 ed).

3. Liberal interpretation of the rule

The rule should be given a practical rather than a strict construction. It should be sufficient compliance with such requirement if the title expresses the general subject and all the provisions of the statute are germane to that general subject. (Sumulong v. COMELEC)

4. Germane

A partial exemption from the increase of tax imposed is not a deviation from the general subject of the law. (Insular Lumber Co. v. CTA)

A tax may be germane and reasonably necessary for the accomplishment of the general object of the decree for regulation. (Tio v. VRB)

A repealing clause does not have to be expressly included in the title of the law. (Phil. Judges Assoc. v. Prado)

The creation of a new legislative district is germane to "the conversion of a municipality to an urbanized city." (Tobias v. Abalos)

The reorganization of the remaining administrative regions is germane to the general subject of "establishing the ARMM". (Chiong bayan v. Orbos)

The **expansion** in the jurisdiction of the Sandiganbayan does not have to be expressly stated in the title of the law (An Act Further **Defining** the Jurisdiction of the Sandiganbayan) because such is the necessary consequence of the amendment. (Lacson v. Executive Secretary)

A provision that states that "no election officer shall hold office for more than four years" is relevant to the title "An Act Providing for a General Registration of voters, Adopting a System of Continuing Registration, Prescribing Procedures Thereof and Authorizing the Appropriation of Funds Therefor" as it seeks to ensure the integrity of the registration process by providing guidelines for the COMELEC to follow in the reassignment of election officers. (De Guzman v. COMELEC)

The **abolition** of 2 municipalities is but a logical consequence of its **merger to create** a city.

5. Not Germane

Prohibition of places of amusement should be included in the title of the law which only provides for the **regulation** of places of amusement. (De la Cruz v. Paras)

C. Passage of a bill

Rules

Procedure

Reason for three readings

Section 26

(2) No bill passed by either House shall become a law unless it has passed three readings on separate

days, and printed copies whereof in its final form have been distributed to its Members three days before its passage, except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency. Upon the last reading of a bill, no amendment thereto shall be allowed, and the vote thereon shall be taken immediately thereafter, and the yeas and the nays entered in the Journal.

1. Rules

- (1) No bill passed by either House shall become a law unless it has passed three readings on separate days.
- (2) Printed copies of the bill in its final form should be distributed to the Members 3 days before its passage (except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency).
- (3) Upon the last reading of a bill, no amendment thereto shall be allowed.
- (4) The vote on the bill shall be taken immediately after the last reading of a bill.
- (5) The yeas and the nays shall be entered in the Journal.

Exception. The certification of the President dispenses with the reading on separate days and the printing of the bill in the final form before its final approval. (Tolentino v. Secretary of Fincance)

Operative. All decrees which are not inconsistent with the Constitution remain operative until they are amended or repealed. (Guingona v. Carague)

2. Procedure:²³⁰

1. A bill is **introduced** by any member of the House of Representatives or Senate except for some measures that must originate only in the former chamber.

2. The **first reading** involves only a reading of the number and title of the measure and its **referral** by the Senate President or the Speaker to the proper committee for study.

3. The bill may be **killed** in the committee or it may be **recommended for approval**, with or without amendments, sometimes after public hearings are first held thereon. (If there are other bills of the same nature or purpose, they may all be consolidated into one bill under common authorship or as a committee bill.)

4. Once reported out, the bill shall be calendared for **second reading**. It is at this stage that the bill is read in its entirety,

²³⁰ Cruz, Philippine Political Law, p. 155 (1995 ed).

scrutinized, debated upon and amended when desired. The second reading is the most important stage in the passage of the bill.

5. The bill as approved in second reading is printed in its final form and copies thereof are distributed at least three days before the third reading. On **third reading**, the members merely register their votes and explain them if they are allowed by the rules. No further debate is allowed.

6. Once the bill passes third reading, it is **sent to the other chamber**, where it will also undergo the three readings.

7. If also approved by the second House, it will then be **submitted to the President** for his consideration.

8. The **bill is enrolled** when printed as finally approved by the Congress, thereafter authenticated with the signatures of the Senate President, the Speaker, and the Secretaries of their respective chambers, and approved by the President.

3. Reason for three readings

To address the tendency of legislators, (on the last day of the legislative year when legislators were eager to go home), to rush bills through and insert matters which would not otherwise stand scrutiny in leisurely debate.²³¹

Q: If the version approved by the Senate is different from that approved by the House of Representatives, how are the differences reconciled?

A: In a bicameral system bills are independently processed by both Houses of Congress. It is not unusual that the final version approved by one House differs from what has been approved by the other. The "conference committee," consisting of members nominated from both Houses, is an extra-constitutional creation of Congress whose function is to propose to Congress ways of reconciling conflicting provisions found in the Senate version and in the House version of a bill.

D. Presidential Approval, Veto or Inaction; Legislative Reconsideration

Three Methods

Presidential Approval

Presidential Veto

Legislative Approval of the bill

Presidential Inaction

Section 27. (1) Every bill passed by the Congress shall, before it becomes

²³¹ See Bernas Commentary, p 760 (2003 ed).

a law, be presented to the President. If he approves the same, he shall sign it; otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter the objections at large in its Journal, and proceed to consider it. If, after such reconsideration, two-thirds of all the Members of such House shall agree to pass the bill, it shall be sent, together with the objections to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the Members of that House, it shall become a law. In all such cases, the votes of each House shall be determined by yeas or nays, and the names of the Members voting for or against shall be entered in its Journal. The President shall communicate his veto of any bill to the House where it originated within thirty days after the date of receipt thereof; otherwise, it shall become a law as if he had signed it.

1. Three methods by which a bill may become a law: (1988 Bar Question)

1. When the President signs it;
2. When the President vetoes it but the veto is overridden by two-thirds vote of all the members of each House;
3. When the President does not act upon the measure within 30 days after it shall have been presented to him.

2. Presidential approval

- (1) Passed bill is presented to the President
- (2) President signs the bill if he approves the same
- (3) The bill becomes a law.

3. Presidential veto

- (1) Passed bill is presented to the President
- (2) President vetoes the bill if he does not approve of it.
- (3) He returns the passed bill with his objections to the House where it originated. (Veto Message)

General rule: If the president disapproves the bill approved by Congress, he should veto the entire bill. He is not allowed to veto separate items of a bill.

Exceptions:

- (1) President may veto an item in cases of appropriation, revenue and tariff bills.

- (2) President may veto inappropriate provisions or riders.

4. Legislative reconsideration of the bill (1993 Bar Question)

- (1) The House where the bill originated enters the objections of the President at large in its Journal.
 - (2) Said House reconsiders the bill.
 - (3) 2/3 of all the Members of such House agree to pass the bill.
 - (4) The bill together with the objections is sent to the other House by which it is also reconsidered.
 - (5) The other House approves the bill by 2/3 of all the members of that House.
 - (6) The bill becomes a law.
- In all such cases, the votes of each House shall be determined by yeas or nays.
The names of the Members voting for or against shall be entered in its Journal.

Q: When does the Constitution require that the yeas and nays of the Members be taken every time a House has to vote?

A:

1. Upon the last and third readings of a bill (art. 6 sec 26(2))
2. At the request of 1/5 of the members present (art 6 sec 16(4))
3. In repassing a bill over the veto of the President (art 6 sec 27(1))

5. Presidential Inaction

- (1) Passed bill is presented to the President
- (2) President does not approve nor communicate his veto to the House where the bill originated within 30 days.
- (3) The bill becomes a law.

E. Item veto

Section 27
 (2) The President shall have the power to veto any particular item or items in an appropriation, revenue, or tariff bill, but the veto shall not affect the item or items to which he does not object.

Again, the **General rule** is: If the president disapproves the bill approved by Congress, he should veto the entire bill. He is not allowed to veto separate items of a bill.

Exceptions:

- (1) President may veto an **item** in cases of appropriation, revenue and tariff bills.
- (2) President may veto **inappropriate provisions** or riders.

Item. An item is an indivisible [sum] of money dedicated to a stated purpose.²³² (Item = Purpose, Amount)

In a tax measure, an item refers to the subject of the tax and the tax rate. It does not refer to the entire section imposing a particular kind of tax. (CIR v. CTA)

The president may not veto the **method** or **manner** of using an appropriated amount. (Bengzon v. Drillon)

F. Doctrine of inappropriate provisions

Doctrine
Reason for the Doctrine
Inappropriate Provisions
Appropriate Provisions

1. Doctrine

A provision that is constitutionally inappropriate for an appropriation bill may be singled out for veto even if it is not an appropriation or revenue "item". (Gonzales v. Macaraig)

2. Reason for the Doctrine

The intent behind the doctrine is to prevent the legislature from forcing the government to veto an entire appropriation law thereby paralyzing government.

3. Inappropriate Provisions

Repeal of laws. Repeal of laws should not be done in appropriation act but in a separate law (PHILCONSA v. Enriquez) (*use this doctrine carefully*)

The requirement of congressional approval for the release of funds for the modernization of the AFP

must be incorporated in a separate bill. Being an inappropriate provision, it was properly vetoed. (PHILCONSA v. Enriquez)

The proviso on "power of augmentation from savings" can by no means be considered a specific appropriation of money. (Gonzales v. Macaraig)

4. Appropriate Provisions

The special provision providing that "the maximum amount of the appropriation for the DPWH to be contracted for the maintenance of national roads and bridges should not exceed 30%" is germane to the appropriation for road maintenance. It specifies how the item shall be spent. It cannot be vetoed separately from the item. (PHILCONSA v. Enriquez)

The special provision that all purchases of medicines by the AFP should comply with Generics Act is a mere advertence to an existing law. It is directly related to the appropriation and cannot be vetoed separately from the item. (PHILCONSA v. Enriquez)

G. Executive Impoundment:

Refusal of the President to spend funds already allocated by Congress for a specific purpose. (See PHILCONSA v. Enriquez)

H. Legislative veto

A Congressional veto is a means whereby the legislature can block or modify administrative action taken under a statute. It is a form of legislative control in the implementation of particular executive actions.

XII. FISCAL POWERS/ POWER OF THE PURSE

Taxation

- A. Nature**
- B. Limitations**
- C. Delegation of power to tax**
- D. Exempted from taxation**

Spending Power

- A. Spending Power**
- B. Appropriation**
- C. Non-establishment provision**
- D. Special Fund**
- E. Appropriation**

Power of the Purse. Congress is the guardian of the public treasury. It wields the tremendous power of the purse. The power of the purse comprehends both the power to generate money for the

²³² Bernas Primer, p. 276 (2006 ed.)

government by taxation and the power to spend it.²³³

TAXATION

Section 28. (1) The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.

A. Nature

Definition

Scope

Purposes

Tax

Public Purpose

1. Definition

Taxation refers to the inherent power of the state to demand enforced contributions for public purposes.

2. Scope

Taxation is so pervasive that it reaches even the citizen abroad and his income earned from source outside the State.

General Limit: For a public purpose; Due process and equal protection clauses (*Sison v. Ancheta*)

Specific Limit: Uniform and equitable (Section 28) (See 29(2))

Exercise of the power: Primarily vested in the national legislature.

3. Purposes:

- (1) To raise revenue
- (2) Instrument of national economic and social policy
- (3) Tool for regulation
- (4) The power to keep alive²³⁴

4. Tax

Taxes are enforced proportional contributions from persons and property levied by the law making body of the state by virtue of its sovereignty for the support of the government and all public needs. Justice Holmes said: "Taxes are what we pay for civilized society."

5. Public Purpose

It is fundamental in democratic governments that taxes may be levied for public purpose only. Without this element, a tax violates the due process clause and is invalid.²³⁵ In *Planters Products, Inc. (PPI) v. Fertiphil Corp.*²³⁶ the Court had occasion to review the validity of LOI 1465, a

martial rule product, which imposed a ten peso capital contribution for the sale of each bag of fertilizer "until adequate capital is raised to make PPI viable." PPI was private corporation. Clearly, therefore, the imposition was for private benefit and not for a public purpose.

B. Limitations on Power of Taxation

- 1. Rule of taxation shall be **uniform** and **equitable**. Congress shall evolve a **progressive** system of taxation.
- 2. Charitable institutions, etc. and all lands, building and improvements actually, directly and exclusively used for religious, charitable or educational purposes shall be exempt from taxation. (art. 6 §28(3))
- 3. All revenues and assets of non-stock, non-profit educational institutions used actually, directly and exclusively for educational purposes shall be exempt from taxes and duties. (art. 14 §4(3))
- 4. Law granting tax exemption shall be passed only with the concurrence of the majority of all the members of Congress. (art. 6 §29(4))

UNIFORM

Uniformity. Uniformity signifies geographical uniformity. A tax is uniform when it operates with the same force and effect in every place where the subject is found.

Uniformity in taxation v. Equality in taxation.

Uniformity in taxation means that persons or things belonging to the same class shall be taxed at the same rate. It is distinguished from equality in taxation in that the latter requires the tax imposed to be determined on the basis of the value of the property.²³⁷

Tan v. del Rosario:

Uniformity means:

- (1) the standards that are used therefor are substantial and not arbitrary;
- (2) the categorization is germane to achieve the legislative purpose;
- (3) the law applies, all things being equal, to both present and future conditions; and
- (4) the classification applies equally well to all those belonging to the same class.

There is a difference between the homeless people and the middle class. The two social classes are differently situated in life. (*Tolentino v. Sec. of Finance*)

EQUITABLE

²³³ Bernas Commentary, p 785 (2003 ed).

²³⁴ Bernas Primer at 278 (2006 ed.)

²³⁵ Sinco, Philippine Political Law, p 579 (1954ed).

²³⁶ G.R. No. 166006, March 14, 2008.

²³⁷ Cruz, Philippine Political Law, p. 168 (1995 ed).

The present constitution adds that the rule of taxation shall also be equitable, which means that the tax burden must be imposed according to the taxpayer's capacity to pay.²³⁸

Progressive system of taxation. The Congress shall evolve a progressive system of taxation. Tax system is progressive when the rate increases as the tax base increases.²³⁹

Reason for progressive system. The explicit mention of progressive taxation in the Constitution reflects the wish of the Commission that the legislature should use the power of taxation as an instrument for a more equitable distribution of wealth.

Directive not a judicially enforceable right. The directive to evolve a progressive system of taxation is addressed to Congress and not a judicially enforceable right. (Tolentino v. Sec. of Finance)

Indirect taxes. The Constitution does not prohibit the imposition of indirect taxes, which are regressive. The provision simply means that direct taxes are to be preferred and indirect taxes should be minimized as much as possible. It does not require Congress to avoid entirely indirect taxes. Otherwise, sales taxes, which are the oldest form of indirect taxes, will be prohibited. The mandate to Congress is not to prescribe but to evolve a progressive system of taxation. (Tolentino v. Sec. of Finance)

C. Delegation of power to tax

Conditions

Tariffs and Customs Code

Limitation imposed regarding the Flexible Tariff Clause

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

1. Conditions in the delegation of the power to tax:

- (1) Delegation must be made by law
- (2) The power granted is to fix tariff rates, import and export quotas, tonnage and wharfage dues, and other duties and impost.

²³⁸ Cruz, Philippine Political Law, p. 168 (1995 ed).

²³⁹ Bernas Commentary, p 779 (2003 ed).

(3) The said power is to be exercised within specified limits and subject to such limitations and restrictions as the Congress may impose.

(4) The authorization of such power must be within the framework of the national development program of the Government.

2. Tariff and Customs Code, Flexible Tariff Clause

The President is given by the Tariff and Customs Code ample powers to adjust tariff rates.

Flexible Tariff Clause

The President may fix tariff rates, import and export quotas, etc. under TCC:

- 1) To increase, reduce or remove existing protective rates of import duty (including any necessary change in classification)
 - the existing rates may be increased or decreased to any level on one or several stages but in no case shall be higher than a maximum of 100% ad valorem
- 2) To establish import quota or to ban imports of any commodity, as may be necessary
- 3) To impose an additional duty on all imports not exceeding 10% ad valorem whenever necessary

3. Limitation Imposed Regarding the Flexible Tariff Clause

- 1) Conduct by the Tariff Commission of an investigation in a public hearing
 - The Commissioner shall also hear the views and recommendations of any government office, agency or instrumentality concerned
 - The NEDA thereafter shall submit its recommendation to the President
- 2) The power of the President to increase or decrease the rates of import duty within the abovementioned limits fixed in the Code shall include the modification in the form of duty.
 - In such a case the corresponding ad valorem or specific equivalents of the duty with respect to the imports from the principal competing country for the most recent representative period shall be used as bases. (Sec 401 TCC)

D. Exempted from taxation

Exempted from taxation

Kind of tax exemption

"Exclusively", Meaning

Elements in determining a charitable institution

Reason for Requirement of Absolute Majority

Section 28
 (3) Charitable institutions, churches and parsonages or convents

appurtenant thereto, mosques, non-profit cemeteries and all lands, buildings, and improvement actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation.

1. Exempted:

- (1) Charitable institutions
- (2) Churches
- (3) Parsonages or convents appurtenant to churches
- (4) Mosques
- (5) Non-profit cemeteries
- (6) All lands, buildings, and improvement **actually, directly and exclusively** used for religious, charitable, or educational purpose shall be exempt from taxation.

2. Kind of tax exemption under 28(3)

The exemption created by Section 28 is only for taxes assessed as property taxes and not excise tax. (CIR v. CA)

3. "Exclusively"

The phrase "exclusively used for educational purposes" extends to facilities which are incidental to and reasonably necessary for the accomplishment of the main purpose. (Abra Valley College v. Aquino)

PCGG has no power to grant tax exemptions (Chavez v. PCGG)

4. Elements to be considered in determining whether an enterprise is a charitable institution/entity:

- (1) Statute creating the enterprise
- (2) Its corporate purposes
- (3) Its constitution and by-laws
- (4) Method of administration
- (5) Nature of actual work performed
- (6) Character of services rendered
- (7) Indefiniteness of the beneficiaries
- (8) Use and occupation of the properties (Lung Center v. QC)

Section 28
 (4) No law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of the Congress.

5. Reason for absolute majority

Bills ordinarily passed with support of only a simple majority, or a majority of those present and voting. The above provision requires an absolute majority of the entire membership of the Congress because a tax exemption represents a withholding of the

power to tax and consequent loss of revenue to the government.

POWER OF APPROPRIATION/ SPENDING POWER

A. Spending Power

1. *Spending Power*
2. *Reason*
3. *"By Law"*

Section 29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

1. Spending Power

The spending power of Congress is stated in Section 29(1): "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law." (1988, 1992 Bar Question)

2. Reason

Behind the provision stands the principle that the people's treasure that the people's treasure may be sent only with their consent. That consent is to be expressed either in the Constitution itself or in valid acts of the legislature as the direct representative of the people.²⁴⁰

3. "By law"

The provision does not say "appropriation by Congress" but rather "by law", a term which covers both statutes and the Constitution.²⁴¹

B. Appropriation

Appropriation
Classification
CDF

1. Appropriation

An appropriation measure may be defined as a statute the primary and specific purpose of which is to authorize the release of public funds from the treasury.²⁴² A law creating an office and providing funds therefore is not an appropriation law since the main purpose is not to appropriate funds but to create the office.²⁴³

2. Classification of Appropriation Measures:

- (4) **General-** The general appropriations law passed annually is intended to provide for the financial operations of the entire government during one fiscal period.

²⁴⁰ See Sinco, Philippine Political Law, p 208 (1954ed).

²⁴¹ Sinco, Philippine Political Law, p 211 (1954ed).

²⁴² Cruz, Philippine Political Law, p. 158 (1995 ed).

²⁴³ Cruz, Philippine Political Law, p. 159 (1995 ed).

- (5) **Special-** designed for a specific purpose such as the creation of a fund for the relief of typhoon victims.

CDF

A law creating CDF was upheld by the SC saying that the Congress itself has specified the uses of the fund and that the power given to Congressmen and Vice-President was merely recommendatory to the President who could approve or disapprove the recommendation. (PHILCONSA v. Enriquez)

C. Limitations on Appropriations

Extra-Constitutional Limitations
Constitutional Limitations

1. Implied Limitations

1. Appropriation must be devoted to a public purpose
2. The sum authorized must be determinate or at least determinable.²⁴⁴

2. Constitutional Limitations

Specific Limitations on the power of appropriation²⁴⁵ [Sec 24, Sec 25(6)]

1. Appropriation bills should originate in the House of Representatives. (art. 6 sec 24)
2. Discretionary funds appropriated for particular officials shall be disbursed only for public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law. (art. 6 sec 25(6))

Constitutional limitations on special appropriation measures [Sec 25(4), Sec 29(2)]

1. Must specify the public purpose for which the sum is intended. (art 6 sec 25 (4))
2. Must be supported by funds actually available as certified to by National Treasurer, or to be raised by a corresponding revenue proposal included therein. (art 6 sec 25(4))
3. Prohibition against appropriations for sectarian benefit. (art 6 sec 29(2))²⁴⁶

Constitutional rules on general appropriations law [Sec 25 (1)(2)(3)(5)(7), Sec 29(2)]

1. Congress may not increase the appropriations recommended by the President. (art 6 sec 25(1))
2. The form, content, and manner of preparation for the budget shall be prescribed by law. (art 6 sec 25(1))
3. Rule on riders. (art 6 sec 25(2))
4. Procedure for approving appropriations for Congress. (art 6 sec 25(3))

²⁴⁴ Cruz, Philippine Political Law, p. 160 (1995 ed).

²⁴⁵ Cruz, Philippine Political Law, p. 160 (1995 ed).

²⁴⁶ See Cruz, Philippine Political Law, p. 164 (1995 ed).

5. Prohibition against transfer of appropriations. (art 6 sec 25(5))
6. Rule on automatic reappropriation. (art 6 sec 25(7))
7. Prohibition against appropriations for sectarian benefit. (art 6 sec 29(2))

D. Non-establishment provision

Section 29
 (2) No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.

No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher or dignitary as such.

Public money may be paid to a priest, preacher, minister, or dignitary if he is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.

General or specific appropriation. Whether the appropriation be general or specific, it must conform to the prohibition against the use of public funds or property for sectarian purposes.²⁴⁷

Purpose of the provision. This provision must be read with Article III, Section 5 on religious freedom and Article II, Section 6 on the separation of Church and State. Its purpose is to further bolster this principle and emphasize the neutrality of the State in ecclesiastical matters.

E. Special Fund

Section 29
 (3) All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government.

²⁴⁷ Cruz, Philippine Political Law, p. 164 (1995 ed.)

Tax levied for a special purpose. All money collected on any tax levied for a special purpose shall be treated as a special fund.

For such purpose only. All money collected on any tax levied for a special purpose shall be paid out for such purpose only.

Balance to the general funds. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government.

F. General Appropriation

Budget and Appropriation

Rule on Riders

Special Appropriations Bill

No Transfer of Appropriations

Discretionary Funds

Automatic Re-enactment

1. Budget and Appropriation

Section 25. (1) The Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget. The form, content, and manner of preparation of the budget shall be prescribed by law.

Budget. The budget is only a proposal, a set of recommendations on the appropriations to be made for the operations of the government. It is used as a basis for the enactment of the general appropriations law.²⁴⁸

The budget as a restriction on appropriations. The Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget.

Reason. The reason for the above provision is the theory that the President knows more about the needed appropriations than the legislature.²⁴⁹ Being responsible for the proper administration of the executive department, the President is ordinarily the party best qualified to know the maximum amount that the operation of his department requires.²⁵⁰

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

²⁴⁸ Cruz, Philippine Political Law, p. 161 (1995 ed.)

²⁴⁹ Cruz, Philippine Political Law, p. 161 (1995 ed.)

²⁵⁰ Sinco, Philippine Political Law, p 216 (1954ed).

2. Rule on riders

Section 25
 (2) No provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein. Any such provision or enactment shall be limited in its operation to the appropriation to which it relates.

(2001 Bar Question)

Every provision or enactment in the general appropriations bill must relate specifically to some particular appropriation therein.

Every such provision or enactment shall be limited in its operation to the appropriation to which it relates

Purpose. To prevent riders or irrelevant provisions that are included in the general appropriations bill to ensure their approval.²⁵¹

Procedure in approving appropriations for the Congress

(3) The procedure in approving appropriations for the Congress shall strictly follow the procedure for approving appropriations for other departments and agencies.

Same Procedure. The procedure in approving appropriations for the Congress shall strictly follow the procedure for approving appropriations for other departments and agencies.

Reason. To prevent the adoption of appropriations *sub rosa* by the Congress.

3. Special Appropriations bill

(4) A special appropriations bill shall specify the purpose for which it is intended, and shall be supported by funds actually available as certified by the National Treasurer, or to be raised by a corresponding revenue proposal therein.

A special appropriations bill shall:

- (1) Specify the purpose for which it is intended;
- (2) Be supported by funds actually available as certified by the National Treasurer; or
- (3) Be supported by funds to be raised by a corresponding revenue proposal therein.

4. No transfer of appropriations

²⁵¹ Cruz, Philippine Political Law, p. 162 (1995 ed.)

(5) No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.

(1998 Bar Question)

Prohibition of transfer. No law shall be passed authorizing any transfer of appropriations.

Reason. This provision prohibits one department from transferring some of its funds to another department and thereby make it beholden to the former to the detriment of the doctrine of separation of powers. Such transfers are also unsystematic, besides in effect disregarding the will of the legislature that enacted the appropriation measure.²⁵²

Augmentation of item from savings. The President, the Senate President, the House Speaker, the Chief Justice, and the heads of Constitutional Commission may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations. In this case, there is no danger to the doctrine of separation of powers because the transfer is made *within* a department and not from one department to another.²⁵³

Exclusive list. The list of those who may be authorized to transfer funds under this provision is exclusive. However, members of the Congress may determine the necessity of realignment of the savings. (PHILCONSA v. Enriquez)

5. Discretionary funds

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

Public Purpose. Discretionary funds appropriated for particular officials shall be disbursed only for

²⁵² Cruz, Philippine Political Law, p. 164 (1995 ed.)

²⁵³ Cruz, Philippine Political Law, p. 164 (1995 ed.)

public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law.

Reason. This was thought necessary in view of the many abuses committed in the past in the use of discretionary funds. In many cases, these funds were spent for personal purposes, to the prejudice and often even without the knowledge of the public.²⁵⁴

6. Automatic Reenactment

(1998 Bar Question)

(7) If, by the end of any fiscal year, the Congress shall have failed to pass the general appropriations bill for the ensuing fiscal year, the general appropriations law for preceding fiscal year shall be deemed reenacted and shall remain in force and effect until the general appropriations bill is passed by the Congress.

Reason. This is to address a situation where Congress fails to enact a new general appropriations act for the incoming fiscal year.

XIII. OTHER PROHIBITED MEASURES

Appellate Jurisdiction of Supreme Court Title of Royalty and Nobility

A. Appellate Jurisdiction of Supreme Court

Section 30. No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and concurrence.

Limitation on power of Congress. No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and concurrence.

SC's Advice and Concurrence Needed. The Congress may increase the appellate jurisdiction of the SC but only with its advice and concurrence.

Reason. To prevent further additions to the present tremendous case load of the Supreme Court which includes the backlog of the past decades.²⁵⁵

B. Titles of Royalty and Nobility

²⁵⁴ Cruz, Philippine Political Law, p. 160 (1995 ed.)

²⁵⁵ Cruz, Philippine Political Law, p. 146 (1995 ed.)

Section 31. No law granting a title of royalty or nobility shall be enacted.

Reason. To preserve the republican and democratic nature of our society by prohibiting the creation of privileged classes with special perquisites not available to the rest of the citizenry.

XIV. INITIATIVE AND REFERENDUM

Initiative and Referendum
initiative
Referendum

Section 32. The Congress shall as early as possible, provide for a system of initiative and referendum, and the exceptions therefrom, whereby 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 therefor 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.

1. Initiative and referendum

The Congress shall as early as possible, provide for a system of initiative and referendum, and the exceptions therefrom.

Petition. A petition must be signed by at least 10% of the total number of registered voters, of which every legislative district must be represented by at least 3% of the registered voters thereof. The petition must then be registered.

RA 6735. The current implementing law is RA 6735, an Act Providing for System of Initiative and Referendum.

2. Initiative.

The power of the people to propose **amendments** to the Constitution or to propose and enact legislation.

Three systems of Initiative:

1. Initiative on the Constitution which refers to a petition proposing amendments to the Constitution;
2. Initiative on statutes which refers to a petition proposing to enact a national legislation.

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

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

Limitations on local initiative:

1. The power of local initiative shall not be exercised more than once a year;
2. Initiative shall extend only to subjects or matters which are within the legal matters which are within the legal powers of the local legislative bodies to enact;
3. If any time before the initiative is held, the local legislative body shall adopt *in toto* the proposition presented, the initiative shall be cancelled. However, those against such action may if they so desire, apply for initiative.

Q: Petitioners filed a petition with COMELEC to hold a plebiscite on their petition for an initiative to amend the Constitution by adopting a unicameral-parliamentary form of government and by providing for transitory provisions.

A: An initiative to change the Constitution applies only to an amendment and not revision. Revision broadly implies a change that alters basic principle in the Constitution like altering the principle of separation of powers or the system of checks and balance. The initiative of the petitioners is a revision and not merely an amendment. (Lambino v. COMELEC)

3. Referendum

Power of the electorate to approve or reject legislation through an election called for the purpose.

Two Classes of Referendum

1. Referendum on statutes which refers to a petition to approve or reject an act or law, or part thereof, passed by Congress;
2. Referendum on local laws which refers to a petition to approve or reject a law, resolution or ordinance enacted by regional assemblies and local legislative bodies. (Sec. 2(c) RA 6735)

Prohibited Measures. The following cannot be subject of an initiative or referendum:

1. Petition embracing more than one subject shall be submitted to the electorate.

2. Statutes involving emergency measures, the enactment of which is specifically vested in Congress by the Constitution, cannot be subject to referendum until ninety(90) days after their effectivity. (Sec. 10 RA 6735)

Q: Is the People Power recognized in the Constitution? (1987, 2000 and 2003 Bar Examinations)

A: "People power" is recognized in the Constitution, Article III, Section 4 of the 1987 Constitution guarantees the right of the people peaceable to assemble and petition the government for redress of grievances. Article VI, Section 32 of the 1987 Constitution requires Congress to pass a law allowing the people to directly propose or reject any act or law or part of it passed by congress or a local legislative body. Article XIII, Section 16 of the 1987 Constitution provides that the right of the people and their organizations to participate in all levels of social, political, and economic decision-making shall not be abridged and that the State shall, by law, facilitate the establishment of adequate consultation mechanisms. Article XVII, Section 2 of the 1987 Constitution provides that subject to the enactment of an implementing law, the people may directly propose amendments to the Constitution through initiative.

EXECUTIVE DEPARTMENT

- I. **Executive Power** (§ 1)
- II. **The President** (§ 2-13)
- III. **The Vice-President**
- IV. **Powers of the President**
- V. **Power of Appointment** (§ 14-16)
- VI. **Power of Control** (§ 17)
- VII. **Military Powers** (§ 18)
- VIII. **Power of Executive Clemency** (§ 19)
- IX. **Borrowing Power** (§ 20)
- X. **Foreign Affairs Power** (§ 21)
- XI. **Budgetary Power** (§ 22)
- XII. **Informing Power** (§ 23)
- XIII. **Other Powers**

I. EXECUTIVE POWER

Executive Power, (Definition)
Scope
Where Vested
Ceremonial Functions
Executive Immunity
Executive Privilege
Cabinet

Section 1. The Executive power shall be vested in the President of the Philippines

A. Executive Power (Definition)

The executive power is the power to enforce and administer the laws.²⁵⁶ (NEA v. CA, 2002)

²⁵⁶ Justice Irene Cortes in the case of *Marcos v. Manglapus (1989)* opines: “It would be inaccurate... to state that ‘executive power’ is the power to enforce laws, for the President is head of State as well as head of government and whatever power inhere in such positions pertain to the office unless the Constitution itself withholds it.”

M.T., in his attempt to provide a comprehensive interpretation of executive power provides:

“Executive power refers to the power of the President:
 (a) to execute and administer laws (b) power enumerated in the Constitution (c) those powers that inhere to the President as head of state and head of government, and (d) residual powers.”
 “Executive power refers to the totality of the President’s power.”

According to Sinco, “Executive power refers to the legal and political functions of the President involving the exercise of discretion. (Philippine Political Law, p.242 (1954 ed.)

B. Executive Power, Scope

1. The scope of power is set forth in the Constitution specifically in Article VII.

2. However, Executive power is more than the sum of specific powers enumerated in the Constitution. It includes **residual powers**²⁵⁷ not specifically mentioned in the Constitution. (*Marcos v. Manglapus (1989)*)

The prosecution of crimes appertains to the Executive Department, whose responsibility is to see the laws are faithfully executed. (*Webb v. De Leon*)²⁵⁸

3. BUT the President cannot dispose of State property unless authorized by law.²⁵⁹

4. Enforcement and administration of election laws is the authority of the COMELEC.²⁶⁰

C. Executive Power, Where Vested

The Executive power shall be vested in the President of the Philippines.

D. Ceremonial Functions (Head of State)

In a presidential system, the presidency includes many other functions than just being executive. The president is the [symbolic and] ceremonial head of the government of the [Philippines].²⁶¹

E. Executive Immunity from suit

Rules on Immunity during tenure

1. The President is immune from suit during his tenure.²⁶²

²⁵⁷ Residual Powers are those which are implicit in and correlative to the paramount duty residing in that office to safeguard and protect general welfare.

²⁵⁸ See Jacinto Jimenez, *Political Law Compendium* p.306 (2005 ed.)

²⁵⁹ See *Laurel v. Garcia (Roponggi Case)*

²⁶⁰ Cruz, *Philippine Political Law*, p. 308 (1995 ed.)

²⁶¹ See *Bernas Commentary*, p 800 (2003 ed).

²⁶² The incumbent President is immune from suit or from being brought to court during the period of their incumbency and tenure. (In re Saturnino Bermudez, 1986)

“The President during his tenure of office or actual incumbency, may not be sued in ANY civil or criminal case. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such.” (*David v. [Ermita]*)

Article VII, Section 17 (1st Sentence) of the 1973 Constitution provides: “The President shall be immune from suit during his tenure.” The immunity granted by the 1st sentence while the President was in office was absolute. The intent was to give the President absolute immunity even for wrongdoing committed during his

2. He may be filed impeachment complaint during his tenure. (Article XI)
3. The President may not be prevented from instituting suit (Soliven v. Makasiar)
4. There is nothing in our laws that would prevent the President from waiving the privilege. The President may shed the protection afforded by the privilege. (Soliven v. Makasiar)
5. Heads of departments cannot invoke the presidents' immunity (Gloria v. CA)

Rules on Immunity after tenure

6. Once out of office, even before the end of the six year term, immunity for non-official acts is lost. Such was the case of Joseph Estrada. (See Bernas Commentary, p 804 (2003 ed.) It could not be used to shield a non-sitting President from prosecution for alleged criminal acts done while sitting in office. (Estrada v. Disierto; See Romualdez v. Sandiganbayan)

Note: In David v. Arroyo, the Court held that it is improper to implead President Arroyo as respondent. However, it is well to note that in **Rubrico v. Arroyo**, Min. Res., GR No, 180054, October 31, 2007, the Supreme Court ordered the respondents, including President Arroyo, to make a return of the writ: *"You, respondents President Macapagal Arroyo...are hereby required to make a return of the writ before the Court of Appeals..."*

Reasons for the Privilege:

1. **Separation of powers.** The separation of powers principle is viewed as demanding the executive's independence from the judiciary, so that the President should not be subject to the judiciary's whim.²⁶³
2. **Public convenience.** By reason of public convenience, the grant is to assure the exercise of presidential duties and functions free from any hindrance or distraction, considering that the Chief Executive is a job that, aside from requiring all of the office-holder's time, also demands undivided attention (Soliven v. Makasiar)

F. Executive Privilege

Definition

How Invoked

Who may invoke

Privilege Not Absolute

tenure. (Bernas, Philippine Political Law, 1984) Although the new Constitution has not reproduced the explicit guarantee of presidential immunity from suit under the 1973 Constitution, presidential immunity during tenure remains as part of the law. (See Bernas Commentary, p 804 (2003 ed.)

²⁶³ See Almonte v. Vasquez

- Types of Executive Privilege (Neri v. Senate)*
- Variety of Executive Privilege (Senate v. Ermita)*
- Kinds of Executive Privilege (Neri v. Senate)*
- Elements of Presidential Communications Privilege*
- Presidential Communications are Presumptively Privileged*
- Executive Privilege v. Public Interest*
- Power of Inquiry v. Executive Privilege*
- Case Digest of Neri v. Senate*

1) Definition

Briefly and in simplest terms, it is the power of the President to withhold certain types of information from the public, from the courts, and from Congress.

2) How invoked

Invoked in relation to specific categories of information. Executive privilege is properly invoked in relation to specific categories of information and not to categories of persons. (While executive privilege is a constitutional concept, a **claim** thereof may be valid or not depending on the ground invoked to justify it and the context in which it is made. Noticeably absent is any recognition that executive officials are exempt from the duty to disclose information by the mere fact of being executive officials. (Senate v. Ermita)

3) Who can invoke

In light of this highly exceptional nature of the privilege, the Court finds it essential to limit to the **President** the power to invoke the privilege. She may of course authorize the **Executive Secretary** to invoke the privilege on her behalf, in which case the Executive Secretary must state that the authority is "By order of the President," which means that he personally consulted with her. The privilege being an extraordinary power, it must be wielded only by the highest official in the executive hierarchy. In other words, the President may not authorize her subordinates to exercise such power. (Senate v. Ermita) (It follows, therefore, that when an official is being summoned by Congress on a matter which, in his own judgment, might be covered by executive privilege, he must be afforded **reasonable time to inform the President or the Executive Secretary** of the possible need for invoking the privilege. This is necessary in order to provide the President or the Executive Secretary with fair opportunity to consider whether the matter indeed calls for a claim of executive privilege. If, after the lapse of that reasonable time, neither the President nor the Executive Secretary invokes the privilege, Congress is no longer bound to respect the failure of the official to appear before Congress and may then opt to avail of the necessary legal means to compel his appearance.) (Senate v. Ermita)

4) Privilege Not Absolute

Claim of executive privilege is subject to **balancing against other interest.** In other words,

confidentiality in executive privilege is not absolutely protected by the Constitution. Neither the doctrine of separation of powers, nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances. (*Neri v. Senate*)
 A claim of executive privilege does not guard against a possible disclosure of a crime or wrongdoing (*Neri v. Senate*)

of separation of powers and the President's unique constitutional role	
Applies to documents in their entirety and covers final and post decisional materials as well as pre-deliberative ones	

5) Types of Executive Privilege²⁶⁴

1. State secrets (regarding military, diplomatic and other security matters)
2. Identity of government informers
3. Information related to pending investigations
4. Presidential communications
5. Deliberative process

6) Variety of Executive Privilege according to Tribe (Tribe cited in *Senate v. Ermita*)

1. State Secrets Privilege. that the information is of such nature that its disclosure would subvert crucial military or diplomatic objectives;
- (2) Informer's privilege. Privilege of the Government not to disclose the identity of persons who furnish information of violations of law to officers charged with the enforcement of that law.
- (3) General Privilege. For internal deliberations. Said to attach to intragovernmental documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies formulated.

7) Two Kinds of Privilege under *In re: Sealed Case (Neri v. Senate)*

1. Presidential Communications Privilege
2. Deliberative Process Privilege

Presidential Communications Privilege	Deliberative Process Privilege
Pertains to communications, documents or other materials that reflect presidential decision making and deliberations that the President believes should remain confidential	Includes advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated
Applies to decision making of the President	Applies to decision making of executive officials
Rooted in the constitutional principle	Rooted on common law privileges

8) Elements of presidential communications privilege (*Neri v. Senate*)

- 1) The protected communication must relate to a "quintessential and non-delegable presidential power."
- 2) The communication must be authored or "solicited and received" by a close advisor of the President or the President himself. The judicial test is that an advisor must be in "operational proximity" with the President.
- 3) The presidential communications privilege remains a qualified privilege that may be overcome by a showing of adequate need, such that the information sought "likely contains important evidence" and by the unavailability of the information elsewhere by an appropriate investigating authority.

9) Presidential Communications are Presumptively Privileged

The presumption is based on the President's generalized interest in confidentiality. The privilege is necessary to guarantee the candor of presidential advisors and to provide the President and those who assist him with freedom to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately.

The presumption can be overcome only by mere showing of public need by the branch seeking access to conversations. The courts are enjoined to resolve the competing interests of the political branches of the government "in the manner that preserves the essential functions of each Branch."

XX

10) Executive Privilege and the Public

The Court held that this jurisdiction recognizes the common law holding that there is a "governmental privilege against public disclosure with respect to state secrets regarding military, diplomatic and other national security matters and cabinet closed door meetings." (*Chavez v. PCGG*)

11) Power of Inquiry v. Executive Privilege

Requirement in invoking the privilege: formal claim of privilege. "Congress has undoubtedly

²⁶⁴ Primer on *Neri v. Senate* made by Atty. Carlos Medina.

has a right to information from the executive branch whenever it is sought in aid of legislation. If the executive branch withholds such information on the ground that it is privileged, **it must so assert it and state the reason therefore and why it must be respected.**" (Justice Carpio Morales in *Senate v. Ermita*)

A formal and proper claim of executive privilege requires a **specific designation and description of the documents within its scope as well as precise and certain reasons for preserving their confidentiality.** Without this specificity, it is impossible for a court to analyze the claim short of disclosure of the very thing sought to be protected. Upon the other hand, Congress must not require the executive to state the reasons for the claim with such particularity as to compel disclosure of the information which the privilege is meant to protect. (*Senate v. Ermita*)

12) *Neri v. Senate Committee*

Background:

This case is about the Senate investigation of anomalies concerning the NBN-ZTE project. During the hearings, former NEDA head Romulo Neri refused to answer certain questions involving his conversations with President Arroyo on the ground they are covered by executive privilege. When the Senate cited him in contempt and ordered his arrest, Neri filed a case against the Senate with the Supreme Court. *On March 25, 2008, the Supreme Court ruled in favor of Neri and upheld the claim of executive privilege.*

Issues:

- (1) . Are the communications sought to be elicited by the three questions covered by executive privilege?
- (2) Did the Senate Committees commit grave abuse of discretion in citing Neri in contempt and ordering his arrest?

Ruling:

(1) The SC said that the communications sought to be elicited by the three questions are covered by the presidential communications privilege, which is one type of executive privilege.

Using the elements of *presidential communications privilege*, the SC is convinced that the communications elicited by the three (3) questions are covered by the **presidential communications privilege.**

First, the communications relate to a "quintessential and non-delegable power" of the President, i.e. the power to enter into an executive agreement with other countries. This authority of the President to enter into *executive agreements* without the concurrence of the Legislature has traditionally been recognized in Philippine jurisprudence.

Second, the communications are "received" by a close advisor of the President. Under the "operational proximity" test, petitioner can be considered a close advisor, being a member of President Arroyo's cabinet.

Third, there is no adequate showing of a compelling need that would justify the limitation of the privilege and of the **unavailability** of the information elsewhere by an appropriate investigating authority. The record is bereft of any categorical explanation from respondent Committees to show a compelling or critical need for

the answers to the three (3) questions in the enactment of a law.

(2) Yes. The Supreme Court said that the Senate Committees committed grave abuse of discretion in citing Neri in contempt. The following reason among others was given by the Supreme Court:

a. **There was a legitimate claim of executive privilege.**

For the claim to be properly invoked, there must be a formal claim by the President stating the "precise and certain reason" for preserving confidentiality. The grounds relied upon by Executive Secretary Ermita are specific enough, since what is required is only that an allegation be made "whether the information demanded involves military or diplomatic secrets, closed-door Cabinet meetings, etc." The particular ground must only be specified, and the following statement of grounds by Executive Secretary Ermita satisfies the requirement: "The context in which executive privilege is being invoked is that the information sought to be disclosed might impair our diplomatic as well as economic relations with the People's Republic of China."

Comments on *Neri v. Senate*

Atty Medina: The ruling expands the area of information that is not accessible to the public. Executive privilege can now be invoked in communications between his close advisors. (See the second element in the *presidential communications privilege*)

Bernas: The problem with the doctrine is, anytime the President says "*That's covered*", that's it. Nobody can ask anymore questions.

ASM: I think when the President says, "It's covered," the Court can still make an inquiry under the Grave Abuse Clause. This inquiry can be done in an executive session.

G. Cabinet

Extra-constitutional creation

Composition

Prohibitions

Vice-President

Ex-officio Capacity

Prohibited Employment

Prohibited Compensation

1. Extra-constitutional creation

Although the Constitution mentions the Cabinet a number of times, the Cabinet itself as an institution is extra-constitutionally created.²⁶⁵

2. Composition

It essentially consist of the heads of departments who through usage have formed a body of presidential adviser who meet regularly with the President.²⁶⁶

3. Prohibitions (1987, 1996 Bar Question)

²⁶⁵ Bernas Commentary, p 808 (2003 ed); See art.7 secs. 3, 11 and 13.

²⁶⁶ Bernas Commentary, p 808 (2003 ed).

(Applies to Members of Cabinet, their deputies or assistants.)

1. Unless otherwise provided in the Constitution, shall not hold any other employment during their tenure.
2. Shall not directly or indirectly practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise or special privilege granted by the government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries during their tenure.
3. Strictly avoid conflict of interest in the conduct of their office during their tenure. (Section 13)

4. Vice-President

Note that the VP may be appointed to the Cabinet, without need of confirmation by the Commission on Appointments; and the Secretary of Justice is an *ex officio* member of the Judicial and Bar Council.

5. Ex-officio²⁶⁷ capacity (2002 Bar Question)

The prohibition must not be construed as applying to posts occupied by the Executive officials without additional compensation in an *ex-officio* capacity as provided by law and as required by the primary functions of the said official's office. The reason is that the posts do not comprise "any other office" within the contemplation of the constitutional prohibition, but properly an imposition of additional duties and functions on said officials.

To illustrate, the Secretary of Transportation and Communications is the *ex officio* Chairman of the Board of Philippine Ports Authority. 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 said position. The reason is that these services are already paid for and covered by the compensation attached to the principal office. (National Amnesty Commission v. COA, 2004)

6. Prohibited Employment

Since the Chief Presidential Legal Counsel has the duty of giving independent and impartial legal advice on the actions of the heads of various executive departments and agencies and to review investigations involving other presidential appointees, he may not occupy a position in any of the offices whose performance he must review. It would involve occupying incompatible positions. Thus he cannot be Chairman at the same time of

the PCGG since the PCGG answers to the President.²⁶⁸

7. Prohibited Compensation

When an Undersecretary sits for a Secretary in a function from which the Secretary may not receive additional compensation, the prohibition on the Secretary also applies to the Undersecretary.²⁶⁹

II. The President

Who is he?

Qualifications

Election

Term of Office

Oath of Office

Privileges

Prohibitions/Inhibitions

Vacancy Situations

Rules of Succession

Temporary Disability

Serious Illness

Removal from Office

A. Who is the President

The President is the Head of State and the Chief Executive.²⁷⁰ (He is *the executive*) He is the repository of all executive power.²⁷¹

B. Qualifications

Qualifications

Reason for Qualifications

Qualifications are exclusive

Natural Born

Registered Voter

Age

Registered Qualification

Section 2. No person may be elected President unless he is a natural-born citizen of the Philippines, a registered voter, able to read and write, at least forty years of age on the day of the election, and a resident of the Philippines for at least ten years immediately preceding such election.

1. Qualifications

1. Natural born citizen of the Phils.
2. Registered voter
3. Able to read write

²⁶⁷ An ex-officio position is one which an official holds but is germane to the nature of the original position. It is by virtue of the original position that he holds the latter, therefore such is constitutional.

²⁶⁸ *Public Interest Group v Elma*, G. R. No. 138965, June 30, 2006.

²⁶⁹ *Bitonio v. COA*, G.R. No. 147392, March 12, 2004.

²⁷⁰ *Bernas Primer* at 289 (2006 ed.)

²⁷¹ *Sinco*, Philippine Political Law, p.240 (1954 ed.)

4. At least 40 years of age o the day of the election
5. A resident of the Philippines for at least 10 years immediately preceding the election.

2. Reason for Qualifications

Qualifications are prescribed for public office to ensure the proper performance of powers and duties.²⁷²

3. Qualifications are exclusive

The above qualifications are exclusive and may not be reduced or increased by Congress. The applicable rule of interpretation is *expression unius est exclusio alterius*.²⁷³

4. Natural Born

One who is a citizen of the Philippines from birth without having to perform any act to acquire or perfect his Philippine citizenship. (Article IV, Section 2)

An illegitimate child of an American mother and a Filipino father is a natural born Filipino citizen if paternity is clearly proved. Hence such person would be qualified to run for President. This was the case of Fernando Poe, Jr. (*Tecson v. COMELEC*)

5. Registered Voter

Possession of the qualifications for suffrage as enumerated in Article V, Section 1.

6. Age

The age qualification must be possessed "on the day of the election for President" that is, on the day set by law on which the votes are cast.²⁷⁴

7. Residence Qualification

The object being to ensure close touch by the President with the country of which he is to be the highest official and familiarity with its conditions and problems, the better for him to discharge his duties effectively.²⁷⁵

C. Election

Regular Election

Special Election

Congress as Canvassing Board

Who will be Proclaimed

Presidential Electoral Tribunal

Section 4. The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin

²⁷² Cruz, Philippine Political Law, p. 174 (1995 ed).

²⁷³ Cruz, Philippine Political Law, p. 174 (1995 ed).

²⁷⁴ Bernas Commentary, p 809 (2003 ed).

²⁷⁵ Cruz, Philippine Political Law, p. 175 (1995 ed).

at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date six years thereafter. The President shall not be eligible for any reelection. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

No Vice-President shall serve for more than two successive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service for the full term for which he was elected.

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

The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the election, open all the certificates in the presence of the Senate and the House of Representatives in joint public session, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes.

The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of both Houses of the Congress, voting separately.

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

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

1. Regular Election

The President (and Vice-President) shall be elected by **direct vote** of the people. Unless otherwise provided by law, the regular election for President (and Vice-President) shall be held on the **second Monday of May**.

2. Special Election (Discussed under Section 10)

3. Congress as Canvassing Board

The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the

election, open all the certificates in the presence of the Senate and the House of Representatives in **joint public session**, and **the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes**. The Congress shall promulgate its rules for the canvassing of the certificates.

Is the function of Congress merely ministerial?

Bernas: The function of Congress is not merely ministerial. It has authority to examine the certificates of canvass for authenticity and due execution. For this purpose, Congress must pass a law governing their canvassing of votes.²⁷⁶

Cruz: As the canvass is regarded merely as a ministerial function, the Congress shall not have the power to inquire into or decide questions of alleged irregularities in the conduct of the election contest. Normally, as long as the election returns are duly certified and appear to be authentic, the Congress shall have no duty but to canvass the same and to proclaim as elected the person receiving the highest number of votes.²⁷⁷

Justice Carpio Morales: This duty has been characterized as being ministerial and executive.²⁷⁸

Validity of Joint Congressional Committee.

Congress may validly delegate the initial determination of the authenticity and due execution of the certificates of canvass to a Joint Congressional Committee so long as the decisions and final report of the said Committee shall be subject to the approval of the joint session of Both Houses of Congress voting separately. (*Lopez v. Senate*, 2004)

COMELEC. There is no constitutional or statutory basis for COMELEC to undertake a separate and “unofficial” tabulation of result whether manually or electronically. If Comelec is proscribed from conducting an official canvass of the votes cast for the President and Vice-President, the Comelec is, with more reason, prohibited from making an “unofficial” canvass of said votes. (*Brilantes v. Comelec*, 2004)

The proclamation of presidential and vice-presidential winners is a function of Congress and not of Comelec (*Macalintal v. COMELEC*)

Congress may continue the canvass even after the final adjournment of its session. The final adjournment of Congress does not terminate an unfinished presidential canvass. Adjournment terminates legislation but not the **non-legislative functions of Congress such as canvassing of votes**. (*Pimentel v. Joint Committee of Congress*, 2004)

4. Who will be proclaimed

The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of both Houses of the Congress, voting separately.

5. Presidential Electoral Tribunal

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

Q: Can Susan Roces, widow of Fernando Poe, Jr, intervene and/or substitute for him, assuming arguing that the protest could survive his death?

A: No. The fundamental rule applicable in a presidential election protest is Rule 14 of the PET Rules. It provides that only the 2nd and 3rd placer may contest the election. The Rule effectively excludes the widow of a losing candidate.²⁷⁹ (*Fernando Poe v. Arroyo*)

The validity, authenticity and correctness of the SOVs and COCs are under the Tribunal’s jurisdiction. The constitutional function as well as the power and the duty to be the sole judge of all contests relating to election, returns and qualification of President and Vice-President is expressly vested in the PET in Section 4 Article VII of the Constitution. Included therein is the duty to correct manifest errors in the SOVs and COCs. (*Legarda v. De Castro*, 2005)

Q: After Fidel Ramos was declared President, defeated candidate Miriam Defensor Santiago filed an election protest with the SC. Subsequently, while the case is pending, she ran for the office of Senator and, having been declared elected, assumed office as Senator. What happens to her election protest?

A: Her protest is deemed abandoned with her election and assumption of office as Senator. (*Defensor Santiago v. Ramos*)

D. Term of Office

²⁷⁹ *Fernando Poe, Jr. v. Arroyo*, P.E.T. CASE No. 002. March 29, 2005.

²⁷⁶ Bernas Primer at 293 (2006 ed.)

²⁷⁷ Cruz, Philippine Political Law, p. 176 (1995 ed.)

²⁷⁸ Separate Opinion of Justice Carpio Morales in *Pimentel v. Joint Committee* (June 22, 2004) citing *Lopez v. Roxas*, 17 SCRA 756, 769 (1966)

6 years. The President (and the Vice-President) shall be elected by direct vote of the people for a term of six years.

Noon of June 30. Term shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date six years thereafter.

No re-election. The President shall not be eligible for any reelection. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

Reason for prohibition on any reelection for Presidency. It was thought that the elimination of the prospect of reelection would make for a more independent President capable of making correct even unpopular decisions.²⁸⁰ He is expected to devote his attention during his lone term to the proper discharge of his office instead of using its perquisites to ensure his remaining therein for another term.²⁸¹

E. Oath of Office

Section 5. Before they enter on the execution of their office, the President, the Vice-President, or the Acting President shall take the following oath or affirmation:
"I do solemnly swear (or affirm) that I will faithfully and conscientiously fulfill my duties as President (or Vice-President or Acting President) of the Philippines, preserve and defend its Constitution, execute its laws, do justice to every man, and consecrate myself to the service of the Nation. So help me God."
(In case of affirmation, last sentence will be omitted.)

Oath. The oath is not a source of substantive power but is merely intended to deepen the sense of responsibility of the President and ensure a more conscientious discharge of his office.²⁸²

F. Privileges

1. Official Residence
2. Salary
3. Immunity from suit

²⁸⁰ Bernas Commentary, p 812 (2003 ed).

²⁸¹ Cruz, Philippine Political Law, p. 177 (1995 ed).

²⁸² Cruz, Philippine Political Law, p. 183 (1995 ed).

Section 6. The President shall have an official residence. The salaries of the President and Vice-President shall be determined by law and shall not be decreased during their tenure. No increase in said compensation shall take effect until after the expiration of the term of the incumbent during which such increase was approved. They shall not receive during their tenure any other emolument from the Government or any other source.

1. Official Residence

The President shall have an official residence.

2. Salary

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

The initial salary of the President is 300,00 per year. (Article XVIII Section 17)

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

No additional emolument during their tenure. They shall not receive during their tenure any other emolument from the Government or any other source.

3. Immunity from Suit

(Discussed under Section 1 [(E)])

G. Prohibitions/Inhibitions

Section 13. The President, Vice-President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during said tenure, directly or indirectly, practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.
The spouse and relatives by consanguinity or affinity within the fourth civil degree of the President shall not during his tenure be appointed as Members of the Constitutional Commissions, or the Office of the Ombudsman, or a Secretaries, Undersecretaries, chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries.

Prohibitions:

1. Shall not receive increase compensation during the term of the

incumbent during which such increase was approved. (sec 6)

2. Shall not receive any other emoluments from the government or any other source during their tenure. (sec 6)

3. Unless otherwise provided in the Constitution, shall not hold any other employment during their tenure.

4. Shall not directly or indirectly practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise or special privilege granted by the government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries during their tenure.

5. Strictly avoid conflict of interest in the conduct of their office during their tenure.

6. May not appoint spouse or relatives by consanguinity or affinity within the fourth civil degree as Member of Constitutional Commissions or the Office of the Ombudsman, or as Secretaries, Under Secretaries, chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries.

Note: Nos. 1-6 above applies to the President. 1-5 applies to the Vice-President. 3-5 applies to Members of Cabinet, their deputies or assistants.

Prohibition against increase of compensation during tenure. The prohibition against the change of their salary either by reduction or increase during their term is meant to prevent the legislature from "weakening the fortitude by appealing to their avarice or corrupting their integrity by operating on their necessities."²⁸³

Emoluments. The emoluments which they may not receive during their tenure from the government or any other source (that is, private) refers to any compensation received for services rendered or form possession of an office. This means that the President cannot accept other employment elsewhere, whether in the government or in the private sector, and must confine himself to the duties of his office.²⁸⁴

Reason for Inhibitions under Section 13. The inhibitions are in line with the principle that a public office is a public trust and should not be abused for personal advantage. Officers mentioned under Section 13 (except the VP who may be appointed to the Cabinet) are inhibited from holding any other office or employment in the government during their tenure. This will discontinue the lucrative

practice of Cabinet members occupying seats in the boards of directors of affluent corporations owned or controlled by the government from which they derived substantial income in addition to their regular salaries. The second paragraph of Section 13 is intended as a guarantee against nepotism.²⁸⁵

H. Vacancy

Section 7. The President-elect and the Vice-President-elect shall assume office at the beginning of their terms.

If the President-elect fails to qualify, the Vice-President-elect shall act as President until the President-elect shall have qualified.

If a President shall not have been chosen, the Vice-President-elect shall act as President until a President shall have been chosen and qualified.

If at the beginning of the term of the President, the President-elect shall have died or shall have become permanently disabled, the Vice-President-elect shall become President.

Where no President and Vice-President shall have been chosen or shall have qualified, or where both shall have died or become permanently disabled, the President of the Senate or, in case of his inability, the Speaker of the House of Representatives shall act as President until a President or a Vice-President shall have been chosen and qualified.

The Congress shall, by law, provide for the manner in which one who is to act as President shall be selected until a President or a Vice-President shall have qualified, in case of death, permanent disability, or inability of the officials mentioned in the next preceding paragraph.

Section 8. In case of death, permanent disability, removal from office, or resignation of the President, the Vice-President shall become the President to serve the unexpired term. In case of death, permanent disability, removal from office, or resignation of both the President and Vice-President, the President of the Senate or, in case of his inability, the Speaker of the House of Representatives, shall then act as President until the President or Vice-President shall have been elected and qualified.

The Congress shall, by law, provide who shall serve as President in case of death, permanent disability, or resignation of the Acting President. He shall serve until the President or the Vice-President shall have been elected and qualified, and be subject to the same restrictions of powers and disqualifications as the Acting President.

Section 10. The Congress shall, at ten o'clock in the morning of the third day after the vacancy in the offices of the President and Vice-President occurs, convene in accordance with its rules without need of a call and within seven days enact a law calling for a special election to elect a President and a Vice-President to be held not earlier than forty-five days nor later than sixty days from the time of such call. The bill calling such special election shall be deemed certified under paragraph 2, Section 26, Article VI of this Constitution and shall become law upon its approval on third

²⁸³ Cruz, Philippine Political Law, p. 183 (1995 ed).

²⁸⁴ Cruz, Philippine Political Law, p. 183 (1995 ed).

²⁸⁵ Cruz, Philippine Political Law, p. 185 (1995 ed).

reading by the Congress. Appropriations for the special election shall be charged against any current appropriations and shall be exempt from the requirements of paragraph 4, Section 25, Article VI of this Constitution. The convening of the Congress cannot be suspended nor the special election postponed. No special election shall be called if the vacancy occurs within eighteen months before the date of the next presidential election.

Vacancy Situations:

1. Vacancy that occurs at the start of the term (Sec 7)
2. Vacancy that occurs in mid-term (Sec 8)
3. Vacancy in both the presidency and vice-presidency. (Section 10)

Vacancy Situations under Section 7:

(The vacancy situations here occur after the office has been initially filled.)

1. When a President has been chosen but fails to qualify at the beginning of his term
2. When no President has yet been chosen at the time he is supposed to assume office.
3. When the President-elect dies or is permanently incapacitated before the beginning of his term
4. When both the President and Vice-President have not yet been chosen or have failed to qualify
5. When both shall have died or become permanently incapacitated at the start of the term.
6. When the Senate President and the Speaker of the House shall have died or shall have become permanently incapacitated, or are unable to assume office.

Vacancy Situation under Section 8

(Vacancy that occurs in mid-term)

1. When the incumbent President dies or is permanently disabled, is removed or resigns.
2. When both the President and the Vice-President die, or are permanently disabled, are removed, or resign.
3. When the Acting President dies, or is permanently incapacitated, is removed or resigns.

I. Rules of Succession

Section 7

Reason for Vacancy	Succession
1. When a President has been chosen but fails to qualify at the beginning of his term	The Vice-President becomes acting President until a President qualifies
2. When no President has yet been chosen at the time he is supposed to assume office.	
3. When the President-elect	Vice-President elect

dies or is permanently incapacitated before the beginning of his term	becomes President
4. When both the President and Vice-President have not yet been chosen or have failed to qualify	The Senate President or the Speaker- in that order- acts as President until a President or Vice-President qualifies.
5. When both shall have died or become permanently incapacitated at the start of the term.	
6. When the Senate President and the Speaker of the House shall have died or shall have become permanently incapacitated, or are unable to assume office.	Congress will decide by law who will act as President until a President or Vice-President shall have been elected and qualified.

Section 8

Reason for Vacancy	Succession
1. When the incumbent President dies or is permanently disabled, is removed or resigns.	The vacancy created is thus permanent. The Vice-President becomes President.
2. When both the President and the Vice-President die, or are permanently disabled, are removed, or resign.	The Senate President or the Speaker-in that order- shall act as President until a President or Vice-President shall have been qualified.
3. When the Acting President dies, or is permanently incapacitated, is removed or resigns.	Congress will determine by law who will act as President until a new President or Vice-President shall have qualified.

Resignation. In *Estrada v. Macapagal-Arroyo*, the SC through Justice Puno (**main opinion**) declared that the resignation of President Estrada could not be doubted as confirmed by his leaving Malacanang. The SC declared that the elements of a valid resignation are (1) intent to resign; and (2) act of relinquishment. Both were present when President Estrada left the Palace. Justice Puno anchored his opinion mainly on the letter of Estrada and on the diary of ES Edgardo Angara.

Permanent Disability. In *Estrada v. Macapagal-Arroyo*, Justice Bellosillo anchored his concurrence on permanent disability. He opined that permanent disability as contemplated by the Constitution does not refer only to physical or mental incapacity, but must likewise cover other *forms of incapacities of a permanent nature*, e.g. **functional disability**. He views Estrada's disability in (a) objective and (b) subjective perspectives.

Objective Approach. "Without people, an effectively functioning cabinet, the military and the police, with no recognition from Congress and the international community, [Estrada] had absolutely no support

from and control of the bureaucracy from within and from without. In fact he had no more functioning government to speak of. It is in this context that [Estrada] was deemed absolutely unable to exercise or discharge the powers, duties and prerogatives of the Presidency.

Subjective Approach. [Estrada's] contemporaneous acts and statements during and after the critical episode are eloquent proofs of his implied-but nevertheless unequivocal acknowledgment of the permanence of his disability.

Comment on Estrada v. Macapagal-Arroyo

Bernas: In sum, 3 justices (Puno, Vitug and Pardo) accepted some form of resignation; 2 justices (Mendoza and Bellosillo) saw permanent disability; 3 justices (Kapuna, Yners Santiago and Sandoval-Gutierrez) accepted the presidency of Arroyo as an irreversible fact. 5 justices (Quisumbing, Melo, Buena, De Leon and Gonzaga-Reyes) signed the decision without expressing any opinion. Davide and Panganiban abstained. In the light of all this, **it is not clear what doctrine was established by the decision.**²⁸⁶

When the Senate President or Speaker becomes Acting President, he does not lose the Senate presidency or the speakership.²⁸⁷

Section 10

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

Bill deemed certified. The bill calling such special election shall be deemed certified under paragraph 2, Section 26, Article VI of this Constitution and shall become law upon its approval on third reading by the Congress.

Appropriations. Appropriations for the special election shall be charged against any current appropriations and shall be exempt from the requirements of paragraph 4, Section 25, Article VI of this Constitution.

No suspension or postponement. The convening of the Congress cannot be suspended nor the special election postponed.

²⁸⁶ Bernas Commentary, p 827 (2003 ed).

²⁸⁷ Bernas Primer at 298 (2006 ed.)

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

J. Temporary Disability

Section 11. Whenever the President transmits to the President of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice-President as Acting President. Whenever a majority of all the Members of the Cabinet transmit to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice-President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President of the Senate and to the Speaker of the House of Representatives his written declaration that no inability exists, he shall reassume the powers and duties of his office. Meanwhile, should a majority of all the Members of the Cabinet transmit within five days to the President of the Senate and to the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Congress shall decide the issue. For that purpose, the Congress shall convene, if it is not in session, within forty-eight hours, in accordance with its rules and without need of call.

If the Congress, within ten days after receipt of the last written declaration, or, if not in session, within twelve days after it is required to assemble, determines by a two-thirds vote of both Houses, voting separately, that the President is unable to discharge the powers and duties of his office, the Vice-President shall act as President; otherwise, the President shall continue exercising the powers and duties of his office.

K. Serious Illness

Section 12. In case of serious illness of the President, the public shall be informed of the state of his health. The members of the Cabinet in charge of national security and foreign relations and the Chief of Staff of the Armed Forces of the Philippines, shall not be denied access to the President during such illness.

Section 12 envisions not just illness which incapacitates but also any serious illness which can be a matter of national concern.²⁸⁸

Reason for informing the public. To guarantee the people's right to know about the state of President's health, contrary to secretive practice in totalitarian regimes.²⁸⁹

Who has the duty to inform? The section does not specify the officer on whom the duty devolves.

²⁸⁸ Bernas Primer at 300 (2006 ed.)

²⁸⁹ Bernas Commentary, p 832 (2003 ed.)

It is understood that the Office of the President would be responsible for making the disclosure.

Reason of the access. To allow the President to make the important decisions in those areas of government.²⁹⁰

L. Removal from Office

Ways of removal from office:

1. By Impeachment
2. By People Power
3. By Killing the President (e.g. Assassination)²⁹¹

(Number 2 is extra constitutional and Number 3 is illegal. -asm).
 (But for purposes of examinations, answer number 1 only)

(Impeachment will be discussed under Article XI)

III. The Vice- President

- Who is the Vice-President**
- Qualifications, Election, Term of Office**
- Oath of Office**
- Prohibitions/Inhibitions**
- Vacancy**
- Removal from Office**
- Appointment to Cabinet**

A. Who is the Vice-President

His function is to be on hand to act as President when needed or to succeed to the presidency in case of a permanent vacancy in the office. The President may also appoint him as a Member of the Cabinet. Such appointment does not need the consent of the Commission on Appointments.²⁹²

B. Qualifications, Election, Term of Office

Section 3. There shall be a Vice-President who shall have the same qualifications and term of office and be elected with and in the same manner as the President. xxx

No Vice-President shall serve for more than two successive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service for the full term for which he was elected. (Section 4)

C. Oath of Office

Same as the President. See Section 5.

²⁹⁰ Bernas Commentary, p 832 (2003 ed).

²⁹¹ Number 2 is extra constitutional and Number 3 is illegal. -asm

²⁹² Bernas Primer at 291 (2006 ed.)

D. Prohibitions and Inhibitions

1. Shall not receive increase compensation during the term of the incumbent during which such increase was approved. (sec 6)
2. Shall not receive any other emoluments from the government or any other source during their tenure. (sec 6)
3. Unless otherwise provided in the Constitution, shall not hold any other employment during their tenure.
4. Shall not directly or indirectly practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise or special privilege granted by the government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries during their tenure.
5. Strictly avoid conflict of interest in the conduct of their office during their tenure. (Section 13)

E. Vacancy in the Vice-Presidency

Section 9. Whenever there is a vacancy in the Office of the Vice-President during the term for which he was elected, the President shall nominate a Vice-President from among the Members of the Senate and the House of Representatives who shall assume office upon confirmation by a majority vote of all the Members of both Houses of the Congress, voting separately.

F. Removal from Office

He may be removed from office in the same manner as the President. (Section 3)

F. Appointment to Cabinet

The Vice-President may be appointed as a Member of the Cabinet. Such appointment requires no confirmation. (Section 3)

Justice Cruz submits that the Vice-President may not receive additional compensation as member of Cabinet because of the absolute prohibition in Section 3 of Article VII.²⁹³

IV. POWERS OF THE PRESIDENT

Constitutional Powers of the President

1. Executive Power
2. Power of Appointment
3. Power of Control

²⁹³ Cruz, Philippine Political Law, p. 183 (1995 ed).

4. Military Powers
5. Pardoning Power
6. Borrowing Power
7. Diplomatic Power
8. Budgetary Power
9. Informing Power
10. Other Powers
 - a. Call Congress to a Special Session (art 6, sec 15)
 - b. Power to approve or veto bills (art 6 sec 27)
 - c. To consent to deputation of government personnel by the Commission on Elections (art 19-C sec 2(4))
 - d. To discipline such deputies (art 19-C sec 2(8))
 - e. Emergency powers by delegation from Congress (art 6 sec 23(2))
 - f. Tariff Powers by delegation from Congress (art 6 sec 28(2))
 - g. General Supervision over local governments and autonomous regional governments (art 10)

V. Power of Appointment

Definition of Appointment
Nature of Power of Appointment
Classification of Appointment
Kinds of Presidential Appointment
Scope of Appointing Power
Appointments needing Confirmation of CA
Officials Who are to be Appointed by the President
Steps in the Appointing Process
Appointment of Officers Lower in Rank
Limitations on the President's Appointing power
Power of Removal

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

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

A. Definition of Appointment

Definition of Appointment. Appointment is the selection, by the authority vested with the power, of

an individual who is to exercise the functions of a given office.²⁹⁴

It is distinguished from **designation** in that the latter simply means the imposition of additional duties, usually by law, on a person already in the public service.

It is also different from the **commission** in that the latter is the written evidence of the appointment.

B. Nature of Power of Appointment

1. Executive in Nature
2. Non-delegability
3. Necessity of Discretion

1. Executive in Nature

Appointing power is executive in nature. (Government v. Springer) Indeed, the filling up of an office created by law is the implementation or execution of law.²⁹⁵

Although, intrinsically executive and therefore pertaining mainly to the President, the appointing power may be exercised by the legislature and by the judiciary, as well as the Constitutional Commissions, over their own respective personnel (See art 6 sec 16 (last sentence), Article VIII etc.)

Implication. Since appointment to office is an executive function, the clear implication is that the legislature may not usurp such function.

The legislature may create an office and prescribe the qualifications of the person who may hold the office, but it may neither specify who shall be appointed to such office nor actually appoint him.²⁹⁶

2. Non-delegability.

Facts: The Minister of Tourism designate petitioner as general manager of the Philippine Tourism Authority. When a new Secretary of Tourism was appointed, the President designated [him] as a general manager of the PTA on the ground that the designation of petitioner was invalid since it is not made by the President as provided for in PD 564. Petitioner claimed that his removal was without just cause.

Held: The appointment or designation of petitioner by the Minister of Tourism is invalid. It involves the exercise of discretion, which cannot be delegated. Even if it be assumed that the power could be exercised by the Minister of Tourism, it could be recalled by the President, for the designation was provisional.²⁹⁷ (Binamira v. Garrucho)

3. Necessity of Discretion

Discretion is an indispensable part in the exercise of power of appointment. Congress may not, therefore, enact a statute which would deprive the President of the full use of his discretion in the nomination and appointment of persons to any public office. Thus it has been held that a statute

²⁹⁴ Cruz, Philippine Political Law, p. 189 (1995 ed).

²⁹⁵ Bernas Commentary, p 839 (2003 ed).

²⁹⁶ Bernas Primer at 305 (2006 ed.)

²⁹⁷ Jacinto Jimenez, Political Law Compendium, p.313 (2006 ed.)

unlawfully limits executive discretion in appointments when it provides for the drawing of lots as a means to determine the districts to which judges of first instance should be assigned by the Chief Executive.²⁹⁸ Congress may not limit the President's choice to one because it will be an encroachment on the Prerogative of the President.²⁹⁹

Appointment is essentially a 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, if issued a permanent appointment, should possess the minimum qualification requirements, including the Civil Service eligibility prescribed by law for the position. This discretion also includes the determination of the nature or character of the appointment, i.e., whether the appointment is temporary or permanent.³⁰⁰

The power to appoint includes the power to decide who among various choices is best qualified provided that the person chosen has the qualification provided by law.³⁰¹ Even the next-in-rank rule of the Civil Service Code cannot be read as binding the appointing authority to choose the first in the order of rank when two or more possess the requisite qualifications.³⁰²

Q: The Revised Administrative Code of 1987 provides, "*All provincial and city prosecutors and their assistants shall be appointed by the President upon the recommendation of the Secretary.*" Is the absence of recommendation of the Secretary of Justice to the President fatal to the appointment of a prosecutor?

A: Appointment calls for discretion on the part of the appointing authority. The power to appoint prosecutors is given to the President. The Secretary of Justice is under the control of the President. Hence, the law must be read simply as allowing the Secretary of Justice to advise the President. (*Bermudez v. Secretary*, 1999)

C. Classification of Appointment (1994 Bar Question)

1. Permanent
2. Temporary
3. Regular
4. Ad Interim

1. Permanent (2003 Bar Question)

²⁹⁸ Sinco, *Philippine Political Law*, p 272 (1954ed).

²⁹⁹ *Flores v. Drilon*, 223 SCRA 568.

³⁰⁰ Antonio B. Nachura, *Outline/Reviewer in Political Law* 274 (2006 ed.)

³⁰¹ *Bernas Primer* at 305 (2006 ed.)

³⁰² *Bernas Commentary*, p 840 (2003 ed).

Permanent appointments are those extended to persons possessing eligibility and are thus protected by the constitutional guarantee of security of tenure.³⁰³

2. Temporary (2003 Bar Question)

Temporary appointments are given to persons without such eligibility, revocable at will and without the necessity of just cause or a valid investigation³⁰⁴; made on the understanding that the appointing power has not yet decided on a permanent appointee and that the temporary appointee may be replaced at any time a permanent choice is made.

Not subject to CA confirmation. A temporary appointment and a designation are not subject to confirmation by the Commission on Appointments. Such confirmation, if given erroneously, will not make the incumbent a permanent appointee. (*Valencia v. Peralta*)

3. Regular

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

4. Ad Interim (1991, 1994 Bar Question)

An ad interim appointment is one made by the President while Congress is not in session; takes effect immediately, but ceases to be valid if disapproved by the Commission on Appointments or upon the next adjournment of Congress. In the latter case, the ad interim appointment is deemed "by-passed" through inaction.

The ad interim appointment is intended to prevent interruptions in vital government services that would otherwise result from prolonged vacancies in government offices.

Ad interim appointment is a permanent appointment. It is a permanent appointment because it takes effect immediately and can no longer be withdrawn by the President once the appointee qualified into office. The fact that it is subject to confirmation by the Commission on Appointments does not alter its permanent character. (*Matibag v. Benipayo*, 2002)

Ad interim appointed, how terminated.

1. Disapproval of the appointment by the Commission on Appointments;
2. Adjournment by Congress without the CA acting on the appointment.

³⁰³ Cruz, *Philippine Political Law*, p. 190 (1995 ed).

³⁰⁴ Cruz, *Philippine Political Law*, p. 190 (1995 ed).

There is no dispute that when the Commission on Appointments disapproves an ad interim appointment, the appointee can no longer be extended a new appointment, inasmuch as the approval is a final decision of the Commission in the exercise of its checking power on the appointing authority of the President. Such disapproval is final and binding on both the appointee and appointing power.

But when an ad interim appointment is bypassed because of lack of time or failure of the Commission on Appointments to organize, there is no final decision by the Commission to give or withhold its consent to the appointment. Absent such decision, the President is free to renew the *ad interim* appointment. (Matibag v. Benipayo)

Q: What happens if a special session is called and that session continues until the day before the start of the regular session? Do appointments given prior to the start of the special session lapse upon the end of the special session or may they continue into the regular session?

A: *Guevara v. Inocente* again says that there must be a “constructive recess” between the sessions and thus appointments not acted upon during the special session lapse before the start of the regular session.³⁰⁵

Difference between an ad interim appointment and an appointment in an acting capacity.

1. The former refers only to positions which need confirmation by the CA while the latter is also given to those which do not need confirmation.
2. The former may be given only when Congress is not in session whereas the latter may be given even when Congress is in session.

Acting Capacity. The essence of an appointment in an acting capacity is its temporary nature. In case of a vacancy in an office occupied by an alter ego of the President, such as the Office of Department Secretary, the President must necessarily appoint the alter ego of her choice as Acting Secretary before the permanent appointee of her choice could assume office.

Congress, through law, cannot impose on the President the obligation to appoint automatically the undersecretary as her temporary alter ego. “An *alter ego*, whether temporary or permanent, holds a position of great trust and confidence. Congress, in the guise of prescribing qualifications to an office, cannot impose on the President who her *alter ego* should be.” Acting appointments are a way of temporarily filling important offices, but if

abused, they can also be a way of circumventing the need for confirmation by the Commission on Appointments.

However, we find no abuse in the present case. The absence of abuse is apparent from President Arroyo’s issuance of ad interim appointments to respondents immediately upon the recess of Congress, way before the lapse of one year. (*Pimentel v. Ermita*, 2005)

D. Kinds of Presidential Appointment

1. Appointments made by an Acting President (Section 14)
2. Appointments made by the President within two months before the next presidential elections and up to the end of his term. (Section 15)
3. Regular Appointments (Section 16)
4. Recess or Ad interim Appointments (Section 13)

E. Scope of the Power to Appoint

Officials to be Appointed by the President

1. Those officials whose appointments are vested in him by the Constitution. (*See Section 16, 1st sentence*)
 - Heads of executive departments
 - Ambassadors, other public ministers and consuls
 - Officers of the armed forces from rank of colonel or naval captain
 - Article VIII, Section 9 provides that the President appoints member of the SC and judges of lower courts
 - The President also appoints members of JBC, chairmen and members of the constitutional commissions (art 9,B, Sec 1(2); C, Section 1(2)), the Ombudsman and his deputies (art 11, sec 9).
 - Appointment of Sectoral Representatives (art 18 sec 7) (*Quintos-Deles v. Commission on Appointments*)
2. Those whom he may be authorized by law (*Section 16, 2nd sentence*)
3. Any other officers of the government whose appointments are not otherwise provided by law (Constitution or statutes). (*Section 16, 2nd sentence*)

Significance of enumeration in Section 16, 1st sentence. The enumeration means that Congress may not give to any other officer the power to appoint the above enumerated officers.³⁰⁶

³⁰⁵

³⁰⁶ Bernas Primer at 306 (2006 ed.)

F. Appointments needing the Confirmation of CA

CA Confirmation

Exclusive List

1. What appointments need confirmation by the Commission on Appointments? (1999 Bar Q)

Those enumerated in the 1st sentence of Section 16:

1. Heads of executive departments
2. Ambassadors, other public ministers and consuls
3. Officers of the armed forces from rank of colonel or naval captain
4. Those other officers whose appointments are vested in him in the Constitution. (**Sarmiento v. Mison**) (*Note: Although the power to appoint Justices, judges, Ombudsman and his deputies is vested in the President, such appointments do not need confirmation by the Commission on Appointments*)

Why from rank of colonel. The provision hopefully will have the effect of strengthening civilian supremacy over the military.³⁰⁷ To some extent, the decision of the Commission was influenced by the observation that coups are generally led by colonels.³⁰⁸

Military officers. The clause “officers of the armed forces from the rank of colonel or naval captain” refers to military officers alone. Hence, promotion and appointment of officers of Philippine Coast Guard which is under the DOTC (and not under the AFP), do not need the confirmation of Commission on Appointments. (*Soriano v. Lista*, 2003) Also, promotion of senior officers of the PNP is not subject to confirmation of CA. PNP are not members of the AFP. (*Manalo v. Sistoza*, 1999)

Chairman of CHR. The appointment of the Chairman of the Commission on Human Rights is not provided for in the Constitution or in the law. Thus, there is no necessity for such appointment to be passed upon by the Commission on Appointments. (*Bautista v. Salonga*)

2. Exclusive list

The Congress cannot by law require the confirmation of appointments of government officials other than those enumerated in the first sentence of Section 16 of Article VII. (*Calderon v. Carale*)

³⁰⁷ Bernas Commentary, p 844 (2003 ed).

³⁰⁸ II RECORD 394-395.

G. Steps in the Appointing Process (where COA confirmation is needed)

1. Nomination by the President
2. Confirmation of the Commission on Appointments
3. Issuance of the Commission

Acceptance. An appointment is deemed complete only upon its acceptance. Pending such acceptance, the appointment may still be withdrawn. (*Lacson v. Romero*)

Appointment to a public office cannot be forced upon any citizen except for purposes of defense of the State under Article II Section 4.

H. Appointment of Officers Lower in Rank

Section 16 (3rd sentence of first paragraph)

The Congress may, by law, vest the appointment of other officers lower in rank in the **President alone**, in the courts, or in the heads of departments, agencies, commissions, or boards.

Significance of the phrase “the President alone”. Alone means to the exclusion of the courts, the heads of departments, agencies, commissions or boards.³⁰⁹

Appointing authority may also be given to other officials. Thus Section 16 says: “The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards.” In *Rufino v. Endriga*³¹⁰ interpreted this to mean that, when the authority is given to collegial bodies, it is to the chairman that the authority is given. But he can appoint only officers “lower in rank,” and not officers equal in rank to him. Thus a Chairman may not appoint a fellow member of a Board.

I. Limitations on the President’s Appointing Power

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

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

Special Limitations

³⁰⁹ Bernas Commentary, p 847 (2003 ed.); The earlier view of Fr. Bernas confirmed by *Sarmiento v. Mison*, was that the retention of the phrase “President alone” was an oversight.

³¹⁰ G.R. No. 139554, July 21, 2006.

1. **(Anti-Nepotism Provision)** The President may not appoint his spouse and relatives by consanguinity or affinity within the fourth civil degree as Members of the Constitutional Commission, as Ombudsman, or as Secretaries, Undersecretaries, chairmen or heads of Bureaus or offices, including government owned-or-controlled corporations. **(Section 13)**
2. Appointments extended by an acting President shall remain effective unless revoked by the elected President within 90 days from his assumption of office. **(Section 14)**
3. **(Midnight Appointments)** Two months immediately before the next presidential elections and up to the end of his term, a President or acting President shall not make appointments except for temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety. **(Section 15)**
4. The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproval by the CA or until the next adjournment of Congress. **(Section 16 par. 2)**

Provision applies only to presidential appointments. The provision applies only to presidential appointments. There is no law that prohibits local executive officials from making appointments during the last days of their tenure. (De Rama v. CA)

Old Doctrine: [Section 15] applies in the appointments in the Judiciary. Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety. Since the exception applies only to executive positions, the prohibition covers appointments to the judiciary.³¹¹ During this period [2 months immediately before the next presidential elections...], the President is neither required to make appointments to the courts nor allowed to do so.

Section 4(1) and 9 of Article VIII simply mean that the President is required by law to fill up vacancies in the courts within the

same time frames provided therein unless prohibited by Section 15 of Article VII. While the filing up of vacancies in the judiciary is undoubtedly in the public interest, there is no showing in this case of any compelling reason to justify the making of the appointments during the period of the ban. (In Re Appointment of Mateo Valenzuela, 1998)

New Doctrine: The prohibition under Article VII, Section 15 of the Constitution against presidential appointments immediately before the next presidential elections and up to the end of the term of the President **does not apply to vacancies in the Supreme Court.** (De Castro v. JBC, March 17, 2010)

Other Limitations:

1. The presidential power of appointment may also be limited by Congress through its power to prescribe qualifications for public office.
2. The judiciary may annul an appointment made by the President if the appointee is not qualified or has not been validly confirmed.³¹²

J. Power of Removal

The President possesses the power of removal by implication from other powers expressly vested in him.

1. It is implied from his power to appoint
2. Being executive in nature, it is implied from the constitutional provision vesting the executive power in the President.
3. It may be implied from his function to take care that laws be properly executed; for without it, his orders for law enforcement might not be effectively carried out.
4. The power may be implied from the President's control over the administrative departments, bureaus, and offices of the government. Without the power to remove, it would not be always possible for the President to exercise his power of control.³¹³

As a general rule, the power of removal may be implied from the power of appointment.³¹⁴ However, the President cannot remove officials appointed by him where the Constitution prescribes certain

³¹¹ In re: Appointment of Valenzuela, AM 98-0501 SC, November 9, 1998.

³¹² Cruz, Philippine Political Law, p. 195 (1995 ed).

³¹³ Sinco, Philippine Political Law, p 275 (1954ed).; *But See* Ang-Angco v. Castillo, "The power of control is not the source of the Executive's disciplinary power over the person of his subordinates. Rather, his disciplinary power flows from his power to appoint." Bernas Primer at 313 (2006 ed).

³¹⁴ Cruz, Philippine Political Law, p. 196 (1995 ed).

methods for separation of such officers from public service, e.g., Chairmen and Commissioners of Constitutional Commissions who can be removed only by impeachment, or judges who are subject to the disciplinary authority of the Supreme Court. In the cases where the power of removal is lodged in the President, the same may be exercised only for cause as may be provided by law, and in accordance with the prescribed administrative procedure.

Members of the career service. Members of the career service of the Civil Service who are appointed by the President may be directly disciplined by him. (*Villaluz v. Zaldivar*) provided that the same is for cause and in accordance with the procedure prescribed by law.

Members of the Cabinet. Members of the Cabinet and such officers whose continuity in office depends upon the President may be replaced at any time. (*Legally speaking, their separation is effected not by removal but by expiration of term.*³¹⁵) (See *Alajar v. CA*)

VI. Power of Control

- Control**
- Control v. Supervision**
- The President and Power of Control**
- Alter ego Principle; Doctrine of Qualified Political Agency**
- Supervision over LGUs**
- The Take-Care Clause**

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

A. Control

Control is the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter.³¹⁶

It includes the authority to order the doing of an act by a subordinate or to undo such act or to assume a power directly vested in him by law.³¹⁷ The power of control necessarily includes the power of supervision.³¹⁸

B. Control v. Supervision

³¹⁵ Cruz, Philippine Political Law, p. 197 (1995 ed).
³¹⁶ *Mondano v. Silvosa*
³¹⁷ Cruz, Philippine Political Law, p. 198 (1995 ed).
³¹⁸ *Bernas Primer* at 313 (2006 ed.)

Control is a stronger power than mere supervision.³¹⁹

Supervision. Supervision means overseeing or the power or authority of an officer to see that subordinate officer performs their duties. If the latter fail or neglect to fulfill them, then the former may take such action or steps as prescribed by law to make them perform these duties.³²⁰

Bernas Primer: Power of Supervision is the power of a superior officer to “ensure that the laws are faithfully executed” by inferiors. The power of supervision does not include the power of control; but the power of control necessarily includes the power of supervision.³²¹

Control	Supervision
An officer in control lays down the rules in the doing of an act.	Supervision does not cover the authority to lay down the rules. Supervisor or superintendent merely sees to it that the rules are followed.
If rules are not followed, he may, in his discretion, order the act undone, re-done by his subordinate or he may decide to do it himself.	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. (<i>Drilon v. Lim</i>)

C. The President and Power of Control

- Power of Control of the President*
- Scope*
- Section 17 is self-executing*
- Not a Source of Disciplinary Powers*

1. Power of Control of the President

[Power of Control] has been given to the President over all executive officers from Cabinet members to the lowliest clerk. This is an element of the presidential system where the President is “the Executive of the government.”³²²

The power of control vested in the President by the Constitution makes for a strongly centralized administrative system. It reinforces further his

³¹⁹ Cruz, Philippine Political Law, p. 198 (1995 ed).
³²⁰ *Mondano v. Silvosa*
³²¹ *Bernas Primer* at 313 (2006 ed).
³²² *Bernas Primer* at 310 (2006 ed.)

position as the executive of the government, enabling him to comply more effectively with his constitutional duty to enforce laws. The power to prepare the budget of the government strengthens the President's position as administrative head.³²³

2. Scope

a. The President shall have control of all the executive departments, bureaus, and offices. (Section 17)

b. The President has control over officers of GOCCs. (NAMARCO v. Arca) (*Bernas: It is submitted that such power over government-owned corporation comes not from the Constitution but from statute. Hence, it may also be taken away by statute.*)

c. **Control over what?** The power of control is exercisable by the President **over the acts** of his subordinates and not necessarily over the subordinate himself. (Ang-angco v. Castillo) It can be said that while the Executive has control over the "judgment" or "discretion" of his subordinates, it is the legislature which has control over their "person."³²⁴

d. Theoretically, the President has full control of all the members of the Cabinet. He may appoint them as he sees fit, shuffle them at pleasure, and replace them in his discretion without any legal inhibition whatever.³²⁵

e. The President may exercise powers conferred by law upon Cabinet members or other subordinate executive officers. (City of Iligan v. Director of Lands) Even where the law provides that the decision of the Director of Lands on questions of fact shall be conclusive when affirmed by the Sec of DENR, the same may, on appeal to the President, be reviewed and reversed by the Executive Secretary. (Lacson-Magallanes v. Pano)

f. It has been held, moreover, that the express grant of the power of control to the President justifies an executive action to carry out the reorganization of an executive office under a broad authority of law.³²⁶ A reorganization can involve the reduction of personnel, consolidation of offices, or even abolition of positions by reason of economy or redundancy of functions. While the power to abolish an office is generally lodged with the legislature, the authority of the

President to reorganize the executive branch, which may include such abolition, is permissible under present laws.³²⁷

3. Section 17 is a self-executing provision

The President derives power of control directly from the Constitution and not from any implementing legislation. Such a law is in fact unnecessary and will even be invalid if it limits the exercise of his power or withdraws it altogether from the President.³²⁸

4. Power of Control is not the source of the Executive's disciplinary power

The power of control is not the source of the Executive's disciplinary power over the person of his subordinates. Rather, his disciplinary power flows from his power to appoint. (Ang-Angco v. Castillo)³²⁹

D. Alter Ego Principle; Doctrine of Qualified Political Agency

Doctrine

When Doctrine not Applicable

Reason for the Doctrine

Power of Control exercised by Department Heads

Power of Control exercised by ES

Abakada Case

1. Doctrine

The doctrine recognizes the establishment of a single executive. The doctrine postulates that, "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**" (*Villena v. Sec. of Interior*)

Put simply, when a department secretary makes a decision in the course of performing his or her official duties, the decision, whether honorable or disgraceful, is presumptively the decision of the President, unless he quickly and clearly disowns it.³³⁰

³²³ Sinco, Philippine Political Law, p 243 (1954ed).

³²⁴ Bernas Primer at 313 (2006 ed.)

³²⁵ Cruz, Philippine Political Law, p. 199 (1995 ed).

³²⁶ *Anak Mindanao v. Executive Sec.*, G.R. No. 166052, August 29, 2007; *Tondo Medical Center Employees v. CA.* G.R. No. 167324, July 17, 2007;

³²⁷ *Malaria Employees v. Executive Secretary*, G.R. No. 160093, July 31, 2007.

³²⁸ Cruz, Philippine Political Law, p. 199 (1995 ed).

³²⁹ Bernas Primer at 313 (2006 ed.)

2. When Doctrine not Applicable

Qualified political agency does NOT apply if the President is required to act in person by law or by the Constitution. Example: The power to grant pardons must be exercised personally by the President.

3. Reason for the Doctrine

Since the executive is a busy man, he is not expected to exercise the totality of his power of control all the time. He is not expected to exercise all his powers in person. He is expected to delegate some of them to men of his confidence, particularly to members of his Cabinet. Thus, out of this **practical necessity** has risen what has come to be referred to as "doctrine of qualified political agency."³³¹

4. Power of Control exercised by Department Heads in the President's Behalf

The President's power of control means his power to reverse the judgment of an inferior officer. It may also be exercised in his behalf by Department Heads. Thus the Secretary of Justice may reverse the judgment of a prosecutor and direct him to withdraw an information already filed. Such action is not directly reviewable by a court. One who disagrees, however, may should appeal to the Office of the President in order to exhaust administrative remedies prior to bring it to court.³³²

5. Power of Control exercised by the ES

The Executive Secretary when acting "by authority of the President" may reverse the decision of another department secretary. (Lacson-Magallanes v. Pano)³³³

6. Abakada Case

Petitioners argue that the EVAT law is unconstitutional, as it constitutes abandonment by Congress of its exclusive authority to fix the rate of taxes and nullified the President's power of control by mandating the fixing of the tax rate by the President upon the recommendation of the Secretary of Finance. The SC ruled that the Secretary of Finance can act as agent of the Legislative Department to determine and declare the event upon which its expressed will is to take effect. His personality in such instance is in reality but a projection of that of Congress. Thus, being the agent of Congress and not of the President, the

President cannot alter or modify or nullify, or set aside the findings of the Secretary of Finance and to substitute the judgment of the former to the latter.³³⁴ (Abakada Guro v. ES, 2005)

E. Power of Supervision over LGUs

The power of the President over local governments is only one of general supervision.³³⁵ (See Article X, Sections 4 and 16)

The President can only interfere in the affairs and activities of a local government unit if he finds that the latter had acted contrary to law. (Judge Dadole v. COA)

A law (RA 7160 Sec 187) which authorizes the Secretary of Justice to review the constitutionality of legality of a tax ordinance—and if warranted, to revoke it on either or both grounds—is valid, and does not confer the power of control over local government units in the Secretary of Justice, as even if the latter can set aside a tax ordinance, he cannot substitute his own judgment for that of the local government unit. (Drilon v. Lim)

F. Faithful Execution Clause; Take Care Clause

The power to take care that the laws be faithfully executed makes the President a dominant figure in the administration of the government.³³⁶

The President shall ensure that the laws be faithfully executed. (Section 17 2nd sentence) The law he is supposed to enforce includes the Constitution, statutes, judicial decisions, administrative rules and regulations and municipal ordinances, as well as treaties entered into by government.³³⁷

This power of the President is not limited to the enforcement of acts of Congress according to their express terms. The President's power includes "the rights and obligations growing out of the Constitution itself, international relations, and all the protection implied by the nature of the government under the Constitution."³³⁸

The reverse side of the *power* to execute the law is the *duty* to carry it out. The President cannot refuse to carry out a law for the simple reason that in his

³³⁰ Fr. Bernas in his Inquirer column, "A Golden Opportunity for GMA".

http://opinion.inquirer.net/inquireropinion/columns/view_article.php?article_id=107245

³³¹ Bernas Commentary, p 857 (2003 ed).

³³² *Orosa v. Roa*, GR 14047, July 14, 2006; *DENR v. DENR Employees*, G.R. No. 149724. August 19, 2003

³³³ See the case of Neri v. Senate Committee on the authority of ES to invoke Executive Immunity. -asm

³³⁴ San Beda College of Law, 2008 Centralized Bar Operations, Political Law Reviewer, p. 29.

³³⁵ Bernas Primer at 313 (2006 ed.)

³³⁶ Cruz, Philippine Political Law, p. 203 (1995 ed.)

³³⁷ Cruz, Philippine Political Law, p. 203 (1995 ed.)

³³⁸ In Re Neagle, 135 US 1 (1890). Bernas Commentary, p 863 (2003 ed).

judgment it will not be beneficial to the people.³³⁹ As the Supreme Court pointed out, “after all we still live under a rule of law.”

It has been suggested that the President is not under obligation to enforce a law which in his belief is unconstitutional because it would create no rights and confer no duties being totally null and void. The better view is that it is not for him to determine the validity of a law since this is a question exclusively addressed to the judiciary. Hence, until and unless a law is declared unconstitutional, the President has a duty to execute it regardless of his doubts on its validity. A contrary opinion would allow him not only to negate the will of legislature but also to encroach upon the prerogatives of the judiciary.³⁴⁰

VII. Military Power/Emergency Powers

The Military Power

Limitations on Military Power

Commander-in-Chief Clause/ Calling Out Power

Suspension of the Privilege

Martial Law

Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

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

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and

agencies over where civil courts are able to function, nor automatically suspend the privilege of the writ. The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion. During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

A. The Military Power (1987 Bar Question)

Section 18 bolsters the principle announced in Article II, Section 3 that “civilian authority is at all times, supreme over the military.” By making the President the commander-in-chief of all the armed forces, the Constitution lessens the danger of a military take-over of the government in violation of its republican nature.³⁴¹

Section 18 grants the President, as Commander-in-Chief, a sequence of graduated powers. From the most to the least benign, these are: the calling out power, the power to suspend the privilege of the writ of habeas corpus, and the power to declare martial law. (*Sanlakas v. Executive Secretary*)

The **power of the sword** makes the President the most important figure in the country in times of war or other similar emergency.³⁴² It is because the sword must be wielded with courage and resolution that the President is given vast powers in the making and carrying out of military decisions.³⁴³

The military power enables the President to:

1. Command all the armed forces of the Philippines;
2. Suspend the privilege of the writ of *habeas corpus*
3. Declare martial law

B. Limitations on Military Power³⁴⁴ (1987, 2000 Bar Question)

1. He may call out the armed forces to prevent or suppress *lawless violence, invasion or rebellion* only.
2. The grounds for the suspension of the privilege of the writ of *habeas corpus* and the proclamation of martial law are now limited only to *invasion or rebellion*.
3. The duration of such suspension or proclamation shall not exceed *sixty days*, following which it shall be automatically lifted.
4. Within *forty-eight hours* after such suspension or proclamation, the President shall personally or in

³³⁹ Bernas Commentary, p 863 (2003 ed)

³⁴⁰ Cruz, Philippine Political Law, p. 203 (1995 ed).

³⁴¹ Cruz, Philippine Political Law, p. 204 (1995 ed).

³⁴² Cruz, Philippine Political Law, p. 205 (1995 ed).

³⁴³ Cruz, Philippine Political Law, p. 205 (1995 ed).

³⁴⁴ Cruz, Philippine Political Law, p. 213 (1995 ed).

writing report his action to the Congress. If not in session, Congress must convene within 24 hours.

5. The Congress may then, by *majority votes of all its members voting jointly*, revoke his action. The revocation may not set aside by the President.

6. By the same vote and in the same manner, the Congress may, upon initiative of the President, extend his suspension or proclamation for a period to be determined by the Congress if the invasion or rebellion shall continue and the public safety requires extension.

7. The action of the President and the Congress shall be subject to review by the Supreme Court which shall have the authority to determine the sufficiency of the factual basis of such action. This matter is no longer considered a political question and may be raised in an appropriate proceeding by any citizen. Moreover, the Supreme Court must decide the challenge within *thirty days* from the time it is filed.

8. Martial law does not automatically suspend the privilege of the writ of habeas corpus or the operation of the Constitution. The civil courts and the legislative bodies shall remain open. Military courts and agencies are not conferred jurisdiction over civilians where the civil courts are functioning.

9. The suspension of the privilege of the writ of *habeas corpus* shall apply only to persons facing charges of *rebellion* or *offenses inherent in or directly connected with invasion*.

10. Any person arrested for such offenses must be judicially charged therewith within *three days*. Otherwise shall be released.

C. Commander-in-Chief Clause; Calling Out Power

Power over the military

Civilian Supremacy

Calling-out Power

The President shall be the Commander-in-Chief of all armed forces of the Philippines and **whenever it becomes necessary**, he may **call out** such armed forces to prevent or suppress lawless violence, invasion or rebellion. (Section 18, 1st sentence)

1. Power over the Military.

The President has absolute authority over all members of the armed forces. (*Gudani v. Senga*, 2006) He has control and direction over them. As Commander-in-chief, he is authorized to direct the movements of the naval and the military forces placed by law at his command, and to employ them in manner he may deem most effectual to harass and conquer and subdue the enemy.³⁴⁵

Since the President is commander-in-chief of the Armed Forces she can demand obedience from military officers. Military officers who disobey or

ignore her command can be subjected to court martial proceeding. Thus, for instance, the President as Commander in Chief may prevent a member of the armed forces from testifying before a legislative inquiry. A military officer who disobeys the President's directive may be made to answer before a court martial. Since, however, Congress has the power to conduct legislative hearings, Congress may make use of remedies under the law to compel attendance. Any military official whom Congress summons to testify before it may be compelled to do so by the President. If the President is not so inclined, the President may be commanded by judicial order to compel the attendance of the military officer. Final judicial orders have the force of the law of the land which the President has the duty to faithfully execute.³⁴⁶

2. Civilian Supremacy (Bernasian view)

Is the President a member of the armed forces?

Dichotomy of views:

Sinco: The President is not only a civil official. As commander-in-chief of all armed forces, the President is also a military officer. This dual role given by the Constitution to the President is intended to insure that the civilian controls the military.³⁴⁷

Bernas: The weight of authority favors the position that the President is not a member of the armed forces but remains a civilian.

The President's duties as Commander-in-Chief represent only a part of the organic duties imposed upon him. All his other functions are clearly civil in nature.

- He is elected as the highest civilian officer
- His compensation is received for his services rendered as President of the nation, not for the individual part of his duties; no portion of its is paid from sums appropriated for the military or naval forces.
- He is not subject to court martial or other military discipline
- The Constitution does not require that the President must be possessed of military training and talents.

This position in fact, is the only one compatible with Article II, Section 3, which says "Civilian authority is at all times, supreme over the military." The net effect thus of Article II, Section 3 when read with Article VII, Section 18 is that a *civilian President holds supreme military authority and is the ceremonial, legal, and administrative head of the armed forces.*³⁴⁸

³⁴⁵ Bernas Commentary, p 866 (2003 ed) citing Fleming v. Page.

³⁴⁶ *Gudani v. Senga*, G.R. No. 170165, April 15, 2006.

³⁴⁷ Sinco, Philippine Political Law, p 261 (1954ed).

³⁴⁸ Bernas Commentary, p 865 (2003 ed).

3. Calling Out Power under Section 18 (2006 Bar Question)

Most Benign power of Section 18

Use of Calling Out Power Vests No Constitutional or Statutory Powers

Declaration of State of Rebellion

Declaration of State of National Emergency

Calling out Power and Judicial Review

a. Most Benign power of Section 18. The diminution of any constitutional rights through the suspension of the privilege of the writ or the declaration of martial law is deemed as “strong medicine” to be used sparingly and only as a last resort, and for as long as only truly necessary. Thus, the invocation of the “calling out” power stands as a balanced means of enabling a heightened alertness in dealing with the armed threat, but without having to suspend any constitutional or statutory rights or cause the creation of any new obligations.

b. Vests no new constitutional or statutory powers. For the utilization of the “calling out” power alone cannot vest unto the President any new constitutional or statutory powers, such as the enactment of new laws. At most, it can only renew emphasis on the duty of the President to execute already existing laws without extending a corresponding mandate to proceed extra-constitutionally or extra-legally. Indeed, the “calling out” power does not authorize the President or the members of the Armed Forces to break the law.

c. Declaration of State of Rebellion. Declaration of the state of rebellion is within the calling-out power of the President. When the President declares a state of emergency or a state of rebellion her action is merely a description of the situation as she sees it but it does not give her new powers. The declaration cannot diminish or violate constitutionally protected rights. (Sanlakas v. Executive Secretary, G.R. No. 159085, February 3, 2004.)

d. Declaration of a “state of national emergency”. The President can validly declare a state of national emergency even in the absence of congressional enactment. (David v. Ermita) (2006 Bar Question)

PP 1017 case

Facts: On February 24, 2006, President Arroyo issued Presidential Proclamation 1017 declaring a state of national emergency. The Solicitor General enumerated the following events that lead to the issuance of PP1017:

1. Escape of Magdalo group and their audacious threat of the Magdalo D-day
2. The defecations in the Military, particularly in the Phil. Marines

3. Reproving statements of the communist leaders

4. Minutes of the Intelligence Report and Security Group of the Philippine Army showing the growing alliance between the NPA and the military.

Did PGMA gravely abuse her discretion in calling out the AFP?

NO. Section 18 grants the President the *calling out power*. The only criterion for the exercise is that “whenever it becomes necessary”, the President may call the armed forces “to prevent or suppress lawless violence, invasion or rebellion” These conditions are present in this case. Considering the circumstances then prevailing PGMA found it necessary to issue PP1017. Owing to her Office’s vast intelligence network, she is in the best position to determine the actual condition in her country. **PP1017 is constitutional insofar as it constitutes a call by PGMA on the AFP to prevent or suppress lawless violence.**

e. President’s action in calling out the armed forces, and judicial review. It may be gathered from the broad grant of power that the actual use to which the President puts the armed forces, is unlike the suspension of the privilege of writ of habeas corpus, not subject to judicial review.³⁴⁹

But, wait! While the Court considered the President’s “calling-out” power as a discretionary power solely vested in his wisdom and that it cannot be called upon to overrule the President’s wisdom or substitute its own, it stressed that “this does not prevent an examination of whether such power was exercised within permissible constitutional limits or whether it was exercised in a manner constituting grave abuse of discretion. (IBP v. Zamora) Judicial inquiry can *go no further* than to satisfy the Court *not* that the President’s decision is *correct*, but that “the President did not act *arbitrarily*.” Thus, the standard is not correctness, but arbitrariness. It is incumbent upon the petitioner to show that the President’s decision is totally bereft of factual basis” and that if he fails, by way of proof, to support his assertion, then “this Court cannot undertake an independent investigation beyond the pleadings. (IBP v. Zamora cited in David v. Arroyo)

f. QUESTION:

What is the extent of the President’s power to conduct peace negotiations?

ANSWER:

Main Opinion, J. Carpio-Morales: The President’s power to conduct peace negotiations is implicitly included in her powers as Chief Executive and Commander-in-Chief. The President – in the course of conducting peace negotiations – may validly consider implementing even those policies that require changes to the Constitution, but she

³⁴⁹ Bernas Commentary, p 866 (2003 ed)

may **not** unilaterally implement them without the intervention of Congress, or act in any way as if the assent of that body were assumed as a certainty.

Given the limited nature of the President's authority to propose constitutional amendments, she **cannot guarantee to any third party that the required amendments will eventually be put in place, nor even be submitted to a plebiscite.** (Province of North Cotabato v. GRP)

D. Suspension of the Privilege

Writ of Habeas Corpus

Privilege of the Writ of Habeas Corpus

Suspension of the Privilege, Meaning

General Limitations on the power to Suspend

To whom Applicable

Effect on Applicable Persons

Grounds

Duration

Four Ways to Lift the Suspension

Duty of the President

Role of Congress

Role of the Supreme Court

1. Writ of HC

The writ. The writ of habeas corpus is a writ directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place, with the day and cause of his caption and detention, to do, to submit to, and receive whatever the court or judge awarding the writ shall consider in his behalf. (Bouvier's Law Dictionary) (Hence, an essential requisite for the availability of the writ is actual deprivation of personal liberty) (*Simply put, a writ of habeas corpus is a writ of liberty*)

Purpose. The great object of which is the liberation of those who may be in prison without sufficient cause.³⁵⁰

To what Habeas Corpus extends. Except as otherwise provided by law, the writ of *habeas corpus* shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto. (Rule 102, Section 1 or Rules of COurt)

2. Privilege of the writ of HC

Privilege. It is the right to have an immediate determination of the legality of the deprivation of physical liberty.

³⁵⁰ Moran, Rules of Court, Vol. II, 499.

3. Suspension of the privilege.

In case of invasion or rebellion, when the public safety requires it, [the President] may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus.

Suspension of the Privilege, Meaning.

Suspension of the privilege does not suspend the writ itself, but only its *privilege*. This means that when the court receives an application for the writ, and it finds the petition in proper form, it will issue the writ as a matter of course, i.e., the court will issue an order commanding the production before the court of the person allegedly detained, at a time and place stated in the order, and requiring the true cause of his detention to be shown to the court. If the return to the writ shows that the person in custody was apprehended and detained in areas where the privilege of the writ has been suspended or for crimes mentioned in the executive proclamation, the court will suspend further proceedings in the action.³⁵¹ (1997 Bar Question)

Facts: Claiming they were illegally arrested without any warrant of arrest, petitioners sued several officers of the AFP for damages. The officers of the AFP argued that the action was barred since the suspension of the privilege of the writ of habeas corpus precluded judicial inquiry into the legality of their detention.

Held: The contention of AFP officers has not merit. The suspension of the privilege of the writ of *habeas corpus* does not render valid an otherwise illegal arrest or detention. **What is suspended is merely the right of individual to seek release from detention through the writ of *habeas corpus*.**³⁵² (Aberca v. Ver, 160 SCRA 590)

4. General Limitations on the power to suspend the privilege

1. Time limit of 60 days
2. Review and possible revocation by Congress
3. Review and possible nullification by SC³⁵³

5. To whom Applicable

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

6. Effect on Applicable Persons

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released. (Article VI Section 18)

³⁵¹ Cruz, Philippine Political Law, p. 210 (1995 ed.)

³⁵² Jacinto Jimenez, Political Law Compendium, 322 (2006 ed.)

³⁵³ Bernas Primer at 318 (2006 ed.)

The suspension of the privilege of the writ does not impair the right to bail. (Article III Section 13)

7. (Grounds) Factual Bases for Suspending the Privilege (1997 Bar Question)

1. In case of invasion or rebellion
2. When the public safety requires it

8. Duration.

Not to exceed sixty days, following which it shall be lifted, unless extended by Congress.

9. Four Ways to Lift the Suspension

1. Lifting by the President himself
2. Revocation by Congress
3. Nullification by the Supreme Court
4. By operation of law after 60 days

10. Duty of the President

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

11. Role of Congress

- a. Congress convenes
- b. Congress may either **revoke** or (with President's initiative) **extend**

Congress convenes. The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

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

Congress may extend. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

12. Role of Supreme Court

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

E. Martial Law

Martial Law, Definition (Under the 1987 Constitution)

Martial Law, Nature

Proclamation of Martial Law

General Limits on the Power to Proclaim...

Effects of Proclamation of Martial Law

Grounds

Duration

Four Ways to Lift the Suspension

Duty of the President

Role of Congress

Role of the Supreme Court (Open Court Doctrine)

1. Martial Law, Definition.

Martial law in its strict sense refers to that law which has application when civil authority calls upon the military arm to aid it in its civil function. Military arm does not supersede civil authority.

Martial law in the Philippines is imposed by the Executive as specifically authorized and within the limits set by the Constitution.³⁵⁴

2. Martial Law, Nature

- a. Essentially police power
- b. Scope of Martial Law: Flexible Concept

Martial law is **essentially police power**. This is borne out of the constitutional text which sets down "public safety" as the object of the exercise of martial law. Public safety is the concern of police power.

What is peculiar, however, about martial law as police power is that, whereas police power is normally a function of the legislature executed by the civilian executive arm, under martial law, police power is exercised by the executive with the aid of the military.

Martial law is a flexible concept. Martial law depends on two factual bases: (1) the existence of invasion or rebellion; and (2) the requirements of public safety.

Necessity creates the conditions for martial law and at the same time **limits the scope of martial law**. Certainly, the necessities created by a state of invasion would be different from those created by rebellion. Necessarily, therefore the degree and kind of vigorous executive action needed to meet the varying kinds and degrees of emergency could not be identical under all conditions. (*The common denominator of all exercise by an executive officer of the discretion and judgment normally exercised by a legislative or judicial body.*)

3. Proclamation of Martial Law

³⁵⁴ Bernas Commentary, p 870 (2003 ed).

In case of invasion or rebellion, when the public safety requires it, [the President] may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law.

Q: Is PP 1017 actually a declaration of Martial law?

A: No. It is merely an exercise of PGMA's calling-out power for the armed forces to assist her in preventing or suppressing lawless violence. It cannot be used to justify act that only under a valid of declaration of Martial Law can be done. (David v. [Ermita])

4. General Limitations on the power to proclaim

1. Time limit of 60 days
2. Review and possible revocation by Congress
3. Review and possible nullification by SC³⁵⁵

5. Effects of Proclamation of Martial Law

A State of martial law does not:

1. Suspend the operation of the Constitution
2. Supplant the functioning of the civil courts or legislative assemblies
3. Authorize the conferment of jurisdiction on military courts and agencies over where civil courts are able to function
4. Automatically suspend the privilege of the writ. (Section 18)

Open Court Doctrine. Civilians cannot be tried by military courts if the civil courts are open and functioning. (Olague v. Military Commission)

The President can: (*This is based on UP and Beda 2008 Bar Reviewers; But see excerpt from Bernas Commentary*)

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

Bernas Commentary: The statement that martial law does not "supplant the functioning of ...legislative assemblies" means that ordinary legislation continues to belong to the legislative bodies even during martial law. **Does this mean that the martial law administrator is without power to legislate?**

A: In actual theater of war, the martial law administrator's word is law, within the limits of the Bill of Rights. But outside the theater of war, the operative law is ordinary law.

6. Grounds; Factual Bases for the Proclamation

1. In case of invasion or rebellion
2. When the public safety requires it

7. Duration

Not to exceed sixty days, following which it shall be lifted, unless extended by Congress.

8. Four Ways to Lift the Proclamation

1. Lifting by the President himself
2. Revocation by Congress
3. Nullification by the Supreme Court
4. By operation of law after 60 days

9. Duty of the President

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

10. Role of Congress

- a. Congress convenes
- b. Congress may either **revoke** or (with President's initiative) **extend**

Congress convenes. The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

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

Congress may extend. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

11. Role of Supreme Court (2006 Bar Question)

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

VIII. Power of Executive Clemency

Power of Executive Clemency

Purpose for the Grant of Power

Forms of Executive Clemency

Constitutional Limits on Executive Clemency

Pardon

Amnesty

Administrative Penalties

Other forms of Executive Clemency

³⁵⁵ Bernas Primer at 318 (2006 ed.)

Section 19. Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment. He shall also have the power to grant amnesty with the concurrence of a majority of all the Members of the Congress.

A. Power of Executive Clemency

Non-delegable. The power of executive clemency is a non-delegable power and must be exercised by the President personally.³⁵⁶

Clemency is not a function of the judiciary; it is an executive function.³⁵⁷ The exercise of the pardoning power is discretionary in the President and may not be controlled by the legislature or reversed by the courts, save only when it contravenes its limitations.³⁵⁸

B. Purpose for the Grant of Power of Executive Clemency

Ratio: Human fallibility

Purpose. That Section 19 gives to the President the power of executive clemency is a tacit admission that human institutions are imperfect and that there are infirmities in the administration of justice. The power therefore exists as an instrument for **correcting these infirmities** and for **mitigating whatever harshness** might be generated by a too strict application of the law.³⁵⁹ In recent years, it has also been used as a **bargaining chip** in efforts to unify various political forces.

C. Forms of Executive Clemency (1988 Bar Question)

1. **Reprieves**- a postponement of a sentence to a date certain, or a stay in the execution.
2. **Commutations**- reduction or mitigation of the penalty.
3. **Pardons**- act of grace which exempts the individual on whom it is bestowed from the punishment which the law inflicts for the crime he has committed.
4. **Remission of fines**
5. **Forfeitures**
6. **Amnesty**- commonly denotes the 'general pardon to rebels for their treason and other high political offenses'.

³⁵⁶ Bernas Commentary, p 893 (2003 ed).

³⁵⁷ Bernas Commentary, p 892 (2003 ed).

³⁵⁸ Cruz, Philippine Political Law, p. 215 (1995 ed).

³⁵⁹ Bernas Primer at 320 (2006 ed.) Cruz, Philippine Political Law, p. 215 (1995 ed).
 Bernas Primer at 320 (2006 ed.)

D. Limits on Executive Clemency

Constitutional Limits on Executive Clemency:

1. It cannot be exercised in **cases of impeachment**
2. Reprieves, commutations, and pardons, and remission of fines and forfeitures can be given only "after **conviction by final judgment**;
3. A grant of amnesty must be with the concurrence of a "majority of all the Members of Congress"
4. No pardon, amnesty, parole, or suspension of sentence for **violation of election laws**, rules, and regulations shall be granted by the President without the favorable recommendation of COMELEC.³⁶⁰

Other Limitations:

1. A pardon cannot be extended to a person convicted of legislative contempt or civil contempt.
2. Pardon cannot also be extended for the purpose of absolving the pardonee of civil liability, including judicial costs.
3. Pardon will not restore offices forfeited.³⁶¹

E. Pardon

- Definition of Pardon*
- Classification of Pardon*
- Scope of Pardon*
- Limitations on Exercise*
- When Completed*
- Effect of Pardon*
- Pardon v. Parole*

1. Pardon

- a. What is Pardon?
- b. Pardon as an act of grace
- c. What does pardon imply?

a. Act of grace which exempts the individual on whom it is bestowed from the punishment which the law inflicts for the crime he has committed.

b. Because pardon is an act of grace, no legal power can compel the executive to give it. It is an act of pure generosity of the executive and it is his to give or to withdraw before it is completed.³⁶² Congress has no authority to limit the effects of the President's pardon, or to exclude from its scope any class of offenders. Courts may not inquire in to the wisdom or reasonableness of any pardon granted by the President.³⁶³

³⁶⁰ Bernas Commentary, p 893 (2003 ed).

³⁶¹ Cruz, Philippine Political Law, p. 216 (1995 ed).

³⁶² Bernas Commentary, p 894 (2003 ed).

³⁶³ Sinco, Philippine Political Law, p 281 (1954ed).

c. Pardon implies guilt. A pardon looks to the future.

2. Classification of Pardon

1. **Plenary**- Extinguishes all the penalties imposed upon the offender, including accessory disabilities.
2. **Partial**-Does not extinguish all the penalties.
3. **Absolute**- One extended without any strings attached.
4. **Conditional**- One under which the convict is required to comply with certain requirements.

a. **Pardonee may reject conditional pardon.** Where the pardon is conditional, the offender has the right to reject the same since he may feel that the condition imposed is more onerous than the penalty sought to be remitted³⁶⁴

b. **Condition, lawful.** It is necessary that the condition should not be contrary to any provision of law.³⁶⁵

c. **Condition, co-extensive.** The condition of the pardon shall be co-extensive with the penalty remitted. Hence, if the condition is violated after the expiration of the remitted penalty, there can no longer be violation of the conditional pardon.

d. *When the condition is that the recipient of the pardon should not violate any of the penal laws, who determines whether penal laws have been violated? Must the recipient of pardon undergo trial and be convicted for the new offenses?* The rule that is followed is that the acceptance of the conditions of the pardon imports the acceptance of the condition that the President will also determine whether the condition has been violated. (Torres v. Gonzales, 152 SCRA 272 (1987)) (1997, 2005 Bar Question)

3. Scope of Pardon³⁶⁶

In granting the President the power of executive clemency, the Constitution does not distinguish between criminal and administrative cases. (Llamas v. Orbos)

Pardon is only granted after conviction of final judgment.

³⁶⁴ Cruz, Philippine Political Law, p. 217 (1995 ed).

³⁶⁵ Sinco, Philippine Political Law, p 281 (1954ed).

³⁶⁶ Jacinto Jimenez, Political Law Compendium 323 (2006 ed.)

A convict who has already served his prison term may still be extended a pardon for the purpose of relieving him of whatever accessory liabilities have attached to his offense.³⁶⁷

4. Limitations on Exercise of Pardon

Constitutional Limitations

1. It cannot be exercised in **cases of impeachment**
2. Reprieves, commutations, and pardons, and remission of fines and forfeitures can be given only "after **conviction by final judgment**;
3. No pardon, amnesty, parole, or suspension of sentence for **violation of election laws**, rules, and regulations shall be granted by the President without the favorable recommendation of COMELEC.³⁶⁸

Other Limitations:

1. A pardon cannot be extended to a person convicted of legislative contempt or civil contempt.
2. Pardon cannot also be extended for the purpose of absolving the pardonee of civil liability, including judicial costs.
3. Pardon will not restore offices forfeited³⁶⁹ or property or interests vested in others in consequence of the conviction and judgment.³⁷⁰

5. When Act of Pardon Completed

Conditional: A pardon must be delivered to and accepted by the offender before it takes effect.

Reason: The reason for requiring acceptance of a pardon is the need for protecting the welfare of its recipient. The condition may be less acceptable to him than the original punishment, and may in fact be more onerous.³⁷¹

Absolute: Bernas submits that acceptance by the condemned is required only when the offer of clemency is not without encumbrance.³⁷² (1995 Bar Question)

Note: A pardon obtained by fraud upon the pardoning power, whether by misrepresentation or

³⁶⁷ Cruz, Philippine Political Law, p. 218 (1995 ed).

³⁶⁸ Bernas Commentary, p 893 (2003 ed).

³⁶⁹ Cruz, Philippine Political Law, p. 216 (1995 ed).

³⁷⁰ Sinco, Philippine Political Law, p 283 (1954ed).

³⁷¹ Bernas Commentary, p 894 (2003 ed).

³⁷² Bernas Commentary, p 895 (2003 ed).

by suppression of the truth or by any other imposition, is absolutely void.³⁷³

6. Effects of Pardon

- a. Relieves criminal liability³⁷⁴
- b. Does not absolve civil liabilities
- c. Does not restore public offices already forfeited, although eligibility for the same may be restored.

a. As to punitive consequences and fines in favor of government. Pardon relieves a party from all punitive consequences of his criminal act. Pardon will have the effect of remitting fines and forfeitures which otherwise will inure to the interests of the government itself.

b. As to civil liabilities pertaining to private litigants. Pardon will not relieve the pardonee of the civil liability and such other claims, as may pertain to private litigants.

c. As Regards Reinstatement:

- i. One who is given pardon has no demandable right to reinstatement. He may however be reappointed. (*Monsanto v. Factoran*, 1989) (*Once reinstated, he may be given his former rank. See Sabello v. Dept. of Education*, 1989, *Bernas Primer at 322*)
- ii. However, if a pardon is given because he was acquitted on the ground that he did not commit the crime, then reinstatement and backwages would be due. (*Garcia v. COA*, 1993)

In order that a pardon may be utilized as a defense in subsequent judicial proceedings, it is necessary that it must be pleaded.³⁷⁵

7. Pardon v. Parole

Parole involves only a release of the convict from imprisonment but not a restoration of his liberty. The parolee is still in the custody of the law although no longer under confinement, unlike the pardonee whose sentence is condoned, subject only to reinstatement in case of violation of the condition that may have been attached to the pardon.³⁷⁶

F. Amnesty

Definition

Nature

Time of Application

Effect of Application

Effects of Grant of Amnesty

Requirements

Pardon v. Amnesty

³⁷³ Sinco, *Philippine Political Law*, p 283 (1954ed).

³⁷⁴ Sinco, *Philippine Political Law*, p 286 (1954ed).

³⁷⁵ Sinco, *Philippine Political Law*, p 283 (1954ed).

³⁷⁶ Cruz, *Philippine Political Law*, p. 220 (1995 ed).

Tax Amnesty

1. Definition of Amnesty

Grant of general pardon to a class of political offenders either after conviction or even before the charges are filed. It is the form of executive clemency which under the Constitution may be granted by the executive only with the concurrence of the legislature.³⁷⁷

2. Nature

It is essentially an executive act and not a legislative act.³⁷⁸ (Though concurrence of Congress is needed)

(According to Sinco citing *Brown v. Walker*, 161 US 591, Congress is not prohibited from passing acts of general amnesty to be extended to persons before conviction.)³⁷⁹

3. Time of Application³⁸⁰ (1995 Bar Question)

Amnesty may be granted before or after the institution of criminal prosecution and sometimes even after conviction. (*People v. Casido*, 268 SCRA 360)

4. Effect of Application

By applying for amnesty, the accused must be deemed to have admitted the accusation against him. (*People v. Salig*, 133 SCRA 59)

5. Effects of the Grant of Amnesty

Criminal liability is totally extinguished by amnesty; the penalty and all its effects are thus extinguished. (See Article 89 of RPC)

It has also been held that when a detained convict claims to be covered by a general amnesty, his proper remedy is not *habeas corpus* petition. Instead, he should submit his case to the proper amnesty board.³⁸¹

6. Requisites (1993 Bar Question)

1. Concurrence of a majority of all the members of Congress (Section 19)
2. There must be a previous admission of guilt. (*Vera v. People*)

7. Pardon v. Amnesty

³⁷⁷ Bernas Commentary, p 897 (2003 ed).

³⁷⁸ Bernas Commentary, p 898 (2003 ed).

³⁷⁹ Sinco, *Philippine Political Law*, p 285 (1954ed).

³⁸⁰ Jacinto Jimenez, *Political Law Compendium* 325 (2006 ed.)

³⁸¹ Bernas Commentary, p 901 (2003 ed).

Pardon	Amnesty
Addressed to ODINARY offenses	Addressed to POLITICAL offenses
Granted to INDIVIDUALS	Granted to a CLASS of persons
Conditional pardon must be accepted	Need not be Accepted
No need for congressional concurrence	Requires congressional concurrence
Private act of the President	A public act, subject to judicial notice
Pardon looks forward.	Amnesty looks backward
Only penalties are extinguished. Civil indemnity is not extinguished.	Extinguishes the offense itself ³⁸²
Only granted after conviction of final judgment	Maybe granted before or after conviction

7. Tax Amnesty

- a. Legal Nature
- b. Needs Concurrence of Congress

a. Legal Nature. Tax amnesty is a general pardon or intentional overlooking of its authority to impose penalties on persons otherwise guilty of evasion or violation of revenue or tax law, [and as such] partakes of an absolute forgiveness or waiver by the Government of its right to collect what otherwise would be due it. (Republic v. IAC, 1991)³⁸³

b. Needs Concurrence of Congress. *Bernas* submits that the President cannot grant tax amnesty without the concurrence of Congress.³⁸⁴

G. Other Forms of Executive Clemency

Grant of reprieves, commutations and remission of fines and forfeitures are explicit in the Constitution.

1. Reprieve

A reprieve is a postponement of a sentence to a date certain, or a stay in the execution.

2. Commutation

Commutation is a remission of a part of the punishment; a substitution of a less penalty for the one originally imposed. Commutation does not have to be in any form. Thus, the fact that a convict was released after six years and placed under

³⁸² See *Bernas Commentary*, p 899 (2003 ed).

³⁸³ *Bernas Primer* at 323 (2006 ed.)

³⁸⁴ *Bernas Primer* at 323 (2006 ed.)

house arrest, which is not a penalty, already leads to the conclusion that the penalty have been shortened. (*Drilon v. CA*)

Commutation is a pardon in form but not in substance, because it does not affect his guilt; it merely reduces the penalty for reasons of public interest rather than for the sole benefit of the offender. In short, while a pardon reaches “both punishment prescribed for the offense and guilt of the offender,” a commutation merely reduces the punishment.³⁸⁵

3. Remission

Remission of fines and forfeitures merely prevents the collection of fines or the confiscation of forfeited property; it cannot have the effect of returning property which has been vested in third parties or money already in the public treasury.³⁸⁶

The power of the Chief Executive to remit fines and forfeitures may not be limited by any act of Congress.³⁸⁷ But a statute may validly authorize other officers, such as department heads or bureau chiefs, to remit administrative fines and forfeitures.³⁸⁸

IX. Borrowing Power

**Power to contract or guarantee foreign loans
 Duty of the Monetary Board**

Section 20. The President may contract or guarantee foreign loans on behalf of the Republic of the Philippines with the prior concurrence of the Monetary Board, and subject to such limitations as may be provided by law. The Monetary Board shall, within thirty days from the end of every quarter of the calendar year, submit to the Congress a complete report of its decision on applications for loans to be contracted or guaranteed by the Government or government-owned and controlled corporations which would have the effect of increasing the foreign debt, and containing other matters as may be provided by law.

A. Power to contract or guarantee foreign loans

- Requirements*
- Reason for Concurrence*
- Why the Monetary Board*
- Spouses Constantino v. Cuisia*

1. Requirements (1994 Bar Question)

The President may contract or guarantee foreign loans on behalf of the Republic of the Philippines:

1. With the prior concurrence of the Monetary Board, and

³⁸⁵ *Sinco*, Philippine Political Law, p 284 (1954ed).

³⁸⁶ *Bernas Commentary*, p 901 (2003 ed).

³⁸⁷ *Sinco*, Philippine Political Law, p 285 (1954ed).

³⁸⁸ *Sinco*, Philippine Political Law, p 284 (1954ed).

2. Subject to such limitations as may be provided by law

2. Reason for Concurrence

A President may be tempted to contract or guarantee loans to subsidize his program of government and leave it to succeeding administration to pay. Also, it will enable foreign lending institutions to impose conditions on loans that might impair our economic and even political independence.³⁸⁹

3. Why the Monetary Board.

Because the Monetary Board has expertise and consistency to perform the mandate since such expertise or consistency may be absent among the Members of Congress.³⁹⁰

4. Spouses Constantino v. Cuisia (2005)

Q: The **financing program** for foreign loans instituted by the President extinguished portions of the country's pre-existing loans through either debt buyback or bond-conversion. The buy-back approach essentially pre-terminated portions of public debts while the bond conversion scheme extinguished public debts through the obtention of a new loan by virtue of a sovereign bond issuance, the proceeds of which in turn were used for terminating the original loan. Petitioners contend that buyback or bond conversion are not authorized by Article VII, Section 20.

A: The language of the Constitution is simple and clear as it is broad. It allows the President to contract and guarantee foreign loans. It makes no prohibition on the issuance of certain kinds of loans or distinctions as to which kinds of debt instruments are more onerous than others. This Court may not ascribe to the Constitution the meanings and restrictions that would unduly burden the powers of the President. **The plain, clear and unambiguous language of the Constitution should be construed in a sense that will allow the full exercise of the power provided therein.** It would be the worst kind of judicial legislation if the courts were to construe and change the meaning of the organic act.³⁹¹

B. Duty of the Monetary Board

Duty of MB

Reason for Reporting

1. Duty

³⁸⁹ Cruz, Philippine Political Law, p. 223 (1995 ed).

³⁹⁰ Bernas Primer at 325 (2006 ed.)

³⁹¹ *Spouses Constantino v. Cuisia*, G.R. 106064, October 13, 2005; See Bernas Primer at 326 (2006 ed.)

The Monetary Board shall, within thirty days from the end of every quarter of the calendar year, **submit to the Congress a complete report** of its decision on applications for loans to be contracted or guaranteed by the Government or government-owned and controlled corporations which would have the effect of increasing the foreign debt, and containing other matters as may be provided by law.

2. Reason for Reporting

In order to allow Congress to act on whatever legislation may be needed to protect public interest.³⁹²

X. Foreign Affairs Power/Diplomatic Power

The President and Foreign Affairs Power Foreign Relations Powers of the President

Source of Power

Concurrence by the Senate

Treaties v. Executive Agreements

Power to Deport

Judicial Review

A. The President and Foreign Affairs Powers

As head of State, the President is supposed to be the spokesman of the nation on external affairs.³⁹³ The conduct of external affairs is executive altogether.³⁹⁴ He is the sole organ authorized "to speak or listen" for the nation in the broad field of external affairs.³⁹⁵

B. Foreign Relations Powers of the President

1. The power to negotiate treaties and international agreements;
2. The power to appoint ambassadors and other public ministers, and consuls;
3. The power to receive ambassadors and other public ministers accredited to the Philippines;
4. The power to contract and guarantee foreign loans on behalf of the Republic;
5. The power to deport aliens.³⁹⁶
6. The power to decide that a diplomatic officer who has become *persona non grata* be recalled.³⁹⁷
7. The power to recognize governments and withdraw recognition³⁹⁸

³⁹² Bernas Primer at 325 (2006 ed.)

³⁹³ Cruz, Philippine Political Law, p. 323 (1995 ed).

³⁹⁴ Cruz, Philippine Political Law, p. 323 (1995 ed).

³⁹⁵ Sinco, Philippine Political Law, p. 298 (1954ed).

³⁹⁶ Bernas Primer at 326 (2006 ed.)

³⁹⁷ Bernas Commentary, p. 910 (2003 ed).

³⁹⁸ Bernas Commentary, p. 910 (2003 ed); Sinco, Philippine Political Law, p. 306 (1954ed).

C. Source of Power

The extensive authority of the President in foreign relations in a government patterned after that of the US proceeds from two general sources:

1. The Constitution
2. The status of sovereignty and independence of a state.

In other words, the President derives his powers over the foreign affairs of the country not only from specific provisions of the Constitution but also from customs and positive rules followed by independent states in accordance with international law and practice.³⁹⁹

D. Concurrence of Senate

When Concurrence of Senate Needed

When Concurrence of Senate Not Needed

Scope of Power to Concur

Treaty

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

1. When Concurrence of Senate Needed

Concurrence of at least 2/3 of all the members of Senate is needed for the validity and effectivity of:

1. Treaties of whatever kind, whether bilateral or multilateral.⁴⁰⁰
2. International Agreements (that which are permanent and original)

2. When Concurrence of Senate Not Needed (2003 Bar Question)

Less formal types of international agreements; Agreements which are temporary or are mere implementations of treaties or statutes do not need concurrence.⁴⁰¹

3. Scope of Power to Concur

The power to ratify is vested in the President subject to the concurrence of Senate. The role of the Senate, however, is limited only to giving or withholding its consent or concurrence, to the ratification. Hence, it is within the authority of the President to refuse to submit a treaty to the Senate. Although the refusal of a state to ratify a treaty which has been signed in his behalf is a serious step that should not be taken lightly, such decision is within the competence of the President alone, which cannot be encroached by the Court

³⁹⁹ Sinco, Philippine Political Law, p 243 (1954ed).

⁴⁰⁰ Bernas Commentary, p 894 (2003 ed).

Note that a treaty which has become customary law may become part of Philippine law by incorporation through Article 2 Section. -asm

⁴⁰¹ Bernas Primer at 326 (2006 ed.)

via a writ of mandamus. (*Pimentel v. Executive Secretary*, 2005)

The power of the Senate to give its concurrence carries with it the right to introduce amendments to a treaty.⁴⁰² *If the President does not agree to any amendments or reservations added to a treaty by the Senate, his only recourse is to drop the treaty entirely. But if he agrees to the changes, he may persuade the other nation to accept and adopt the modifications.*

4. Treaty

Definition

Two General Steps

Effects of Treaties

Termination of Treaties

a. Definition. Treaty is an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever designation. (1969 Vienna Convention on the Law of Treaties)

b. Two General Steps

1. Negotiation- Here the President alone has authority
2. Treaty Approval⁴⁰³

c. Effect of Treaties

1. Contract between states as parties
2. It is a law for the people of each state to observe (municipal law)⁴⁰⁴

E. Treaties v. Executive Agreements

1. International agreements which involve political issues or changes of national policy and those involving international arrangements of a permanent character take the form of a treaty; while international agreements involving adjustment of details carrying out well established national policies and traditions and involving arrangements of a more or less temporary nature take the form of executive agreements

2. In treaties, formal documents require ratification, while executive agreements become binding through executive action. (*Commissioner of Customs v. Eastern Sea Trading* 3 SCRA 351)

F. Power to Deport

The power to deport aliens is lodged in the President. It is subject to the regulations prescribed

⁴⁰² Sinco, Philippine Political Law, p 299 (1954ed).

⁴⁰³ Sinco, Philippine Political Law, p 299 (1954ed).

⁴⁰⁴ Sinco, Philippine Political Law, p 300 (1954ed).



in Section 69 of the Administrative Code or to such future legislation as may be promulgated. (In re McCulloch Dick, 38 Phil. 41)

The adjudication of facts upon which the deportation is predicated also devolves on the Chief Executive whose decisions is final and executory. (Tan Tong v. Deportation Board, 96 Phil 934, 936 (1955))

G. Judicial Review

Treaties and other international agreements concluded by the President are also subject to check by the Supreme Court, which has the power to declare them unconstitutional. (Art. VIII, Section 4)

XI. Budgetary Power

Budgetary Power

The Budget

Government Budgetary Process

Congress May Not Increase Appropriations

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

A. Budgetary Power

This power is properly entrusted to the executive department, as it is the President who, as chief administrator and enforcer of laws, is in best position to determine the needs of the government and propose the corresponding appropriations therefor on the basis of existing or expected sources of revenue.⁴⁰⁵

B. The Budget

The **budget of receipts and expenditures** prepared by the President is the basis for the general appropriation bill passed by the Congress.⁴⁰⁶

The phrase "sources of financing" has reference to sources other than taxation.⁴⁰⁷

C. Government Budgetary Process

The complete government budgetary process has been graphically described as consisting of four major phases:

1. Budget Preparation

⁴⁰⁵ Cruz, Philippine Political Law, p. 224 (1995 ed).

⁴⁰⁶ Bernas Primer at 329 (2006 ed.)

⁴⁰⁷ Bernas Commentary, p 912 (2003 ed).

2. Legislative Authorization
3. Budget Execution
4. Budget Accountability⁴⁰⁸

D. Congress May Not Increase Appropriations

The Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget. (Article VI Section 25(1))

XII. Informing Powers

Not Mandatory

State of the Nation Address

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

A. Not Mandatory

Although couched in mandatory language, the first sentence of this provision does not as a rule impose a compellable duty on the President.⁴⁰⁹

B. State of the Nation Address

The President usually discharges the informing power through the state-of-the-nation address, which is delivered at the opening of the regular session of the legislature.⁴¹⁰

⁴⁰⁸ Guingona v. Carague, 196 SCRA 221 (1991); Bernas Commentary, p 912 (2003 ed).

⁴⁰⁹ Cruz, Philippine Political Law, p. 225 (1995 ed).

⁴¹⁰ Cruz, Philippine Political Law, p. 226 (1995 ed).

JUDICIAL DEPARTMENT

- I. JUDICIAL DEPARTMENT**
- II. JUDICIAL POWER**(Section 1)
- III. JURISDICTION** (Section 2)
- IV. THE SUPREME COURT**(Sections 4, 7-12)
- V. POWERS OF THE SUPREME COURT**
(Sections 5,6, 11, 16)
- VI. JUDICIAL REVIEW**
- VII. DECIDING A CASE** (Sections 4,13-15)
- VIII. OTHER COURTS**

I. Judicial Department

- Composition**
- Common Provisions**
- Independence of Judiciary**

A. Composition

The Supreme Court and all lower courts make up the judicial department of our government.⁴¹¹

B. Common Provisions

- | | |
|------------------------------|------------------|
| 1. Judiciary (See Section 3) | Independence of |
| 2. Oversight (Section 2) | Congressional |
| 3. Powers (Section 12) | Separation of |
| 4. (Section 14) | General Rules |
| 5. Case (Section 15) | Period to Decide |

C. Independence of Judiciary (2000 Bar Question)

To maintain the independence of the judiciary, the following **safeguards** have been embodied in the Constitution:⁴¹²

1. The Supreme Court is a constitutional body. It cannot be abolished nor may its membership or the manner of its meeting be changed by mere legislation. (art 8 §2)
2. The members of the Supreme Court may not be removed except by impeachment. (art. 9 §2)
3. The SC may not be deprived of its minimum original and appellate jurisdiction as prescribed in Article X, Section 5. (art. 8 §2)

⁴¹¹ Cruz, Philippine Political Law, p. 231 (1995 ed).

⁴¹² Cruz, Philippine Political Law, p. 229 (1995 ed).

4. The appellate jurisdiction of the Supreme Court may not be increased by law without its advice or concurrence. (art. 6 §30)
5. Appointees to the judiciary are now nominated by the Judicial and Bar Council and no longer subject to confirmation by Commission on Appointments. (art. 8 §9)
6. The Supreme Court now has administrative supervision over all lower courts and their personnel. (art. 8 §6)
7. The Supreme Court has exclusive power to discipline judges of lower courts. (art 8 §11)
8. The members of the Supreme Court and all lower courts have security of tenure, which cannot be undermined by a law reorganizing the judiciary. (art. 8 §11)
9. They shall not be designated to any agency performing quasi-judicial or administrative functions. (art. 8 §12)
10. The salaries of judges may not be reduced during their continuance in office. (art. 8 §10)
11. The judiciary shall enjoy fiscal autonomy (art 8§3)
12. Only the Supreme Court may order the temporary detail of judges (art 8 §5(3))
13. The Supreme Court can appoint all officials and employees of the judiciary. (art. 8 §5(6))

Section 3. The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released.

(1999 Bar Question)

Fiscal autonomy means freedom from outside control. As envisioned in the Constitution, fiscal autonomy enjoyed by the Judiciary...contemplates a guarantee of **full flexibility to allocate and utilize their resources** with the wisdom and dispatch that their needs, require.

Fiscal autonomy recognizes the power and authority to (a) *levy, assess and collect fees*, (b) fix rates of compensation not exceeding the highest rates authorized by law for compensation, and (c) pay plans of the government and allocate or disburse such sums as may be provided by law or prescribed by them in the course of the discharge of their functions.

The imposition of restrictions and constraints on the manner the [Supreme Court] allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative of the express mandate of the Constitution and of the independence and separation of powers. (Bengzon v. Drilon)

Reason. Fiscal autonomy is granted to the Supreme Court to strengthen its autonomy.⁴¹³ The provision is intended to remove courts from the mercy and caprice, not to say vindictiveness, of the legislature when it considers the general appropriations bill.⁴¹⁴

II. Judicial Power

Where Vested

Definition

Scope

Intrinsic Limit on Judicial Power

Grave Abuse of Discretion

Role of Legislature in Judicial Process

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.

A. Judicial Power Where Vested (1989 Bar Question)

Judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. (Section 1 par. 1)

B. Definition of Judicial Power (1994 Bar Question)

Traditional Concept: Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable. (Section 1, 2nd sentence)

Broadened Concept: Duty to determine whether [or not] there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the party of any branch or instrumentality of the Government. (Section 1, 2nd sentence)

C. Scope of Judicial Power (1989 Bar Question)

Judicial power is the measure of the allowable scope of judicial action.⁴¹⁵ The use of the word “includes” in Section 1 connotes that the provision is not intended to be an exhaustive list of what judicial power is.⁴¹⁶

⁴¹³ Bernas Primer at 336 (2006 ed.)

⁴¹⁴ Cruz, Philippine Political Law, p. 237 (1995 ed.)

⁴¹⁵ Bernas Commentary, p 914 (2003 ed.)

⁴¹⁶ Bernas Commentary, p 919 (2003 ed.)

An accused who has been convicted by final judgment still possesses collateral rights and these rights can be claimed in the appropriate courts [e.g. death convict who becomes insane after his final conviction cannot be executed while in a state of insanity] The suspension of death sentence is an exercise of judicial power. It is not usurpation of the presidential power of reprieve though the effect is the same- the temporary suspension of the execution of the death convict.” (Echegaray v. Sec. of Justice, 1999)

D. Limit on Judicial Power

- (1) Courts may not assume to perform non-judicial functions.
- (2) It is not the function of the judiciary to give advisory opinion
- (3) Judicial power must sometimes yield to separation of powers, political questions and enrolled bill rule.

1. By the principle of separation of powers, courts **may neither attempt to assume nor be compelled to perform non-judicial functions.**⁴¹⁷ Thus, a court may not be required to act as a board of arbitrators (Manila Electric Co. v. Pasay Transportation (1932). Nor may it be charged with administrative functions except when reasonably incidental to the fulfillment of official duties. (Noblejas v. Tehankee) Neither is it's the function of the judiciary to give advisory opinions.

2. Advisory Opinions.

An **advisory opinion** is an opinion issued by a court that does not have the effect of resolving a specific legal case, but merely advises on the constitutionality or interpretation of a law.

The nature of judicial power is also the foundation of the principle that it is not the function of the judiciary to give advisory opinion.⁴¹⁸ If the courts will concern itself with the making of advisory opinions, there will be loss of judicial prestige. There may be less than full respect for court decisions.

Declaratory Judgment v. Advisory Opinions.

Declaratory Judgment	Advisory Opinions
Involves real parties with real conflicting interests	Response to a legal issue posed in the abstract in advance of any actual case in which it may be presented
Judgment is a final one forever binding on the parties.	Binds no one

⁴¹⁷ Bernas Commentary, p 916 (2003 ed.)

⁴¹⁸ Bernas Commentary, p 921 (2003 ed.)

A judicial act	Not a judicial act ⁴¹⁹
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3. The 'broadened concept' of judicial power is not meant to do away with the political questions doctrine itself. The concept must sometimes yield to **separation of powers**, to the doctrine on "political questions" or to the "enrolled bill" rule.⁴²⁰

E. Grave Abuse Clause

"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"

Not every abuse of discretion can be the occasion for the Court to come in by virtue of the second sentence of Section 1. It must be "grave abuse of discretion amounting to lack or excess of jurisdiction."⁴²¹

There is grave abuse of discretion:

- (1) when an act done contrary to the Constitution, the law, or jurisprudence, or
- (2) it is executed whimsically, capriciously, arbitrarily out of malice, ill will or personal bias. (Infotech v. COMELEC, 2004)

Again, the 'broadened concept' of judicial power is not meant to do away with the political questions doctrine itself. The concept must sometimes yield to separation of powers, to the doctrine on "political questions" or to the "enrolled bill" rule.⁴²² (1995 Bar Question)

Rule 65 embodies the Grave Abuse Clause.⁴²³

F. Role of Legislature in Judicial Process

Although judicial power is vested in the judiciary, the proper exercise of such power requires prior legislative action:

1. Defining such enforceable and demandable rights; and
2. Determining the court with jurisdiction to hear and decide controversies or disputes arising from legal rights.⁴²⁴

Courts cannot exercise judicial power when there is no applicable law. The Court has no authority to entertain an action for judicial declaration of citizenship because there was no law authorizing

⁴¹⁹ Bernas Commentary, p 924 (2003 ed).

⁴²⁰ See Bernas Commentary, p 919-920 (2003 ed).

⁴²¹ Bernas Commentary, p 920 (2003 ed).

⁴²² See Bernas Commentary, p 919-920 (2003 ed).

⁴²³ Annotation to the Writ of Amparo.

⁴²⁴ Bernas Primer at 335 (2006 ed.)

such proceeding. (Channie Tan v. Republic, 107 Phil 632 (1960)) An award of honors to a student by a board of teachers may not be reversed by a court where the awards are governed by no applicable law. (Santiago Jr. v. Bautista) Nor may courts reverse the award of a board of judges in an oratorical contest. (Felipe v. Leuterio, 91 Phil 482 (1952)).⁴²⁵

III. Jurisdiction

Definition

Scope

Role of Congress

Section 2. The Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof. No law shall be passed reorganizing the Judiciary when it under-mines the security of tenure of its Members.

A. Definition

Jurisdiction is the power and authority of the court to hear, try and decide a case. (De La Cruz v. CA, 2006)

B. Scope

It is not only the (1) **power to determine**, but the (2) **power to enforce its determination**. The (3) **power to control the execution** of its decision is an essential aspect of jurisdiction (Echegaray . Sec. of Justice, 301 SCRA 96)

C. Role of Congress

Power. The Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts. (Section 2)

Limitations:

1. Congress may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5. (art. 8 §2)
2. No law shall be passed reorganizing the Judiciary when it under-mines the security of tenure of its Members. (art. 8 §2)
3. The appellate jurisdiction of the Supreme Court may not be increased by law except upon its advice and concurrence. (art. 6 § 30)

* Jurisdiction in Section 2 refers to jurisdiction over cases [jurisdiction over the subject matter].⁴²⁶

⁴²⁵ Bernas Primer at 335 (2006 ed.)

⁴²⁶ Cruz, Philippine Political Law, p. 2333 (1995 ed).

IV. The Supreme Court

Nature
Composition
Qualifications
Judicial and Bar Council
Appointment
Salaries
Tenure
Removal
Prohibition

A. Nature

The [Supreme] Court is a court of law. Its primary task is to resolve and decide cases and issues presented by litigants according to law. However, it may apply equity where the court is unable to arrive at a conclusion or judgment strictly on the basis of law due to a gap, silence, obscurity or vagueness of the law that the Court can still legitimately remedy, and the special circumstances of the case. (Rule 3, Section 1 of 2010 SC Internal Rules)

Concept of Precedence in the Supreme Court

The Chief Justice enjoys precedence over all the other Members of the Court in all official functions. The Associate Justices shall have precedence according to the order of their appointments as officially transmitted to the Supreme Court.

The rule on precedence shall be applied in the following instances:

- (a) in the determination of the Chairpersonship of the Division;
- (b) in the seating arrangement of the Justices in all official functions; and
- (c) in the choice of office space, facilities, equipment, transportation, and cottages.

B. Composition

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

Composition of the Supreme Court: Fifteen (15).
 1 Chief Justice and 14 Associate Justices.

By so fixing the number of members of the Supreme Court at [fifteen], it seems logical to infer that no statute may validly increase or decrease it.⁴²⁷

⁴²⁷ Sinco, Philippine Political Law, p 318 (1954ed).

Collegiate Court. The primary purpose of a collegiate court is precisely to provide for the most exhaustive deliberation before a conclusion is reached.⁴²⁸

C. Qualifications

Section 7. (1) No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural-born citizen of the Philippines. A Member of the Supreme Court must be at least forty years of age, and must have been for fifteen years or more a judge of a lower court or engaged in the practice of law in the Philippines.

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

(3) A Member of the Judiciary must be a person of proven competence, integrity, probity, and independence.

Qualifications of a Member of the Supreme Court:

1. Must be a natural born citizen of the Philippines
2. Must at least be 40 years of age;
3. Must have been for 15 years or more a judge of a lower court or engaged in the practice of law in the Philippines; and
4. A person of proven competence, integrity, probity, and independence.

Congress may not alter the qualifications of Members of the Supreme Court and the constitutional qualifications of other members of the Judiciary. But Congress may alter the statutory qualifications of judges and justices of lower courts.⁴²⁹

It behooves every prospective appointee to the Judiciary to apprise the appointing authority of every matter bearing on his fitness for judicial office, including such circumstances as may reflect on his integrity and probity. Thus the fact that a prospective judge failed to disclose that he had been administratively charged and dismissed from the service for grave misconduct by a former President of the Philippines was used against him. It did not matter that he had resigned from office and that the administrative case against him had become moot and academic.⁴³⁰

Similarly, before one who is offered an appointment to the Supreme Court can accept it, he must correct the entry in his birth certificate that he is an alien.⁴³¹

⁴²⁸ Cruz, Philippine Political Law, p. 268 (1995 ed).

⁴²⁹ Bernas Primer at 356 (2006 ed.)

⁴³⁰ *In re JBC v. Judge Quitain*, JBC No. 013, August 22, 2007.

⁴³¹ *Kilosbayan v. Ermita*, G.R. No. 177721, July 3, 2007. This was the case of Justice Gregory Ong of the Sandiganbayan who was being promoted to the Supreme court. Ong, however, remains in the Sandiganbayan.

“A Member of the Judiciary must be a person of proven competence, integrity, probity, and independence.”

Competence. In determining the competence of the applicant or recommendee for appointment, the Judicial and Bar Council shall consider his educational preparation, experience, performance and other accomplishments of the applicant. (Rule 3 Section 1 of JBC Rules; See Canon 6 of 2004 New Code of Judicial Conduct)

Integrity. The Judicial and Bar Council shall take every possible step to verify the applicant’s record of and reputation for honesty, integrity, incorruptibility, irreproachable conduct and fidelity to sound moral and ethical standards. (Rule 4, Section 1 of JBC Rules; See Canon 2 of 2004 NCJC)

Probity and Independence. Any evidence relevant to the candidate’s probity and independence such as, but not limited to, decision he has rendered if he is an incumbent member of the judiciary or reflective of the soundness of his judgment, courage, rectitude, cold neutrality and strength of character shall be considered. (Rule 5 Section of JBC Rules; See Canon 1 of 2004 NCJC)

D. Judicial and Bar Council (1988, 1999 Bar Question)

Composition

Function

Reason for Creation

Section 8.

(1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and a representative of the Congress as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

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

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

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

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

Composition of JBC:

1. SC Chief Justice (*ex officio* Chairman)

Ex officio Members

2. Secretary of Justice
3. Representative of Congress

Regular Members (Term of 4 years appointed by President with the consent of CA)

4. Representative of IBP
5. Professor of Law
6. Retired Member of SC
7. Representative of private sector

The Clerk of the Supreme Court shall be the Secretary ex officio of the JBC.

Representative from Congress. Such representative may come from either House. In practice, the two houses now work out a way of sharing representation.⁴³² A member from each comes from both Houses but each have only half a vote.⁴³³

Function of JBC. JBC’s principal function is to recommend to the President appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

JBC does not perform judicial or quasi-judicial functions (J Brion’s Concurring and Dissenting Opinion in De Castro v. JBC)

Rationale for Creation of JBC. The Council was principally designed to eliminate politics from the appointment and judges and justices. Thus, appointments to the Judiciary do not have to go through a political Commission on Appointments.⁴³⁴

Relationship of JBC and SC

The Court cannot dictate on the JBC the results of its assigned task, *i.e.*, who to recommend or what standards to use to determine who to recommend. It cannot even direct the JBC on how and when to do its duty, but it can, under its power of supervision, direct the JBC to “*take such action or step as prescribed by law to make them perform their duties,*” if the duties are not being performed because of JBC’s fault or inaction, or because of extraneous factors affecting performance. Note in this regard that, constitutionally, the Court can also assign the JBC other functions and duties – a power that suggests authority beyond what is purely supervisory. (J Brion’s Concurring and Dissenting Opinion in De Castro v. JBC)

The process of preparing and submitting a list of nominees is an arduous and time-consuming task that cannot be done overnight. It is a six-step process lined with standards requiring the JBC to attract the best available candidates, to examine and investigate them, to exhibit transparency in all

⁴³² Bernas Primer at 356 (2006 ed.)

⁴³³ Bernas Commentary, p 984 (2003 ed.)

⁴³⁴ Bernas Primer at 357 (2006 ed.)

its actions while ensuring that these actions conform to constitutional and statutory standards (such as the election ban on appointments), to submit the required list of nominees on time, and to ensure as well that all these acts are politically neutral. On the time element, the JBC list for the Supreme Court has to be submitted on or before the vacancy occurs given the 90-day deadline that the appointing President is given in making the appointment. **The list will be submitted, not to the President as an outgoing President, nor to the election winner as an incoming President, but to the President of the Philippines whoever he or she may be.** If the *incumbent President* does not act on the JBC list within the time left in her term, the same list shall be available to the *new President* for him to act upon. In all these, the Supreme Court bears the burden of overseeing that the JBC's duty is done, unerringly and with utmost dispatch; the Court cannot undertake this supervision in a manner consistent with the Constitution's expectation from the JBC unless it adopts a pro-active stance within the limits of its supervisory authority. (J Brion's Concurring and Dissenting Opinion in De Castro v. JBC)

E. Appointment

Section 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation. For the lower courts, the President shall issue the appointments within ninety days from the submission of the list.

For every vacancy, the Judicial and Bar Council submits to the President a list of at least three names. The President may not appoint anybody who is not in the list. ~~If the President is not satisfied with the list, he may ask for another list.~~⁴³⁵

Why at least 3? The reason for requiring at least three nominees for every vacancy is to give the President enough leeway in the exercise of his discretion when he makes his appointment. If the nominee were limited to only one, the appointment would in effect be made by the Judicial and Bar Council, with the President performing only the mathematical act of formalizing the commission.⁴³⁶

Judges may not be appointed in an acting capacity or temporary capacity.⁴³⁷ It should be noted that what the Constitution authorizes the President to do is to appoint Justices and judges and **not the authority** merely to designate a non-member of

⁴³⁵ Bernas Commentary, p 985 (2003 ed).

⁴³⁶ Cruz, Philippine Political Law, p. 234 (1995 ed).

⁴³⁷ Cruz, Philippine Political Law, p. 237 (1995 ed).

the Supreme Court **temporarily** to sit as Justice of Supreme Court.⁴³⁸

ASM: Do you know that when there is a vacancy in the Supreme Court, the remaining members of the Tribunal vote and make a recommendation to the Judicial and Bar Council.

F. Salaries

Section 10. The salary of the Chief Justice and of the Associate Justices of the Supreme Court, and of judges of lower courts shall be fixed by law. During their continuance in office, their salary shall not be decreased.

The prohibition of the diminution of the salary of Justices and judges during their continuance in office is intended as a protection for the independence of the judiciary.⁴³⁹

The clear intent of the Constitutional Commission was to subject the salary of the judges and justices to income tax. (Nitafan v. CIR, 1987)

G. Tenure

Section 11. The Members of the Supreme Court and judges of lower courts shall hold office during good behavior until they reach the age of **seventy years** or become incapacitated to discharge the duties of their office. The Supreme Court *en banc* shall have the power of discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

Security of Tenure is essential to an independent judiciary.

The Supreme Court may investigate or discipline its own members. (See IN THE MATTER OF THE CHARGES OF PLAGIARISM, ETC., AGAINST ASSOCIATE JUSTICE MARIANO C. DEL CASTILLO. A.M. No. 10-7-17-SC; See also IN RE: UNDATED LETTER OF MR. LOUIS C. BIRAOGO A.M. No. 09-2-19-SC)

H. Removal

By Impeachment. The Members of the Supreme Court are removable only by impeachment. They can be said to have failed to satisfy the requirement of "good behavior" only if they are guilty of the offenses which are constitutional grounds of impeachment.

⁴³⁸ Bernas Commentary, p 985 (2003 ed).

⁴³⁹ Bernas Commentary, p 986 (2003 ed).

The members of the Supreme Court may be removed from office on impeachment for, and conviction of:

1. Culpable violation of the Constitution;
2. Treason;
3. Bribery;
4. Graft and Corruption;
5. Other High Crimes
6. Betrayal of Public Trust(Article XI, Section 2)

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

H. Prohibition

Section 12. The Members of the Supreme Court and of other courts established by law shall not be designated to any agency performing quasi-judicial or administrative functions.

The provision merely makes explicit an application of the principles of separate of powers.⁴⁴⁰

Take note of the other tasks given to SC or the Members of SC by the Constitution:

1. SC en banc as Presidential Electoral Tribunal (art 7 §4)
2. Chief Justice as presiding officer of the impeachment Court when the President is in trial (art. 11 §3(6)).
3. Chief Justice as ex officio chairman of the JBC. (art. 8 §8(1)).
4. Justices as members of Electoral Tribunals (art. 6 §17).

V. Powers of Supreme Court

- General Power**
- Specific Powers**
- Original Jurisdiction**
- Appellate Jurisdiction**
- Temporary Assignment of Judges**
- Change of Venue or Place of Trial**
- Rule-Making Power**
- Appointment of Court Personnel**
- Administrative Supervision of Courts**
- Disciplinary/Dismissal Powers**
- Contempt Powers**
- Annual Report**

Section 5. The Supreme Court shall have the following powers:

⁴⁴⁰ Bernas Commentary, p 991 (2003 ed).

1. Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.
2. Review, revise, reverse, modify, or affirm on appeal or certiorari as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
 - (a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
 - (b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
 - (c) All cases in which the jurisdiction of any lower court is in issue.
 - (d) All criminal cases in which the penalty imposed is reclusion perpetua or higher.
 - (e) All cases in which only an error or question of law is involved.
3. Assign temporarily judges of lower courts to other stations as public interest may require. Such temporary assignment shall not exceed six months without the consent of the judge concerned.
4. Order a change of venue or place of trial to avoid a miscarriage of justice.
5. Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.
6. Appoint all officials and employees of the Judiciary in accordance with the Civil Service Law.

Section 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

Section 11
 xxxThe Supreme Court *en banc* shall have the power of discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

A. General Power

Judicial Power (§1)

B. Specific Powers

Specific Powers of the Supreme Court under Article VIII:

1. Original Jurisdiction
2. Appellate Jurisdiction
3. Temporary Assignment of Judges
4. Change of Venue or Place of Trial
5. Rule-Making Power
6. Appointment of Court Personnel (§5)
7. Administrative Supervision of Courts (§6)

8. Dismissal/ Removal Powers (§11)
(Section 5(1) and (2) refer to the irreducible jurisdiction of the Supreme Court while Section 5 (3 -6) and Section 6 provide of auxiliary administrative powers.)

Other Powers of SC:

1. Jurisdiction over proclamation of Martial law or suspension of the writ of habeas corpus; (art. 7 §18)
2. Jurisdiction over Presidential and Vice-Presidential election contests; (art. 7 §4)
3. Jurisdiction over decision, order, or ruling of the Constitutional Commissions. (art. 9 §7)
4. Supervision over JBC (art. 8 §8(1))
5. Power to Punish Contempt

C. Original Jurisdiction

Section 5(1). The Supreme Court has original jurisdiction over:

1. Cases affecting ambassadors, other public ministers and consuls.
2. Petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.⁴⁴¹

Note that under international law, diplomats and even consuls to a lesser extent, are not subject to jurisdiction of the courts of the receiving State, save in certain cases, as when immunity is waived either expressly or impliedly. In such instances, the Supreme Court can and probably should take cognizance of the litigation in view of possible international repercussions.⁴⁴²

The petitions for *certiorari*, *mandamus*, prohibition, and *quo warranto* are special civil actions. The questions raised in the first three petitions are questions of jurisdiction or grave abuse of discretion and, in fourth, the title of the respondent. The petition for *habeas corpus* is a special proceeding.⁴⁴³

Concurrent Jurisdiction.

The Supreme Court has concurrent original jurisdiction with Regional Trial Courts in cases affecting ambassadors, other public ministers and consuls. (BP 129 § 21(2))

The Supreme Court has concurrent original jurisdiction with the Court of Appeals in petitions for *certiorari*, prohibition and *mandamus* against the Regional Trial Courts. (BP 129 § 9(1))

The Supreme Court has concurrent original jurisdiction with the Court of Appeals and the Regional Trial Courts in petitions for *certiorari*,

prohibition and *mandamus* against lower courts and bodies and in petitions for *quo warranto* and *habeas corpus*. (BP 129 §9(1), §21(2))

Principle of Judicial Hierarchy

Under a judicial policy recognizing *hierarchy of courts*, a higher court will not entertain direct resort to it unless the redress cannot be obtained in the appropriate courts. (Santiago v. Vasquez, 217 SCRA 167) Thus, while it is true that the issuance of a writ of prohibition under Rule 65 is within the jurisdiction of the Supreme Court, a petitioner cannot seek relief from the Supreme Court where the issuance of such writ is also within the competence of the Regional Trial Court or the Court of Appeals.

A direct recourse of the Supreme Court's original jurisdiction to issue writs should be allowed only when there are special and important reasons therefore, clearly and specifically set out in the petition. (Mangahas v. Paredes, 2007)

Q: What cases may be filed originally in the Supreme Court?

A: Only petitions for certiorari, prohibition, mandamus, quo warranto, habeas corpus, disciplinary proceedings against members of the judiciary and attorneys, and affecting ambassadors, other public ministers and consuls may be filed originally in the Supreme Court. (**Rule 56, Section 1, Rules of Court**)

D. Appellate Jurisdiction

Section 5(2). The Supreme Court has the power to review, revise, reverse, modify, or affirm on appeal or certiorari as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

- a. All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
- b. All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
- c. All cases in which the jurisdiction of any lower court is in issue.
- d. All criminal cases in which the penalty imposed is reclusion perpetua or higher.
- e. All cases in which only an error or question of law is involved.

Irreducible. This appellate jurisdiction of the Supreme Court is irreducible and may not be withdrawn from it by Congress.⁴⁴⁴

Final Judgments of lower courts. It should be noted that the appeals allowed in this section are

⁴⁴¹ See Rule 65, 66 and 102, Rules of Court.

⁴⁴² Cruz, Philippine Political Law, p. 252 (1995 ed).

⁴⁴³ Cruz, Philippine Political Law, p. 252 (1995 ed).

⁴⁴⁴ Cruz, Philippine Political Law, p. 255 (1995 ed).

from final judgments and decrees only of “lower courts” or judicial tribunals. Administrative decisions are not included.⁴⁴⁵

The lower courts have competence to decide constitutional questions. Section 5(2)(a) provides that Supreme Court has *appellate* jurisdiction over “final judgments and orders all cases in which the *constitutionality* or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance or regulation is in question.”

Review of Death Penalty. Section 5 requires a mandatory review by the Supreme Court of cases where the penalty imposed is *reclusion perpetua*, life imprisonment, or death. However, the Constitution has not proscribed an intermediate review. To ensure utmost circumspection before the penalty of death, *reclusion perpetua* or life imprisonment is imposed, the Rule now is that such cases must be reviewed by the Court of Appeals before they are elevated to the Supreme Court.⁴⁴⁶

Note, however, that the rule for the review of decisions of lower courts imposing death or *reclusion perpetua* or life imprisonment are not the same. In case the sentence is death, there is automatic review by the Court of Appeals and ultimately by the Supreme Court. This is mandatory and neither the accused nor the courts may waive the right of appeal. In the case of the sentence of *reclusion perpetua* or life imprisonment, however, although the Supreme Court has jurisdiction to review them, the review is not mandatory. Therefore review in this later cases may be waived and appeal may be withdrawn.⁴⁴⁷

In *Republic v. Sandiganbayan, 2002*, it was held that the appellate jurisdiction of the Supreme Court over decisions and final orders of the Sandiganbayan is limited to questions of law. A **question of law** exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted.

Section 5(2), (a) and (b) explicitly grants judicial review in the Supreme Court. (*Judicial Review will be discussed in the next chapter*)

E. Temporary Assignment of Judges

Section 5(3). The Supreme Court has the power to assign temporarily judges of lower courts to other

stations as public interest may require. Such temporary assignment shall not exceed six months without the consent of the judge concerned.

Rationale of the Provision. The present rule bolsters the independence of the judiciary in so far as it vests the power to temporarily assign judges of inferior courts directly in the Supreme Court and no longer in the executive authorities and conditions the validity of any such assignment in excess of six months upon the consent of the transferred judge. This will minimize if not altogether eliminate the pernicious practice of the *rigodon de jueces*, or the transfer of judges at will to suit the motivations of the chief executive.⁴⁴⁸

Purpose of Transfer. Temporary assignments may be justified to arrange for judges with clogged dockets to be assisted by their less busy colleagues, or to provide for the replacement of the regular judge who may not be expected to be impartial in the decision of particular cases.⁴⁴⁹

Permanent Transfer. Since transfer imports removal from one office and since a judge enjoys security of tenure, it cannot be effected without the consent of the judge concerned.⁴⁵⁰

F. Change of Venue or Place of Trial

Section 5(4). The Supreme Court has the power to order a change of venue or place of trial to avoid a miscarriage of justice.

This power is deemed to be an incidental and inherent power of the Court. (*See People v. Gutierrez, 36 SCRA 172 (1970)*)

G. Rule Making Power

Power to Promulgate Rules

Limits on the Rule Making Power

Nature and Function of Rule Making Power

Test to Determin Whether Rules are Substantive

Rules Concerning Protection of Constitutional Rights

Admission to the Practice of Law

Integration of the Bar

Congress and the Rules of Court

1. Power to Promulgate Rules

The Supreme Court has the power to promulgate rules concerning:

1. The protection and enforcement of constitutional rights;
2. Pleading, practice, and procedure in all courts;
3. The admission to the practice of law,

⁴⁴⁵ Cruz, Philippine Political Law, p. 256 (1995 ed).

⁴⁴⁶ *People v. Mateo*, G.R. No. 147678-87. July 7, 2004; *People v. Laguna*, G.R. No. 170565, January 31, 2006.

⁴⁴⁷ *People v. Rocha and Ramos*, G.R. No. 173797, August 31, 2007.

⁴⁴⁸ Cruz, Philippine Political Law, p. 259 (1995 ed).

⁴⁴⁹ Cruz, Philippine Political Law, p. 259 (1995 ed).

⁴⁵⁰ Bernas Commentary, p 967(2003 ed).

4. The Integrated Bar;
5. Legal assistance to the underprivileged.
(Section 5(5))

2. Limits on SC's Rule Making Power

1. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases.
2. They shall be uniform for all courts of the same grade.
3. They shall not diminish, increase, modify **substantive rights**.

Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

3. Nature and Function of Rule Making Power

For a more independent judiciary. The authority to promulgate rules concerning pleading, practice and admission to the practice of law is a traditional power of the Supreme Court. The grant of this authority, coupled with its authority to integrate the Bar, to have administrative supervision over all courts, in effect places in the hands of Supreme Court the totality of the administration of justice and thus makes for a more independent judiciary.

Enhances the capacity to render justice. It also enhances the Court's capacity to render justice, especially since, as the Supreme Court has had occasion to say, it includes the inherent authority to suspend rules when the requirement of justice demand.

Moreover, since it is to the Supreme Court that rule making authority has been given, rules promulgated by special courts and quasi-judicial bodies are effective unless disapproved by the Supreme Court.

4. Test to Determine whether the rules diminish, increase or modify substantive rights

1. If the rule takes away a vested right, it is a substantive matter.
2. If the rule creates a right, it may be a substantive matter.
3. If it operates as a means of implementing an existing right, then the rule deals merely with procedure. (Fabian v. Desierto)

Illustrative cases where the rule merely deals with procedure:

Maniago v. CA, 1996

The rule that unless a reservation to file a separate civil action is reserved, the civil case is deemed filed with the criminal case is not about substantive rights. Whether the two actions must be tried in a single proceeding is a matter of procedure.

Fabian v. Desierto, 1998

The transfer by the Supreme Court of pending cases involving a review of decision of the Office of the Ombudsman in administrative actions to the Court of Appeals is merely procedural. This is because, it is not the right to appeal of an aggrieved party which is affected by law. The *right* has been preserved. Only the *procedure* by which the appeal is to be made or decided has been changed.

People v. Lacson, 400 SCRA 267

(This is quite confusing because of the dates)

Facts: Respondent was charged with multiple murder. He filed a motion with the trial court for judicial determination of probable cause. On March 29, 1999, the trial court dismissed the cases provisionally. On December 1, 2000, the Revised Rules on Criminal Procedure took effect. Section 8 of Rule 117 allowed the revival of the case which was provisionally dismissed only within two years. On June 6, 2001, the criminal cases against respondent were refilled. Respondent argued that the refilling of the cases was barred. The prosecution argued that under Article 90 of the Revised Penal Code, it had twenty years to prosecute respondent.

Held:

Is the rule merely procedural? Yes, the rule is merely procedural. Section 8, Rule 117 is not a statute of limitations. The two-year bar under the rule does not reduce the periods under Article 90 of the Revised Penal Code. It is but a limitation of the right of the State to revive a criminal case against the accused after the case had been filed but subsequently provisionally dismissed with the express consent of the accused. Upon the lapse of the period under the new rule, the State is presumed to have abandoned or waived its right to revive the case. The prescription periods under the Revised Penal Code are not diminished.

Is the refilling of cases barred in this case?

No. A procedural law may not be applied retroactively if to do so would work injustice or would involve intricate problems of due process. The time-bar of two years under the new rule should not be applied retroactively against the State. If the time-bar were to be applied retroactively so as to commence to run on March 31, 1999, when the prosecutor received his copy of the resolution dismissing the cases, instead of giving the State two years to revive the provisionally dismissed cases, the State would have considerably less than two years to do so. The period before December 1, 2000 should be excluded in the computation of the two-year period, because the rule prescribing it was not

yet in effect at that time and the State could not be expected to comply with it.⁴⁵¹

Illustrative cases where the rule deals with substantive matter:

PNB v. Asuncion, 80 SCRA 321

Facts: Petitioner filed a collection case against several solidary debtors. One of them died during the pendency of the case. The court dismissed the case against all the defendants on the ground that the petitioner should file a claim in the estate proceedings. Petitioner argued that the dismissal should be confined to the defendant who died.

Held: Article 1216 of the Civil Code gives the creditor the right to proceed against anyone of the solidary debtors or some or all of them simultaneously. Hence, in case of the death of one of them, the creditor may proceed against the surviving debtors. The Rules of Court cannot be interpreted to mean that the creditor has no choice but to file a claim in the estate of the deceased. Such construction will result in the diminution of the substantive rights granted by the Civil Code.⁴⁵²

Santero v. CFI, 153 SCRA 728

Facts: During the pendency of the proceeding for the settlement of the estate of the deceased, respondents, who were children of the deceased, filed a motion asking for an allowance for their support. Petitioners, who were children of the deceased with another woman, opposed on the grounds that petitioners were already of majority age and under Section 3 of Rule 83, the allowance could be granted only to minor children.

Held: Article 188 of the Civil Code grants children the right to support even beyond the age of majority. Hence, the respondent were entitled to the allowance. Since, the right to support granted by the Civil Code is substantive, it cannot be impaired by Section 3, Rule 83 of the Rules of Court.⁴⁵³

Damasco v. Laqui, 166 SCRA 214

Facts: Petitioner was charged with grave threats. The trial court convicted him of light threats. Petitioner moved for reconsideration because the crime of which he was convicted had already prescribed when the information was filed.

Held: While an accused who fails to move to quash is deemed to waive all objection which are grounds to quash, this rule cannot apply to prescription. Prescription extinguishes criminal

liability. To apply the said rule will contravene Article 89 of the Revised Penal Code which is substantive. The rules promulgated by the Supreme Court must not diminish, increase or modify substantive rights.⁴⁵⁴

Zaldivia v. Reyes, 211 SCRA 277

Facts:

On May 30, 1990, a complaint was filed with the provincial prosecutor against petitioner for violating an ordinance by quarrying without a mayor's permit. The information was filed in court on October 2, 1990. Petitioner moved to quash on the ground that under Act 3326, violations of municipal ordinances prescribe in two months and the prescriptive period is suspended only upon the institution of judicial proceedings. The prosecution argued that under Section 1, Rule 110 of the Rules on Criminal Procedure, the filing of a case for preliminary investigation interrupts the prescriptive period.

Held: If there is a conflict between Act No. 3326 and Rule 110 of the Rules on Criminal Procedure, the former must prevail. **Prescription in criminal cases is a substantive right.**⁴⁵⁵

Illustrative case where retroactive application of a ruling will affect substantive right:

LBP v. De Leon, 399 SCRA 376

Facts: The Supreme Court ruled that in accordance with Section 60 of the Comprehensive Agrarian Reform Law, appeals from the Special Agrarian Courts should be made by filing a petition for review instead of merely filing a notice of appeal. Petitioner filed a motion for reconsideration, in which it prayed that the ruling be applied prospectively.

Held: Before the case reached the Supreme Court, petitioner had no authoritative guideline on how to appeal decision of Special Agrarian Courts in the light of seemingly conflicting provisions of Section 60 and 61 of the Comprehensive Agrarian Reform Law, because Section 61 provided that review shall be governed by the Rules of Court. The Court of Appeals had rendered conflicting decisions on this precise issue. Hence, the decision of the Supreme Court should be applied prospectively because it affects substantive right. If the ruling is given retroactive application, it will prejudice the right of appeal of petitioner because its pending appeals in the Court of Appeals will be dismissed on a mere technicality thereby, sacrificing their substantial merits.⁴⁵⁶

⁴⁵¹ Jacinto Jimenez, Political Law Compendium 344 (2006 ed.)

⁴⁵² Jacinto Jimenez, Political Law Compendium, 342 (2006 ed.)

⁴⁵³ Jacinto Jimenez, Political Law Compendium, 343 (2006 ed.)

⁴⁵⁴ Jacinto Jimenez, Political Law Compendium, 343 (2006 ed.)

⁴⁵⁵ Jacinto Jimenez, Political Law Compendium, 343 (2006 ed.)

⁴⁵⁶ Jacinto Jimenez, Political Law Compendium, 345 (2006 ed.)

5. Rules Concerning the protection and enforcement of constitutional rights; Rules Concerning pleading, practice and procedure in courts

Power to Make Rules; Writ of Amparo.

The Rules on the Writ of Amparo is promulgated by the Court based on its power to promulgate rules for the protection and enforcement of constitutional rights. In light of the prevalence of extra legal killing and enforced disappearances, the Supreme Court resolved to exercise for the first time its power to promulgate rules to protect our people's constitutional rights.

Writ of Amparo (1991 Bar Question)

a. **Etymology.** "Amparo" comes from Spanish verb "amparar" meaning "to protect.

b. **Nature:** A writ to protect right to life, liberty and security of persons.

c. **Section 1 of The Rule on the Writ of Amparo:** "The petition for a writ of amparo is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by unlawful act or omission of a public official or employee, or of a private individual or entity. The writ shall cover extralegal killings and enforced disappearances or threats thereof." (Note that not all constitutional rights are covered by this Rule; only right to life, liberty and security)

Writ of Habeas Data. The writ of habeas data is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party. (Section 1, The Rule on the Habeas Data)

Writ of Kalikasan. The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces. (Rule 7, Rule of Procedure in Environmental Cases)

See Internal Rules of the Surpeme Court A.M. 10-4-20-SC

In Re: Request for Creation of Special Division, A.M. No. 02-1-07-SC (2002): It was held that it is within the competence of the Supreme Court, in the exercise of its power to promulgate rules governing the enforcement and protection of constitutional rights and rules governing pleading, practice and procedure in all courts, to create a Special Division in the Sandiganbayan which will hear and decide the plunder case of Joseph Estrada.

Regulation of Demonstrations

Facts: Petitioner applied for a permit to hold a rally in from of the Justice Hall to protest the delay in the disposition of the cases of his clients. The mayor refused to issue the permit on the ground that it was prohibited by the Resolution of the Supreme Court dated July 7, 1998, which prohibited rallies within two hundred meters of any court building. Petitioners argued that the Resolution amended the Public Assembly Act in violation of the separation of powers.

Held: The existence of the Public Assembly Act does not preclude the Supreme Court from promulgating rules regulating the conduct of demonstration in the vicinity of courts to assure the people of an impartial and orderly administration of justice as mandate by the Constitution. (In re Valmonte, 296 SCRA xi)

Requirement of International Agreement

Facts: The Philippines signed the Agreement establishing the World Trade Organization. The Senate passed a resolution concurring in its ratification by the President.

Petitioners argued that Article 34 of the General Provisions and Basic Principles of the Agreement on Trade-Related Aspects of Intellectual Property Rights is unconstitutional. Article 34 requires members to create a **disputable presumption in civil proceedings** that a product shown to be identical to one produced with the use of a patented process shall be deemed to have been obtained by **illegal use of the patented process** if the product obtained by the patented process is new or there is a substantial likelihood that the identical product was made with the use of the patented process but the owner of the patent could not determine the exact process used in obtaining the identical product. **Petitioners argued that this impaired the rule-making power of the Supreme Court.**

Held: Article 34 should present no problem. Section 60 of the Patent Law provides a similar presumption in cases of infringement of a patented design or utility model. Article 34 does not contain an unreasonable burden as it is consistent with due process and the adversarial system. Since the Philippines is signatory to most international

conventions on patents, trademarks and copyrights, **the adjustment in the rules of procedure will not be substantial.** (Tanada v. Angara, 272 SCRA 18)⁴⁵⁷

Power to Suspend Its Own Rules. Section 5(5) of the Constitution gives this Court the power to "[p]romulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts." This includes an inherent power to suspend its own rules in particular cases in order to do justice.⁴⁵⁸

6. Admission to the Practice of Law

Rule on Conduct of Officials. Section 90 of the Local Government Code which prohibits lawyers who are members of a local legislative body to practice law is not an infringement on the power of the Court to provide for rules for the practice of law. The law must be seen not as a rule on practice of law but as a rule on the conduct of officials intended to prevent conflict of interest. (Javellana v. DILG, 1992)

Bar Flunkers Act. After the Supreme Court has declared candidates for the bar as having flunked the examinations, Congress may not pass a law lowering the passing mark and declaring the same candidates as having passed. This would amount to not just amending the rules but reversing the Court's *application* of an existing rule. (*In re Cunanan*, 94 phil 534 (1954))

Nullification of Bar Results. In 2003, the Court nullified the results of the exams on Commercial Law when it was discovered that the Bar questions had been leaked. (Bar matter No. 1222, 2004)

Parliamentary Freedom of Speech v SC's Power to Discipline

Facts: Senator Miriam Defensor-Santiago made this speech on the Senate floor. "x x x I am not angry. I am irate. I am foaming in the mouth. I am homicidal. I am suicidal. I am humiliated, debased, degraded. And I am not only that, I feel like throwing up to be living my middle years in a country of this nature. I am nauseated. I spit on the face of Chief Justice Artemio Panganiban and his cohorts in the Supreme Court, I am no longer interested in the position [of Chief Justice] if I was to be surrounded by idiots. I would rather be in another environment but not in the Supreme Court of idiots x x x." Pobre asks that disbarment proceedings or other disciplinary actions be taken against the lady senator.

⁴⁵⁷ Jacinto Jimenez, Political Law Compendium, 347 (2006 ed.)

⁴⁵⁸ *Lim et al v CA*, G.R. No. 149748, November 16, 2006.

Issue: May Senator Santiago be disbarred or be imposed with disciplinary sanction for her intemperate and highly improper speech made on the senate floor?

Held: No. A lawyer-senator who has crossed the limits of decency and good professional conduct by giving statements which were intemperate and highly improper in substance may not be disbarred or be imposed with disciplinary sanctions by the Supreme Court.

It is true that parliamentary immunity must not be allowed to be used as a vehicle to ridicule, demean, and destroy the reputation of the Court and its magistrates, nor as armor for personal wrath and disgust. However, courts do not interfere with the legislature or its members in the manner they perform their functions in the legislative floor or in committee rooms. Any claim of an unworthy purpose or of the falsity and mala fides of the statement uttered by the member of the Congress does not destroy the privilege. The disciplinary authority of the assembly and the voters, not the courts, can properly discourage or correct such abuses committed in the name of parliamentary immunity. (Pobre v. Defensor-Santiago, 2009)

(See Estrada v. Sandiganbayan, GR No. 159486: Suspension of Atty. Allan Paguia)

7. Integration of the Bar

a. Bar - refers to the collectivity of all persons whose names appear in the Roll of Attorneys.

b. Integration of the Philippine Bar - means the official unification of the entire lawyer population of the Philippines. This requires membership and financial support (in reasonable amount) of every attorney as conditions *sine qua non* to the practice of law and the retention of his name in the Roll of Attorneys of the Supreme Court. (*In re* Integration of the Bar of the Philippines)

c. Purpose of an integrated Bar, in general are:

1. Assist in the administration of justice;
2. Foster and maintain, on the part of its members, high ideals of integrity, learning, professional competence, public service and conduct;
3. Safeguard the professional interests of its members;
4. Cultivate among its members a spirit of cordiality and brotherhood;
5. Provide a forum for the discussion of law, jurisprudence, law reform, pleading, practice, and procedure, and the relation of the Bar to the Bench and to the public, and public relation relating thereto;
6. Encourage and foster legal education;
7. Promote a continuing program of legal research in substantive and adjective law, and make reports and recommendations thereon; and



8. Enable the Bar to discharge its public responsibility effectively (*In re Integration of the Bar of the Philippines*)

d. In re: Atty. Marcial Edillon. In this case, Atty. Edillon objects to the requirement of membership in the integrated bar as a pre-condition to the practice of law. This gave the Court the opportunity to ventilate some basic notions underlying bar integration.

1. The practice of law is a privilege that is subject to reasonable regulation by the State;
2. Bar integration is mandated by the Constitution;
3. The lawyer is not being compelled to join the association. Passing the bar examination already made him a member of the bar. The only compulsion to which he is subjected is the **payment of annual dues**, and this is justified by the need for elevating the quality of legal profession;
4. The Constitution vests in the SC plenary powers regarding admission to the bar.

e. Letter of Atty Arevalo, 2005. Payment of dues is a necessary consequence of membership in the Integrated Bar of the Philippines, of which no one is exempt. This means that the compulsory nature of payment of dues subsists as long as one's membership in the IBP remains regardless of the lack of practice of, or the type of practice, the member is engaged in.⁴⁵⁹

8. Congress and the Rules of Court

Bernas Primer: Rules issued by the Supreme Court may be repealed, altered, or supplemented by Congress because Congress has plenary legislative power. The silence of the Constitution on the subject can only be interpreted as meaning that there is no intention to diminish that plenary power. In fact, RA 8974 which requires full payment before the sate may exercise proprietary rights, contrary to Rule 67 which requires a deposit, was recognized by Court in *Republic v. Gingoyon, 2005*. (*An earlier obiter dictum in Echegaray v. Sec. of Justice, 1999, said that Congress has no power to amend Rules. This was repeated by Puno and Carpio in dissent in Republic v. Gingoyon*)⁴⁶⁰

Nachura (2006): Congress cannot amend the Rules of Court. "The 1987 Constitution took away the power of Congress to repeal, alter or supplement rules concerning pleading and procedure. In fine, the power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with Congress, more so with

the Executive." *Echagaray v. Secretary of Justice* (1999)

ASM: Follow Bernas' view. Article XVIII, Section 10 provides: "The provisions of the existing Rules of Court, judiciary acts, and procedural laws not inconsistent with this Constitution shall remain operative ***unless amended or repealed by the Supreme Court or the Congress***"

H. Appointment of Court Personnel

The authority of the Supreme Court to appoint its own official and employees is another measure intended to safeguard the independence of the Judiciary. However, the Court's appointing authority must be exercised "in accordance with the Civil Service Law."⁴⁶¹

Note that Section 5(6) empowers the Supreme Court not only to appoint its own officials and employees but of the Judiciary itself.

It should also be recalled that courts may be given authority by Congress "to appoint officers lower in rank." (art. 7 §16)

I. Administrative Supervision of Courts

Strengthens Independence. Section 6 provides that the Supreme Court shall have administrative supervision by the Supreme Court over all lower courts and the personnel thereof. It is a significant innovation towards strengthening the independence of the judiciary. Before 1973 Constitution, there was no constitutional provision on the subject and administrative supervision over the lower courts and their personnel was exercised by the Secretary of Justice.⁴⁶² The previous set-up impaired the independence of judges who tended to defer to the pressures and suggestions of the executive department in exchange for favorable action on their requests and administrative problems.⁴⁶³

Exclusive Supervision. Article VIII, Section 6 exclusively vests in the Supreme Court administrative supervision over all courts and court personnel, from the Presiding Justice of the Court of Appeals down to the lowest municipal trial court clerk. By virtue of this power, it is only the Supreme Court that can oversee the judges' and court personnel's compliance with all laws, and take proper administrative action against them if they commit any violation thereof. *No other branch of government may intrude into this power, without*

⁴⁵⁹ Letter of Atty. Cecilio Y. Arevalo, Requesting Exemptions from Payment of IBP Dues, May 9, 2005.

⁴⁶⁰ Bernas Primer at 352 (2006 ed.)

⁴⁶¹ Bernas Commentary, p 979 (2003 ed).

⁴⁶² Bernas Commentary, p 979 (2003 ed).

⁴⁶³ Cruz, Philippine Political Law, p. 264 (1995 ed).

running afoul to the doctrine of separation of powers. (Maceda v. Vasquez)

Ombudsman and SC's Power of Supervision.

The Ombudsman may not initiate or investigate a criminal or administrative complaint before his office against a judge; the Ombudsman must first indorse the case to the Supreme Court for appropriate action. (Fuentes v. Office of Ombudsman, 2001)

Administrative Proceeding, Confidential.

Administrative proceedings before the Supreme Court are confidential in nature in order to protect the respondent therein who may turn out to be innocent of the charges. (Godinez v. Alano, 1999)

According to Bernas, the power of administrative supervision of the Supreme Court, includes the power [sitting en banc] to discipline judges of lower courts, or order their dismissal.⁴⁶⁴

J. Disciplinary Powers

Section 11

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

1. Power to Discipline

The power of the Supreme Court to discipline judges of inferior courts or to order their dismissal is exclusive. It may not be vested in any other body. Nor may Congress pass a law that judges of lower courts are removable by impeachment.⁴⁶⁵

2. Disciplinary Actions

Besides removal, such other disciplinary measures as suspension, fine and reprimand can be meted out by the Supreme Court on erring judges.⁴⁶⁶

3. Requirement for Disciplinary Actions

Disciplinary Action	Decision
Dismissal of judges, Disbarment of a lawyer, suspension of either for more than 1 year or a fine exceeding 10,000 pesos (<i>People v. Gacott</i>)	Decision <i>en banc</i> (by a vote of a majority of the members who actually took part in the deliberations on the issues in the case and voted thereon)

⁴⁶⁴ Bernas Commentary, p 979 (2003 ed).

⁴⁶⁵ Bernas Commentary, p 988 (2003 ed).

⁴⁶⁶ Cruz, Philippine Political Law, p. 267 (1995 ed).

Other disciplinary actions	Decision of a division is sufficient (<i>People v. Gacott</i>)
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4. SC Determines what "good behavior" is.

Judges of lower courts shall hold office during **good behavior** until they reach the age of seventy years or become **incapacitated** to discharge the duties of their office.

It is submitted that the Supreme Court alone can determine what good behavior is, since the SC alone can order their dismissal.⁴⁶⁷

5. SC Determines whether a judge has become incapacitated

The power to determine incapacity is part of the overall administrative power which the Supreme Court has over its members and over all the members of the judiciary.⁴⁶⁸

K. Contempt Powers

One of the essential powers of every court under our system of government is that of punishing for contempt persons who are guilty of disobedience to its orders or for disrespect to its authority. The punishment is either imprisonment or fine.⁴⁶⁹

"While it is sparingly to be used, yet the power of courts to punish for contempts is a necessary and integral part of the independence of judiciary, and is absolutely essential to the performance of the duties imposed on them by law. Without it they are mere boards of arbitration, whose judgments and decrees would only be advisory."⁴⁷⁰

L. Annual Report

Section 16. The Supreme Court shall, within thirty days from the opening of each regular session of the Congress, submit to the President and the Congress an annual report on the operations and activities of the Judiciary

The purpose of this provision is not to subject the Court to the President and to the Congress but simply to enable the judiciary to inform government about its needs. (I RECORD 510-512)⁴⁷¹

The annual report required under this provision can be the basis of appropriate legislation and government policies intended to improve the administration of justice and strengthen the independence of judiciary.⁴⁷²

⁴⁶⁷ Bernas Commentary, p 987(2003 ed).

⁴⁶⁸ Bernas Commentary, p 988(2003 ed).

⁴⁶⁹ Sinco, Philippine Political Law, p 372 (1954ed).

⁴⁷⁰ Gompers v. Buck's Stove and Range co., 221 US 418.

⁴⁷¹ Bernas Commentary, p 1000 (2003 ed).

VI. Judicial Review

Definition of Judicial Review
Constitutional Supremacy
Functions of Judicial Review
Who May Exercise
Requisites of Judicial Review
Political Questions
Effect of Declaration of Unconstitutionality
Partial Unconstitutionality
Judicial Review by Lower Courts
Modalities of Constitutional Interpretation

A. Definition

Judicial review is the power of the courts to test the validity of governmental acts in light of their conformity to a higher norm (e.g. the constitution.)
 –asm

The power of judicial review is the Supreme Court's power to declare a law, treaty, international or executive agreement, presidential decree, proclamation, order, instruction, ordinance, or regulation unconstitutional. This power is explicitly granted by Section 5(2), (a) and (b).⁴⁷³ Judicial Review is an aspect of Judicial Power.⁴⁷⁴

Theory of Judicial Review. The Constitution is the supreme law. It was ordained by the people, the ultimate source of all political authority. It confers limited powers on the national government. If the government consciously or unconsciously oversteps these limitations there must be some authority competent to hold it in control, to thwart its unconstitutional attempt, and thus to vindicate and preserve inviolate the will of the people as expressed in the Constitution. This power the courts exercise. This is the beginning and the end of the theory of judicial review.⁴⁷⁵

Judicial Review in Philippine Constitution. Unlike the US Constitution⁴⁷⁶ which does not provide for the exercise of judicial review by their Supreme Court, the Philippine Constitution

⁴⁷² Cruz, Philippine Political Law, p. 277 (1995 ed).

⁴⁷³ Bernas Primer at 341 (2006 ed.)

⁴⁷⁴ Bernas Commentary, p 937(2003 ed).

⁴⁷⁵ Howard L. MacBain, "Some Aspects of Judicial Review," Bacon Lectures on the Constitution of the United States (Boston: Boston University Heffernan Press, 1939), pp. 376-77 cited in David v. Arroyo.

⁴⁷⁶ The case of *Marbury v. Madison* established the doctrine of judicial review as a core legal principle in American constitutional system: "So if a law be in opposition to the constitution; of both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is the very essence of judicial duty."

expressly recognizes judicial review in Section 5(2) (a) and (b) of Article VIII of the Constitution.

B. Principle of Constitutional Supremacy

Judicial review is not an assertion of superiority by the courts over the other departments, but merely an expression of the supremacy of the Constitution.⁴⁷⁷ Constitutional supremacy produced judicial review, which in turn led to the accepted role of the Court as "the ultimate interpreter of the Constitution."⁴⁷⁸

C. Functions of Judicial Review

1. **Checking-** invalidating a law or executive act that is found to be contrary to the Constitution.
2. **Legitimizing-** upholding the validity of the law.
Rule on the Double Negative- Uses the term "not unconstitutional"; the court cannot declare a law constitutional because it already enjoys a presumption of constitutionality
3. **Symbolic**⁴⁷⁹- to educate the bench and the bar as the controlling principles and concepts on matters of great public importance.

In a Separate Opinion in *Francisco v. HR*, Mr. Justice Adolf Azcuna remarked:

"The function of the Court is a necessary element not only of the system of checks and balances, but also of a **workable and living Constitution**. For absent an agency, or organ that can rule, with finality, as to what the terms of the Constitution mean, there will be **uncertainty if not chaos** in governance... This is what... Hart calls the need for a Rule of Recognition in any legal system..."

D. Who May Exercise

1. Supreme Court
2. Inferior Courts

E. Requisites of Judicial Inquiry/Judicial Review (1994 Bar Question)

Essential Requisites (APEN)

1. There must be an **actual case** or controversy; The question involved must be **ripe** for adjudication.
2. The question of constitutionality must be raised by the **proper party**;

⁴⁷⁷ *Angara v. Electoral Commission*, 63 Phil 139.

⁴⁷⁸ See *Cooper v. Aaron*, 358 US 1 (1956)

⁴⁷⁹ "The Court also has the duty to formulate guiding and controlling constitutional principles, precepts, doctrines, or rules. It has the symbolic function of educating bench and bar on the extent of protection given by constitutional guarantees." (*Salonga v. Pano*, 134 SCRA 438, 1985)

Auxiliary Rules

3. The constitutional question must be raised at the **earliest possible opportunity**;
4. The decision of the constitutional question must be **necessary** to the determination of the case itself.

(Read the case of *Francisco v. HR and David v. Arroyo* in the original)

1. Actual Case

Actual Case or controversy involves a **conflict of legal rights**, an assertion of opposite legal claims susceptible of judicial determination.⁴⁸⁰

The case must **not** be:

1. Moot or academic or
2. Based on extra-legal or other similar consideration not cognizable by courts of justice.⁴⁸¹
3. A request for advisory opinion.⁴⁸²
4. Hypothetical or feigned constitutional problems
5. Friendly suits collusively arranged between parties without real adverse interests⁴⁸³

Moot Case. A moot case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness.

However, Courts will decide cases, otherwise moot and academic, if:

1. There is a grave violation of the Constitution;
2. The exceptional character of the situation and the paramount public interest is involved
3. When the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and
4. The case is capable of repetition yet evading review. (Province of Batangas vs. Romulo, 429 SCRA 736; David v. Arroyo (2006) Quizon v. Comelec, G.R. No. 177927, February 15, 2008; Province of North Cotabato v GRP)

⁴⁸⁰ Cruz, Philippine Political Law, p. 241 (1995 ed).

⁴⁸¹ Cruz, Philippine Political Law, p. 241 (1995 ed); See Cawaling v. COMELEC, 368 SCRA 453)

⁴⁸² Cruz, Philippine Political Law, p. 242 (1995 ed).

⁴⁸³ Bernas Commentary, p 938(2003 ed).

The requirement of actual controversy encompasses concepts such as ripeness, standing, and the prohibition against advisory judicial rulings (*BP Chemicals v. UCC*, 4 F.3d 975)

Ripeness Doctrine. The requirement that a case be ripe for judgment before a court will decide the controversy. **Ripeness** refers to readiness for adjudication,

Rationale. To prevent the courts, through premature adjudication, from entangling themselves in abstract disagreements.

When Not Ripe. A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.⁴⁸⁴

Ripeness and Standing.

A simple description of the requirements of standing and ripeness is found in the words of Justice Stone in *Nashville v. Wallace*. In that opinion he referred to: "valuable legal rights... threatened with imminent invasion." The valuable legal rights constitute the standing and the **threat of imminent invasion constitute the ripeness.**⁴⁸⁵

2. Standing/Proper Party (1992, 1995 Bar Question)

Proper Party- A proper party is one who has sustained or is in immediate danger of sustaining an injury in result of the act complained of.⁴⁸⁶

Locus Standi refers to the **right of appearance** in a court of justice on a given question. (Black)

General Rule:

Direct Interest Test: The persons who impugn the validity of a statute must have a "personal and substantial interest in the case such that he has sustained or will sustain, direct injury as a result.

Exceptions:

1. Cases of transcendental importance or of paramount public interest or involving an issue of overarching significance.
2. Cases of Proclamation of martial law and suspension of the privilege of the writ of habeas corpus where **any citizen** may challenge the

⁴⁸⁴ *Texas v. United States*, 523 U.S. 296, 300 (1998).

⁴⁸⁵ Jerre S. Williams, Constitutional Analysis 16, (1979).

⁴⁸⁶ *Ex Parte Levitt*, 303 US 633; *People v. Vera* 65 Phil 58, 89 (1937).

- proclamation of suspension. (art.7 §18)
3. The right to information on matters of public concern and the right to access to public documents has been recognized as accruing to mere citizenship. (Legaspi v. CSC, 150 SCRA 530 (1987))
 4. Facial Challenge (?)

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REQUISITES of standing:

A citizen can raise a constitutional question only when:

1. **Injury:** He can show that he has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government;
2. **Causation:** The injury is fairly traceable to the challenged action; and
3. **Redressability:** A favorable action will likely redress the injury. (Francisco v. Fernando GR 166501, 2006)

In a **public suit**, where the plaintiff asserts a public right in assailing an allegedly illegal official action, our Court adopted the “direct injury test” in our jurisdiction. (David v. Arroyo)

Direct Injury Test: The persons who impugn the validity of a statute must have a **“personal and substantial interest in the case such that he has sustained or will sustain, direct injury as a result.** (David v. Arroyo) (See People v. Vera, 65 Phil 58, 89 (1937)).

By way of summary, the following rules may be culled from the cases decided by the Supreme Court. Taxpayers, voters, concerned citizens, and legislators may be accorded standing to sue, provided that the following requirements are met:

1. the cases involve constitutional issues
2. for **taxpayers**, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
3. for **voters**, there must be a showing of obvious interest in the validity of the election law in question;
4. for **concerned citizens**, there must be a showing that the issues raised are of transcendental importance which must be settled early;
5. for **legislators**, there must be a claim that the official action complained of infringes

upon their prerogatives as legislators
 [David v. Arroyo G.R. No. 171396 (2006)]

Illustrative Cases showing existence of standing:

Facts: Petitioners filed a case as **taxpayers** questioning the validity of the contract between DOTC and respondent by virtue of which respondent agreed to build and lease to the DOTC a light railway transit system. Respondent claimed that petitioners had no standing to file the action.

Held: Taxpayers may file action questioning contracts entered into by government on the ground that the contract is in contravention of the law. (Tatad v. Garcia, 243 SCRA 436)⁴⁸⁷

Facts: Petitioners who were Filipino **citizens** and taxpayers, questioned the constitutionality of the IPRA on the ground that it deprived the State of ownership over lands of the public domain and the natural resources in them in violation of Section 2, Article XII of the Constitution.

Held: As, citizens, petitioners possess the public right to ensure that the national patrimony is not alienated and diminished in violation of the Constitution. Since the government holds it for the benefit of the Filipinos, a citizen had sufficient interest to maintain a suit to ensure that any grant of concession covering the national patrimony strictly complies with the constitutional requirements.

In addition, the IPRA appropriate funds. Thus, it is a valid subject of a taxpayer’s suit. (Cruz v. Secretary of Environment and Natural Resources, 347 SCRA 128)⁴⁸⁸

Facts: Petitioner, a **senator**, questioned the constitutionality of Administrative Order No. 308 which provided for the establishment of a national computerized identification reference system. Petitioner contends that the AO usurps legislative power. The government questioned his standing to file the case.

Held: As a senator, petitioner is possessed of the requisite standing to bring suit raise the issue that the issuance of AO 308 is a usurpation of legislative power. (Ople v. Torres, 293 SCRA 141)⁴⁸⁹

Facts: Petitioners, who are minors, filed a case to compel the Secretary of Environment and Natural Resources to cancel the timber license agreements and to desist from issuing new ones on the ground that deforestation has resulted in damage to the environment. The Secretary of argued that petitioners has no cause of action.

Held: SC said that Petitioners have a right to a sound environment, this is incorporated in Section 16 of Article II.

SC also said that Petitioners have personality to sue based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned. *“We find no difficulty*

⁴⁸⁷ Jacinto Jimenez, Political Law Compendium, 333 (2006 ed.)

⁴⁸⁸ Jacinto Jimenez, Political Law Compendium, 334 (2006 ed.)

⁴⁸⁹ Jacinto Jimenez, Political Law Compendium, 336 (2006 ed.)

in ruling that they can, for themselves, for others of their generation and for the succeeding generation. Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced ecology is concerned.” (Oposa v. Factoran, 1993)

Illustrative Cases showing absence of standing:

Facts: Upon authorization of the President, the PCGG ordered the sale at public auction of paintings by old masters and silverware alleged to be illgotten wealth of former President Marcos, his relatives, and friends. Petitioners, who were Filipino citizens, taxpayers, and artist, filed a petition to restrain the auction.

Held: Petitioners have no standing to restrain the public auction. The paintings were donated by private persons to the MMA who owns them. The pieces of silverware were given to the Marcos couple as gifts on their silver wedding anniversary. Since the petitioners are not the owners of the paintings and the silverware, they do not possess any right to question their dispositions. (Joya v. PCGG, 225 SCRA 586)⁴⁹⁰

Facts: Petitioner filed a petition in his capacity as a **taxpayer** questioning the constitutionality of the creation of 70 positions for presidential advisers on the ground that the President did not have the power to create these positions.

Held: Petitioner has not proven that he has sustained any injury as a result of the appointment of the presidential advisers. (Gonzales v. Narvasa, 337 SCRA 437)⁴⁹¹

Facts: In view of the increase in violent crimes in Metropolitan Manila, the President ordered the PNP and the Philippine Marines to conduct joint visibility patrols for the purpose of crime prevention and suppression. Invoking its responsibility to uphold the rule of law, the Integrated Bar of the Philippines questioned the validity of the order.

Held: the mere invocation of the IBP of the Philippines of its duty to preserve the rule of law is not sufficient to clothe it with standing in this case. This is too general an interest which is shared by the whole citizenry. The IBP has not shown any specific injury it has suffered or may suffer by virtue of the questioned order. The IBP projects as injurious the militarization of law enforcement which might threaten democratic institutions. The presumed injury is highly speculative. (IBP v. Zamora, 338 SCRA 81)⁴⁹²

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Transcendental Importance Being a mere procedural technicality, the requirement of *locus standi* may be waived by the Court in the exercise of its discretion. Thus, the Court has adopted a rule that even where the petitioners

⁴⁹⁰ Jacinto Jimenez, Political Law Compendium, 337 (2006 ed.)

⁴⁹¹ Jacinto Jimenez, Political Law Compendium, 338 (2006 ed.)

⁴⁹² Jacinto Jimenez, Political Law Compendium, 339 (2006 ed.)

have failed to show direct injury, they have been allowed to sue under the principle of **“transcendental importance.”** [David v. Arroyo G.R. No. 171396 (2006)]

When an Issue Considered of Transcendental Importance:

An issue is of transcendental importance because of the following:

- (1) the character of the funds or other assets involved in the case;
- (2) the presence of a clear disregard of a constitutional or statutory prohibition by an instrumentality of the government; and
- (3) the lack of any other party with a more direct and specific interest in raising the question. (Francisco vs. House of Representatives, 415 SCRA 44; Senate v. Ermita G.R. No. 169777 (2006))

Facial Challenge⁴⁹³.

The established rule is that a party can question the validity of a statute only if, as applied to him, it is unconstitutional. The exception is the so-called “facial challenge.” But the only time a facial challenge to a statute is allowed is when it operates in the area of freedom of expression. In such instance, the “overbreadth doctrine” permits a party to challenge to a statute even though, as applied to him, it is not unconstitutional, but it might be if applied to others not before the Court whose activities are constitutionally protected. Invalidation of the statute “on its face”, rather than “as applied”, is permitted in the interest of preventing a “chilling effect” on freedom of expression (Justice Mendoza’s concurring opinion in Cruz v. DENR, G.R. No. 135395, December 06, 2000) A facial challenge to a legislative act is the most difficult challenge to mount successfully since the challenge must establish that no set of circumstances exists under which the act would be valid. (Estrada v. Sandiganbayan, G.R. No. 148560, November 19, 2001)⁴⁹⁴

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Bernas: In sum, it may be said that the concept of *locus standi* as it exists in Philippine jurisprudence now has departed from the rigorous American concept.⁴⁹⁵

3. Earliest Opportunity

⁴⁹³ Facial Challenge is a manner of challenging a statute in court, in which the plaintiff alleges that the statute is always, and under all circumstances, unconstitutional, and therefore void.

⁴⁹⁴ Antonio B. Nachura, Outline/Reviewer in Political Law 23 (2006 ed.)

⁴⁹⁵ Bernas Commentary, p 949(2003 ed).

General Rule: Constitutional question must be raised at the earliest possible opportunity, such that if it is not raised in the pleadings, it cannot be considered at the trial, and, if not considered in trial, cannot be considered on appeal.

Exceptions:

1. In criminal cases, the constitutional question can be raised at any time in the discretion of the court.
2. In civil cases, the constitutional question can be raised at any stage if it is necessary to the determination of the case itself.
3. In every case, except where there is estoppel, the constitutional question may be raised at any stage if it involves jurisdiction of the court.⁴⁹⁶

4. Necessity/ Lis Mota

Rule: The Court will not touch the issue of unconstitutionality unless it really is **unavoidable or is the very *lis mota***.⁴⁹⁷

Reason: The reason why courts will as much as possible avoid the decision of a constitutional question can be traced to the doctrine of separation of powers which enjoins upon each department a proper respect for the acts of the other departments. The theory is that, as the joint act of the legislative and executive authorities, a law is supposed to have been carefully studied and determined to be constitutional before it was finally enacted. Hence, as long as there is some other basis that can be used by the courts for its decision, the constitutionality of the challenged law will not be touched and the case will be decided on other available grounds.⁴⁹⁸

Motu Propio Exercise of Judicial Review. While courts will not ordinarily pass upon constitutional questions which are not raised in the pleadings, a court is not precluded from inquiring into its own jurisdiction or be compelled to enter a judgment that it lacks jurisdiction to enter. Since a court may determine whether or not it has jurisdiction, it necessarily follows that it can inquire into the constitutionality of a statute on which its jurisdiction depends. (Fabian v. Desierto, 295 SCRA 470)⁴⁹⁹

⁴⁹⁶ Cruz, Philippine Political Law, p. 247 (1995 ed).

⁴⁹⁷ Bernas Commentary, p 952(2003 ed).

⁴⁹⁸ Cruz, Philippine Political Law, p. 247 (1995 ed).

⁴⁹⁹ Jacinto Jimenez, Political Law Compendium, 330 (2006 ed.)

Read Province of North Cotabato v. GRP for mootness and ripeness.

F. Political Questions (1995 Bar Question)

Justiciable v. Political Question

Definition of Political Question

Guidelines (Baker v. Carr)

Justiciable v. Political

Suspension of Writ and Proclamation of ML

Calling Our Power of the President

Impeachment of a Supreme Court Justice

1. Justiciable v. Political Questions

The distinction between justiciable and political questions can perhaps best be illustrated by the suspension or expulsion of a member of Congress, which must be based upon the ground of "disorderly behavior" and concurred in by at least 2/3 of all his colleagues. The determination of what constitutes disorderly behavior is a political question and therefore not cognizable by the court; but the disciplinary measure may nonetheless be disauthorized if it was supported by less than the required vote. The latter issue, dealing as it does with a procedural rule the interpretation of which calls only for mathematical computation, is a justiciable question.⁵⁰⁰

2. Political Questions, Definition

Political questions are those questions which under the Constitution are:

1. To be decided by the people in their sovereign capacity, or
2. In regard to which full discretionary authority has been delegated to the legislative or executive branch of the government.⁵⁰¹ (Tanada v. Cuenco, 1965)

Political questions connotes "**questions of policy.**" It is concerned with **issues dependent upon the wisdom**, not legality, of a particular measure. (Tanada v. Cuenco)

3. Guidelines for determining whether a question is political.

Textual Kind

⁵⁰⁰ Cruz, Philippine Political Law, p. 78(1995 ed).

⁵⁰¹ Cruz: Where the matter falls under the discretion of another department or especially the people themselves, the decision reached is in the category of a political question and consequently may not be the subject of judicial review.

Accordingly, considerations affecting the wisdom, efficacy or practicability of a law should come under the exclusive jurisdiction of Congress. So too, is the interpretation of certain provisions of the Constitution, such as the phrase "other high crimes" as ground for impeachment.

1. A textually demonstrable constitutional commitment of the issue to a political department;

Functional Kind

2. Lack of judicially discoverable and manageable standards for resolving it;
3. Impossibility of deciding a case without an initial determination of a kind clearly for non-judicial discretion; (*Baker v. Carr*, 369 US 186 (1962))⁵⁰²

Prudential Type

4. Impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of the government;
5. An unusual need for unquestioning adherence to a political decision already made;
6. Potentiality of embarrassment from multifarious pronouncements by various departments. (*Baker v. Carr*, 369 US 186 (1962))

(Bernas submits that the Grave Abuse Clause has eliminated the prudential type of political questions from Philippine jurisprudence.⁵⁰³ Hence, the question is not political even there is an "unusual need for questioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question."⁵⁰⁴)

Examples of Textual Kind⁵⁰⁵:

1. **Alejandrino v. Quezon 26 Phil 83 (1924)**: The SC through Justice Malcolm held, "Mandamus will not lie against the legislative body, its members, or its officers, to compel the performance of duties purely legislative in their character which therefore pertain to their legislative functions and over which they have exclusive control."
2. **Osmena v. Pendatun 109 Phil 863 (1960)**: The SC refused to interpose itself in the matter of suspension of Osmena Jr., for a speech delivered on the floor of Congress. Whether he committed "disorderly behavior" was something in regard to which full discretionary authority had been given to the legislature.
3. **Arroyo v. De Venecia, 1997**: The issue in this case was whether the Court could intervene in a case where the House of Representatives was said to have disregarded its own rule. The Court said it could not

⁵⁰² Bernas Commentary, p 959(2003 ed); Bernas Primer at 348 (2006 ed.)

⁵⁰³ See Bernas Commentary, p 959 (2003 ed)

⁵⁰⁴ Bernas Primer at 348 (2006 ed.)

⁵⁰⁵ Bernas Commentary, p 954(2003 ed).

because the matter of formulating rules have been textually conferred by the Constitution on Congress itself. Hence, provided that no violation of a constitutional provisions or injury to private rights was involved, the Court was without authority to intervene.

4. **Santiago v. Guingona, 1998**: Dispute involved is the selection of a Senate Minority leader whose position is not created by the Constitution but by Congressional rules.

Examples of Functional Kind⁵⁰⁶:

1. **Tobias v. Abalos, 1994; Mariano v. COMELEC, 1995**: Apportionment of representative districts is not a political question because there are constitutional rules governing apportionment.
2. **Daza v. Singson, 1989; Coseteng v. Mitra, 1990; Guingona v. Gonzales, 1992**: The Court intervened in the manner of forming the Commission on Appointments.
3. **Bondoc v. Pineda**: The Court invalidated the expulsion of a member of the House Electoral Tribunal.

(All these were done by the Court because it found applicable legal standards.)

4. Grave Abuse Clause and Political Questions

Again, the 'broadened concept' of judicial power is not meant to do away with the political questions doctrine itself. The concept must sometimes yield to separation of powers, to the doctrine on "political questions" or to the "enrolled bill" rule.⁵⁰⁷ (1995 Bar Question)

5. Suspension of the Writ of HC and Proclamation of Martial Law

The action of the President and the Congress shall be subject to review by the Supreme Court which shall have the authority to determine the sufficiency of the factual basis of such action. This matter is no longer considered a political question.⁵⁰⁸

6. President's action in calling out the armed forces

It may be gathered from the broad grant of power that the actual use to which the President puts the armed forces, is unlike the suspension of the privilege of writ of habeas corpus, not subject to judicial review.⁵⁰⁹

But, while the Court considered the President's "calling-out" power as a discretionary power solely vested in his wisdom and that it cannot be called upon to overrule the President's wisdom or

⁵⁰⁶ Bernas Commentary, p 957(2003 ed).

⁵⁰⁷ See Bernas Commentary, p 919-920 (2003 ed).

⁵⁰⁸ Cruz, Philippine Political Law, p. 214 (1995 ed).

⁵⁰⁹ Bernas Commentary, p 866 (2003 ed)

substitute its own, it stressed that “this does not prevent an examination of **whether such power was exercised within permissible constitutional limits or whether it was exercised in a manner constituting grave abuse of discretion.** (IBP v. Zamora) Judicial inquiry can *go no further* than to satisfy the Court *not* that the President’s decision is *correct*, but that “the President did not act *arbitrarily.*” Thus, **the standard is not correctness, but arbitrariness.** It is incumbent upon the petitioner to show that the President’s decision is totally bereft of factual basis” and that if he fails, by way of proof, to support his assertion, then “this Court cannot undertake an independent investigation beyond the pleadings. (**IBP v. Zamora cited in David v. Arroyo**)

6. Impeachment Case against a Supreme Court Justice.

Facts: On June 2, 2003, former President Joseph Estrada filed an impeachment cases against the Chief Justice and seven Associate Justices of the Supreme Court . The complaint was endorsed by three congressmen and referred to the Committee on Justice of the House of Representatives. On October 22, 2003, the Committee on Justice voted to dismiss the complaint for being insufficient in substance. The Committee on Justice had not yet submitted its report to the House of Representatives.

On October 23, 2003, two congressmen filed a complaint a complaint for impeachment against the Chief Justice in connection with the disbursement against the Chief Justice in connection with the disbursement of the Judiciary Development Fund. The complaint was accompanied by a resolution of endorsement/impeachment was accompanied by a resolution of endorsement/impeachment signed by at least one-third of the congressmen.

Several petitions were filed to prevent further proceedings in the impeachment case on the ground that the Constitution prohibits the initiation of an impeachment proceeding against the same official more than once the same period of one year. **Petitioners plead for the SC to exercise the power of judicial review to determine the validity of the second impeachment complaint.**

The House of Representatives contend that impeachment is a political action and is beyond the reach of judicial review. Respondents Speaker De Venecia, *et. al.* and intervenor Senator Pimentel raise the novel argument that the Constitution has excluded impeachment proceedings from the coverage of judicial review. Briefly stated, it is the position of respondents Speaker De Venecia *et. al.* that impeachment is a political action which cannot assume a judicial character. Hence, any question, issue or incident arising at any stage of the impeachment proceeding is beyond the reach of judicial review. For his part, intervenor Senator Pimentel contends that the Senate’s “sole power to try” impeachment cases (1) entirely excludes the application of judicial review over it; and (2) necessarily includes the Senate’s power to determine constitutional questions relative to impeachment proceedings. They contend that the exercise of judicial review over impeachment proceedings is inappropriate since it runs counter to the framers’ decision to allocate to different fora the powers

to try impeachments and to try crimes; it disturbs the system of checks and balances, under which impeachment is the only legislative check on the judiciary; and it would create a lack of finality and difficulty in fashioning relief

Held: That granted to the Philippine Supreme Court and lower courts, *as expressly provided for in the Constitution*, is not just a power but also a **duty**, and it was **given an expanded definition** to include the power to correct any grave abuse of discretion on the part of any government branch or instrumentality. that granted to the Philippine Supreme Court and lower courts, *as expressly provided for in the Constitution*, is not just a power but also a **duty**, and it was **given an expanded definition** to include the power to correct any grave abuse of discretion on the part of any government branch or instrumentality.

The Constitution provides for several limitations to the exercise of the power of the House of Representatives over impeachment proceedings. These limitations include the one-year bar on the impeachment of the same official. It is well within the power of the Supreme Court to inquire whether Congress committed a violation of the Constitution in the exercise of its functions. (Francisco v. House of Representatives, 415 SCRA 44)

x----x

Respondents are also of the view that judicial review of impeachments undermines their finality and may also lead to conflicts between Congress and the judiciary. Thus, they call upon this Court to exercise judicial statesmanship on the principle that “whenever possible, the Court should defer to the judgment of the people expressed legislatively, recognizing full well the perils of judicial willfulness and pride

Held: “Did not the people also express their will when they instituted the safeguards in the Constitution? This shows that the Constitution did not intend to leave the matter of impeachment to the sole discretion of Congress. Instead, it provided for certain well-defined limits, or in the language of *Baker v. Carr*,⁵⁷ “judicially discoverable standards” for determining the validity of the exercise of such discretion, through the power of judicial review.”

G. Effect of Declaration of Unconstitutionality

Orthodox View: An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is inoperative, as if it had not been passed at all.⁵¹⁰

“When courts declare a law to inconsistent with the Constitution, the former shall be void and the latter shall govern.” (Article 7 of the New Civil Code)

Modern View: Certain legal effects of the statute prior to its declaration of unconstitutionality may be recognized. “The actual existence of a statute prior to such a determination of constitutionality is an **operative fact** and may have consequences which cannot always be erased by a new judicial declaration.”⁵¹¹

H. Partial Unconstitutionality

⁵¹⁰ See Norton v. Shelby County, 118 US 425.

⁵¹¹ Chicot County Drainage Dist. V. Baxter States Bank 308 US 371.

Also in deference to the doctrine of separation of powers, courts hesitate to declare a law totally unconstitutional and as long as it is possible, will salvage the valid portions thereof in order to give effect to the legislative will.⁵¹²

Requisites of Partial Unconstitutionality:

1. The Legislature must be willing to retain the valid portion(s).⁵¹³
2. The valid portion can stand independently as law.

I. Judicial Review by Lower Courts

Legal Bases of lower courts' power of judicial review:

1. **Article VIII, Section 1.** Since the power of judicial review flows from judicial power and since inferior courts are possessed of judicial power, it may be fairly inferred that the power of judicial review is not an exclusive power of the Supreme Court.
2. **Article VII, Section 5(2).** This same conclusion may be inferred from Article VIII, Section 5(2), which confers on the Supreme Court *appellate* jurisdiction over judgments and decrees of lower courts in certain cases.
3. **Statutes**
4. **General Principles of Law** (San Miguel Corp. v. SOL)

Note: While a declaration of unconstitutionality made by the Supreme Court constitutes a precedent binding on all, a similar decision of an inferior court binds only the parties in the case.⁵¹⁴

J. Modalities of Constitutional Interpretation

1. **Historical-** Analyzing the intention of the framers and the Constitution and the circumstances of its ratification.
2. **Textual-** Reading the language of the Constitution as the man on the street would.
3. **Structural-** Drawing inferences from the architecture of the three-cornered power relationships.
4. **Doctrinal-** Rely on established precedents

⁵¹² Cruz, Philippine Political Law, p. 251 (1995 ed); See Senate v. Ermita.

⁵¹³ Usually shown by the presence of separability clause. But even without such separability clause, it has been held that if the valid portion is so far independent of the invalid portion, it may be fair to presume that the legislature would have enacted it by itself if they had supposed that they could constitutionally do so.

⁵¹⁴ Bernas Commentary, p 964 (2003 ed).

5. **Ethical-** Seeks to interpret the Filipino moral commitments that are embedded in the constitutional document.
6. **Prudential-** Weighing and comparing the costs and benefits that might be found in conflicting rules.⁵¹⁵

VII. Deciding a Case

Process of Decision Making
Cases Decided En Banc
Cases Decided in Division

A. Process of Decision Making

- In Consulta*
- Certification of Consultation*
- Explanation on Abstention etc.*
- Statement of Facts and the Law*
- Denial of MR or Petition for Review*
- Decisions of the Court*
- Period for Decision*
- Certification and Explanation*

Read Rule 13 of 2010 SC Internal Rules

Section 13. The conclusions of the Supreme Court in any case submitted to it for decision *en banc* or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the Court. A certification to this effect signed by the Chief Justice shall be issued and a copy thereof attached to the record of the case and served upon the parties. Any Members who took no part, or dissented, or abstained from a decision or resolution must state the reason therefor. The same requirements shall be observed by all lower collegiate courts.

Section 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based. No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

Section 15. (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.
 (2) A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself.
 (3) Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice or the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, and served upon the parties. The certification shall state why a decision or resolution has not been rendered or issued within said period.

⁵¹⁵ Bernas Commentary, p 964 (2003 ed).

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

1. "In Consulta"⁵¹⁶

The conclusions of the Supreme Court in any case submitted to it for decision *en banc* or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the Court. (Section 13)

2. Certification of Consultation and Assignment

A certification as regards consultation and assignment signed by the Chief Justice shall be issued and a copy thereof attached to the record of the case and served upon the parties. (Section 13)

Purpose. The purpose of certification is to ensure the implementation of the constitutional requirement that decisions of the Supreme Court are reached after consultation with members of the court sitting *en banc* or in division before the case is assigned to a member thereof for decision-writing. (Consing v. CA, 1989)

The certification by the Chief Justice that he has assigned the case to a Justice for writing the opinion will not expose such Justice to pressure since the certification will not identify the Justice.⁵¹⁷

Effect of Absence of Certification. The absence of the certification would not necessarily mean that the case submitted for decision had not been reached in consultation before being assigned to one member for writing of the opinion of the Court since the regular performance of duty is presumed. The lack of certification at the end of the decision would only serve as evidence of failure to observe certification requirement and may be basis for holding the official responsible for the omission to account therefore. Such absence of certification would not have the effect of invalidating the decision.⁵¹⁸

Minute Resolution. Minute resolutions need not be signed by the members of the Court who took part in the deliberations of a case nor do they require the certification of the Chief Justice. (Borromeo v. CA, 1990)

3. Explanation on Abstention etc.

Any Member who:

1. Took no part, or
2. Dissented, or

⁵¹⁶ After deliberations by the group.

⁵¹⁷ Bernas Primer at 361 (2006 ed.)

⁵¹⁸ Bernas Primer at 362 (2006 ed.)

3. Abstained

from a decision or resolution must state the reason therefore (Section 13)

The reason for the required explanation is to encourage participation.⁵¹⁹

4. Statement of Facts and the Law

Rule

Purpose of Requirement

Where Applicable

Where Not Applicable

Illustration of Sufficient Compliance

Illustration of Insufficient Compliance

Rule

No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based. (Section 14)

A decision need not be a complete recital of the evidence presented. So long as the factual and legal basis are clearly and distinctly set forth supporting the conclusions drawn therefrom, the decision arrived at is valid.

However, it is imperative that the decision not simply be limited to the dispositive portion but must state the nature of the case, summarize the facts with reference to the record, and contain a statement of applicable laws and jurisprudence and the tribunal's statement and conclusions on the case.⁵²⁰

Requirement, not jurisdictional. Although the 1st paragraph of Section 14 is worded in mandatory language, it is nonetheless merely directory. It has been held that the "requirement does not go to the jurisdiction of the court"⁵²¹ (1989 Bar Question)

Purpose

To inform the person reading the decision, and especially the parties, of how it was reached by the court after consideration of the pertinent facts and examination of applicable laws. There are various reasons for this:

1. To assure the parties that the judge studied the case;
2. To give the losing party opportunity to analyze the decision and possibly appeal or, alternatively, convince the losing party to accept the decision in good grace;
3. To enrich the body of case law, especially if the decision is from the

⁵¹⁹ Bernas Primer at 361 (2006 ed.)

⁵²⁰ Antonio B. Nachura, Outline/Reviewer in Political Law 295 (2006 ed.)

⁵²¹ Cruz, Philippine Political Law, p. 269 (1995 ed.)

Supreme Court. (Fransisco v. Permskul, 1989)

Where Applicable

The constitutional requirement (Section 14, 1st paragraph) that a decision must express clearly and distinctly the facts and law on which it is based as **referring only to decisions**⁵²².

Resolutions disposing of petitions fall under the constitutional provision (Section 14, 2nd paragraph) which states that “no petition for review...shall be refused due course... without stating the legal basis therefore.” (Borromeo v. CA)⁵²³

Where not Applicable

It has been held that the provision is not applicable to:

1. Decision of the COMELEC⁵²⁴;
2. Decision of military tribunals which are not courts of justice.⁵²⁵
3. Mere orders are not covered since they dispose of only incidents of the case, such as postponements of the trial. The only exception is an order of dismissal on the merits⁵²⁶
4. This requirement does not apply to a minute resolution dismissing a petition for habeas corpus, certiorari and mandamus, provided a legal basis is given therein. (Mendoza v. CFI 66 SCRA 96)
5. Neither will it apply to administrative cases. (Prudential Bank v. Castro, 158 SCRA 646)

Illustrative Cases of Sufficient Compliance:

Facts: The Court of Appeals affirmed the conviction of petitioner for estafa. Petitioner argued that the decision did not comply with the Constitution because instead of making its own finding of facts, the Court of Appeals adopted the statement of facts in the brief filed by the Solicitor General.

Held: There is no prohibition against court’s adoption of the narration of facts made in the brief instead of rewriting them in its own words. (Hernandez v. CA, 228 SCRA 429)⁵²⁷

Memorandum Decisions.

The rule remains that the constitutional mandate saying that “no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based,” does not

preclude the validity of “memorandum decisions,” which adopt by reference the findings of fact and conclusions of law contained in the decisions of inferior tribunals. This rule has been justified on the grounds of expediency, practicality, convenience and docket status of our courts.⁵²⁸ (Solid Homes v. Laserna, 2008)

Memorandum decisions can also speed up the judicial process, a desirable thing and a concern of the Constitution itself. Where a memorandum decision is used, the decision adopted by reference must be attached to the Memorandum for easy reference. Nonetheless, the Memorandum decision should be used sparingly and used only where the facts as in the main are accepted by both parties and in simple litigations only. (Fransisco v. Permskul, 1989)

Illustrative Cases of Insufficient Compliance

In Dizon v. Judge Lopez, 1997, the decision, which consisted only of the dispositive portion (denominated a *sin perjuicio*⁵²⁹ judgment) was held invalid.

Facts: Respondents sold the same property to two different buyers. Petitioners, the first buyers, filed a case to annul the title of the second buyer. The lower court rendered a decision dismissing the complaint. *The decision stated that the plaintiffs failed to prove their case and there was no sufficient proof of bad faith on the part of the second buyer.*

Held: The decision does not comply with the requirement under the Constitution that it should contain a clear and distinct statement of facts. It contained conclusions without stating the facts which served as their basis. (Valdez v. CA, 194 SCRA 360)

Facts: Petitioners filed an action to annul the foreclosure sale of the property mortgaged in favor of respondent. After petitioners had rested their case, respondent filed a demurrer to the evidence. *The trial court issued an order dismissing the case on the ground that the evidence showed that the sale was in complete accord with the requirements of Section 3 of Act No. 3135.*

Held: The order violates the constitutional requirement. The order did not discuss what the evidence was or why the legal requirements had been observed. (Nicos Industrial Corporation v. CA, 206 SCRA 122)

Facts: The RTC convicted the accused of murder. *The decision contained no findings of fact in regard to the commission of the crime and simply contained the conclusion that the prosecution had sufficiently established the guilt of the accused of the crime charged beyond reasonable doubt and that the witnesses for the protection were more credible.*

Held: The decision did not contain any findings of fact which are essential in decision-making. (People v. Viernes, 262 SCRA 641)

⁵²² Decision is described as a judgment rendered after the presentation of proof or on the basis of stipulation of facts. (Cruz, Philippine Political Law, p. 269 (1995 ed))

⁵²³ Bernas Primer at 362 (2006 ed.)

⁵²⁴ Nagca v. COMELEC, 112 SCRA 270 (1982).

⁵²⁵ Cruz, Philippine Political Law, p. 273 (1995 ed).

⁵²⁶ Cruz, Philippine Political Law, p. 269 (1995 ed).

⁵²⁷ Jacinto Jimenez, Political Law Compendium, 350 (2006 ed.)

⁵²⁸ **G.R. No. 166051, April 8, 2008.**

⁵²⁹ Sin Perjuicio judgment is a judgment without a statement of facts in support of its conclusions.

Facts: Petitioners sued respondents for damages on the ground that they were not able to take their flight although the travel agent who sold them the plane tickets confirmed their reservations. *The decision of the trial court summarized the evidence for the parties and then held that respondent, the travel agent, and the sub-agent should be held jointly and severally liable for damages on the basis of the facts.*

Held: The decision did not distinctly and clearly set forth the factual and legal bases for holding respondents jointly and severally liable. (*Yee Eng Chong v. Pan American World Airways Inc.*, 328 SCRA 717)

Facts: The MTC convicted petitioner of unfair competition. Petitioner appealed to the RTC. The RTC affirmed his conviction. The RTC stated in this decision that it found no cogent reason to disturb the findings of fact of MTC.

Held: The decision of the RTC fell short of the constitutional requirement. The decision in question should be struck down as a nullity. (*Yao v. CA*, 344 SCRA 202)

4. Statement of Legal Basis for Denial of MR or Petition for Review

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor. (Section 14)

Resolutions disposing of petitions fall under the constitutional provision (Section 14, 2nd paragraph) which states that “no petition for review...shall be refused due course... without stating the legal basis therefore.”

When the Court, after deliberating on a petition and any subsequent pleadings, manifestations, comments, or motion decides to deny due course to the petition and states that the questions raised are factual or no reversible error or if the respondent court’s decision is shown or for some other legal basis stated in the resolution, there is sufficient compliance with the constitutional requirement. (*Borromeo v. CA*)

Illustrative Cases:

The Court of Appeals denied the petitioner’s motion for reconsideration in this wise: “Evidently, the motion poses nothing new. The points and arguments raised by the movants have been considered and passed upon in the decision sought to be reconsidered. Thus, we find no reason to disturb the same.” The Supreme Court held that there was adequate compliance with the constitutional provision. (*Martinez v. CA*, 2001)

The Supreme Court ruled that “lack of merit” is sufficient declaration of the legal basis for denial of petition for review or motion for reconsideration. (*Prudential Bank v. Castro*)

5. Period for Decision

All cases or matters filed after the effectivity of 1987 Constitution must be decided or resolved within **twenty-four months** from date of submission for the Supreme Court. (Section 15).

Exception: When the Supreme Court review the factual basis of the proclamation of martial law or suspension of the privilege of the writ or the extension thereof, it must promulgate its decision thereon within 30 days from its filing. (Article VII, Section 18).

Mandatory. Decision within the maximum period is mandatory. Failure to comply can subject a Supreme Court Justice to impeachment for culpable violation of the Constitution.⁵³⁰

The court, under the 1987 Constitution, is now mandated to decide or resolve the case or matter submitted to it for determination within specified periods. Even when there is delay and no decision or resolution is made within the prescribed period, there is no automatic affirmance of the appealed decision. This is different from the rule under Article X, Section 11(2) of the 1973 Constitution which said that, in case of delay, the decision appealed from was deemed affirmed. (*Sesbreño v. CA*, 2008)⁵³¹

6. When a Case Deemed Submitted

A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself. (Section 15)

7. Certification of Period’s Expiration and Explanation for Failure to Render Decision or Resolution

Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice or the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, and served upon the parties. The certification shall state why a decision or resolution has not been rendered or issued within said period. (Section 15)

Despite the expiration of the applicable mandatory period, the court, without prejudice to such responsibility as may have been incurred in consequence thereof, shall decide or resolve the case or matter submitted thereto for determination, without further delay. (Section 15)

B. Cases Decided En Banc

Section 4

⁵³⁰ Bernas Commentary, p 997(2003 ed).

⁵³¹ G.R. No. 161390, April 16, 2008.

(2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court en banc, and all other cases which under the Rules of Court are required to be heard en banc, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

(1999 Bar Question)

Cases that must be heard en banc:

1. All cases involving the constitutionality of a treaty, international or executive agreement, or law.
2. All cases which under the Rules of Court are required to be heard en banc
3. All cases involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations
4. Cases heard by a division when the required majority in the division is not obtained;
5. Cases where the Supreme Court modifies or reverses a doctrine or principle of law previously laid down either en banc or in division.
6. Administrative cases involving the discipline or dismissal of judges of lower courts (Section 11) [Dismissal of judges, Disbarment of a lawyer, suspension of either for more than 1 year or a fine exceeding 10,000 pesos (*People v. Gacott*)]
7. Election contests for President or Vice-President.
8. Appeals from Sandiganbayan or Constitutional Commissions. (Legal Basis?)

(See Rule 2 Section 3 of 2010 SC Internal Rules)

Number of Votes Needed to Decide a Case Heard En Banc:

When the Supreme Court sits en banc cases are decided by the concurrence of "majority if the members who actually took part in the deliberations on the issues in the cases and voted thereon." Thus, since a quorum of the Supreme Court is eight, the votes of at least five are needed and are enough, even if it is a question of constitutionality. (Those who did not take part in the deliberation do not have the right to vote)⁵³² (1996 Bar Question)
ASM: In reality, when the decision says that a particular Justice "did not take part", it does not

necessarily mean that he was not there during the deliberations.

Q: How many justices are needed to constitute a quorum when the Court sits en banc and there are only fourteen justices in office?

A: In *People v. Ebio, 2004*, since it was a capital criminal cases, the Court said that there should be eight.⁵³³

Procedure if opinion is equally divided.

When the Court en banc is equally divided in opinion, or the necessary majority cannot be had, the case shall again be deliberated on, and if after such deliberation no decision is reached, the original action commenced in the court shall be dismissed; in appealed cases, the judgment or order appealed from shall stand affirmed; and on all incidental matters, the petition or motion shall be denied. (**Rule 56, Section 7, Rules of Court**)

C. Cases Decided in Division

Section 4

(3) Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided en banc: Provided, that no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting en banc.

Divisions are not separate and distinct courts.

Actions considered in any of the divisions and decisions rendered therein are, in effect by the same Tribunal. Decisions or resolutions of a division of the court are not inferior to an *en banc* decision. (*People v. Dy, 2003*)

Decisions of a division, not appealable to en banc.

Decisions or resolutions of a division of the court, when concurred in by majority of its members who actually took part in the deliberations on the issues in a case and voted thereon is a decision or resolution of the Supreme Court. (*Firestone Ceramics v. CA, 2000*)

Where the required number cannot be obtained in a division of three in deciding a case.

Where the required number of votes is not obtained, there is no decision. The only way to dispose of the case then is to refer it to the Court en banc. (Section 4(3))

"Cases" v. "Matters".

"Cases or matters heard by a division shall be **decided** or **resolved** with the concurrence of a majority of the

⁵³² Bernas Primer at 338 (2006 ed.)

⁵³³ Bernas Primer at 337 (2006 ed.)

Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members.”

When the required number is not obtained, the case shall be decided en banc.”

A careful reading of the above constitutional provision reveals the intention of the framers to draw a distinction between cases on one hand and, and matters on the other hand, such that cases are ‘decided’ while matters, including motions, are ‘resolved’. Otherwise put, the word “decided” must refer to ‘cases; while the word ‘resolved’ must refer to ‘matters’.

Where the required number cannot be obtained in a division of three in motion for reconsideration. If a case has already been decided by the division and the losing party files a motion for reconsideration, the failure of the division to resolve the motion because of a tie in the voting does not leave the case undecided. Quite plainly, if the voting results in a tie, the motion for reconsideration is lost. The assailed decision is not reconsidered and must therefore be deemed affirmed. (Fortich v. Corona, 1999)

Supreme Court and Stare Decisis

Stare decisis derives its name from the Latin maxim *stare decisis et non quieta movere, i.e.,* to adhere to precedent and not to unsettle things that are settled. It simply means that a principle underlying the decision in one case is deemed of imperative authority, controlling the decisions of like cases in the same court and in lower courts within the same jurisdiction, unless and until the decision in question is reversed or overruled by a court of competent authority. The decisions relied upon as precedents are commonly those of appellate courts, because the decisions of the trial courts may be appealed to higher courts and for that reason are probably not the best evidence of the rules of law laid down.

Judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria that must control the actions, not only of those called upon to abide by them, but also of those duty-bound to enforce obedience to them. In a hierarchical judicial system like ours, the decisions of the higher courts bind the lower courts, but the courts of co-ordinate authority do not bind each other. The one highest court does not bind itself, being invested with the innate authority to rule according to its best lights.

The Court, as the highest court of the land, may be guided but is not controlled by precedent. Thus, the Court, especially with a new membership, is not obliged to follow blindly a

particular decision that it determines, after re-examination, to call for a rectification. The adherence to precedents is strict and rigid in a common-law setting like the United Kingdom, where judges make law as binding as an Act of Parliament. But ours is not a common-law system; hence, judicial precedents are not always strictly and rigidly followed. A judicial pronouncement in an earlier decision *may be* followed as a precedent in a subsequent case only when its reasoning and justification are relevant, and the court in the latter case accepts such reasoning and justification to be applicable to the case. The application of precedent is for the sake of convenience and stability.

VIII. Other Courts

Composition
Judicial Power; Judicial Review
Jurisdiction
Qualifications
Appointment
Salaries
Tenure
Removal
Prohibition
Deciding a Case

A. Composition

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

The different lower courts under the Judiciary Reorganization Law are the:

1. Court of Appeals
2. regional trial courts
3. metropolitan trial courts
4. municipal trial courts
5. municipal circuit trial courts

Other Courts:

1. Court of Tax Appeals
2. Sandignabayan
3. Sharia Court

(Together with the Supreme Court, the aforementioned tribunals make up the judicial department of our government)⁵³⁴

Court of Appeals. The Court of Appeals is composed of 68 Associate Justices and 1 Presiding Justice. (RA 52; RA 8246)

B. Judicial Power; Judicial Review in Lower Courts

⁵³⁴ Cruz, Philippine Political Law, p. 231 (1995 ed).

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. (Section 1)

Legal Bases of lower courts' power of judicial review:

1. **Article VIII, Section 1.** Since the power of judicial review flows from judicial power and since inferior courts are possessed of judicial power, it may be fairly inferred that the power of judicial review is not an exclusive power of the Supreme Court.
2. **Article VII, Section 5(2).** This same conclusion may be inferred from Article VIII, Section 5(2), which confers on the Supreme Court **appellate** jurisdiction over judgments and decrees of lower courts in certain cases.

Note: While a declaration of unconstitutionality made by the Supreme Court constitutes a precedent binding on all, a similar decision of an inferior court binds only the parties in the case.⁵³⁵

C. Jurisdiction of Lower Courts

1 Statutory Conferment of Jurisdiction

The Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts. (Section 2)

2. Constitutional Conferment of Jurisdiction

J.M. Tuason & Co. v. CA; Ynot v. IAC: There is in effect a constitutional conferment of original jurisdiction on the lower courts in those five cases for which the Supreme Court is granted appellate jurisdiction in Section 5(2).

Section 5(2). The Supreme Court has the power to review, revise, reverse, modify, or affirm on appeal or certiorari as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

- a. All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
- b. All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

- c. All cases in which the jurisdiction of any lower court is in issue.
- d. All criminal cases in which the penalty imposed is reclusion perpetua or higher.
- e. All cases in which only an error or question of law is involved.

D. Contempt Powers

(See Rule 71)

The power to punish for contempt is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings and to the enforcement of judgment, orders, and mandates of the courts, and consequently, to the due administration of justice.⁵³⁶

1996 Bar Question

On the first day of the trial of a rape-murder case where the victim was a popular TV star, over a hundred of her fans rallied at his entrance of the courthouse, each carrying a placard demanding the conviction of the accused and the imposition of the death penalty on him. The rally was peaceful and did not disturb the proceedings of the case.

Q: Can the trial court order the dispersal of the rallyists under the pain of being punished for contempt of court?

Suggested Answer: Yes, the trial court can order the dispersal of the rally under the pain of being cited for contempt. The purpose of the rally is to attempt to influence the administration of justice. As stated in *People v. Flores*, 239 SCRA 83, any conduct by any party which tends to directly or indirectly impede or obstruct or degrade the administration of justice is subject to the contempt powers of the court.

Q: If instead of a rally, the fans of the victim wrote letters to the newspaper editors demanding the conviction of the accused, can the trial court punish them for contempt?

Suggested Answer: No, the trial court cannot punish for contempt the fans of the victim who wrote letters to the newspaper editors. Since the letters were not addressed to the judge and the publication of the letters occurred outside the court, the fans cannot be punished in the absence of a clear and present danger to the administration of justice.

E. Qualifications

1. Qualifications of Members of Court of Appeals

1. Must be a natural-born citizen of the Philippines (Section 7(1))
2. Must be a member of the Philippine Bar (Section 7(2))

⁵³⁵ Bernas Commentary, p 964 (2003 ed).

⁵³⁶ *Slade Perkins v. Director of Prisons*, 58 Phil 271.

3. Must be a person of proven competence, integrity, probity, and independence. (Section 7(3))
4. Possessing other qualifications prescribed by Congress (Section 7(2))

Section 7 of BP 129 provides that, "The Presiding Justice and the Associate Justice shall have the same qualifications as those provided in Constitution for Justice of the Supreme Court". Hence, the members of the CA must also be:

- a. Must at least be 40 years of age;
- b. Must have been for 15 years or more a judge of a lower court or engaged in the practice of law in the Philippines

2. Constitutional Qualifications for Non-collegiate courts

1. Citizens of the Philippines (Section 7(2))
2. Members of the Philippine Bar (Section 7(2))
3. Possessing the other qualifications prescribed by Congress (Section 7(2))
4. Must be a person of proven competence, integrity, probity and independence. (Section 7(3))

Qualifications of RTC Judges:

1. Citizen of the Philippines; (Section 7(2))
2. Member of the Philippine Bar (Section 7(2))
3. A person of proven competence, integrity, probity and independence.
4. Possessing the other qualifications prescribed by Congress (Section 7(2))
 - a) At least 35 years old (BP 129, Section 15)
 - b) Has been engaged for at least [10] years in the practice of law in the Philippines or has held public office in the Philippines requiring admission to the practice of law as an indispensable requisite. (BP 129, Section 15)

Qualifications of MTC, MeTC, MCTC Judges:

1. Citizen of the Philippines; (Section 7(2))
2. Member of the Philippine Bar (Section 7(2))
3. A person of proven competence, integrity, probity and independence.
4. Possessing the other qualifications prescribed by Congress (Section 7(2))
 - a) At least 35 years old (BP 129, Section 26)

- b) Has been engaged for at least 5 years in the practice of law in the Philippines or has held public office in the Philippines requiring admission to the practice of law as an indispensable requisite. (BP 129, Section 26)

Qualifications of CTA Judges:

Judges of the CTA shall have the same qualifications as Members of the Supreme Court. (RA No. 1125, Section 1 in relation to CA No. 102, Section 1)

Qualifications of Members of Sandiganbayan:

No person shall be appointed as Member of the Sandiganbayan unless he is at least forty years of age and for at least 10 years has been a judge of a court of record or has been engaged in the practice of law in the Philippines or has held office requiring admission to the bar as a prerequisite for a like period. (PD No. 1606 as amended, Section 1)

Qualifications of judges of Shari'a Courts:

In addition to the qualifications for Members of Regional Trial Courts, a judge of the Sharia's district court must be learned in the Islamic Law and Jurisprudence. (PD No. 1083, Article 140)

No person shall be appointed judge of the Shari'a Circuit Court unless he is at least 25 years of age, and has passed an examination in the Shari'a and Islamic jurisprudence to be given by the Supreme Court for admission to special membership in the Philippine Bar to practice in the Shari'a courts. (PD No. 1083, Article 152)

Note: Congress may not alter the constitutional qualifications of members of the Judiciary. But Congress may alter the statutory qualifications of judges and justices of lower courts.⁵³⁷

It behooves every prospective appointee to the Judiciary to apprise the appointing authority of every matter bearing on his fitness for judicial office, including such circumstances as may reflect on his integrity and probity. Thus the fact that a prospective judge failed to disclose that he had been administratively charged and dismissed from the service for grave misconduct by a former President of the Philippines was used against him. It did not matter that he had resigned from office and that the administrative case against him had become moot and academic.⁵³⁸

D. Appointment

The judges of lower courts shall be appointed by the President from a list of at least three nominees

⁵³⁷ Bernas Primer at 356 (2006 ed.)

⁵³⁸ *In re JBC v. Judge Quitain*, JBC No. 013, August 22, 2007.

prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation. For the lower courts, the President shall issue the appointments within ninety days from the submission of the list. (Section 9)

Old Doctrine: [Section 15] applies in the appointments in the Judiciary. Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety. Since the exception applies only to executive positions, the prohibition covers appointments to the judiciary.⁵³⁹

During this period [2 months immediately before the next presidential elections...], the President is neither required to make appointments to the courts nor allowed to do so.

Section 4(1) and 9 of Article VIII simply mean that the President is required by law to fill up vacancies in the courts within the same time frames provided therein unless prohibited by Section 15 of Article VII.

While the filing up of vacancies in the judiciary is undoubtedly in the public interest, there is no showing in this case of any compelling reason to justify the making of the appointments during the period of the ban. (In Re Appointment of Mateo Valenzuela, 1998)

New Doctrine: The prohibition under Article VII, Section 15 of the Constitution against presidential appointments immediately before the next presidential elections and up to the end of the term of the President **does not apply to vacancies in the Supreme Court.** (De Castro v. JBC, March 17, 2010)

E. Salaries

The salary of judges of lower courts shall be fixed by law. During their continuance in office, their salary shall not be decreased. (Section 10)

Imposition of income tax on salaries of judges does not violate the constitutional prohibition against decrease in salaries. (Nitafan v. Tan, 152 SCRA 284)

F. Tenure

⁵³⁹ In re: Appointment of Valenzuela, AM 98-0501 SC, November 9, 1998.

The judges of lower courts shall hold office during good behavior until they reach the age of **seventy years** or become incapacitated to discharge the duties of their office. (Section 11)

No law shall be passed reorganizing the Judiciary when it undermines the security of tenure of members. (Section 2)

In *Vargas v. Villaroza*, (80 Phil 297 (1982), the Supreme Court held that the guarantee of security of tenure is a guarantee not just against "actual removal" but also of "uninterrupted continuity in tenure."

G. Discipline/ Removal

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

According to *People v. Gacott*, (1995), only dismissal of judges, disbarment of a lawyer, suspension of either for more than 1 year or a fine exceeding 10,000 pesos requires *en banc* decision.

The grounds for the removal of a judicial officer should be established beyond reasonable doubt, particularly where the charges on which the removal is sought are misconduct in office, willful neglect, corruption and incompetence. (Office of the Judicial Administrator v. Pascual, 1996)

H. Prohibition

The members of courts established by law shall not be designated to any agency performing quasi-judicial or administrative functions. (Section 12)

Thus, where a judge was designated member of the *Ilocos Norte Provincial Committee on Justice* by the Provincial Governor where the function of the Committee was to receive complaints and make recommendations towards the speedy disposition of cases of detainees, the **designation was invalidated.** (*In re Manzano*, 166 SCRA 246 (1988).

I. Deciding a Case

1. Consultation

The conclusions of the [*lower collegiate courts*] in any case submitted to it for decision *en banc* or in division shall be reached in consultation before the case is assigned to a Member for the writing of the opinion of the court.

A certification to this effect signed by the [Chief Justice] shall be issued and a copy thereof

attached to the record of the case and served upon the parties.

Any Members who took no part, or dissented, or abstained from a decision or resolution must state the reason therefor. (Section 13)

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

2. Statement of Facts and Law

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

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor. (Section 14)

3. Period in Deciding Case

Court	Period
Supreme Court	24 months (Section 15)
Court of Appeals	12 months (Section 15)
Sandiganbayan	3 months (Re Problem of Delays in Sandiganbayan)
All other lower courts	3 months (Section 15)

(1) All cases or matters filed after the effectivity of 1987 Constitution must be decided or resolved within, unless reduced by the Supreme Court, **twelve months for all lower collegiate courts, and three months for all other lower courts.**

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

(4) Despite the expiration of the applicable mandatory period, the court, without prejudice to such responsibility as may have been incurred in consequence thereof, shall decide or resolve the case or matter submitted thereto for determination, without further delay. (Section 15)

RE Problem of Delays in the Sandiganbayan

The provision in Article VIII, Section 15 of the 1987 Constitution which says that cases or matters filed must be decided by "lower collegiate courts" within 12 months, does not apply to the Sandiganbayan. The provision refers to regular courts of lower collegiate level, which is the Court of Appeals.

The Sandiganbayan is a special court on the same level as the Court of Appeals, possessing all inherent powers of a court of justice with the same functions of a trial court. The Sandiganbayan, being a special court, shall have the power to promulgate its own rules. In fact, it promulgated its own rules regarding the reglementary period of undecided cases under its jurisdiction. In its own rules it says that judgments on pending cases shall be rendered within 3 months. Also, the law creating

the Sandiganbayan is also clear with the 3 month reglementary period. The Sandiganbayan, in a sense, acts like a trial court, therefore a 3 month and not a 12 month reglementary period.