POLITICAL LAW

A. THE CONSTITUTION

DEFINITION, NATURE AND CONCEPTS

Q: What is Political Law?

A: It is that branch of public law which deals with the organization and operations of the governmental organs of the State and defines its relations with the inhabitants of the territory. *(People v. Perfecto, G.R. No. L-18463, October 4, 1922)*

Q: What is the scope of political law?

A:

1. Political law
2. Constitutional law
3. Administrative law
4. Law on municipal corporations
5. Law on public officers
6. Election laws
7. Public international law

Q: What is the Constitution?

A: The Constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials, must defer. *(Cruz, Constitutional Law, 1998 ed., p. 4)*

Q: How is the Philippine Constitution classified?

A: It is classified as written, enacted and rigid. *(Art. XVII, 1987 Constitution)*

Q: When did the Philippine Constitution take effect?

A: It took effect on February 2, 1987, which was the date of the plebiscite. *(De Leon v. Esguerra, G.R. No. L-78059, Aug. 31, 1987)*

Q: How should the Philippine Constitution be interpreted?

A:

1. *Verba legis* – whenever possible, the words used in the Constitution must be given their ordinary meaning except where technical terms are employed.

2. *Ratio legis et anima* – where there is ambiguity, the words of the Constitution should be interpreted in accordance with the intent of the framers.

3. *Ut magis valeat quam pereat* – the Constitution has to be interpreted as a whole. *(Francisco v. HR, G.R. No. 160261, Nov. 10, 2003)*

Q: In case of doubt, how should the Constitution be construed?

A: The provisions should be considered self-executing; mandatory rather than directory; and prospective rather than retroactive. *(Nachura, Reviewer in Political Law, 2005 ed., p. 3)*

Q: What is the doctrine of Constitutional Supremacy?

A: Under this doctrine, if a law or contract violates any norm of the Constitution, that law or contract, whether promulgated by the legislative or by the executive branch or entered into by private persons for private purposes, is null and void and without any force and effect. Thus, since the Constitution is the fundamental, paramount and supreme law of the nation, it is deemed written in every statute and contract**.** *(Manila Prince Hotel v. GSIS, G.R. No. 122156, Feb. 3, 1997)*

Q: State the legal distinctions between EDSA 1 and 2.

A:

EDSA 1	EDSA 2
As to power involved or exercised by the people	
Exercise of the people power of revolution	Exercise of the people power of freedom of speech and of assembly, to petition the government for redress of grievances
Effect of exercise of the power involved	
Overthrows the whole government	Only affected the Office of the President
Judicial review	
Extra-constitutional. The legitimacy of the new government that resulted from it cannot be the subject of judicial review.	Intra-constitutional. The resignation of the sitting President that it caused and the succession of the VP as President are subject to judicial review.
Nature of question involved	
Presented a political question.	Involves legal questions.

Q: Is the People Power recognized in the Constitution?

A: "People power" is recognized in the Constitution:

1. *Article III, Section 4* guarantees the right of the people peaceable to assemble and petition the government for redress of grievances;
2. *Article VI, Section 32* 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;
3. *Article XIII, Section 16* 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;
4. *Article XVII, Section 2* provides that subject to the enactment of an implementing law, the people may directly propose amendments to the Constitution through initiative.

PARTS

Q: What are the three parts of a written Constitution?

A:

1. *Constitution of Sovereignty* – this refers to the provisions pointing out the modes or procedure in accordance with which formal changes in the Constitution may be made (*Art. XVII, Amendments or Revisions)*

2. *Constitution of Liberty* – the series of prescriptions setting forth the fundamental civil and political rights of the citizens and imposing limitations on the power of the government as a means of securing the enjoyment of those rights (*Art. III, Bill of Rights)*

3. *Constitution of Government* – provides for a structure and system of government; refers to the provisions outlining the organization of the government, enumerating its powers, laying down certain rules relative to its administration and defining the electorate *(Art. VI, Legislative Dep't, Art. VII, Exec. Dep't, Art. VIII, Judicial Dep't, Art. IX, Consti. Commissions)*

AMENDMENT AND REVISION

Q: Distinguish amendment from revision.

A:

AMENDMENT	REVISION
Isolated or piecemeal change merely by adding, deleting, or reducing without altering the basic principle involved	A revamp or rewriting of the whole instrument altering the substantial entirety of the Constitution

Q: How do you determine whether a proposed change is an amendment or a revision?

A:

1. *Quantitative test* – asks whether the proposed change is so extensive in its provisions as to change directly the 'substantial entirety' of the Constitution by the deletion or alteration of numerous existing provisions. One examines only the number of provisions affected and does not consider the degree of the change.

2. *Qualitative test* – whether the change will accomplish such far reaching changes in the nature of our basic governmental plan as to amount to a revision. (*Lambino v. Comelec, G.R. No. 174153, Oct. 25, 2006)*

Q: How may the Constitution be amended or revised?

A:

1. *Proposal*
   a. By Congress upon a vote of ¾ of all its members acting as Constituent Assembly (ConAss)

      Note: While the substance of the proposals made by each type of ConAss is not subject to judicial review, the manner the proposals are made is subject to judicial review.

      Since ConAss owes their existence to the Constitution, the courts may determine whether the assembly has acted in accordance with the Constitution.

   b. By Constitutional Convention (ConCon)

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Note: Congress may call a ConCon:

1. By a vote of 2/3 of all its members; or
2. By a majority vote of all its members, submit such question to the electorate.

If Congress, acting as a ConAss, calls for a ConCon but does not provide details for the calling of such ConCon, Congress by exercising its ordinary legislative power may supply such details. But in so doing, the Congress (as legislature) should not transgress the resolution of Congress acting as a ConAss.

Note: The manner of calling a ConCon is subject to judicial review because the Constitution has provided for voting requirements.

Note: Choice of which ConAss or ConCon should initiate amendments and revisions is left to the discretion of Congress. In other words, it is a political question.

Congress, as a ConAss and the ConCon has no power to appropriate money for their expenses. Money may be spent from the treasury only pursuant to an appropriation made by law.

c. By People's Initiative upon a petition of at least 12% of the total number of registered voters, of which every legislative district must be represented by 3% of the registered voters therein.

Note: The Constitution may be amended not oftener than every 5 years through initiative.

Revisions cannot be done through Initiative.

2. *Ratification* – Amendments or revisions to the Constitution should be ratified by the majority in a plebiscite which should be held not earlier than 60 days nor later than 90 days after the approval of such amendment.

Q: What is the Doctrine of Proper Submission?

A: Plebiscite may be held on the same day as regular election *(Gonzales v. COMELEC, G.R. No. L-28196, Nov. 9, 1967),* provided the people are sufficiently informed of the amendments to be voted upon, to conscientiously deliberate thereon, to express their will in a genuine manner. Submission of piece-meal amendments is unconstitutional. All amendments must be submitted for ratification at one plebiscite only. The people have to be given a proper frame of reference in arriving at their decision. *(Tolentino v. COMELEC, G.R. No. L-34150, Oct. 16, 1971)*

a. R.A. 6735 INITIATIVE AND REFERENDUM LAW

Q: What is initiative?

A: It is the power of the people to propose amendments to the Constitution or to propose and enact legislation.

Q: What are the three (3) kinds of initiative under R.A. 6735?

A:

1. *Initiative on the Constitution*—refers to a petition proposing amendments to the Constitution

2. *Initiative on statutes*—refers to a petition to enact a national legislation

3. *Initiative on local legislation*—refers to a petition proposing to enact a regional, provincial, municipal, city, or barangay law, resolution or ordinance *(Section 2 [a], R.A. 6735)*

Note: Section 2 (b) of R.A. 6735 provides for:

1. *Indirect Initiative*- exercise of initiative by the people through a proposition sent to Congress or the local legislative body for action

2. *Direct Initiative*- the people themselves filed the petition with the COMELEC and not with Congress.

Q: What is the rule on Local initiative?

A: In case of:

1. Autonomous regions - not less than 2,000 registered voters
2. Provinces and Cities – not less than 1,000 registered voters
3. Municipalities – not less than 100 registered voters
4. Barangays – not less than 50

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)*

Q: What are the limitations on Local initiative?

A:

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; and
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: Is the initiative to change the Constitution applicable to revision?

A: No. An initiative to change the Constitution applies only to an amendment. 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 vs. COMELEC, G.R. No. 174153, 25 October 2006)*

Q: What is referendum?

A: It is the power of the electorate to approve or reject legislation through an election called for that purpose.

Q: What are the two (2) classes of referendum?

A:

1. *Referendum on Statutes*- refers to a petition to approve or reject a law, or part thereof, passed by Congress

2. *Referendum on Local La*w- refers to a petition to approve or reject a law, resolution or ordinance enacted by regional assemblies and local legislative bodies.

Notes: 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 90 days after their effectivity. *(Sec. 10 RA 6735)*

Q: Compare and differentiate the concepts and processes of initiative from referendum.

A:

INITIATIVE	REFERENDUM
The power of the people to propose amendments to the Constitution or to propose and enact legislations through an election called for the purpose.	The power of the legislation through an election called for the purpose. *(Sec. 3, R.A. No. 6735 [1989])*

LOCAL INITIATIVE	LOCAL REFERENDUM
The legal process whereby the registered voters of a local government unit may directly propose, enact, or amend any ordinance *(Sec. 120)*	The legal process whereby the registered voters of the local government units may approve, amend or reject any ordinance enacted by the Sanggunian *(Sec. 126)*

SELF-EXECUTING AND NON-SELF-EXECUTING

Q: What constitutional provisions are considered Self-Executing and Non-Self-Executing?

A: The following provisions of the Constitution are considered as self-executing:

1. Provisions in the Bill of Rights on arrests, searches and seizures, the rights of a person under custodial investigation, the rights of an accused, and the privilege against self-incrimination,
2. Fundamental rights of life, liberty and the protection of property,
3. Provisions forbidding the taking or damaging of property for public use without just compensation.

XPN: A constitutional provision is not self-executing where it merely announces a policy and its language empowers the Legislature to prescribe the means by which the policy shall be carried into effect:

1. Article II on "Declaration of Principles and State Policies"
2. Article XIII on "Social Justice and Human Rights,"
3. Article XIV on "Education Science and Technology, Arts, Culture end Sports" *(Manila Prince Hotel v. GSIS, G.R. 122156, Feb. 3, 1997)*

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

B. GENERAL CONSIDERATIONS

NATIONAL TERRITORY

Q: What is Territory?

A: Territory is the fixed portion of the surface of the Earth inhabited by the people of the State. As an element of a State, it is an area over which a state has effective control.

Q: What comprises the Philippine territory?

A:

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

CONSISTS OF	INCLUDING ITS
a. Terrestrial b. Fluvial c. Aerial Domains	a. Territorial Sea b. Seabed c. Subsoil d. Insular shelves e. Other Submarine areas

2. *All other territories over which the Philippines has sovereignty or jurisdiction* – includes any territory that presently belongs or might in the future belong to the Philippines through any of the accepted international modes of acquiring territory.

Q: What are the components of our National Territory?

A:

1. Terrestrial Domain
2. Maritime Domain
3. Aerial Domain

Note: R.A. 9522 which was approved by President Arroyo on March 10, 2009 amended certain provisions of R.A. 3046, as amended by R.A. 5446 and defined the archipelagic baselines of the Philippines.

ARCHIPELAGIC DOCTRINE

Q: What is an Archipelagic State?

A: It is a state constituted wholly by one or more archipelagos and may include other islands.

Q: What is the Archipelagic Doctrine and where is it found in the 1987 Philippine Constitution?

A: It is defined as all waters, around between and connecting different islands belonging to the Philippine Archipelago, irrespective of their width or dimension, are necessary appurtenances of its land territory, forming an integral part of the national or inland waters, subject to the exclusive sovereignty of the Philippines.

It is found in the 2nd sentence of Article 1 of the 1987 Constitution.

Q: What does the Archipelagic Doctrine emphasize?

A: It emphasizes the unity of the land and waters by defining an archipelago as group of islands surrounded by waters or a body of waters studded with islands.

Note: To emphasize unity, an imaginary single baseline is drawn around the islands by joining appropriate points of the outermost islands of the archipelago with straight lines and all islands and waters enclosed within the baseline form part of its territory.

Q: What are the purposes of the Archipelagic Doctrine?

A: The following are the purposes of the Archipelagic Doctrine:

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

Note: The main purpose of the archipelagic doctrine is to protect the territorial interests of an archipelago, that 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. Accordingly, if we follow the old rule of international law, it is possible that between islands, e.g. Bohol and Siquijor, due to the more than 24 mile distance between the 2 islands, there may be high seas. Thus, foreign vessels may just enter anytime at will, posing danger to the security of the State. However, applying the doctrine, even these bodies of water within the baseline, regardless of breadth, form part of the archipelago and are thus considered as internal waters.

Q: Is the Spratlys Group of Islands (SGI) part of the Philippine Archipelago?

A: No. It is too far to be included within the archipelagic lines encircling the internal waters of Philippine Archipelago. However, the SGI is part of the Philippine territory because it was discovered by a Filipino seaman in the name of Vice-Admiral Cloma who later renounced his claim over it in favor of the Republic of the Philippines. Subsequently, then Pres. Marcos issued a Presidential Decree constituting SGI as part of the Philippine territory and sending some of our armed forces to protect said island and maintain our sovereignty over it.

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

A: Yes. Article I of the Constitution provides: "*The national territory comprises the Philippine archipelago, x x x, and all other territories over which the Philippines has sovereignty or jurisdiction, x x x."* The Spratlys Group of islands falls under the second phrase "and all other territories over which the Philippines has sovereignty or jurisdiction". It is part of our national territory because Philippines exercise sovereignty (through election of public officials) over Spratlys Group of Islands.

DOCTRINE OF STATE IMMUNITY

Q: What is the Doctrine of State Immunity?

A: Under this doctrine, the State cannot be sued without its consent. *(Sec. 3, Art. XVI, 1987 Constitution)*

Q: What is the basis of the doctrine of State immunity?

A: It reflects nothing less than recognition of the sovereign character of the State and an express affirmation of the unwritten rule effectively insulating it from the jurisdiction of courts. It is based on the very essence of sovereignty. *(Department of Agriculture v. NLRC, G.R. No. 104269, November 11, 1993)*

Note: There can be no legal right against the authority which makes the law on which the right depends *(Republic vs. Villasor, GRN L-30671, November 28, 1973)*. However, it may be sued if it gives consent, whether express or implied.

Q: Does this doctrine apply as well to foreign government?

A: Yes. This doctrine also applies to foreign government because of the sovereign equality of all the state. Accordingly, immunity is enjoyed by other States, consonant with the public international law principle of *par in parem non habet imperium.* The head of State, who is deemed the personification of the State, is inviolable, and thus, enjoys immunity from suit. *(JUSMAG Philippines v. NLRC, G.R. No. 108813, December 15, 1994)*

Q: Can the State waive its immunity?

A: Yes, expressly or impliedly.

1. *Express* consent of the State may be manifested through general or special law.

   Note: Solicitor General cannot validly waive immunity from suit. Only the Congress can *(Republic v. Purisima, G.R. No. L-36084, Aug.31, 1977).*

2. *Implied* consent is given when the State itself commences litigation or when it enters into a contract. There is an implied consent when the state enters into a business contract. *(US v. Ruiz, G.R. No. L-35645 May 22, 1985)*

   Note: This rule is not absolute.

Q: Do all contracts entered into by the government operate as a waiver of its non-suability?

A: No. Distinction must still be made between one which is executed in the exercise of its sovereign function and another which is done in its proprietary capacity. A State may be said to have descended to the level of an individual and can this be deemed to have actually given its consent to be sued only when it enters into business contracts. It does not apply where the contract relates to the exercise of its sovereign functions. *(Department of Agriculture vs. NLRC G.R. No. 104269, November 11, 1993)*

Q: When is a suit considered as suit against the State?

A:

1. When the Republic is sued by name;
2. When the suit is against an unincorporated government agency;
3. When the suit is on its face against a government officer but the case is such

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

that ultimate liability will belong not to the officer but to the government. *(Republic v. Sandoval, G.R. No. 84607, Mar. 19, 1993)*

Q: Petitioners sued the Philippine National Railways for damages for the death of their son who fell from an overloaded train belonging to the PNR. The trial court dismissed the suit on the ground that the charter of the PNR, as amended by P.D No. 741 has made the same a government instrumentality, and thus immune from suit. Is the dismissal proper?

A: No. The correct rule is that not all government entities whether corporate or non-corporate, are immune from suits. Immunity from suit is determined by the character of the objects for which the entity is organized. When the government enters into a commercial business, it abandons its sovereign capacity and is to be treated like any other corporation. In this case, the State divested itself of its sovereign capacity when it organized the PNR which is no different from its predecessors, the Manila Railroad Company. *(Malang v. PNRC, G.R. No. L-49930, August 7, 1985)*

Q: Distinguish unincorporated government agency performing governmental function and one performing proprietary functions according to the applicability of the Doctrine of State Immunity.

A:

Unincorporated Government Agency Performing Governmental Functions	Unincorporated Government Agency Performing Proprietary Functions
Immunity has been upheld in its favor because its function is governmental or incidental to such function	Immunity has not been upheld in its favor whose function was not in pursuit of a necessary function of government but was essentially a business. *(Air Transportation Office v. Spouses David, G.R. No. 159402, February 23, 2011)*

Q: What is the Restrictive Theory of State Immunity from Suit?

A: The Restrictive Theory of State Immunity means that a State may be said to have descended to the level of an individual and can thus be deemed to have tacitly given its consent to be sued only when it enters into business contracts. However, the restrictive application of State immunity is proper only when the proceedings arise out of commercial transactions of the foreign sovereign, its commercial activities or economic affairs. It does not apply where the contract relates to the exercise of its sovereign functions. *(United States vs. Ruiz, G.R. No. L-35645, May 22, 1985)*

Q: When is a suit against a public official deemed to be a suit against the State?

A: The doctrine of State Immunity from suit applies to complaints filed against public officials for acts done in the performance of their duties within the scope of their authority.

GR: The rule is that the suit must be regarded as one against the state where the satisfaction of the judgment against the public official concerned will require the state to perform a positive act, such as appropriation of the amount necessary to pay the damages awarded to the plaintiff.

XPNs: The rule does not apply where:

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

2. The public official is clearly being sued not in his official capacity but in his personal capacity, although the acts complained of may have been committed while he occupied a public position. (*Lansang vs. CA*, G.R. No. 102667, *February 23, 2000*)

Q: The Northern Luzon Irrigation Authority was established by a legislative charter to strengthen the irrigation systems that supply water to farms and commercial growers in the area. While the NLIA is able to generate revenues through its operations, it receives an annual appropriation from Congress. The NLIA is authorized to "exercise all the powers of a corporation under the Corporation Code." Due to a miscalculation by some of its employees, there was a massive irrigation overflow causing a flash flood in Barrio Zanjera. A child drowned in the incident and his parents now file suit against the NLIA for damages. May the NLIA validly invoke the immunity of the State from suit?

A: No. Irrigation is a proprietary function. Besides, the NLIA has a juridical personality separate and distinct from the government, a suit against it is not a suit against the State. *(Fontanilla v. Maliaman, G.R. Nos. 55963 & 61045, February 27, 1991)*

Since the waiver of the immunity from suit is without qualification, the waiver includes an action based on a quasi-delict. (*Rayo vs. CFI of Bulacan. G.R. No. L-55954. December 19, 1981)*

Q: What are the implications of this phrase "waiver of immunity by the State does not mean a concession of its liability"?

A: When the State gives its consent to be sued, all it does is to give the other party an opportunity to show that the State is liable. Accordingly, the phrase that "waiver of immunity by the State does not mean a concession of liability" means that by consenting to be sued, the State does not necessarily admit that it is liable.

In such a case the State is merely giving the plaintiff a chance to prove that the State is liable but the State retains the right to raise all lawful defenses. (*Philippine Rock Industries, Inc. v. Board of Liquidators, G.R. No. 84992, December 15, 1989*)

Q: Is there any distinction between suability and liability of the State?

A: Yes.

SUABILITY	LIABILITY
Depends on the consent of the State to be sued	Depends on the applicable law and the established facts
The circumstance that a State is suable does not necessarily mean that it is liable.	The State can never be held liable if it is not suable.

Q: How are the liabilities of the following determined?

A:

1. *Public officers* – their acts without or in excess of jurisdiction: any injury caused by him is his own personal liability and cannot be imputed to the State.

2. *Government agencies* – establish whether or not the State, as principal which may ultimately be held liable, has given its consent.

GOVERNMENT AGENCIES	SUABILITY
a. Incorporated agencies	test of suability is stated in their charters. If its charter says so, it is suable
b. Unincorporated government agencies	suable if the nature of their acts is proprietary in nature
c. Jure gestionis	by right of economic or business relation = may be sued
d. Jure imperii	by right of sovereign power, in the exercise of sovereign functions = cannot be sued

Note: Letters c and d are also considered as nature of acts of State.

Acta Jure Imperii	*Acta Jure Gestionis*
There is no waiver.	There is waiver of State immunity from suit.
The State is acting in its sovereign governmental capacity.	The State entered into a contract in its commercial or proprietary capacity. The State descended to the level of a private entity.

3. *Government* – doctrine of State immunity is available; non-suability of the State is available to the agency even if it is shown that it is engaged not only in government functions but also, as a sideline, or incidentally, in proprietary enterprises.

Q: In what instances may a public officer be sued without the State's consent?

A:

1. To compel him to do an act required by law
2. To restrain him from enforcing an act claimed to be unconstitutional
3. To compel payment of damages from an already appropriated assurance fund or to refund tax over-payments from a fund already available for the purpose
4. To secure a judgment that the officer impleaded may satisfy the judgment himself without the State having to do a positive act to assist him
5. Where the government itself has violated its own laws because the doctrine of State immunity cannot be used to perpetrate an injustice

TEAM BAROPS

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Q: What is the true test in determining whether a suit against a public officer is a suit against the State?

A: The test is that, if a public officer or agency is sued and made liable, the State will have to perform an affirmative act of appropriating the needed amount to satisfy the judgment. If the State does so, then, it is a suit against the State.

Q: Is garnishment of government funds allowed?

A:

GR: No. Whether the money is deposited by way of general or special deposit, they remain government funds and are not subject to garnishment.

XPN: Where a law or ordinance has been enacted appropriating a specific amount to pay a valid government obligation, then the money can be garnished.

Note: Funds belonging to government corporations which can sue and be sued that are deposited with a bank can be garnished. *(PNB v. Pabalan, G.R. No. L-33112, June 15, 1978)*

If the local legislative authority refuses to enact a law appropriating the money judgment rendered by the court, the winning party may file a petition for *mandamus* to compel the legislative authority to enact a law *(Municipality of Makati v. CA, G.R. Nos. 89898-99, Oct.1, 1990)*

Q: Can the Government be made to pay interest in money judgments against it?

A:

GR: No.

XPNs:

1. Eminent domain
2. Erroneous collection of taxes
3. Where government agrees to pay interest pursuant to law.

Q: A property owner filed an action directly in court against the Republic of the Philippines seeking payment for a parcel of land which the national government utilized for a road widening project. Can the government invoke the doctrine of non-suitability of the state?

A: No. When the government expropriates property for public use without paying just compensation, it cannot invoke its immunity from the suit. Otherwise, the right guaranteed in Section 9, Article III of the 1987 Constitution that private property shall not be taken for public use without just compensation will be rendered nugatory. *(Ministerio vs. Court of First Instance, L-31635, August 31, 1971)*

PRINCIPLES AND POLICIES

Q: Are the provisions in Article II self-executing?

A: No. By its very title, Article II of the Constitution is a "declaration of principles and state policies." However, 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. *(Tondo Medical v. CA, G.R. No. 167324, July 17, 2007)*

Note: As a general rule, these provisions are non-self-executing. But a provision that is complete in itself, and provides sufficient rules for the exercise of rights, is self-executing. Thus, certain provisions in Art. II are self-executing, one of which is that provided in Section 16, Art. II, "*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.*" *(Oposa v. Factoran, G.R. No. 101083, July, 30, 1993)*

Q: What is a Republican State?

A: It is a state wherein all government authority emanates from the people and is exercised by representatives chosen by the people. *(Dissenting Opinion of J. Puno, G.R. No. 148334, January 21, 2004 and Bernas Primer, 2006 Edition)*

Q: What are the manifestations of Republicanism?

A: The following are the manifestations of Republicanism:

1. Ours is a government of laws and not of men.
2. Rule of Majority (Plurality in elections)
3. Accountability of public officials
4. Bill of Rights
5. Legislature cannot pass irrepealable laws
6. Separation of powers

Note: 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".

Q: What do you understand by Constitutional Authoritarianism?

A: 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.

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. *(Bernas Primer, 2006 Edition)*

Note: 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.

Q: What is the State policy regarding war?

A: The State renounces war as an instrument of national policy. *(Sec. 2, Art. II, 1987 Constitution)*

Q: Does the Philippines renounce defensive war?

A. No, because it is duty bound to defend its citizens. Under the Constitution, the prime duty of the government is to serve and protect the people.

Note: The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations. *(Section 2, Article II, 1987 Constitution)*

Q: What are the policies of the State on the following?

1. **Working men**
2. **Ecology**
3. **They symbols of statehood**
4. **Cultural minorities**
5. **Science and Technology**

A:

1. *Section 14, Article XIII of the Constitution* provides: "The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation."

2. *Section 16, Article II of the Constitution* provides: The State shall protect and advance the right of the people and their posterity to a balanced and healthful ECOLOGY in accord with the rhythm and harmony of nature."

3. *Section 1, Article XVII of the Constitution* provides: "The Flag of the Philippines shall be red, white, and blue, with a sun and three stars, as consecrated and honored by the people and recognized by law."

   Section 2, Article XVI of the Constitution states: "The Congress may by law, adopt a new name for the country, a national anthem, or a national seal, which shall all be truly reflective and symbolic of the ideals, history, and traditions of the people. Such law shall take effect only upon its ratification by the people in a national referendum."

4. *Section 22, Article II of the Constitution* provides: The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development."

   Section 5, Article XII of the Constitution reads: "The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being.

   The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of the ancestral domains."

   Section 6, Art. XIII of the Constitution provides: "The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources,

TEAM BAROPS

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands.

The State may resettle landless farmers and farm workers in its own agricultural estates which shall be distributed to them in the manner provided by law."

Section 17, Article XIV of the Constitution states: "The State shall recognize, respect and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies."

5. *Section 17, Article II of the Constitution* provides: "The State shall give priority to Education, Science and Technology, Arts, Culture and Sports to foster patriotism and nationalism, accelerate social progress, and promote total human liberation and development."

Section 14, Article XII of the Constitution reads in part: "The sustained development of a reservoir of national talents consisting of Filipino scientists, entrepreneurs, professionals, managers, high-level technical manpower and skilled workers and craftsmen shall be promoted by the State. The State shall encourage appropriate technology and regulate its transfer for the national benefit.

Sub-section 2, Section 3, Article XIV of the Constitution states: "They (educational institutions) shall inculcate patriotism and nationalism, foster love of humanity, respect for human rights, appreciation of the role of national heroes in the historical development of the country, teach the rights and duties of citizenship, strengthen ethical and spiritual values, develop moral character and personal discipline, encourage critical and creative thinking, broaden scientific and technological knowledge, and promote vocational efficiency."

Section 10, Article XIV of the Constitution declares: "Science and Technology are essential for national development and progress. The State shall give priority to research and development, invention, innovation, and their utilization; and to science and technology education, training, services. It shall support indigenous, appropriate, and self-reliant scientific and cultural capabilities, and their application to the country's productive systems and national life."

Section 11, Article XIV of the Constitution provides: "The Congress may provide for incentives, including tax deductions, to encourage private participation in programs of basic and applied scientific research. Scholarships, grants-in-aid or other forms of Incentives shall be provided to deserving science students, researchers, scientists, investors, technologists, and specially gifted citizens."

Section 12, Article XIV of the Constitution reads: "The State shall regulate the transfer and promote the adaptation of technology from all sources for the national benefit. It shall encourage widest participation of private groups, local governments, and community-based organizations in the generation and utilization of science and technology."

Q: Does the 1987 Constitution provide for a policy of transparency in matters of public concern?

A: Yes, the 1987 Constitution provides for a policy of transparency in matters of public interest**:**

1. *Section 28, Article II of the 1987 Constitution* provides: "Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full disclosure of all its transactions involving public interest,"

2**.** *Section 7, Article III* states: "The right of the people to information on matters of public concern shall be recognized, access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law."

3. *Section 20, Article VI* reads: "The records and books of account of the Congress shall

be preserved and be open to the public in accordance with law, and such books shall be audited by the Commission on Audit which shall publish annually an itemized list of amounts paid to and expenses incurred for each member."

4. *Section 17, Article XI* provides: sworn statement of assets, liabilities and net worth of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commission and other constitutional offices, and officers of the armed forces with general or flag rank filed upon their assumption of office shall be disclosed to the public in the manner provided by law.

5. *Section 21, Article XII* declares: "Information on foreign loans obtained or guaranteed by the government shall be made available to the public."

Note: These provisions on public disclosures are intended to enhance the role of the citizenry in governmental decision-making as well as in checking abuse in government. *(Valmonte vs. Belmonte, G.R. No. 74930, Feb. 13, 1989)*

Q: What is the Doctrine of Incorporation?

A: It means that the rules of International law form part of the law of the land and no legislative action is required to make them applicable in a country. By this doctrine, the Philippines is bound by generally accepted principles of international law, which are considered to be automatically part of our own laws. *(Tañada v. Angara, G.R. No. 118295, May 2, 1997)*

Q: What is the Doctrine of Auto-limitation?

A: It is the doctrine where the Philippines adhere to principles of international law as a limitation to the exercise of its sovereignty.

Note: The fact that the international law has been made part of the law of the land does not by any means imply the primacy of international law over national law in the municipal sphere. *(Philip Morris, Inc. v. CA, G.R. No. 91332, July 16, 1993)*

Q: What is meant by the principle of Civilian Supremacy?

A: The civilian authority is, at all times, supreme over the military.

Q: How is civilian supremacy ensured?
A:

1. By the installation of the President, the highest civilian authority, as the commander-in-chief of all the armed forces of the Philippines. *(Sec. 18, Art. VII, 1987 Constitution)*

2. Through the requirement that members of the AFP swear to uphold and defend the Constitution, which is the fundamental law of civil government. *(Sec. 5[1], Art. XVI, 1987 Constitution)*

Q: Can a person avoid the rendition of military services to defend the State?

A: No. One cannot avoid compulsory military service by invoking one's religious convictions or by saying that he has a sick father and several brothers and sisters to support. Accordingly, the duty of government to defend the State cannot be performed except through an army. To leave the organization of an army to the will of the citizens would be to make this duty to the Government excusable should there be no sufficient men who volunteer to enlist therein. The right of the Government to require compulsory military service is a consequence of its duty to defend the State and is reciprocal with its duty to defend the life, liberty, and property of the citizen." *(People v. Zosa, G.R. No. L-45892-93, July 13, 1938).*

Q: What are the provisions of the Constitution that support the principle of separation of Church and State?

A:

1. The non-establishment clause. *(Sec. 5 of Art. III)*
2. Sectoral representation in the House of Representatives. Various sectors may be represented except the religious sector. *(Par. 2, Sec. 5 of Art. VI)*
3. Religious groups shall not be registered as political parties. *(Par. 5, Sec. 2, Art. IX-C, 1987 Constitution)*

Note : Exceptions to the above-mentioned rule are the following provisons :

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

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

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])*.

Q: What is the Strict Separationist Approach?

A: Under this approach, the establishment clause was meant to protect the State from the church, and the State's hostility towards religion allows no interaction between the two. *(Estrada v. Escritor, A.M. No. P-02-1651, June 22, 2006)*

Q: What is the Strict Neutrality Approach?

A: It is not hostile in religion, but it is strict in holding that religion may not be used as a basis for classification for purposes of governmental action, whether the action confers rights or privileges or imposes duties or obligations. Only secular criteria may be the basis of government action. It does not permit, much less require accommodation of secular programs to religious belief. *(Estrada v. Escritor, A.M. No. P-02-1651, June 22, 2006)*

Q: What is the theory of Benevolent Neutrality?

A: Under this theory the "wall of separation" is meant to protect the church from the State. It believes that with respect to governmental actions, accommodation of religion may be allowed, not to promote the government's favored form of religion, but to allow individuals and groups to exercise their religion without hindrance. *(Estrada v. Escritor, A.M. No. P-02-1651, June 22, 2006)*

Q: What theory is applied in the Philippines?

A: In the Philippine context, the Court categorically ruled that, "the Filipino people, in adopting the Constitution, manifested their adherence to the benevolent neutrality approach that requires accommodations in interpreting the religion clauses. (*Estrada v. Escritor, A.M. No. P-02-1651, June 22, 2006*)

Q: What are the three kinds of accommodation that results from free exercise claim?

A: Those which are:

1. Found to be constitutionally compelled, *i.e.* required by the Free Exercise Clause (mandatory),
2. Discretionary or legislative, *i.e.* not required by the Free Exercise Clause (permissive),
3. Prohibited by the religion clauses (prohibited).

Note: Based on the foregoing, and after holding that the Philippine Constitution upholds the benevolent neutrality doctrine which allows for accommodation, the Court laid down the rule that in dealing with cases involving purely conduct based on religious belief, it shall adopt the *strict-compelling State interest test* because it is most in line with the benevolent neutrality-accommodation.

Q: What is Mandatory Accommodation?

A: This is based on the premise that when religious conscience conflicts with a government obligation or prohibition, the government sometimes may have to give way. This accommodation occurs when all three conditions of the compelling State interest test are met.

Q: What is Permissive Accommodation?

A: It means that the State may, but is not required to, accommodate religious interests.

Q: What is Prohibited Accommodation?

A: This results when the Court finds no basis for a mandatory accommodation, or it determines that the legislative accommodation runs afoul of the establishment or the free exercise clause. In this case, the Court finds that establishment concerns prevail over potential accommodation interests.

Note: The purpose of accommodations is to remove a burden on, or facilitate the exercise of, a person's or institution's religions.

SEPARATION OF POWERS

Q: What is the Doctrine of Separation of Powers?

A: In essence, separation of powers means the legislation belongs to Congress, execution to the executive, settlement of legal controversies to the judiciary. Each is therefore prevented from invading the domain of the others.

Q: What is the purpose of separation of powers?

A: To prevent the concentration of authority in one person or group of persons that might lead to irreparable error or abuse in its exercise to the detriment of republican institutions. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of governmental powers among the three departments, to save the people from autocracy.

1. To secure action
2. To forestall over-action
3. To prevent despotism
4. To obtain efficiency

Q: What are the powers vested in the three branches of government?

A:

Executive	Legislative	Judiciary
Imple-mentation of laws *(Power of the sword)*	Making of laws *(Power of the purse)*	Interpretation of laws *(Power of judicial review)*

Note: Legislative power is given to the Legislature whose members hold office for a fixed term *(Art. VI, Sec.1)*; executive power is given to a separate Executive who holds office for a fixed term *(Art. VII, Sec.1)*; and judicial power is held by an independent Judiciary. *(Art. VIII, Sec.1)*

Q: A group of losing litigants in a case decided by the SC filed a complaint before the Ombudsman charging the Justices with knowingly and deliberately rendering an unjust decision in utter violation of the penal laws of the land. Can the Ombudsman validly take cognizance of the case?

A: No. Pursuant to the principle of separation of powers, the correctness of the decisions of the SC as final arbiter of all justiciable disputes is conclusive upon all other departments of the government; the Ombudsman has no power to review the decisions of the SC by entertaining a complaint against the Justices of the SC for knowingly rendering an unjust decision. *(In re: Laureta, G.R. No. L-68635, May 14, 1987)*

Q: May the RTC or any court prohibit a committee of the Senate like the Blue Ribbon Committee from requiring a person to appear before it when it is conducting investigation in aid of legislation?

A: No, because that would be violative of the principle of separation of powers. The principle essentially means that legislation belongs to Congress, execution to the Executive and settlement of legal controversies to the Judiciary. Each is prevented from invading the domain of the others. (*Senate Blue Ribbon Committee v. Majaducon, G.R. No. 136760, July 29, 2003*)

Q: What is the principle of Blending of Powers?

A: It is an instance when powers are not confined exclusively within one department but are assigned to or shared by several departments.

Examples of the blending of powers are the following:

1. Power of appointment which can be exercised by each department and be rightfully exercised by each department over its own administrative personnel;
2. General Appropriations Law – President prepares the budget which serves as the basis of the bill adopted by Congress;
3. Amnesty granted by the President requires the concurrence of the majority of all the members of the Congress; and
4. COMELEC does not deputize law-enforcement agencies and instrumentalities of the government for the purpose of ensuring free, orderly, honest, peaceful and credible elections alone (consent of the President is required)

CHECKS AND BALANCES

Q: What is the principle of Checks and Balances?

A: It allows one department to resist encroachments upon its prerogatives or to rectify mistakes or excesses committed by the other departments.

Q: How does the Executive Check the other two branches?

A:

EXECUTIVE CHECK	
Legislative	**Judiciary**
Through its veto power	1. Through its *power of pardon*, it may set aside the judgment of the judiciary. 2. Also by *power of appointment* – power to appoint members of the Judiciary.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Q: How does Legislature check the other two branches?

A:

LEGISLATIVE CHECK	
Executive	**Judiciary**
1. Override the veto of the President	Revoke or amend the decisions by either: 1. Enacting a new law
2. Reject certain appointments made by the president	2. Amending the old law, giving it certain definition and interpretation different from the old
3. Revoke the proclamation of martial law or suspension of the writ of habeas corpus	3. Impeachment of SC members
4. Impeachment	4. Define, prescribe, apportion jurisdiction of lower courts: a. Prescribe the qualifications of lower court judges b. Impeachment c. Determination of salaries of judges.
5. Determine the salaries of the president or vice president	

Q: How does the Judiciary check the other two branches?

A:

JUDICIAL CHECK	
Executive	**Legislative**
It may declare (through the SC as the final arbiter) the acts of both the legislature and executive as unconstitutional or invalid so long as there is grave abuse of discretion.	

Note: Often times, due to the principle of separation of powers, the Supreme Court refuses to pass upon the constitutionality of the laws so long as it can use other basis for deciding the case.

The legislature cannot, upon passing a law which violates a constitutional provision, validate it so as to prevent an attack thereon in the courts, by a declaration that it shall be so construed as not to violate the constitutional inhibition *(Endencia v. David, G.R. No. L-6355-56 Aug. 31, 1953).* The right and responsibility to investigate and suspend a public official rests solely in the executive department; the legislature cannot delegate a power/duty to the SC to investigate the conduct and behavior of executive officials otherwise, it would be unconstitutional as per violation of the doctrine of separation of powers. *(Noblejas v. Teehankee, G.R. No. L-28790, Apr. 29, 1968)*

The first and safest criterion to determine whether a given power has been validly exercised by a particular department is *whether or not the power has been constitutionally conferred upon the department claiming its exercise*. However, even in the absence of express conferment, the exercise of the power may be justified under the Doctrine of Necessary Implication - the grant of express power carried with it all other powers that may be reasonably inferred from it.

DELEGATION OF POWERS

Q: Can a delegated power be re-delegated?

A:

GR: No. Delegated power constitutes not only a right but a duty to be performed by the delegate through the instrumentality of his own judgment and not through the intervening mind of another.

XPN: Permissible delegations: **PETAL**

1. Delegation to the **P**eople through initiative and referendum. *(Sec. 1, Art. VI, 1987 Constitution)*
2. **E**mergency powers delegated by Congress to the President. *(Sec. 23, Art. VI)*

   The conditions for the vesture of emergency powers are the following:

   a. There must be war or other national emergency
   b. The delegation is for a limited period only
   c. Delegation is subject to restrictions as Congress may prescribe
   d. Emergency powers must be exercised to carry a national policy declared by Congress

3. Congress may delegate **T**ariff powers to the President. *(Sec. 28 (2), Art. VI)*

   Note: The Tariff and Customs Code is the enabling law that grants such powers to the president.

The power to impose tariffs in the first place is not inherent in the President but arises only from congressional grant. Thus, it is the prerogative of Congress to impose limitations and restrictions on such powers which do not normally belong to the executive in the first place. *(Southern Cross Cement Corporation v. Philippine Cement Manufacturing Corp., G.R. No. 158540, Aug. 3, 2005)*

4. Delegation to **A**dministrative bodies – also known as power of subordinate legislation.

   Note: This refers to the authority vested by Congress to the administrative bodies to "fill in the details" which Congress cannot provide due to lack of opportunity or competence. Such includes the making of supplementary rules and regulations. Such have the force and effect of law.

5. Delegation to **L**ocal Governments – It is not regarded as a transfer of general legislative power, but rather as the grant of authority to prescribe local regulations.

   Note: Congress can only delegate, usually to administrative agencies, Rule-Making Power.

Q: What are the two tests of valid delegation?

A:

1. *Completeness Test*- law must be complete in all essential terms and conditions when it leaves the legislature so that there will be nothing left for the delegate to do when it reaches him except to enforce it.

2. *Sufficient Standard Test*- if law does not spell out in detail the limits of the delegate's authority, it may be sustained if delegation is made subject to a sufficient standard.

   Note: SUFFICIENT STANDARD – maps out the boundaries of the delegate's authority and indicating the circumstances under which it is to be pursued and effected (purpose: prevent total transference of legislative power).

Note: INVALID DELEGATION OF LEGISLATIVE POWER–If there are gaps that will prevent its enforcement, delegate is given the opportunity to step into the shoes of the legislature and exercise discretion in order to repair the omissions.

Q: What is the distinction between the President's authority to declare a state of national emergency and her authority to exercise emergency powers?

A: The President's authority to:

Declare a State of National Emergency	Exercise Emergency Powers
Granted by the Constitution, no legitimate objection can be raised.	Requires a delegation from Congress. *(David, et al. v. Gloria Macapagal-Arroyo, et al., G.R. No. 171396, May 3, 2006)* **Note:** Conferment of emergency powers on the President is not mandatory on Congress.

FORMS OF GOVERNMENT

Q: What is the form of government of the Philippines?

A: The Philippines adheres to the presidential system.

Q: What is the principal identifying feature of a presidential form of government?

A: The principal identifying feature of a presidential form of government is embodied in the separation of powers doctrine.

Note: In presidential system, the President is both the head of State and the head of government.

Q: What are the essential characteristics of a parliamentary form of government?

A:

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;

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

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.

Q: What are the functions of the Government?

A:

1. *Constituent* – mandatory for the government to perform because they constitute the very bonds of society.

2. *Ministrant* – intended to promote the welfare, progress and prosperity of the people.

Note: Distinction of function is no longer relevant because the Constitution obligates the State to promote social justice and has repudiated the *laissez faire* policy *(ACCFA v. Federation of Labor Unions, G.R. No. L-221484, Nov. 29, 1969).* However, in *Shipside Incorporated v. CA (G.R. No. 143377, Feb. 20, 2001),* the nature of the function of the BCDA was a factor to determine the *locus standi* of the Government.

Q: Does the Bases Conversion Development Authority (BCDA) exercise constituent or ministrant function?

A: While public benefit and public welfare, particularly, the promotion of the economic and social development of Central Luzon, may be attributable to the operation of the BCDA, yet it is certain that the functions performed by the BCDA are basically proprietary in nature. Other corporations have been created by government to act as its agents for the realization of its programs, the SSS, GSIS, NAWASA and the NIA, to count a few, and yet, the Court has ruled that these entities, although performing functions aimed at promoting public interest and public welfare, are not government-function corporations invested with governmental attributes. It may thus be said that the BCDA is not a mere agency of the Government but a corporate body performing proprietary functions. *(Shipside Incorporated v. CA, G.R. No. 143377, Feb. 20, 2001)*

Q: What are the classifications of government on the basis of legitimacy?

A:

1. *De jure government.* A government truly and lawfully established by the Constitution of a State but which having been in the meantime displaced is actually cut off from power or control.
2. *De facto government.* A government of fact; one actually exercising power and control in the State as opposed to the true and lawful government.

Q: What are the kinds of a *de facto* government?

A:

1. *De facto proper* – government that gets possession and control of, or usurps, by force or by the voice of the majority, the rightful legal government and maintains itself against the will of the latter;
2. *Government of paramount force* – established and maintained by military forces who invade and occupy a territory of the enemy in the course of war; and
3. *Independent government* – established by the inhabitants of the country who rise in insurrection against the parent State*. (Kop Kim Cham v. Valdez Tan Key, G.R. No. L- 5, Sept. 17, 1945)*

C. LEGISLATIVE DEPARTMENT

Q: To what body is legislative power vested?

A:

GR: Congress

XPN: Powers reserved to the people by the provision on initiative and referendum.

Q: What are the classes of legislative power?

A: ODeCO

1. ***O****riginal*: Possessed by the people in their sovereign capacity *i.e.* initiative and referendum.
2. ***De****legated*: Possessed by Congress and other legislative bodies by virtue of the Constitution.
3. ***C****onstituent*: The power to amend or revise the Constitution.
4. ***O****rdinary*: The power to pass ordinary laws.

Q: What are the limitations on the legislative power of Congress?

A:

1. Substantive: limitations on the content of laws.
2. Procedural: limitations on the manner of passing laws.
3. Congress cannot pass irrepealable laws.
4. Congress, as a general rule, cannot delegate its legislative power.

Note: 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.

HOUSES OF CONGRESS

Compositions, Qualifications and Terms of Office

Q: Discuss the composition, qualifications, and term of office of members of Congress.

A:

SENATE	HoR
Composition	
24 Senators (elected at large by qualified Filipino voters)	Not more than 250 members, unless otherwise provided by law.
Qualifications	
1. Natural-born citizen of the Phils. 2. At least 35 years of age on the day of election. 3. Able to read and write. 4. Resident of the Phils. for not less than 2 years immediately preceding the day of election.	1. Natural-born citizen of the Phils. 2. At least 25 years of age on the day of election. 3. Able to read and write. 4. Except the party-list reps, a registered voter in the district in which he shall be elected. 5. Resident thereof for a period of not less than 1 year immediately proceeding the day of the election.
Term of office	
6 years, commencing at noon on the 30th day of June next following their election. *Term limit:* Only up to 2 consecutive terms. However, they may serve for more than 2 terms provided that the terms are not consecutive.	3 years, commencing at noon on the 30th day of June next following their election. *Term limit:* No member of the HoR shall serve for more than 3 consecutive terms.

Q: Discuss the disqualifications of members of Congress.

A:

Senate	HoR
1. No Senator shall serve for more than 2 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 *(Section 4, Article VI)*.	1. Shall not serve for more than three (3) consecutive terms *(Sec. 7, Article VI)*.
2. One who has been declared by competent authority as insane or incompetent	2. One who has been declared by competent authority as insane or incompetent
3. One who has been sentenced by final judgment for: a. Subversion; b. Insurrection; c. Rebellion; d. Any offense for which he has been sentenced to a	3. One who has been sentenced by final judgment for: a. Subversion; b. Insurrection; c. Rebellion; d. Any offense for which he has been sentenced to a

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

penalty of not more than 18 months; or e. A crime involving moral turpitude, unless given plenary pardon or granted amnesty. *(Section 12, BP 881)*	penalty of not more than 18 months; or e. A crime involving moral turpitude, unless given plenary pardon or granted amnesty. *(Section 12, BP 881)*

Note: The term of office prescribed by the Constitution may not be extended or shortened by the legislature, but the period during which an officer actually holds the office (tenure) may be affected by circumstances within or beyond the power of said officer. Tenure may be shorter than the term or it may not exist at all. These situations will not change the duration of the term of office.

Q: How can members of Congress be removed from their respective offices?

A:

SENATORS	MEMBERS OF THE HOUSE OF REPRESENTATIVES (HoR)
Expulsion by the Senate with the concurrence of 2/3 of all its members. *(Sec. 16, par. 3, Article VI)*	Expulsion by the House is with the concurrence of 2/3 of all its members. *(Sec. 16, par. 3, Art. VI)*

Q: Can Congress or COMELEC impose an additional qualification for candidates for senator?

A: No. The Congress cannot validly amend or otherwise modify these qualification standards, as it cannot disregard, evade, or weaken the force of a constitutional mandate, or alter or enlarge the Constitution (*Cordora v. COMELEC, G.R. No. 176947, Feb. 19, 2009*; *Social Justice Society v. DDB and PDEA, G.R Nos. 157870, 158633, 161658, Nov. 3, 2008*).

Q: What is the rule on voluntary renunciation of office for any length of time?

A: It shall not be considered as an interruption in the continuity of his service for the full term for which he was elected *(Sec. 4, Article VI).*

House of Representatives (HoR)

Q: What is the composition of HoR?

A:

District Representative	Party-list Representative
1. Elected according to legislative district by the constituents of such district; 2. Must be a resident of his legislative district for at least 1 year immediately before the election; 3. Elected personally, by name; 4. Does not lose seat if he/she changes party or affiliation; 5. In case of vacancy, a special election may be held provided that the vacancy takes place at least 1 year before the next election; 6. A district representative is not prevented from running again as a district representative if he/she lost during the previous election; and 7. A change in affiliation within months prior to election does not prevent a district representative from running under his new party.	1. Elected nationally with party-list organizations garnering at least 3% of all votes cast for the party-list system entitled to 1 seat, which is increased according to proportional representation, but is in no way to exceed 3 seats per organization; 2. No special residency requirement; 3. Voted upon by party or organization. It is only when a party is entitled to representation that it designates who will sit as representative; 4. If he/she changes party or affiliation, loses his seat, in which case he/she will be substituted by another qualified person in the party /organization based on the list submitted to the COMELEC; 5. In case of vacancy, a substitution will be made within the party, based on the list submitted to the COMELEC; 6. A party-list representative cannot sit if he ran and lost in the previous election; and 7. A change in affiliation within 6 months prior to election prohibits the party-list representatives from listing as

	representative under his new party or organization.

DISTRICT REPRESENTATIVES AND QUESTIONS OF APPORTIONMENT

Q: Who are district representatives?

A: District representatives are those who were elected from legislative districts apportioned among the provinces, cities and the Metropolitan Manila area.

Q: How are legislative districts apportioned?

A: Legislative districts are apportioned among the provinces, cities, and the Metropolitan Manila area. They are apportioned in accordance with the number of their respect inhabitants and on the basis of a uniform and progressive ratio. *(Section 5, Article VI, 1987Constitution)*

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

Note: The question of the validity of an apportionment law is a justiciable question. *(Macias v. Comelec, G.R. No. L-18684, September 14, 1961)*

Q: What are the conditions for apportionment?

A:

1. Elected from legislative districts which are apportioned in accordance with the number of inhabitants of each area and on the basis of a uniform and progressive ratio:

   a. *Uniform* – Every representative of Congress shall represent a territorial unit with more or less 250,000 population. All the other representatives shall have the same or nearly the same political constituency so much so that their votes will constitute the popular majority.

   b. *Progressive* – It must respond to the change in times. The number of House representatives must not be so big as to be unwieldy. *(Let us say, there is a growth in population. The ratio may then be increased. From 250,000 constituents/1 representative it may be reapportioned to 300, 000 constituents/1 representative).*

2. Each legislative district shall comprise contiguous, compact and adjacent territory. (This condition is not absolute)

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

4. Legislative districts shall be re-apportioned by Congress within 3 years after the return of each census *(Senator Aquino III v. COMELEC, G.R. No. 189793, April 7, 2010.*

Note: **GR:** There must be proportional representation according to the number of their constituents/inhabitants

XPN: In one city-one representative/one province-one representative rule.

Note: Where a town is converted to a highly urbanized city with a population of not less than 250, 000, the creation of a separate congressional district is in keeping with the one city-one representative/one province-one representative rule.

A city which has exceeded the number of 250, 000 inhabitants is entitled to one representative.

Q: What is the reason for such rule?

A: The underlying principle behind the rule for apportionment 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.

Note: 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, G.R. No. L-114783, December 8, 1994)*

As such, 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, G.R. No. L-114783, December 8, 1994)*

Q: How should the reapportionment be made?

A: Reapportionment can be made thru a special law. *(Mariano, Jr. vs. COMELEC, G.R. No. 118577, March 7, 1995)*

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Note: In *Montejo vs. COMELEC,* it was held that while concededly the conversion of Biliran into a regular province brought about an imbalance in the distribution of voters and inhabitants in the 5 districts of Leyte, the issue involves reapportionment of legislative districts, and Petitioner's remedy lies with Congress. This Court cannot itself make the reapportionment as petitioner would want. *(Montejo vs. COMELEC G.R. No. 118702, March 16, 1995)*

Q: What is Gerrymandering? Is it allowed?

A: Gerrymandering is the formation of one legislative district out of separate territories for the purpose of favoring a candidate or a party. It is not allowed because the Constitution provides that each district shall comprise, as far as practicable, contiguous, compact and adjacent territory (*Bernas, Reviewer in Philippine Constitution, p. 186)*

PARTY-LIST SYSTEM

Q: Discuss the Party-List System.

A: Party-list representatives shall constitute 20% of the total number of representatives in the House of Representatives. *(Sec. 5 [2], Art. VI, 1987 Constitution)*

Party-list system is a mechanism of proportional representation in the election of representatives to the HoR from national, regional and sectoral parties or organizations or coalitions thereof registered with the COMELEC.

A free and open party system shall be allowed to evolve according to the free choice of the people. *(Sec. 2 [5], Art. IX-C, 1987 Constitution)* Political parties registered under the party-list system shall be entitled to appoint poll watchers in accordance with law. *(Sec. 8, Art. IX-C, 1987 Constitution)*

Q: Discuss the different parties under the party-list system

A: No votes cast in favor of political party, organization or coalition shall be valid except for those registered under the party-list system.

1. *Political party* – organized group of citizens advocating ideology or platform, principles and policies for the general conduct of government and which, as the most immediate means of securing their adoption, regularly nominates and supports certain of its leaders and members as candidate in public office *(Bayan Muna v. COMELEC, G.R. No. 147612, June 28, 2001)*

2. *National party* – its constituency is spread over the geographical territory of at least a majority of regions

3. *Regional party* – its constituency is spread over the geographical territory of at least a majority of the cities and provinces comprising the region

4. *Sectoral party* – organized group of citizens belonging to any of the following sectors: labor, peasant, fisherfolk, urban poor, indigenous, cultural communities, elderly, handicapped, women, youth, veterans, overseas workers and professionals, whose principal advocacy pertains to the special interest and concerns of their sectors.

5. *Sectoral Organization* – refers to a group of citizens who share similar physical attributes or characteristics, employment, interest or concerns.

6. *Coalition* – refers to an aggregation of duly registered national, regional, sectoral parties or organizations for political and/or election purposes.

Q: If one were to analyze the Constitutional and statutory examples of qualified parties, it should be evident that they represent what classes?

A:

Broad Definition	*Narrow Definition	Specifically Defined Groups
Working Class	Labor	Carpenters, security guards, microchip factory workers, barbers, tricycle drivers
Economically Deprived	Urban Poor	Informal settlers, the jobless, persons displaced by domestic wars
The Vulnerable	Women	Working women, battered women, victims of slavery
Work Impaired	Handi-Capped	Deaf and dumb, the blind, people on wheelchairs *(Separate Opinion of Justice Abad, Ang Ladlad LGBT Party v. COMELEC, G.R.*

		No. 190582, Apr. 8, 2010)

Note: Obviously, the level of representation desired by both the Constitution and R.A. 7941 for the party-list system is the second, the narrow definition of the sector that the law regards as "marginalized and underrepresented." The implication of this is that, if any of the sub-groupings (the carpenters, the security guards, the microchips factory workers, the barbers, the tricycle drivers in the example) within the sector desires to apply for accreditation as a party-list group, it must compete with other sub-groups for the seat allotted to the "labor sector" in the House of Representatives. This is the apparent intent of the Constitution and the law. *(Separate Opinion of Justice Abad, Ang Ladlad LGBT Party v. COMELEC, G.R. No. 190582, Apr. 8, 2010)*

Q: What groups are disqualified for registration?

A:

1. Religious denominations or sects.
2. Those who seek to achieve their goals through violence or unlawful means.
3. Those who refuse to uphold and adhere to the Constitution; and
4. Those supported by foreign governments *(Ang Bagong Bayani-OFW Labor Party, v. COMELEC, G.R. No. 147589, June 25, 2003)*

Q: In sum, what are the requirements for a group to qualify for sectoral party accreditation?

A:

1. The applying party must show that it represents the "marginalized and underrepresented," exemplified by the working class, the service class, the economically deprived, the social outcasts, the vulnerable, the work impaired, or some such similar class of persons.
2. The applying party should be characterized by a shared advocacy for genuine issues affecting basic human rights as these apply to the sector it represents.
3. The applying party must share the cause of their sector, narrowly defined as shown above. If such party is a sub-group within that sector, it must compete with other sub-groups for the seat allocated to their sector.
4. The members of the party seeking accreditation must have an inherent regional or national presence.
5. Except for matters the COMELEC can take judicial notice of, the party applying for accreditation must prove its claims by clear and convincing evidence. *(Separate Opinion of Justice Abad, Ang Ladlad LGBT Party v. COMELEC, G.R. No. 190582, Apr. 8, 2010)*

Q: Has the Ang Ladlad Party-List amply proved that it meets the requirements for sectoral party accreditation?

A: Yes. Their members are in the vulnerable class like the women and the youth. Ang Ladlad represents a narrow definition of its class (LGBTs) rather than a concrete and specific definition of a sub-group within the class (group of gay beauticians, for example). The people that Ang Ladlad seeks to represent have a national presence. *(Separate Opinion of Justice Abad, Ang Ladlad LGBT Party v. COMELEC, G.R. No. 190582, Apr. 8, 2010)*

Q: What are the grounds for the cancellation of registration?

A:

1. Accepting financial contributions from foreign governments or agencies; and
2. Failure to obtain at least 10% of the votes casts in the constituency where the party fielded candidates. *(Ang Bagong Bayani-OFW Labor Party, v. COMELEC, G.R. No. 147589, June 25, 2003)*

Q: Can major political parties participate in the party-list elections?

A: No. It is not open to all but only to the marginalized and the underrepresented. Allowing all individuals and groups, including those which now dominate district elections, to have the same opportunity to participate in the party-list elections would desecrate this lofty objective and mongrelize the social justice mechanism into an atrocious veneer for traditional politics. (*Ang Bagong Bayani-OFW Labor Party v. COMELEC, G.R. No. 147589, June 26, 2001)*

Q: Who shall be voted?

A: The registered national, regional or sectoral party-list groups or organizations and not their candidates.

Q: Who are elected into office?

TEAM BAROPS

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

A: It is the party-list representatives who are elected into office, not their parties or organizations. These representatives are elected, however, through that peculiar party-list system that the Constitution authorized and that Congress by law established where the voters cast their votes for the organizations or parties to which such party-list representatives belong. *(Abayon v. HRET, G.R. No. 189466, Feb. 11, 2010)*

Q: What are the qualifications of party-list nominees?

A:

1. Natural- born citizen of the Philippines
2. Registered voter
3. Resident of the Philippines for at least 1 year immediately preceding the day of the election
4. Able to read and write
5. *Bona fide* member of the party or organization which he seeks to represent at least 90 days preceding election day
6. At least 25 years of age. (not more than 30 years old for nominees for youth sector)

Note: There is absolutely nothing in R.A. 7941 that prohibits COMELEC from disclosing or even publishing through mediums other than the "Certified List" the names of the party-list nominees. As may be noted, no national security or like concerns is involved in the disclosure of the names of the party-list groups in question *(Bantay RA 7941 v. COMELEC, G.R. No. 177271; G.R. No. 177314, May 4, 2007)*

Q: What is the effect of change of affiliation any party-list representative?

A: Any elected party-list representative who changes his political party or sectoral affiliation during his term of office shall forfeit his seat; provided that if he changes his political party or sectoral affiliation within 6 months before an election, he shall not be eligible for nomination as party-list representative under his new party or organization *(Amores v. HRET, G.R. No. 189600, June 29, 2010).*

Note: In case of vacancy in the seat reserved for party-list representatives, the vacancy shall be automatically filled by the next representative from the list of nominees in the order submitted to the COMELEC by the same party, organization or coalition, who shall serve for the unexpired term. If the list is exhausted, the party, organization or coalition concerned shall submit additional nominees.

Q: Does the Constitution preclude Congress from increasing its membership?

A: The Constitution does not preclude Congress from increasing its membership by passing a law, other than a general re-apportionment law. Thus, a law converting a municipality into a highly urbanized city automatically creates a new legislative district, and consequently increases the membership of the HoR *(Mariano v. COMELEC, G.R No. 118577, Mar. 7, 1995).*

Q: What is the formula mandated by the Constitution in determining the number of party-list representatives?

A: The House of Representatives shall be composed of not more than 250 members, unless otherwise fixed by law. *(Section 5 [1], Article VI of the 1987 Constitution).*

The number of seats available to party-list representatives is based on the: Ratio of party-list representatives to the total number of representatives.

Accordingly, we compute the number of seats available to party-list representatives from the number of legislative districts.

$$\left(\frac{\text{Number of seats available to legislative districts}}{0.80}\right) \times 0.20 = \text{Number of seats available to party-list representatives}$$

This formula allows for the corresponding increase in the number of seats available for party-list representatives whenever a legislative district is created by law.

After prescribing the ratio of the number of party-list representatives to the total number of representatives, the Constitution left the manner of allocating the seats available to party-list representatives to the wisdom of the legislature. *(BANAT v. COMELEC, G.R. No. 179271, April 21, 2009)*

Q: How shall the party-list representative seats be allocated?

A: In determining the allocation of seats for party-list representatives under Section 11 of R.A. No. 7941, the following procedure shall be observed:

1. The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.
2. The parties, organizations, and coalitions receiving at least 2% of the total votes cast for the party-list system shall be entitled to one guaranteed seat each.
3. Those garnering sufficient number of votes, according to the ranking in paragraph 1, shall be entitled to additional seats in proportion to their total number of votes until all the additional seats are allocated.
4. Each party, organization, or coalition shall be entitled to not more than 3 seats.

Note: In computing the additional seats, the guaranteed seats shall no longer be included because they have already been allocated, at one seat each, to every two percent. Thus, the remaining available seats for allocation as "additional seats" are the maximum seats reserved under the party-list system less the guaranteed seats. Fractional seats are disregarded in the absence of a provision in R.A. 7941 allowing for a rounding off of fractional seats. *(BANAT v. COMELEC, G.R. No. 179271, April 21, 2009)*

Q: Is the two percent threshold prescribed in Section 11 (b) R.A. 7941 constitutional?

A: No. The Court therefore strikes down the two percent threshold only in relation to the distribution of the additional seats as found in the second clause of Section 11 (b) of RA 7941. The two percent threshold 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 interests in the House of Representatives". *(BANAT v. COMELEC, G.R. No. 179271, April 21, 2009)*

LEGISLATIVE PRIVILEGES, INHIBITIONS AND DISQUALIFICATIONS

a. PARLIAMENTARY IMMUNITIES AND LEGISLATIVE PRIVILEGES

Q: What is immunity from arrest?

A: Legislators are privileged from arrest while Congress is "in session" with respect to offenses punishable by up to 6 years of imprisonment.

Q: What is the purpose of parliamentary immunities?

A: It is not for the benefit of the officials; rather, it is to protect and support the rights of the people by ensuring that their representatives are doing their jobs according to the dictates of their conscience. It is indispensable no matter how powerful the offended party is.

Q: May a congressman who committed an offense punishable for not more than 6 years, but is not attending session, be arrested?

A: No. So long as he is an incumbent congressman, and so long as Congress is in session, whether or not he is attending it, he shall be immune from arrest. *(People of the Philippines v. Jalosjos, G.R. Nos. 132875-76, February 3, 2000).*

Q: Can a senator-lawyer be disbarred or disciplined by the Supreme Court for statements made during a privilege speech?

A: No. Indeed, the senator-lawyer's privilege speech is not actionable criminally or in a disciplinary proceeding under the Rules of Court. The Court, however, would be remiss in its duty if it let the Senator's offensive and disrespectful language that definitely tended to denigrate the institution pass by. It is imperative on the Court's part to re-instill in Senator/Atty. Santiago her duty to respect courts of justice, especially this Tribunal, and remind her anew that parliamentary non-accountability thus granted to members of Congress is not to protect them against prosecutions for their own benefit, but to enable them, as the people's representatives, to perform the functions of their office without fear of being made responsible before the courts or other forums outside the congressional hall. It is intended to protect members of congress against government pressure and intimidation aimed at influencing the decision-making prerogatives of Congress and its members. *(Pobre v. Sen. Defensor-Santiago, A.C. No. 7399, Aug. 25, 2009)*

Q: Is Congress considered in session during a recess?

A: No. It is not in session. During a recess, a congressman who has committed an offense

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

punishable by not more than 6 years imprisonment may be arrested.

Q: Is there immunity from searches?

A: No. The Constitution provides only a privilege from arrest in order to ensure the attendance of Congressmen.

Q: What is legislative privilege?

A: No member shall be questioned or held liable in any forum other than his/her respective Congressional body for any debate or speech in Congress or in any committee thereof. *(Sec. 11, Article VI; Pobre v. Sen. Santiago, A.C. No, 7399, August 25, 2009)*

Q: What are the limitations on legislative privilege?

A:

1. Protection is only against forum other than Congress itself. Thus, for defamatory remarks, which are otherwise privileged, a member may be sanctioned by either the Senate or the House as the case may be.

2. The "speech or debate" must be made in performance of their duties as members of Congress.

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

A: Yes. In *Paredes*, Jr. *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 behaviour which is a penalty. *(Paredes*, *Jr. v*. *Sandiganbayan*, *GR 118354, August 8, 1995)*

Q: What are the two (2) requirements for the privilege of Speech and Debate to be availed of?

A:

1. That the remarks must be made while the legislature or the legislative committee is functioning, that is in session

2. That they must be made in connection with the discharge of official duties.

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

Q: What does speech or debate encompass?

A: It includes a vote or passage of a resolution, all the utterances made by Congressmen in the performance of their functions such as speeches delivered, statements made, or votes casts in the halls of Congress. It also includes bills introduced in Congress (whether or not it is in session) and all the other utterances (made outside or inside the premises of Congress) provided they are made in accordance with a legislative function. *(Jimenez, v. Cabangbang, G.R. No. L-15905, August 3, 1966)*

Note: The purpose of the privilege is to insure the effective discharge of functions of Congress. The privilege may be abused but it is said that such is not so damaging or detrimental as compared to the denial or withdrawal of such privilege.

Q: **Does publication fall under the scope of speech?**

A: No, not all the time. The same shall be made while Congress is in session and not during its recess. However, if publication is made when Congress is not in session, it is not privileged because Congressman is said to be not acting as congressman. *(Jimenez, v. Cabangbang, G.R. No. L-15905, August 3, 1966)*

b. INCOMPATIBLE AND FORBIDDEN OFFICES

Q: What are the prohibitions attached to a legislator during his term?

A:

1. *Incompatible office* – "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 and controlled corporations or their subsidiaries during his term without forfeiting his seat" *(Sec. 13, Article VI, 1987 Constitution)*

   Note: Forfeiture of the seat in Congress shall be automatic upon the member's assumption of such other office deemed incompatible with his seat in Congress. However, no forfeiture shall take place if the member of Congress holds the other

government office in an *ex-officio* capacity.

2. *Forbidden office* – Neither shall a senator or a member of the House of Representatives be appointed to any office which may have been created or the emoluments thereof increased during the term for which he was elected. *(Sec. 13, Art. VI, 1987 Constitution)*

   Note: With this, even if the member of the Congress is willing to forfeit his seat therein, he may not be appointed to any office in the government that has been created or the emoluments thereof have been increased during his term. Such a position is forbidden office. The purpose is to prevent trafficking in public office.

   The provision does not apply to elective offices.

   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.

Q: While it is performing humanitarian functions as an auxiliary to government, is the Structure of the Philippine National Red Cross (PNRC) *sui generis*?

A: Yes. A National Society partakes of a *sui generis* character. It is a protected component of the Red Cross movement under Articles 24 and 26 of the First Geneva Convention, especially in times of armed conflict. These provisions require that the staff of a National Society shall be respected and protected in all circumstances. Such protection is not ordinarily afforded by an international treaty to ordinary private entities or even non-governmental organizations (NGOs). This *sui generis* character is also emphasized by the Fourth Geneva Convention which holds that an Occupying Power cannot require any change in the personnel or structure of a National Society. National societies are therefore organizations that are directly regulated by international humanitarian law, in contrast to other ordinary private entities, including NGOs.

The auxiliary status of a Red Cross Society means that it is at one and the same time a private institution and a public service organization because the very nature of its work implies cooperation with the authorities, a link with the State. In carrying out their major functions, Red Cross Societies give their humanitarian support to official bodies, in general having larger resources than the Societies, working towards comparable ends in a given sector. *(Liban v. Gordon, G. R. No. 175352, January 18, 2011)*

c. PARLIAMENTARY INHIBITIONS & DISQUALIFICATIONS

Q: What are the particular inhibitions attached to their office?

A:

1. "Personally" appearing as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial or other administrative bodies. *(Sec. 14)*
2. Upon assumption of office, must make a full disclosure of financial and business interests. Shall notify the House concerned of a potential conflict in interest that may arise from the filing of a proposed legislation of which they are authors. *(Sec. 12, Article VI)*

Q: What are the disqualifications attached to their office and when are they applicable?

A:

DISQUALIFICATION	APPLICABLE WHEN
Cannot hold any other office or employment in the Gov't or any subdivision, agency or instrumentality thereof, including GOCCs or their subsidiaries. *(Sec. 13, Article VI)*	During his term. If he does so, he forfeits his seat. *(Sec. 13, Article VI)*
Legislators cannot be appointed to any office. *(Sec. 13, Article VI)*	If the office was created or the emoluments thereof increased during the term for which he was elected. *(Sec. 13, Article VI)*
Legislators cannot personally appear as counsel before any court of justice, electoral tribunal, quasi-judicial and administrative bodies. *(Sec. 14, Article VI)*	During his term of office.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Legislators cannot be financially interested 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 the GOCC or its subsidiary. *(Sec. 14, Article VI)*	During his term of office.
Legislators cannot intervene in any matter before any office of the Gov't. *(Sec. 14, Article VI)*	When it is for his pecuniary benefit or where he may be called upon to act on account of his office.

Q: Are legislators required to disclose their assets and liabilities?

A: Yes. A public officer or employee shall upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities and net worth. *(Sec.12, Art. VI)*

SESSIONS

Q: When is the regular session of Congress?

A: Congress convenes once every year on the 4th Monday of July, unless otherwise provided for by law. It continues in session for as long as it sees fit, until 30 days before the opening of the next regular session, excluding Saturdays, Sundays, and legal holidays. *(Sec. 15, Art. VI)*

Q: What are the instances when there are special sessions?

A:

1. Due to vacancies in the offices of the President and Vice President at 10 o'clock a.m. on the third day after the vacancies *(Sec. 10 of Article VI)*

2. To decide on the disability of the President because a majority of all the members of the cabinet have "disputed" his assertion that he is able to discharge the powers and duties of his office *(Sec. 11 of Article VII)*

3. To revoke or extend the Presidential Proclamation of Martial Law or suspension of the privilege of the writ of habeas corpus *(Sec. 18 of Art. VII)*; and

4. Called by the President at any time when Congress is not in session *(Sec. 15 of Art. VI)*.

Q: What is a Mandatory Recess?

A: A mandatory recess is prescribed for the 30-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. *(Sec. 15, Art. VI)*

Q: What are the instances when Congress is voting separately and voting jointly?

A:

Separate	Joint
1. Choosing the President *(Sec. 4, Article VII)* 2. Determining President's disability *(Sec. 11, Article VII)* 3. Confirming nomination of Vice-President *(Sec. 9, Article VI)* 4. Declaring the existence of a state of war in joint session *(Sec. 23, Article VI)* 5. Proposing Constitutional amendments *(Sec. 1, Article XVII)*	1. When revoking or extending the proclamation suspending the privilege of writ of *habeas corpus (Sec. 18, Article VII)* 2. When revoking or extending the declaration of martial law *(Sec. 18, Article VII).*

Q: What are the instances when Congress votes other than majority?

A:

INSTANCES WHEN CONGRESS VOTES	NUMBER OF VOTES REQUIRED
1. To suspend or expel a member in accordance with its rules and proceedings	2/3 of all its members *(Sec. 16, Article VI)*
2. To enter the Yeas and nays in the Journal	1/5 of the members present *(Sec. 16 (4), Article VI)*
3. To declare the existence of a state of war	2/3 of both houses in joint session voting separately *(Sec. 23, Article VI)*

4. To re-pass 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
5. To determine the President's disability after submissions by both the Cabinet and the President	2/3 of both Houses voting separately *(Sec. 11, Article VI)*

Q: What is the rule on adjournment?

A: Neither House during the sessions of the Congress shall, without the consent of the other, adjourn for more than 3 days, nor to any other place than that in which the two Houses shall be sitting. *(Sec. 16, Art. VI)*

Q: What is adjournment *sine die*?

A: Interval between the session of one Congress and that of another.

INTERNAL GOVERNMENT OF CONGRESS

Q: Who are the elected officers of Congress?

A:

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

Q: How is election of officers done?

A: By a majority vote of all respective members *(Section 16, Art. VI)*.

a. QUORUM

Q: What is a quorum?

A: A quorum is such number which enables a body to transact its business. It is such number which makes a lawful body and gives such body the power to pass a law or ordinance or any valid act that is binding.

Alternative Answer:

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

Note: In computing quorum, members who are outside the country and thus outside of each House's jurisdiction are not included.

Q: What is the effect if there is no quorum?

A: In the absence of quorum, each House may adjourn from day to day and may compel the attendance of absent members in such manner and under such penalties as each House may provide.

Note: 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, G.R. No. 132875-76, February 3, 2000)*

b. MAJORITY VOTE

Q: What does majority vote mean?

A: Majority refers to more than half of the total or aggregate. Although the Constitution provides that the Speaker and the Senate President shall be elected by a majority of all members, the Constitution does not provide that those who will not vote for the winner (by majority vote) are *ipso facto* the minority who can elect the minority leader. Majority votes pertain only to such number or quantity as may be required to elect an aspirant as such. There is no indication that by such election, the houses are already divided into the majority camp and the minority camp.

Majority vote refers to the political party with the most number of backings; refer to the party, faction or organization with the most number of votes but not necessarily more than one half (plurality). *(Santiago v. Guingona, G.R. No. 134577, November 18, 1998)*

Q: Can the courts intervene in the implementation of the internal rules of Congress?

A: No. As part of their inherent power, Congress can determine their own rules. Hence, the courts cannot intervene in the implementation of these rules insofar as they affect the members of Congress *(Osmeña v. Pendatun, G.R. No L-17144, October 28, 1960)*

Note: Corollary to Congress' power to make rules is the power to ignore the same rules when circumstances so require.

TEAM BAROPS

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

DISCIPLINE OF MEMBERS

Q: May each house of congress punish its members for disorderly behavior?

A: Yes. Each house may punish its members for disorderly behavior and, with concurrence of 2/3 of all its members, suspend, for not more than 60 days, or expel a member.

Q: What is contemplated by "disorderly behavior?"

A: The interpretation of the phrase disorderly behavior is the prerogative of the House concerned and cannot be judicially reviewed (*Osmeña v. Pendatun, G.R. No. L-17144, Oct. 28, 1960*).

Note: Members of Congress may also be suspended by the Sandiganbayan or by the Office of the Ombudsman. The suspension in the Constitution is different from the suspension prescribed in RA 3019, Anti-Graft and Corrupt Practices Act. The latter is not a penalty but a preliminary preventive measure and is not imposed upon the petitioner for misbehaviour as a member of Congress. *(Santiago v. Sandiganbayan, G.R. No. 128055, Apr. 18, 2001).*

ELECTORAL TRIBUNAL AND THE COMMISSION ON APPOINTMENTS

a. CONGRESSIONAL ELECTORAL TRIBUNAL

Q: What is the composition of the electoral tribunal (ET)?

A:

1. 3 Supreme Court Justices designated by the Chief Justice

2. 6 members of the Chamber concerned (Senate or HoR) chosen on the basis of proportional representation from the political parties and parties registered under the party-list system *(Sec. 17, Art. VI)*.

Note: The senior Justice in the Electoral Tribunal shall be its chairman.

Q: What is the jurisdiction of the Electoral Tribunals?

A: Each electoral tribunal shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective members (*Sec. 17, Art. VI, 1987 Constitution*). This includes determining the validity or invalidity of a proclamation declaring a particular candidate as the winner.

Note: The electoral tribunal has rule-making power (*Lazatin v. HRET, G.R. No. L-84297, Dec. 8, 1988*).

It is independent of the Houses of Congress and its decisions may be reviewed by the Supreme Court only upon showing of grave abuse of discretion.

The mere fact that the members of either the Senate or the House sitting on the electoral tribunal are those which are sought to be disqualified due to the filing of an election contest against them does not warrant all of them from being disqualified from sitting in the ET.

Q: What is an election contest?

A: Where a defeated candidate challenges the qualification and claims for himself the seat of the proclaimed winner.

Note: In the absence of an election contest, ET is without jurisdiction.

Once a winning candidate has been proclaimed, taken his oath, and assumed office as a member of the HoR, COMELEC's jurisdiction over election contests relating to his election, returns, and qualification ends, and the HRET's own jurisdiction begins. The phrase "election, returns, and qualifications" should be interpreted in its totality as referring to all matters affecting the validity of the contestee's title. *(Vinzons-Chato v. COMELEC, G.R. No. 172131, Apr. 2, 2007)*

Q: In the absence of election contest, what power does each House have over its members?

A: The power of each House to expel its members or even to defer their oath taking until their qualifications are determined may still be exercised even without an election contest.

Q: Imelda ran for HoR. A disqualification case was filed against her on account of her residence. The case was not resolved before the election. Imelda won the election. However, she was not proclaimed. Imelda now questions the COMELEC's jurisdiction over the case. Does the COMELEC have jurisdiction over the case?

A: Yes. HRET's jurisdiction as the sole judge of all contests relating to elections, etc. of members of Congress begins only after a candidate has become a member of the HoR. Since Imelda has not yet been proclaimed, she is not yet a member of the HoR. Thus, COMELEC retains jurisdiction.

(Romualdez-Marcos v. COMELEC, G.R. No. 119976, Sept. 18, 1995)

Q: Does the HRET have authority to pass upon the eligibilities of the nominees of the party-list groups that won in the lower house of Congress?

A: Yes. By analogy with the cases of district representatives, once the party or organization of the party-list nominee has been proclaimed and the nominee has taken his oath and assumed office as member of the HoR, the COMELEC's jurisdiction over election contests relating to his qualifications ends and the HRET's own jurisdiction begins. *(Abayon v. HRET, G.R. No. 189466, Feb. 11, 2010)*

Q: What are the valid grounds or just causes for termination of membership to the tribunal?

A:

1. Expiration of Congressional term of Office
2. Death or permanent disability
3. Resignation from the political party he represents in the tribunal
4. Formal affiliation with another political party
5. Removal from office for other valid reasons. *(Bondoc v. Pineda, G.R. No. 97710, Sept. 26, 1991)*

Q: Rep. Camasura was a member of the HRET. There was an electoral contest involving his party-mate and Bondoc. The party instructed him to vote for his party-mate. However, Rep. Camasura cast a conscience vote in Bondoc's favor. Thus, the party expelled him from HRET on the grounds of disloyalty to the party and breach of party discipline. Was the expulsion valid?

A: No. SET/HRET members are entitled to security of tenure to ensure their impartiality and independence. As judge-members of the tribunal, they must be non-partisan, they must discharge their functions with complete detachment; independence and impartiality, even from the party to which they belong. Thus, disloyalty to party and breach of party discipline are not valid grounds for expelling a tribunal's member. The members are not supposed to vote along party lines—once appointed. *(Bondoc v. Pineda, G.R. No. 97710, Sept. 26, 1991)*

Note: A member may not be expelled by the HoR for party disloyalty short of proof that he has formally affiliated with another political group.

Q: Can the ET meet when Congress is not in session?

A: Yes. Unlike the Commission on Appointments, the ET shall meet in accordance with their rules, regardless of whether Congress is in session or not.

Q: Is there an appeal from the ET's decision?

A: No. Sec. 17 of Art. VI provides that the SET/HRET is the sole judge of all contests. Hence, from its decision, there is no appeal. Appeal is not a constitutional but merely a statutory right.

Q: Is there any remedy from its decision?

A: Yes. A special civil action for certiorari under Rule 65 of the Rules of Court may be filed. This is based on grave abuse of discretion amounting to lack or excess of jurisdiction. This will be filed before the Supreme Court.

b. COMMISSION ON APPOINTMENTS (CA)

Q: What is the composition of the Commission on Appointments (CA)?

A:

1. Senate President as *ex-officio* chairman
2. 12 Senators
3. 12 members of the HoR *(Sec. 18, Art. VI)*

Note: A political party must have at least 2 elected senators for every seat in the Commission on Appointments. Thus, where there are two or more political parties represented in the Senate, a political party/coalition with a single senator in the Senate cannot constitutionally claim a seat in the Commission on Appointments. It is not mandatory to elect 12 senators to the Commission; what the Constitution requires is that there must be at least a majority of the entire membership. *(Guingona, Jr. v. Gonzales, G.R. No. 106971, October 20, 1992)*

Q: How are the 12 Senators and 12 Representatives chosen?

A: The members of the Commission shall be elected by each House on the basis of proportional representation from the political party and party list. Accordingly, 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, G.R. No. 86344, December 21,*

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

1989). Endorsement is not sufficient to get a seat in COA.

Note: The provision of Sec. 18, Art. VI of the Constitution, on proportional representation is mandatory in character and does not leave any discretion to the majority party in the Senate to disobey or disregard the rule on proportional representation; otherwise, the party with a majority representation in the Senate or the HoR can by sheer force of numbers impose its will on the hapless minority. By requiring a proportional representation in the CA, Sec. 18 in effect works as a check on the majority party in the Senate and helps maintain the balance of power. No party can claim more than what it is entitled to under such rule *(Guingona, Jr. v. Gonzales, G.R. No. 105409, Mar.1, 1993).*

Q: What is the jurisdiction of the CA?

A: CA shall confirm the appointments by the President with respect to the following positions: **HAPCOO**

1. **H**eads of the Executive departments. (except if it is the Vice-President who is appointed to the post)
2. **A**mbassadors, other **P**ublic ministers or **C**onsuls
3. **O**fficers of the AFP from the rank of colonel or naval captain
4. **O**ther officers whose appointments are vested in him by the Constitution (*i.e.* COMELEC members) *(Bautista v. Salonga, G.R. No. 86439, April 13, 1989)*

Q: What are the rules on voting?

A:

1. The CA shall rule by a majority vote of all the members.
2. The chairman shall only vote in case of tie.
3. The CA shall act on all appointments within 30 session days from their submission to Congress *(Sec. 18, Art. VI)*

Q: What are the limitations on confirmation?

A:

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

2. Appointments extended by the President to the above-mentioned positions while Congress is not in session shall only be effective until disapproval by the CA or until the next adjournment of Congress *(Sarmiento III v. Mison, G.R. No. L-79974, December 17, 1987)*

Q: What are the guidelines in the meetings of the CA?

A:

1. Meetings are held either at the call of the Chairman or a majority of all its members.
2. Since the CA is also an independent constitutional body, its rules of procedure are also outside the scope of congressional powers as well as that of the judiciary. *(Bondoc v. Pineda, G.R. No. 97710, Sept. 26, 1991)*

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

POWERS OF CONGRESS

a. LEGISLATIVE POWER

Q: What are the legislative powers of Congress?

A:

1. General plenary power *(Sec. 1, Art. VI)*
2. Specific power of appropriation
3. Taxation and expropriation
4. Legislative investigation
5. Question hour

Q: What is Legislative Power?

A: It is the power or competence of the legislative to propose, enact, ordain, amend/alter, modify, abrogate or repeal laws. It is vested in the Congress 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.

Q: What are the limitations of such power?

A:

1. SUBSTANTIVE—
   a. *Express:*
      i. Bill of Rights *(Article III, 1987 Constitution)*
      ii. On Appropriations *(Sections 25 and 29 paragraphs 1 and 2, Article VI)*
      iii. On taxation *(Sections 28 and 29, paragraph 3, Article VI)*

iv. On Constitutional appellate jurisdiction of SC *(Section 30, Article VI)*
v. No law granting title of royalty or nobility shall be passed *(Section 31, Article VI)*
vi. No specific funds shall be appropriated or paid for use or benefit of any religion, sect, etc., except for priests, etc., assigned to AFP, penal institutions, etc. *(Sections 29, paragraph 2, Article VI)*

b. Implied:
i. Prohibition against irrepealable laws
ii. Non-delegation of powers

2. PROCEDURAL—
a. Only one subject, to be stated in the title of the bill *(Sec. 26, par. 1, Article VI)*
b. Three (3) readings on separate days; printed copies of the bill in its final form distributed to members 3 days before its passage, except if President certifies to its immediate enactment to meet a public calamity or emergency; upon its last reading, no amendment allowed and the vote thereon taken immediately and the yeas and nays entered into the Journal *(Section 26, paragraph 2, Article VI)*
c. Appropriation bills , revenue bills, tariff bills, bills authorizing the increase of public debt, bills of local application and private bills shall originate exclusively in the House of Representatives. *(Section 24, Art. VI)*

Q: What is an appropriation bill?

A: It is a bill, the primary and specific aim of which is to appropriate a sum of money from the public treasury.

Note: A bill creating a new office, and appropriating funds for it is not an appropriation bill.

Q: What is a revenue bill?

A: A revenue bill is one specifically designed to raise money or revenue through imposition or levy.

Q: What is a bill of local application?

A: It is one which is limited to specific localities, such as for instance the creation of a town *(Bernas Commentary, p. 748, 2003)*. Hence, it is one involving purely local or municipal matters, like a charter of a city.

Q: What are private bills?

A: Those which affect private persons, such as for instance a bill granting citizenship to a specific foreigner *(Bernas Commentary, p.748, 2003)*.

Q: How are private bills illustrated?

A: They are illustrated by a bill granting honorary citizenship to a distinguished foreigner *(Cruz, Philippine Political Law, p. 155, 1995)*.

Note: Every bill shall embrace only one subject, as expressed in the title thereof, which does not have to be a complete catalogue of everything stated in the bill. A title expressing the general subject of the bill and all the provisions of the statute are germane to the general subject is sufficient.

b. POWER OF APPROPRIATION

Q: What is the power of appropriation?

A: The spending power, called the "power of the purse" belongs to Congress, subject only to the veto power of the President. It carries with it the power to specify the project or activity to be funded under the appropriation law.

Q: What is an appropriation law?

A: A statute, the primary and specific purpose of which is to authorize release of public funds from the treasury.

Q: What is budget?

A: Financial program of the national government for the designated calendar year, providing for the estimates of receipts of revenues and expenditures.

Q: What are the classifications of appropriations?

A:

1. *General appropriation law* – passed annually, intended for the financial operations of the entire government during one fiscal period;

2. *Special appropriation law* – designed for a specific purpose

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

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

Philconsa, on constitutional grounds, has filed suit to nullify the resolution of the Sangguniang Panlalawigan giving the special discretionary fund to the Governor for the stated purpose. How would you decide the case? Give your reasons.

A: The resolution is unconstitutional.

1.) *First*, it violates Art. VI, Sec. 29(2) of the Constitution which prohibits the appropriation of public money or property, directly or indirectly, for the use, benefit or support of any system of religion;

2.) *Second*, it contravenes Art. VI, Sec, 25(6) which limits the appropriation of discretionary funds only for public purposes.

The use of discretionary funds for purely religious purpose is thus unconstitutional, and the fact that the disbursement is made by resolution of a local legislative body and not by Congress does not make it any less offensive to the Constitution. Above all, the resolution constitutes a clear violation of the Non-establishment Clause of the Constitution.

Q: Who shall propose the budget?

A: The President shall propose the budget and submit it to Congress. It shall indicate the expenditures, sources of financing as well as receipts from previous revenues and proposed revenue measures. It will serve as a guide for Congress:

1. In fixing the appropriations;
2. In determining the activities which should be funded. *(Section 22, Art. VII)*

Note: The propose subject is not final. It is subject to the approval of Congress but the President may exercise his or her veto power. Accordingly, the power of the purse belongs to Congress, subject only to the veto power of the President. The President may propose the budget but still the final say on the matter of appropriation is lodged in the Congress. *(Philippine Constitution Association v. Enriquez, G.R. No. 113105, August 19, 1994)*

Q: **May Congress modify the budget proposed by the President?**

A: Yes. However, Congress may only reduce but not increase the budget.

Q: May Congress increase its outlay for itself, the Judiciary and other Constitutional bodies?

A: No, because it is presumed that their needs have already been identified while drafting the budget.

Note: Congress may not decrease the appropriation for the Judiciary below the amount appropriated for the previous year.

c. LEGISLATIVE INQUIRIES

Q: What does Section 21, Article VI of the Constitution provide?

A: 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.

Note: "In aid of legislation" does not mean that there is pending legislation regarding the subject of the inquiry. In fact, investigation may be needed for purposes of proposing future legislation.

If the stated purpose of the investigation is to determine he existence of violations of the law, the investigation is no longer "in aid of legislation" but "in aid or prosecution." This violates the principle of separation of powers and is beyond the scope of Congressional powers.

Q: What is the scope of subject matter of the power to conduct inquiries in aid of legislation?

A: Indefinite. The field of legislation is very wide as compared to that of the American Congress. And because of such, the field of inquiry is also very broad. It may cover administrative inquiries, social, economic, political problem (inquiries), discipline of members, etc. Suffice it to say that it is co-extensive with legislative power. (*Arnault v. Nazareno, G.R. No. L-3820, July 18, 1950)*

Note: Investigatorial Power is not absolute; subject judicial review in view of the expanded power of the court to determine whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction.

The power of inquiry is an essential and appropriate auxiliary to the legislative action (*Arnault v. Nazareno, G.R. No. L-3820, Jul. 18, 1950).* 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.

Q: What are the limitations on legislative investigation?

A:

1. Constitutional rights to counsel and against self incrimination – even if the investigation is not a criminal investigation, the information divulge therein may be used in criminal prosecution (Under Sec. 21, Art. VI, it is provided that the rights of 1987 Constitution, the persons appearing in or affected by such inquiries shall be respected)

2. The Rules of procedures to be followed in such inquiries shall be published for the guidance of those who will be summoned. This must be strictly followed so that the inquiries are confined only to the legislative purpose. This is also to avoid abuses.

3. The investigation must be in aid of legislation.

4. Congress may not summon the President as witness or investigate the latter in view of the doctrine of separation of powers except in impeachment cases.

   Note: It is the President's prerogative to divulge or not the information which he deems confidential or prudent in the public interest.

5. Congress may no longer punish the witness in contempt after its final adjournment. The basis of the power to impose such penalty is the right to self-preservation. And such right is enforceable only during the existence of the legislature *(Lopez v. Delos Reyes G.R. No. L-3436,1 Nov. 5, 1930).*

6. Congress may no longer inquire into the same justiciable controversy already before the court *(Bengzon v. Blue Ribbon Committee, G.R. No. 89914, Nov. 20, 1991)*

Q: Senator Enrile accused the Vice Chairman of the Standard Chartered Bank of violating the Securities Regulation Code for selling unregistered foreign securities. This has led the Senate to conduct investigation in aid of legislation. SCB refused to attend the investigation proceedings on the ground that criminal and civil cases involving the same issues were pending in courts. Decide.

A: The mere filing of a criminal or an administrative complaint before a court or a quasi-judicial body should not automatically bar the conduct of legislative investigation. Otherwise, it would be extremely easy to subvert any intended inquiry by Congress through the convenient ploy of instituting a criminal or an administrative complaint. Surely, the exercise of sovereign legislative authority, of which the power of legislative inquiry is an essential component, can not be made subordinate to a criminal or an administrative investigation. *(Standard Chartered Bank v. Senate, G.R. No. 167173, Dec. 27, 2007)*

Q: Distinguish the above-mentioned case from the case of Bengzon v. Senate Blue Ribbon Committee.

A: It is true that in Bengzon, the Court declared that the issue to be investigated was one over which jurisdiction had already been acquired by the Sandiganbayan, and to allow the [Senate Blue Ribbon] Committee to investigate the matter would create the possibility of conflicting judgments; and that the inquiry into the same justiciable controversy would be an encroachment on the exclusive domain of judicial jurisdiction that had set in much earlier.

To the extent that, in the case at bench, there are a number of cases already pending in various courts and administrative bodies involving the petitioners, relative to the alleged sale of unregistered foreign securities, there is a resemblance between this case and Bengzon. However, the similarity ends there.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Central to the Court's ruling in Bengzon -- that the Senate Blue Ribbon Committee was without any constitutional mooring to conduct the legislative investigation -- was the Court's determination that the intended inquiry was not in aid of legislation. The Court found that the speech of Senator Enrile, which sought such investigation contained no suggestion of any contemplated legislation; it merely called upon the Senate to look into possible violations of Sec. 5, R.A. No. 3019. Thus, the Court held that the requested probe failed to comply with a fundamental requirement of Sec. 21, Article VI of the Constitution. (*Standard Chartered Bank v. Senate, G.R. No. 167173, Dec. 27, 2007*)

Q: Does Congress have the power to cite persons in contempt?

A: Yes. Even if the Constitution only provides that Congress may punish its members for disorderly behavior or expel the same, it is not an exclusion of power to hold other persons in contempt.

Note: Congress has the inherent power to punish recalcitrant witnesses for contempt, and may have them incarcerated until such time that they agree to testify. The continuance of such incarceration only subsists for the lifetime, or term, of such body. Thus, each House lasts for only 3 years. But if one is incarcerated by the Senate, it is indefinite because the Senate, with its staggered terms, is a continuing body.

Q: Does the pardoning power of the President apply to cases of legislative contempt?

A: No. It is a limitation on the President's power to pardon by virtue of the doctrine of separation of powers.

Q: What is the so-called 'question hour'?

A: 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 the Senate or the Speaker of the HoR at least 3 days before their scheduled appearance. Interpellations shall not be limited to written questions, but it may cover matters related thereto. When the security of the State or the public interest so requires, the appearance shall be conducted in executive session *(Sec. 22, Art.VI, 1987 Constitution)*

Q: Distinguish question hour from legislative investigation.

A:

QUESTION HOUR (SEC. 22, ART. VI, 1987 CONSTITUTION)	LEGISLATIVE INVESTIGATION (SEC. 21, ART. VI, 1987 CONSTITUTION)
As to persons who may appear	
Only a department head	Any person
As to who conducts the investigation	
Entire body	Committees
As to subject matter	
Matters related to the department only	Any matter for the purpose of legislation

d. POWER OF OVERSIGHT

Q: What is the power of oversight of Congress?

A: The power of oversight embraces all activities undertaken by Congress to enhance its understanding of and influence over the implementation of legislation it has enacted. It concerns post-enactment measures undertaken by Congress. *(Macalintal v. COMELEC, G.R. No. 157013 July 10, 2003, [Separate opinion of Justice Puno])*

Q: What is the scope of the power of oversight?

A: To:

1. Monitor bureaucratic compliance with program objectives
2. Determine whether agencies are properly administered
3. Eliminate executive waste and dishonesty
4. Prevent executive usurpation of legislative authority
5. Assess executive conformity with the congressional perception of public interest. *(Macalintal v. COMELEC, G.R. No. 157013, Jul. 10, 2003, [Separate opinion of Justice Puno])*

Q: What are the bases of oversight power of Congress?

A: The power of oversight has been held to be:

1. Intrinsic in the grant of legislative power itself
2. Integral to the system of checks and balances
3. Inherent in a democratic system of government

Q: What are the categories of Congressional Oversight Functions?

A:

1. *Scrutiny*—implies a lesser intensity and continuity of attention to administrative operations. Its primary purpose is to determine economy and efficiency of the operation of government activities. In the exercise of legislative scrutiny, Congress may request information and report from the other branches of government. It can give recommendations or pass resolutions for consideration of the agency involved. It is based primarily on the power of appropriation of Congress. But legislative scrutiny does not end in budget hearings. Congress can ask the heads of departments to appear before and be heard by either the House of Congress on any matter pertaining to their department. Likewise, Congress exercises legislative scrutiny thru its power of confirmation to find out whether the nominee possesses the necessary qualifications, integrity and probity required of all public servants.

2. *Congressional investigation*—involves a more intense digging of facts. It is recognized under Section 21, Article VI. Even in the absence of constitutional mandate, it has been held to be an essential and appropriate auxiliary to the legislative functions.

3. *Legislative supervision*—it connotes a continuing and informed awareness on the part of congressional committee regarding executive operations in a given administrative area. It allows Congress to scrutinize the exercise of delegated law-making authority, and permits Congress to retain part of that delegated authority.

Q: What is legislative veto? Is it allowed in the Philippines?

A: Legislative veto is a statutory provision requiring the President or an administrative agency to present the proposed IRR of a law to Congress which, by itself or through a committee formed by it, retains a "right" or "power" to approve or disapprove such regulations before they take effect. As such, a legislative veto in the form of a congressional oversight committee is in the form of an inward-turning delegation designed to attach a congressional leash to an agency to which Congress has by law initially delegated broad powers. It radically changes the design or structure of the Constitution's diagram of power as it entrusts to Congress a direct role in enforcing, applying or implementing its own laws. Thus, legislative veto is not allowed in the Philippines. *(ABAKADA Guro Party-list v. Purisima, G.R. No. 166715, Aug. 14, 2008)*

Q: Can Congress exercise discretion to approve or disapprove an IRR based on a determination of whether or not it conformed to the law?

A: No. In exercising discretion to approve or disapprove the IRR based on a determination of whether or not it conformed to the law, Congress arrogated judicial power unto itself, a power exclusively vested in the Supreme Court by the Constitution. Hence, it violates the doctrine of separation of powers. *(ABAKADA Guro Party-list v. Purisima, G.R. No. 166715, Aug. 14, 2008)*

Q: May the Senate be allowed to continue the conduct of a legislative inquiry without a duly published rules of procedure?

A: No. The phrase "duly published rules of procedure" requires the Senate of every Congress to publish its rules of procedure governing inquiries in aid of legislation because every Senate is distinct from the one before it or after it. (*Garcillano v. House of Representatives Committee on Public Information, G.R. No. 170338, Dec. 23, 2008)*

Q: Is the present (2008) Senate a continuing legislative body?

A: The present Senate under the 1987 Constitution is no longer a continuing legislative body. The present Senate has 24 members, twelve of whom are elected every 3 years for a term of 6 years each. Thus, the term of 12 Senators expires every 3 years, leaving less than a majority of Senators to continue into the next Congress (*Garcillano v. House of Representatives Committee on Public Information, et al., G.R. No. 170338, Dec. 23, 2008).*

Note: There is no debate that the Senate *as an institution* is "continuing", as it is not dissolved as an entity with each national election or change in the composition of its members. However, in the conduct of its day-to-day business the Senate of each Congress acts separately and independently of the Senate of the Congress before it.

Undeniably, all pending matters and proceedings, *i.e.* unpassed bills and even legislative investigations, of the Senate of a particular Congress are considered *terminated* upon the expiration of that Congress and it is merely optional on the Senate of the succeeding Congress to take up such unfinished matters, *not in*

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

the same status, but as if presented *for the first time*. The logic and practicality of such a rule is readily apparent considering that the Senate of the succeeding Congress (which will typically have a different composition as that of the previous Congress) should not be bound by the acts and deliberations of the Senate of which they had no part. *(Neri v. Senate Committee on Accountability of Public Officers and Investigations, GR. No. 180643, Sept. 4, 2008)*

Q: What is its consequence?

A: The consequence is that the *Rules of Procedure* must be republished by the Senate after every expiry of the term of the 12 Senators (*Garcillano v. House of Representatives Committee on Public Information, G.R. No. 170338, Dec. 23, 2008)*

Q: Is the publication of the rules in the Internet a valid publication?

A: The invocation of the Senators of the Provisions of "The Electronic Commerce Act of 2000," to support their claim of valid publication through the internet as all the more incorrect. The law merely recognizes the admissibility in evidence of electronic data messages and/or electronic documents. It does not make the internet a medium for publishing laws, rules and regulations. (*Garcillano v. House of Representatives Committee on Public Information, G.R. No. 170338, Dec. 23, 2008)*

LEGISLATIVE PROCESS AND THE BICAMERAL CONFERENCE COMMITTEE

Q: What is the Doctrine of Shifting Majority?

A: For each House of Congress to pass a bill, only the votes of the majority of those present in the session, there being a quorum, is required.

Note: The basis for determining the existence of a quorum in the Senate shall be the total number of Senators who are within the coercive jurisdiction of the Senate (*Avelino v. Cuenco, G.R. No. L-2821, Mar. 4, 1949*).

Q: What is the so-called one bill-one subject rule?

A: 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.

Note: The purpose of such rule is (1) to prevent hodgepodge or log-rolling legislation, (2) to prevent surprise or fraud upon the legislature, and to fairly appraise the people. *(Central Capiz v. Ramirez, G.R. No. 16197, March 12, 1920)*

Q: When does a bill become a law?

A:

1. Approved and signed by the President
2. Presidential veto overridden by 2/3 vote of all members of both Houses
3. Failure of the President to veto the bill and to return it with his objections to the House where it originated, within 30 days after the date of receipt
4. A bill calling a special election for President and Vice-President under Sec. 10. Art. VII becomes a law upon third reading and final reading

Q: What are the Rules regarding the Passage of Bills?

A:

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.

XPN: 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, G.R.No. 115455, October 30, 1995)*

Note: All decrees which are not inconsistent with the Constitution remain operative until they are amended or repealed. *(Guingona v. Caragüe, G.R. No. 94571, April 22, 1991)*

Q: How many readings must a bill undergo before it may become a law?

A: Each bill must pass 3 readings in both Houses.

GR: Each reading shall be held on separate days and printed copies thereof in its final form shall be distributed to its Members, 3 days before its passage.

XPN: If a bill is certified as urgent by the President as to the necessity of its immediate enactment to meet a public calamity or emergency, the 3 readings can be held on the same day. *(Sec. 26, Art. VI)*

Q: What are the reasons for the three readings?

A:

1. To address the tendency of legislators, (on the last day of the legislative year when legislators were eager to go home)
2. To rush bills through
3. To insert alters which would not otherwise stand scrutiny in leisurely debate.

Q: What is the purpose of the constitution of the Bicameral Conference Committee?

A: A Conference Committee is constituted and is composed of Members from each House of Congress to settle, reconcile or thresh out differences or disagreements on any provision of the bill.

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. *(Concurring and Dissenting Opinion, J. Callejo, Sr., G.R. No. 168056, September 1, 2005)*

Q: Are the conferees limited to reconciling the differences in the bill?

A: The conferees are not limited to reconciling the differences in the bill but may introduce new provisions germane to the subject matter or may report out an entirely new bill on the subject. *(Tolentino v. Secretary of Finance, G.R. No, 115455, August 25, 1994)*

Q: When does the law take effect?

A: A law must be published as a condition for its effectivity and in accordance with Article 2 of the Civil Code, it shall take effect fifteen days following the completion of its publication in the Official Gazette or in a newspaper of general circulation unless it is otherwise provided. *(GR L-63915, December 29, 1986)*

LIMITATIONS ON LEGISLATIVE POWER

a. LIMITATIONS ON REVENUE, APPROPRIATION AND TARIFF MEASURES

Q: What are the constitutional limitations on the legislative's power to enact laws on revenue, appropriation and tariff measures?

A:

1. 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. *(Sec. 24, Art. VI)*

Note: The initiative for filing of ART bills must come from the House, but it does not prohibit the filing in the Senate of a substitute bill in anticipation of its receipt of the bill from the House, so long as the action by the Senate is withheld pending the receipt of the House bill (*Tolentino v. Sec. of Finance, G.R. No. 115455, Aug. 25, 1994*).

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. *(Section 27 [2], Art. VI)*

Q: What are the implied limitations on appropriation power?

A:

1. Must specify public purpose
2. Sum authorized for release must be determinate, or at least determinable. *(Guingona v. Caragüe, G.R. No. 94571, April 22, 1991)*

Q: What are the constitutional limitations on special appropriations measures?

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

A:

1. Must specify public purpose for which the sum was intended

2. Must be supported by funds actually available as certified by the National Treasurer or to be raised by corresponding revenue proposal included therein. (*Sec. 25[4], Art. VI, 1987 Constitution*)

Q: What are the Constitutional rules on General Appropriations Laws?

A:

1. Congress may not increase appropriations recommended by the President for the operations of the government;

2. Form, content and manner of preparation of budget shall be provided by law;

3. No provision or enactment shall be embraced in the bill unless it releases specifically to some particular appropriations therein;

4. Procedure from approving appropriations for Congress shall be the same as that of other departments in order to prevent *sub-rosa* appropriations by Congress;

5. Prohibition against transfer of appropriations *(doctrine of augmentation)*, however the following may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations:

   a. President
   b. Senate President
   c. Speaker of the HoR
   d. Chief Justice
   e. Heads of Constitutional Commissions.

6. Prohibitions against appropriations for sectarian benefit; and

7. Automatic re-appropriation – 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 the preceding fiscal year shall be deemed reenacted and shall remain in force and effect until the general appropriations bill is passed by the Congress *(Sec. 25, [7], Art. VI, 1987 Constitution)*

b. Presidential Veto and Congressional Override

Q: What is the rule on presidential veto?

A:

GR: If the President disapproves a bill enacted by Congress, he should veto the entire bill. He is not allowed to veto separate items of a bill.

XPN: Item-veto is allowed in case of appropriation, revenue, and tariff bills *(Sec. 27 [2], Art. VI, 1987 Constitution).*

XPNs to the XPN:

1. *Doctrine of inappropriate provisions* – a provision that is constitutionally inappropriate for an appropriation bill may be singled out for veto even if it is not an appropriation or revenue item. *(Gonzales v. Macaraig, Jr., G.R. No. 87636, Nov. 19, 1990)*

2. *Executive impoundment* – refusal of the President to spend funds already allocated by Congress for specific purpose. It is the failure to spend or obligate budget authority of any type. *(Philconsa v. Enriquez, G.R. No. 113105, Aug. 19, 1994)*

Q: May the President veto a law?

A: No. What the president may validly veto is only a bill and neither the provisions of law 35 years before his term nor a final and executory judgment of the Supreme Court. *(Bengzon v. Drilon, G.R. No. 103524, April 15, 1992)*

Q: When is there a pocket veto?

A: It occurs when:

1. the President fails to act on a bill; and
2. the reason he does not return the bill to the Congress is that Congress is not in session.

Note: Pocket veto is not applicable in the Philippines because inaction by the President for 30 days never produces a veto even if Congress is in recess. The President must still act to veto the bill and communicate his veto to Congress without need of returning the vetoed bill with his veto message.

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 *(Section 26 (2), Article VI)*;
2. At the request of 1/5 of the members present *(Section 16 (4), Article VI)*; and
3. In repassing a bill over the veto of the President *(Section 27 (1), Article VI)*.

Q: What is a rider?

A: A rider is a provision in a bill which does not relate to a particular appropriation stated in the bill. Since it is an invalid provision under *Sec. 25 (2), Art. VII, 1987 Constitution,* the President may veto it as an item.

NON-LEGISLATIVE POWERS

Q: What are the Non-legislative powers of Congress?

A:

1. Power to declare the existence of state of war *(Sec. 23 [1], Art. VI)*
2. Power to act as Board of Canvassers in election of President *(Sec. 10, Art. VII)*
3. Power to call a special election for President and Vice-President *(Sec. 10, Art. VII)*
4. Power to judge President's physical fitness to discharge the functions of the Presidency *(Sec. 11, Art. VII)*
5. Power to revoke or extend suspension of the privilege of the writ of habeas corpus or declaration of martial law *(Sec. 18, Art. VII)*
6. Power to concur in Presidential amnesties Concurrence of majority of all the members of Congress *(Sec. 19, Art. VII)*
7. Power to concur in treaties or international agreements; concurrence of at least 2/3 of all the members of the Senate *(Sec. 21, Art. VII)*
8. Power to confirm certain appointments/nominations made by the President *(Secs. 9 and 16, Art. VII)*
9. Power of Impeachment *(Sec. 2, Art. XI)*
10. Power relative to natural resources *(Sec. 2, Art. XII)*
11. Power of internal organization *(Sec. 16, Art. VI)*
    a) Election of officers
    b) Promulgate internal rules
    c) Disciplinary powers *(Sec. 16, Art. VI)*
12. Informing Function

Q: State the conditions under which, during a period of national emergency, Congress may grant emergency powers to the President is allowed.

A: Under *Sec. 23[2], Article VI* of the Constitution, Congress may grant the President emergency powers subject to the following conditions:

1. There is a war or other national emergency
2. The grant of emergency powers must be for a limited period
3. The grant of emergency powers is subject to such restrictions as Congress may prescribe
4. The emergency powers must be exercised to carry out a declared national policy

Q: What is the policy of the Philippines regarding war?

A: The Philippines renounces war as an instrument of national policy. *(Sec. 2, Art. II)*

Q: What is the voting requirement to declare the existence of a state of war?

A:

1. 2/3 of both Houses
2. In joint session
3. Voting separately

Note: Even though the legislature can declare existence of war and enact measures to support it, the actual power to engage war is lodged nonetheless in the executive.

Q: Discuss the Informing function of Congress.

A: The informing function of the legislature includes its function to conduct legislative inquiries and investigation and its oversight power.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

The power of Congress does not end with the finished task of legislation. Concomitant with its principal power to legislate is the auxiliary power to ensure that the laws it enacts are faithfully executed. As well stressed by one scholar, the legislature "fixes the main lines of substantive policy and is entitled to see that administrative policy is in harmony with it; it establishes the volume and purpose of public expenditures and ensures their legality and propriety; it must be satisfied that internal administrative controls are operating to secure economy and efficiency; and it informs itself of the conditions of administration of remedial measure."

The power of oversight has been held to be intrinsic in the grant of legislative power itself and integral to the checks and balances inherent in a democratic system of government. Woodrow Wilson went one step farther and opined that the legislature's informing function should be preferred to its legislative function. He emphasized that "[E]ven more important than legislation is the instruction and guidance in political affairs which the people might receive from a body which kept all national concerns suffused in a broad daylight of discussion." *(Concurring and Dissenting Opinion of Justice Puno, Macalintal v. COMELEC, G.R. No. 157013 July 10, 2003)*

D. EXECUTIVE DEPARTMENT

Q: Who is the Chief Executive of the State?

A: The President is the Head of State and the Chief Executive.

PRIVILEGES, INHIBITIONS AND DISQUALIFICATIONS

a. IMMUNITY AND PRIVILEGES

Q: What are the privileges of the President and VP?

A:

PRESIDENT	VICE-PRESIDENT
PRIVILEGES	
1. Official residence; 2. Salary is determined by law and not to be decreased during his tenure *(Sec. 6, Art. VII)*; 3. Immunity from suit for official acts.	1. Salary shall not be decreased during his tenure; 2. If appointed to a Cabinet post, no need for Commission on Appointments' confirmation *(Sec. 3, Art. VII).*

1. Executive Immunity

Q: What are the rules on executive immunity?

A: A. *(Rules on immunity <u>during</u> tenure)*

1. The President is immune from suit during his tenure. *(In re: Bermudez, G.R. No. 76180, Oct. 24, 1986)*
2. An impeachment complaint may be filed against him during his tenure. *(Art. XI)*
3. The President may not be prevented from instituting suit. *(Soliven v. Makasiar, G.R. No. 82585, Nov. 14, 1988)*
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, G.R. No. 82585, Nov. 14, 1988)*
5. Heads of departments cannot invoke the President's immunity. *(Gloria v. Court of Appeals, G.R. No. 119903, Aug. 15, 2000)*

B. (Rule on immunity <u>after</u> tenure)

Once out of office, even before the end of the 6-year term, immunity for non-official acts is lost. Such was the case of former President Joseph Estrada. Immunity cannot be claimed to shield a non-sitting President from prosecution for alleged criminal acts done while sitting in office. *(Estrada v. Desierto, G.R. Nos. 146710-15, Mar. 2, 2001)*

Q: What are the reasons for the President's immunity from suit?

A:

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. *(Almonte v. Vasquez, G.R. No. 95367, May 23, 1995)*

2. *Public convenience.* The grant is to assure the exercise of presidential duties and functions free from any hindrance or distraction, considering that the presidency is a job that, aside from requiring all of the office-holders' time, demands undivided attention. *(Soliven v. Makasiar, G.R. No. 82585, Nov. 14, 1988)*

   Note: President's immunity from suit does not extend to his alter egos. However, the said immunity extends beyond his term, so long as the act, on which immunity is invoked, was done during his term.

Q: Upon complaint of the incumbent President of the Republic, Achernar was charged with libel before the RTC. Achernar contends that if the proceedings ensue by virtue of the President's filing of her complaint-affidavit, she may subsequently have to be a witness for the prosecution, bringing her under the trial court's jurisdiction. May Achernar invoke the President's immunity?

A: No. The immunity of the President from suit is personal to the President. It may be invoked only by the President and not by any other person. *(Soliven v. Makasiar, G.R. No. 82585, Nov. 14, 1988)*

2. Executive Privilege

Q: What is executive privilege?

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

A: It is the power of the President to withhold certain types of information from the public, the courts, and the Congress.

Q: How is the privilege invoked?

A: Executive privilege must be invoked in relation to specific categories of information and not to categories of persons.

Note: 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, G.R. No. 169777, April 20, 2006)*

Q: Is the invocation of this privilege through executive orders, prohibiting executive officials from participating in legislative inquiries, violate the constitutional right to information on matters of public concern of the people?

A: Yes. To the extent that investigations in aid of legislation are generally conducted in public, however, any executive issuance tending to unduly limit disclosures of information in such investigations necessarily deprives the people of information which, being presumed to be in aid of legislation, is presumed to be a matter of public concern. The citizens are thereby denied access to information which they can use in formulating their own opinions on the matter before Congress — opinions which they can then communicate to their representatives and other government officials through the various legal means allowed by their freedom of expression. *(Senate v. Ermita, G.R. No. 169777, April 20, 2006)*

Q: Who can invoke executive privilege?

A:

1. President

   Note: The privilege being an extraordinary power, it must be wielded only by the highest official in the executive department. Thus, the President may not authorize her subordinates to exercise such power.

2. Executive Secretary, upon proper authorization from the President

Note: The Executive Secretary must state that the authority is "By order of the President," which means he personally consulted with her.

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, G.R. No. 169777, April 20, 2006)*

Q: What is the requirement in invoking the privilege?

A: A formal claim of the privilege is required. 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.

Note: Congress must not require the President 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, G.R. No. 169777, April 20, 2006).*

Q: Is the privilege absolute?

A: No. Claim of executive privilege is subject to balancing against other interest. Simply put, 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 can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances. *(Neri v. Senate,G.R. No. 180643, Mar. 25, 2008).*

Q: Sec. 1 of EO 464 required all heads of departments in the Executive branch to secure the consent of the President before appearing in an inquiry conducted by either House of Congress, pursuant to Art. VI, sec. 22 of the Constitution. Does this section applies only question hour? Is it valid?

A: Section 1, in view of its specific reference to Section 22 of Article VI of the Constitution and the absence of any reference to inquiries in aid of

legislation, must be construed as limited in its application to appearances of department heads in the question hour contemplated in the provision of said 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.

The requirement then to secure presidential consent under Section 1, limited as it is only to appearances in the question hour, is valid on its face. For under Section 22, Article VI of the Constitution, the appearance of department heads in the question hour is discretionary on their part. *(Senate v. Ermita, G.R. No. 169777, April 20, 2006)*

Note: Sec. 1 of EO 464 cannot, however, 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 to appear in such inquiry, unless a valid claim of privilege is subsequently made, either by the President herself or by the Executive Secretary. *(Senate v. Ermita, G.R. No. 169777, April 20, 2006)*

Q: What are the varieties of executive privilege?

A:

1. *State secret privilege* – invoked by Presidents on the ground that the information is of such nature that its disclosure would subvert crucial military or diplomatic objective.

2. *Informer's privilege* – privilege of the government not to disclose the identity of persons who furnish information in violations of law to officers charged with the enforcement of the law.

3. *General privilege* – for internal deliberations. Said to attach to intra-governmental documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.

   Note: In determining the validity of a claim of privilege, the question that must be asked is not only whether the requested information falls within one of the traditional privileges, but also whether that privilege should be honored in a given procedural setting.

Q: Differentiate Presidential Communications Privilege from Deliberative Process Privilege.

A:

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 of separation of powers and the President's unique constitutional role	Rooted in common law privileges

Q: What are the elements of presidential communications privilege?

A:

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.

Q: Are presidential communications presumptively privileged?

A: Yes. 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

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

policies and making decisions and to do so in a way many could 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."

Q: The House of Representatives' House Committee conducted an inquiry on the Japan-Philippines Economic Partnership Agreement (JPEPA), then being negotiated by the Philippine Government. The House Committee requested DTI Usec. Aquino to furnish it with a copy of the latest draft of the JPEPA. Aquino replied that he shall provide a copy thereof once the negotiations are completed.

A petition was filed with the SC which seeks to obtain a copy of the Philippine and Japanese offers submitted during the negotiation process and all pertinent attachments and annexes thereto. Aquino invoked executive privilege based on the ground that the information sought pertains to diplomatic negotiations then in progress. On the other hand, Akbayan for their part invoke their right to information on matters of public concern.

Are matters involving diplomatic negotiations covered by executive privilege?

A: Yes. It is clear that while the final text of the JPEPA may not be kept perpetually confidential, the offers exchanged by the parties during the negotiations continue to be privilege even after the JPEPA is published. Disclosing these offers could impair the ability of the Philippines to deal not only with Japan but with other foreign governments in future negotiations. (*AKBAYAN Citizen's Action Party v. Aquino, G.R No. 170516, July 16, 2008*)

Note: Such privilege is only presumptive.

Q: How is the presumption overcome?

A: Recognizing a type of information as privileged does not mean that it will be considered privileged in all instances. Only after a consideration of the context in which the claim is made may it be determined if there is a public interest that calls for the disclosure of the desired information, strong enough to overcome its traditionally privileged status. *(AKBAYAN Citizen's Action Party v. Aquino, et al., G.R No. 170516, July 16, 2008)*

b. PROHIBITIONS, INHIBITIONS AND DISQUALIFICATIONS

Q: What are the prohibitions attached to the President, Vice-President, Cabinet Members, and their deputies or assistants?

A: The President, Vice-President, the Members of the Cabinet, and their deputies or assistants, unless otherwise provided in this Constitution shall:

1. Shall not receive any other emolument from the government or any other source *(Sec. 6, Art. VII)*

2. Shall not hold any other office or employment during their tenure unless:
    a. Otherwise provided in the Constitution (*e.g.* VP can be appointed as a Cabinet Member; Sec. of Justice sits on Judicial and Bar Council)
    b. The positions are *ex-officio* and they do not receive any salary or other emoluments therefor (*e.g.* Sec. of Finance is head of Monetary Board)

3. Shall not practice, directly or indirectly, any other profession during their tenure

4. Shall not participate in any business

5. Shall not be financially interested in any contract with, or in any franchise, or special privilege granted by the Government, including GOCCs

6. Shall avoid conflict of interest in conduct of office

7. Shall avoid nepotism *(Sec. 13, Art. VII)*

    Note: The spouse and relatives by consanguinity or affinity within the 4th civil degree of the President shall not, during his tenure, be appointed as:
    a. Members of the Constitutional Commissions
    b. Office of the Ombudsman
    c. Secretaries
    d. Undersecretaries
    e. Chairmen or heads of bureaus or offices, including GOCCs and their subsidiaries

If the spouse, *etc.*, was already in any of the above offices at the time before his/her spouse

became President, he/she may continue in office. What is prohibited is appointment and reappointment, not continuation in office.

Spouses, *etc*., can be appointed to the judiciary and as ambassadors and consuls.

Q: Christian, the Chief Presidential Legal Counsel (CPLC), was also appointed as Chairman of the PCGG. May the two offices be held by the same person?

A: No. The two offices are incompatible. Without question, the PCGG is an agency under the Executive Department. Thus, the actions of the PCGG Chairman are subject to the review of the CPLC. *(Public Interest Group v. Elma, G.R. No. 138965, June 30, 2006)*

POWERS OF THE PRESIDENT

a. EXECUTIVE AND ADMINISTRATIVE POWERS IN GENERAL

Q: What is executive power?

A: It is the power of carrying out the laws into practical operation and enforcing their due observance. *(National Electrification Administration v. CA, G.R. No. 143481, Feb. 15, 2002).* It is the legal and political functions of the President involving the exercise of discretion.

It is vested in the President of the Philippines. Thus, the President shall have control of all executive departments, bureaus and offices. He shall ensure that laws are faithfully executed. (*Sec. 17, Art. VI, 1987 constitution*)

Note: Until and unless a law is declared unconstitutional, the President has a duty to execute it regardless of his doubts as to its validity. This is known as the *faithful execution clause. (Secs.1 and 17, Art. VII, 1987 Constitution).*

Q: What is the faithful execution clause?

A: Since executive power is vested in the President of the Philippines, he shall have control of all executive departments, bureaus and offices. Consequently, he shall ensure that the laws be faithfully executed *(Sec. 17, Art. VII)*. The power to take care that the laws be faithfully executed makes the President a dominant figure in the administration of the government. 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 the government.

Q: What is the scope of executive power?

A:

1. Executive power is vested in the President of the Philippines. *(Sec. 1, Art. VII, 1987 Constitution)*
2. It is not limited to those set forth in the Constitution *(Residual powers). (Marcos v. Manglapus, G.R. No. 88211, Oct. 27, 1989)*
3. Privilege of immunity from suit is personal to the President and may be invoked by him alone. It may also be waived by the President, as when he himself files suit. *(Soliven v. Makasiar, G.R. No. 82585, Nov. 14, 1988)*
4. The President cannot dispose of state property unless authorized by law. *(Laurel v. Garcia, G.R. No. 92013, July 25, 1990)*

Q: What are the specific powers of the President?

A: He is the repository of all executive power, such as:

1. Appointing power *(Sec. 16, Art. VII)*
2. Power of control over all executive departments, bureaus and offices *(Sec. 17, Art. VII)*
3. Commander-in-Chief powers (calling-out power, power to place the Philippines under martial law, and power to suspend the privilege of the writ of habeas corpus) *(Sec. 18, Art. VII)*
4. Pardoning power *(Sec. 19, Art. VII)*
5. Borrowing power *(Sec. 20, Art. VII)*
6. Diplomatic/Treaty-making power *(Sec. 21, Art. VII)*
7. Budgetary power *(Sec. 22, Art. VII)*
8. Informing power *(Sec. 23, Art. VII)*
9. Veto power *(Sec. 27, Art. VI)*
10. Power of general supervision over local governments *(Sec. 4, Art. X*)
11. Power to call special session *(Sec. 15, Art. VI)*

Q: Is the power of the President limited only to such specific powers enumerated in the Constitution?

A: No. The powers of the President cannot be said to be limited only to the specific power enumerated in the Constitution. Executive power is more than the sum of specific powers so

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

enumerated. The framers did not intend that by enumerating the powers of the President he shall exercise those powers and no other. Whatever power inherent in the government that is neither legislative nor judicial has to be executive. These unstated *residual powers* are implied from the grant of executive power and which are necessary for the President to comply with his duties under he Constitution. *(Marcos v. Manglapus, G.R. No. 88211, Oct. 27, 1989).*

Q: What is administrative power?

A: *Administrative power* is concerned with the work of applying policies and enforcing orders as determined by proper governmental organs. It enables the President to fix a uniform standard of administrative efficiency and check the official conduct of his agents. To this end, he can issue administrative orders, rules and regulations. *(Ople v. Torres, G.R. No. 127685, July 23, 1998).*

b. APPOINTING POWER

1. In General

Q: What is appointment?

A: It is the selection, by the authority vested with the power, of an individual who is to exercise the functions of a given office.

Note: An appointment may be made verbally but it is usually done in writing through what is called the commission.

Q: What is the nature of the appointing power of the President?

A: The power to appoint is executive in nature. While Congress and the Constitution in certain cases may prescribe the qualifications for particular offices, the determination of who among those who are qualified will be appointed is the President's prerogative. *(Pimentel, et al. v. Ermita, et al., G.R. No. 164978, Oct. 13, 2005).*

Q: Are the appointments made by an acting President effective?

A: These shall remain effective unless revoked by the elected President within 90 days from his assumption or re-assumption of office. *(Sec. 14, Art. VII)*

Q: What is designation?

A: Designation means imposition of additional duties on a person already in the public service. It is considered only as an acting or temporary appointment, which does not confer security of tenure on the person named. *(Binamira v. Garrucho, G.R. No. 92008, July 30, 1990)*

Note: The President has the power to temporarily designate an officer already in the government service or any other competent person to perform the functions of an office in the executive branch. In no case shall the temporary designation exceed one year.

2. Commission on Appointments Confirmation

Q: What are four instances where confirmation of the Commission on Appointments is required?

A:

1. Heads of executive departments

   GR: Appointment of cabinet secretaries requires confirmation.

   XPN: Vice-president may be appointed as a member of the Cabinet and such appointment requires no confirmation. *(Sec. 3, Art. VII)*

2. Ambassadors, other public ministers and consuls – those connected with the diplomatic and consular services of the country.

3. Officers of AFP from the rank of colonel or naval captain

   Note: PNP of equivalent ranks and Philippine Coast Guard are not included.

4. Other officers of the government whose appointments are vested in the President in the Constitution *(Sec. 16, Art. VII)*, such as:
   a. Chairmen and members of the CSC, COMELEC and COA *(Sec. 1[2], Art. IX-B, C, D)*
   b. Regular members of the JBC *(Sec. 8[2], Art. VIII)*

Q: What is the appointing procedure for those that need CA confirmation?

A:

1. Nomination by the President
2. Confirmation by the CA
3. Issuance of commission
4. Acceptance by the appointee *(Cruz,*

Philippine Political Law, 2002 ed., p. 207).

Note: At anytime before all four steps have been complied with, the President can withdraw the nomination and appointment. *(Lacson v. Romero, G.R. No. L-3081, Oct. 14, 1949)*

Q: What is the appointing procedure for those that do not need CA confirmation?

A:

1. Appointment
2. Acceptance

Q: Distinguish an *ad interim* appointment from an appointment in an acting capacity.

A:

***AD INTERIM* APPOINTMENT**	**APPOINTMENT IN AN ACTING CAPACITY**
Made if Congress is not in session	Made at any time there is vacancy, i.e., whether Congress is in session or not
Requires confirmation of CA	Does not require confirmation of CA
Permanent in nature	Temporary in nature
Appointee enjoys security of tenure	Appointee does not enjoy security of tenure

Q: Is the act of the President in appointing acting secretaries constitutional, even without the consent of the Commission on Appointments while Congress is in session?

A: Yes. Congress, through a 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. The office of a department secretary may become vacant while Congress is in session. Since a department secretary is the alter ego of the President, the acting appointee to the office must necessarily have the President's confidence. *(Pimentel v. Ermita, G.R. No. 164978, Oct. 13, 2005)*

Note: Acting appointments cannot exceed one year. *(Section 17[3], Chapter 5, Title I, Book III of EO 292).*

Q: May an appointment be the subject of a judicial review?

A: Generally, no. Appointment is a political question. So long as the appointee satisfies the minimum requirements prescribed by law for the position, the appointment may not be subject to judicial review.

Q: What are the limitations regarding the appointing power of the president?

A:

1. The spouse and relatives by consanguinity or affinity within the 4th civil degree of the President shall not, during his "tenure" be appointed:
    a. As members of the Constitutional Commissions
    b. Member of the Office of Ombudsman
    c. Secretaries
    d. Undersecretaries
    e. Chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries. *(Sec. 13[2], Art. VII)*

2. **GR**: Two months immediately before the next Presidential elections (2nd Monday of May), and up to the end of his "term" (June 30), a President (or Acting President) shall not make appointments.

   XPN: Temporary appointments, to executive positions, when continued vacancies therein will prejudice public service *(Sec. 15, Art. VII) (e.g. Postmaster);* or endanger public safety *(e.g. Chief of Staff).*

3. Midnight Appointments

Q: Sec. 15, Art. VII of the 1987 Constitution prohibits the President from making appointments two months before the next presidential elections and up to the end of his term. To what types of appointment is said prohibition directed against?

A: Section 15, Article VII is directed against two types of appointments:

1. Those made for buying votes – refers to those appointments made within two months preceding the Presidential election and are similar to those which are declared election offenses in the Omnibus Election Code; and

2. Those made for partisan considerations – consists of the so-called "midnight" appointments. (*In Re: Hon. Mateo A.*

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Valenzuela and Hon. Placido B. Vallarta, A.M. No. 98-5-01-SC Nov. 9, 1998)

Q: Does an outgoing President have the power to appoint the next Chief Justice within the period starting two months before the presidential elections until the end of the presidential term? Discuss thoroughly.

A: Yes. Article VII is devoted to the Executive Department, and, among others, it lists the powers vested by the Constitution in the President. The presidential power of appointment is dealt with in Sections 14, 15 and 16 of the Article.

Article VIII is dedicated to the Judicial Department and defines the duties and qualifications of Members of the Supreme Court, among others. Section 4(1) and Section 9 of this Article are the provisions specifically providing for the appointment of Supreme Court Justices. In particular, Section 9 states that the appointment of Supreme Court Justices can only be made by the President upon the submission of a list of at least three nominees by the JBC; Section 4(1) of the Article mandates the President to fill the vacancy within 90 days from the occurrence of the vacancy.

Had the framers intended to extend the prohibition contained in Section 15, Article VII to the appointment of Members of the Supreme Court, they could have explicitly done so. They could not have ignored the meticulous ordering of the provisions. They would have easily and surely written the prohibition made explicit in Section 15, Article VII as being equally applicable to the appointment of Members of the Supreme Court in Article VIII itself, most likely in Section 4 (1), Article VIII. That such specification was not done only reveals that the prohibition against the President or Acting President making appointments within two months before the next presidential elections and up to the end of the President's or Acting President's term does not refer to the Members of the Supreme Court.

Given the background and rationale for the prohibition in Section 15, Article VII, there is no doubt that the Constitutional Commission confined the prohibition to appointments made in the Executive Department. The framers did not need to extend the prohibition to appointments in the Judiciary, because their establishment of the JBC and their subjecting the nomination and screening of candidates for judicial positions to the unhurried and deliberate prior process of the JBC ensured that there would no longer be midnight appointments to the Judiciary. *(De Castro v. JBC, G.R. No. 191002, Mar. 17, 2010)*

c. POWER OF REMOVAL

Q: Where does the President derive his power of removal?

A: The President derives his implied power of removal 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. *(Sinco, Philippine Political Law, 1954 ed., p. 275)*

Q: Can the President remove all the officials he appointed?

A: No. All officials appointed by the President are also removable by him since the Constitution prescribes certain methods for the separation from the public service of such officers. *(Cruz, Philippine Political Law, 2002 ed., pp. 209-210)*

Note: Members of the career service of the Civil Service who are appointed by the President may be directly disciplined by him *(Villaluz v. Zaldivar, G.R. No. L-22754, Dec. 31, 1965)* provided that the same is for cause and in accordance with the procedure prescribed by law.

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 the process of removal

but by the expiration of their term. *(Aparri v. CA, G.R. No. L-30057, Jan. 31, 1984)*

d. POWER OF CONTROL AND SUPERVISION

Q: What is the power of control?

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

Note: The President's power over GOCCs comes not from the Constitution, but from statute. Hence, it may be taken away by statute.

The President has full control of all the members of his Cabinet. He may appoint them as he sees fit, shuffle them at pleasure, and replace them in his discretion without any legal inhibition whatever. However, such control is exercisable by the President only over the acts of his subordinates and not necessarily over the subordinate himself. *(Ang-Angco v. Castillo, G.R. No.L-17169, Nov. 30, 1963)*

1. Doctrine of Qualified Political Agency

Q: What is the doctrine of qualified political agency or alter ego principle?

A: It means that the acts of the secretaries of the Executive departments performed and promulgated in the regular course of business are presumptively the acts of the Chief Executive. *(Villena v. Secretary of the Interior, G.R. No. L-46570, April 21, 1939)*

Q: What are the exceptions to the alter ego doctrine?

A:

1. If the acts are disapproved or reprobated by the President;
2. If the President is required to act in person by law or by the Constitution.

Note: In the case of *Abakada Guro v. Executive Secretary, G.R. No. 168056, Sept. 1, 2005,* the SC held that the Secretary of Finance can act as an agent of the Legislative Dept. to determine and declare the event upon which its expressed will is to take effect. Thus, being the agent of Congress and not of the President, the latter cannot alter, or modify or nullify, or set aside the findings of the Secretary of Finance and to substitute the judgment of the former for that of the latter.

Q: What is the reason for the alter ego doctrine?

A: Since the President 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.

2. Executive Departments and Offices

Q: Can Department Heads exercise power of control in behalf of the President?

A: Yes. 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.

Note: The Sec. of Justice may reverse the judgment of a prosecutor and direct him to withdraw an information already filed. One who disagrees, however, may appeal to the Office of the President in order to exhaust administrative remedies prior filing to the court.

Q: Can the Executive Secretary reverse the decision of another department secretary?

A: Yes. The Executive Secretary when acting "by authority of the President" may reverse the decision of another department secretary. *(Lacson-Magallanes Co., Inc. v. Paño, G.R. No. L-27811, Nov. 17, 1967)*

3. Local Government Units

Q: What is the power of general supervision?

A: This is the power of a superior officer to ensure that the laws are faithfully executed by subordinates. The power of the President over LGUs is only of general supervision. Thus, he can only interfere in the affairs and activities of a LGU

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

if he finds that the latter acted contrary to law. The President or any of his alter egos cannot interfere in local affairs as long as the concerned LGU acts within the parameters of the law and the Constitution. Any directive, therefore, by the President or any of his alter egos seeking to alter the wisdom of a law-conforming judgment on local affairs of a LGU is a patent nullity, because it violates the principle of local autonomy, as well as the doctrine of separation of powers of the executive and the legislative departments in governing municipal corporations. *(Dadole v. COA, G.R. No. 125350, Dec. 3, 2002)*

Q: Distinguish control from supervision.

A:

CONTROL	SUPERVISION
An officer in control lays down the rules in the doing of an act.	The supervisor or superintendent merely sees to it that the rules are followed, but he himself does not lay down such rules.
If the rules are not followed, the officer in control may, in his discretion, order the act undone or re-done by his subordinate or he may even decide to do it himself.	The supervisor does not have the discretion to modify or replace them. If the rules are not observed, he may order the work done or re-done but only to conform to the prescribed rules. *(Drilon v. Lim, G.R. No. 112497, Aug. 4, 1994)*

Note: The power of supervision does not include the power of control; but the power of control necessarily includes the power of supervision.

e. COMMANDER-IN-CHIEF POWERS

Q: What is the scope of the President's Commander-in-Chief powers?

A:

1. *Command of the Armed Forces* – The Commander-in-Chief clause vests on the President, as Commander-in-Chief, absolute authority over the persons and actions of the members of the armed forces. *(Gudani v. Senga, G.R. No. 170165, Aug. 15, 2006)*

   Note: By making the President the Commander-in-Chief of all the armed forces, the principle announced in Art. II, Sec. III is bolstered. Thus, the Constitution lessens the danger of a military take-over of the government in violation of its republican nature.

   The President as Commander-in-Chief can prevent the Army General from appearing in a legislative investigation and, if disobeyed, can subject him to court martial. *(Gudani v. Senga, G.R. No. 170165, Aug. 15, 2006)*

2. *Calling-out powers* – Call the armed forces to prevent or suppress lawless violence, invasion, or rebellion. The only criterion for the exercise of this power is that whenever it becomes necessary.

   Note: The declaration of a state of emergency is merely a description of a situation which authorizes her to call out the Armed Forces to help the police maintain law and order. It gives no new power to her, nor to the police. Certainly, it does not authorize warrantless arrests or control of media. *(David v. Ermita, G.R. No. 171409, May 3, 2006)*

   The Constitution does not require the President to declare a state of rebellion to exercise her calling out power grants. Section 18, Article VII grants the President, as Commander-in-Chief a "sequence" of "graduated powers." *(Sanlakas v. Executive Secretary, G.R. No. 159085, Feb. 3, 2004)*

3. *Suspension of the privilege of the writ of habeas corpus*

   Note: A "writ of *habeas corpus*" is an order from the court commanding a detaining officer to inform the court if he has the person in custody, and what is his basis in detaining that person.

   The "privilege of the writ" is that portion of the writ requiring the detaining officer to show cause why he should not be tested. What is permitted to be suspended by the President is not the writ itself but its privilege.

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

Q: What are the requisites for the suspension of the privilege of the writ of *habeas corpus*?

A:

1. There must be an invasion or rebellion
2. Public safety requires the suspension

Note: The invasion and rebellion must be actual and not merely imminent.

Q: Can the Supreme Court inquire into the factual basis of the suspension of the privilege of the writ of *habeas corpus*?

A: Yes. The Supreme Court declared that it had the power to inquire into the factual basis of the suspension of the privilege of the writ and to annul the same if no legal ground could be established. Hence, the suspension of the privilege of the writ is no longer a political question to be resolved solely by the President. *(Lansang v. Garcia, G.R. No. L-33964, Dec. 11, 1971)*

Note: Also applies to the proclamation of martial law.

Q: Is the right to bail impaired if the privilege of the writ of *habeas corpus* is suspended?

A: The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. *(Sec. 13, Art. III, 1987 Constitution).*

Q: What are the limitations on the suspension of the privilege of writ of *habeas corpus*?

A:

1. Applies only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion; and
2. Anyone arrested or detained during suspension must be charged within 3 days. Otherwise, he should be released.

Q: State the guidelines in the declaration of martial law.

A:

1. There must be an invasion or rebellion, *and*
2. Public safety requires the proclamation of martial law all over the Philippines or any part thereof.
3. *Duration*: Not more than 60 days following which it shall be automatically lifted unless extended by Congress.
4. *Duty of the President to report to Congress*: within 48 hours personally or in writing.
5. *Authority of Congress to revoke or extend the effectivity of proclamation*: by majority vote of all of its members voting jointly.

   Note: Once revoked by Congress, the President cannot set aside the revocation.

Q: What are the limitations on the declaration of martial law?

A: Martial law does not:

1. Suspend the operation of the Constitution;
2. Supplant the functioning of the civil courts or legislative assemblies;
3. Authorize conferment of jurisdiction over civilians where civil courts are able to function;

   Note: Civilians cannot be tried by military courts if the civil courts are open and functioning. *(Olaguer v. Military Commission No. 34, G.R. No. L-54558, May 22, 1987)*.

4. Automatically suspend the privilege of the writ of *habeas corpus*.

Note: When martial law is declared, no new powers are given to the President; no extension of arbitrary authority is recognized; no civil rights of individuals are suspended. The relation of the citizens to their State is unchanged.

Supreme Court cannot rule upon the correctness of the President's actions but only upon its arbitrariness.

Q: What are the ways to lift the proclamation of martial law?

A:

1. Lifting by the President himself
2. Revocation by Congress
3. Nullification by the SC
4. By operation of law after 60 days *(Sec. 18, Art. VII)*

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Q: Is the actual use of the armed forces by the President subject to judicial review?

A: No. While the suspension of the privilege of the writ of *habeas corpus* and the proclamation of martial law is subject to judicial review, the actual use by the President of the armed forces is not. Thus, troop deployments in times of war are subject to the President's judgment and discretion. *(IBP v. Zamora, G.R. No. 141284, Aug. 15, 2000)*

Q: Are peace negotiations with rebel groups part of presidential power?

A: Yes. The President's power to conduct peace negotiations is implicitly included in her powers as Chief Executive and Commander-in-Chief. As Chief Executive, the President has the general responsibility to promote public peace, and as Commander-in-Chief, she has the more specific duty to prevent and suppress rebellion and lawless violence. *(Province of North Cotabato v. Gov't of the Republic of the Philippines Peace Panel on Ancestral Domain, G.R. No. 183591, Oct. 14, 2008).*

Q: May the President, in the exercise of peace negotiations, agree to pursue reforms that would require new legislation and constitutional amendments, or should the reforms be restricted only to those solutions which the present laws allow?

A: If the President is to be expected to find means for bringing this conflict to an end and to achieve lasting peace in Mindanao, then she must be given the leeway to explore, in the course of peace negotiations, solutions that may require changes to the Constitution for their implementation. So long as the President limits herself to recommending these changes and submits to the proper procedure for constitutional amendment and revision, her mere recommendation need not be construed as unconstitutional act. 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. The most she could do is submit these proposals as recommendations either to Congress or the people, in whom constituent powers are vested. *(Province of North Cotabato v. Gov't of the Republic of the Philippines Peace panel on Ancestral Domain, G.R. No. 183591, Oct.14, 2008)*

f. PARDONING POWER

Q: What is the purpose of executive clemency? Can it be delegated?

A: Executive clemency is granted for the purpose of relieving the harshness of the law or correcting mistakes in the administration of justice. The power of executive clemency is a non-delegable power and must be exercised by the President personally.

Note: Clemency is not a function of the judiciary; it is an executive function. The grant is discretionary, and may not be controlled by the legislature or reversed by the court, save only when it contravenes its limitations.

The power to grant clemency includes cases involving administrative penalties.

In granting the power of executive clemency upon the President, Sec. 19, Art. VII of the Constitution does not distinguish between criminal and administrative cases.

If the President can grant pardons in criminal cases, with more reason he can grant executive clemency in administrative cases, which are less serious. (Llamas v. Orbos, G.R. No. 99031, Oct. 15, 1991)

Q: What is the scope of the President's pardoning power? (Forms of executive clemency)

A: The President may grant the following:
[Pa R C Re A]

1. **Pa**rdons (conditional or plenary)
2. **R**eprieves
3. **C**ommutations
4. **Re**mission of fines and forfeitures
5. **A**mnesty

Note: The first 4 require conviction by final judgment while amnesty does not.

Q: Are there limitations to the President's pardoning power?

A: Yes. It:

1. Cannot be granted in cases of impeachment.
2. Cannot be granted for violations of election laws without favorable recommendations of the COMELEC.
3. Can be granted only after convictions by final judgment (except amnesty).
4. Cannot be granted in cases of civil or legislative contempt.
5. Cannot absolve convict of civil liability.
6. Cannot restore public offices forfeited.

Q: What is pardon? What are its legal effects?

A: Pardon is an act of grace which exempts individual on whom it is bestowed from punishment which the law inflicts for a crime he has committed. As a consequence, pardon granted after conviction frees the individual from all the penalties and legal disabilities and restores him to all his civil rights. But unless expressly grounded on the person's innocence (which is rare), it cannot bring back lost reputation for honesty, integrity and fair dealing. *(Monsanto v. Factoran, G.R. No. 78239, Feb. 9, 1989)*

Note: Because pardon is an act of grace, no legal power can compel the President to give it. 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 into the wisdom or reasonableness of any pardon granted by the President.

Q: What are the kinds of pardon? What makes them different from each other?

A:

1. *Absolute pardon* - one extended without any conditions

2. *Conditional pardon* - one under which the convict is required to comply with certain requirements

3. *Plenary pardon* - extinguishes all the penalties imposed upon the offender, including accessory disabilities partial pardon does not extinguish all penalties

4. *Partial pardon* - does not extinguish all the penalties

Note: A judicial pronouncement that a convict who was granted a pardon subject to the condition that he should not again violate any penal law is not necessary before he can be declared to have violated the condition of her pardon. *(Torres v. Gonzales, G.R. No. L-76872, July 23, 1987)*

Q: Can an offender reject pardon?

A: It depends.

1. *Conditional Pardon* - the offender has the right to reject it since he may feel that the condition imposed is more onerous than the penalty sought to be remitted.

2. *Absolute Pardon* - the pardonee has no option at all and must accept it whether he likes it or not.

> **Note:** In this sense, an absolute pardon is similar to commutation, which is also not subject to acceptance by the offender. *(Cruz, Philippine Political Law, 2002 ed., p. 232)*

Q: Mon Daraya, the assistant city treasurer of Caloocan, was convicted of *estafa* through falsification of public documents. However, he was granted an absolute pardon, prompting him to claim that he is entitled to be reinstated to his former public office. Is Mon's contention tenable?

A: No. Pardon does not *ipso facto* restore a convicted felon neither to his former public office nor to his rights and privileges which were necessarily relinquished or forfeited by reason of the conviction although such pardon undoubtedly restores his eligibility to that office. *(Monsanto v. Factoran, G.R. No. 78239, Feb. 9, 1989)*

Q: What is reprieve?

A: It is the postponement of sentence to a date certain, or stay of execution.

Note: It may be ordered to enable the government to secure additional evidence to ascertain the guilt of the convict or, in the case of the execution of the death sentence upon a pregnant woman, to prevent the killing of her unborn child.

Q: What is commutation?

A: It is the reduction or mitigation of the penalty, from death penalty to life imprisonment, remittances and fines. Commutation is a pardon

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

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.

Note: Commutation does not have to be in any form. Thus, the fact that a convict was released after 6 years and placed under house arrest, which is not a penalty, already leads to the conclusion that the penalty has been shortened.

Q: Can the SC review the correctness of the action of the President in granting executive clemency by commuting the penalty of dismissal, as ruled by the Court, to a dismissed clerk of court?

A: Yes. By doing so, the SC is not deciding a political question. What it is deciding is whether or not the President has the power to commute the penalty of the said clerk of court. As stated in *Daza v. Singson, G.R. No. 87721-30, December 21, 1989,* it is within the scope of judicial power to pass upon the validity of the actions of the other departments of the Government.

Q: What is remission?

A: 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.

Note: The power of the President to remit fines and forfeitures may not be limited by any act of Congress. But a statue may validly authorize other officers, such as department heads or bureau chiefs, to remit administrative fines and forfeitures.

Q: What is probation?

A: It is a disposition under which a defendant after conviction and sentence is released subject to conditions imposed by the court and to the supervision of a probation officer.

Q: What is a parole?

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

Q: What is amnesty?

A: It is a 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 President only with the concurrence of the legislature.

Note: Thus, the requisites of amnesty are (a) concurrence of a majority of all the members of Congress and (b) a previous admission of guilt.

Q: What are the effects of the grant of amnesty?

A: Criminal liability is totally extinguished by amnesty; the penalty and all its effects are thus extinguished. Amnesty reaches back to the past and erases whatever shade of guilt there was. In the eyes of the law, a person granted amnesty is considered a new-born child. *(Cruz, Philippine Political Law, 2002 ed., p. 237)*

Q: Differentiate amnesty from pardon.

A:

AMNESTY	PARDON
Addressed to Political offenses	Addressed to Ordinary offenses
Granted to a Class of Persons	Granted to Individuals
Requires concurrence of majority of all members of Congress	Does not require concurrence of Congress
Public act to which the court may take judicial notice of	Private act which must be pleaded and proved
Looks backward and puts to oblivion the offense itself	Looks forward and relieves the pardonee of the consequence of the offense
May be granted before or after conviction	Only granted after conviction by final judgment
Need not be accepted	Must be accepted

g. DIPLOMATIC POWERS

Q: What are the President's powers over foreign affairs?

A: The President is the chief architect of foreign relations. By reason of the President's unique position as Head of State, he is the logical choice as the nation's spokesman in foreign relations. The Senate, on the other hand, is granted the right to share in the treaty-making power of the President by concurring with him with the right to amend.

Q: What is the scope of the foreign relations powers of the President?

A: The President's diplomatic powers include power to:

1. Negotiate treaties and other international agreements. However, such treaty or international agreement requires the concurrence of the Senate *(Sec. 21, Art. VII)* which may opt to do the following:
   a. Approve with 2/3 majority;
   b. Disapprove outright; or
   c. Approve conditionally, with suggested amendments which if re-negotiated and the Senate's suggestions are incorporated, the treaty will go into effect without need of further Senate approval.

2. Appoint ambassadors, other public ministers, and consuls.

3. Receive ambassadors and other public ministers accredited to the Philippines. *(Cruz, Philippine Political Law, 2002 ed., p. 239).*

4. Contract and guarantee foreign loans on behalf of RP. *(Sec. 20, Art. VII).*

5. Deport aliens:
   a. This power is vested in the President by virtue of his office, subject only to restrictions as may be provided by legislation as regards to the grounds for deportation. *(Sec. 69, Revised Administrative Code).*
   b. In the absence of any legislative restriction to authority, the President may still exercise this power.
   c. The power to deport aliens is limited by the requirements of due process, which entitles the alien to a full and fair hearing.
   d. But: the alien is not entitled to bail as a matter of right. *(Tan Sin v. The Deportation Board, G.R. No. L-11511, Nov. 28, 1958)*

   Note: The adjudication of facts upon which the deportation is predicated devolved on the President whose decision is final and executory. *(Tan Tong v. Deportation Board, G.R. No. L-7680, April 30, 1955)*

6. Decide that a diplomatic officer who has become *persona non grata* be recalled.

7. Recognize governments and withdraw recognition. *(Cruz, Philippine Political Law, 2002 ed., p. 239)*

Q: Where do the President's diplomatic powers come from?

A: The extensive authority of the President in foreign relations in a government patterned after that of the US proceeds from 2 general sources:

1. The Constitution
2. The status of sovereignty and independence of a state.

Q: Who ratifies a treaty? What is the scope of the power to concur treaties and international agreements?

A: 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. 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 upon by the Court via a writ of mandamus**.** *(Pimentel v. Ermita, G.R. No. 164978, Oct. 13, 2005)*

TEAM BAROPS

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Note: The power of the Senate to give its concurrence carries with it the right to introduce amendments to a treaty. 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.

h. BUDGETARY POWER

Q: What is budgetary power?

A: Within 30 days from opening of every regular session, the President shall submit to Congress a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures. *(Sec. 22, Art. VII).*

Note: This power is properly entrusted to the President as it is the President who, as chief administrator and enforcer of the laws, is in the 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.

i. RESIDUAL POWER

Q: What are residual powers?

A: Whatever power inherent in the government that is neither legislative nor judicial has to be executive. These unstated *residual powers* are implied from the grant of executive power and which are necessary for the President to comply with his duties under he Constitution. *(Marcos v. Manglapus, G.R. No. 88211, Oct. 27, 1989)*

Note: Residual powers are those not stated or found in the Constitution but which the President may validly exercise.

j. Impoundment Power

Q: What is impoundment power?

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

Q: What are the principal sources of this power?

A:

1. Authority to impound given to the President either expressly or impliedly by Congress
2. The executive power drawn from the President's role as Commander-in-Chief
3. Faithful Execution clause

Note: Proponents of impoundment insist that a faithful execution of the laws requires that the President desist from implementing the law if doing so would prejudice public interest. An example given is when through efficient and prudent management of a project, substantial savings are made. In such a case, it is sheer folly to expect the President to spend the entire amount budgeted in the law. *(PHILCONSA v. Enriquez, G.R. No. 113105, Aug. 19, 1994)*

E. JUDICIAL DEPARTMENT

a. JUDICIAL POWER

Q: What is judicial power?

A: 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. *(Sec. 1[2], Art. VIII)*

Q: In what body is it vested?

A: It is vested in one Supreme Court (SC) and such lower courts as may be established by law. *(Sec. 1, Art. VIII)*

Q: Distinguish justiciable questions from political questions.

A:

JUSTICIABLE QUESTIONS	POLITICAL QUESTIONS
Imply a given right legally demandable and enforceable, an act or omission violative of such right, and a remedy granted and sanctioned by law for said breach of right	Questions which involve the policy or the wisdom of the law or act, or the morality or efficacy of the same. Generally it cannot be inquired by the courts. Further, these are questions which under the Constitution: a. Are decided by the people in their sovereign capacity; and b. Where full discretionary authority has been delegated either to the executive or legislative department.

Q: How does the definition of judicial power under the present Constitution affect the political question doctrine?

A: The 1987 Constitution expands the concept of judicial review. Under the expanded definition, the Court cannot agree that the issue involved is a political question beyond the jurisdiction of the court to review. When the grant of power is qualified, conditional or subject to limitations, the issue of whether the prescribed qualifications or conditions have been met or the limitations respected is justiciable—the problem being one of legality or validity, not its wisdom. Moreover, the jurisdiction to delimit constitutional boundaries has been given to the SC. When political questions are involved, the Constitution limits the delimitation as to whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the official whose action is being questioned.

Note: The courts cannot be asked for advisory opinions.

Q: **Can judicial power be shared?**

A: No. The US SC declared that judicial power cannot be shared, as the powers of the legislature and executive cannot also thereby be shared. *(US v. Nixon, 418 US 683 41 Led 2d 1039, 94 SC t 3090, 1974)*

Q: What is the power of judicial inquiry?

A: It is the power of the court to inquire into the exercise of discretionary powers to determine whether there is grave abuse of discretion amounting to lack or excess of jurisdiction.

It is the power of the court to determine the validity of government acts in conformity with the Constitution.

b. JUDICIAL REVIEW

Q: What is the power of judicial review?

A: The power of the SC to declare a law, treaty, ordinance and other governmental act unconstitutional.

Q: What are the requisites of judicial review?

A:

1. *Actual case* – an existing case or controversy which is both ripe for resolution and susceptible of judicial determination, and that which is not conjectural or anticipatory, or that which seeks to resolve hypothetical or feigned constitutional problems.

Note: A petition raising a constitutional question does not present an "actual controversy" unless it alleges a legal right or power. Moreover, it must show that a conflict of rights exists, for inherent in the term "controversy" is the presence of opposing

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

views or contentions. The controversy must also be justiciable; that is, it must be susceptible of judicial determination. *(IBP v. Hon. Ronaldo B. Zamora, G.R. No. 141284, Aug. 15, 2000)*

2. *Proper party* – one who has sustained or is in immediate danger of sustaining an injury as a result of the act complained of.

GR: If there is no actual or potential injury, complainant has no legal personality to raise Constitutional questions

XPN: If the question is of transcendental importance

Note: The Principle of Transcendental Importance is determined by:

a. The character of the funds or other assets involved in the case;

b. The presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government;

c. The lack of any other party with a more direct and specific interest in raising the questions being raised. *(Francisco, Jr. v. House of Representatives, G.R. No. 160261, Nov. 10, 2003)*

3. *Earliest opportunity* – Constitutional question must be raised at the earliest possible opportunity. If not raised in pleadings, it cannot be considered in trial and on appeal. However, such is not absolute. It is subject to the following conditions:

a. *Criminal case* – it may be brought at any stage of the proceedings according to the discretion of the judge (trial or appeal) because no one shall be brought within the terms of the law who are not clearly within them and the act shall not be punished when the law does not clearly punish them.

b. *Civil case* – it may be brought anytime if the resolution of the Constitutional issue is inevitable in resolving the main issue.

c. When the jurisdiction of the lower court is in question except when there is *estoppel*

Note: The earliest opportunity to raise a constitutional issue is to raise it in the pleadings before a competent court that can resolve the same, such that, if not raised in the pleadings, it cannot be considered in trial and, if not considered in trial, it cannot be considered on appeal.

The Ombudsman has no jurisdiction to entertain questions regarding constitutionality of laws. Thus, when the issue of constitutionality a law was raised before the Court of Appeals (CA), which is the competent court, the constitutional question was raised at the earliest opportune time. *(Estarija v. Ranada, G.R. No. 159314, June 26, 2006)*

The NLRC's foremost function is to administer and enforce R.A. No. 8042, and not to inquire into the validity of its provisions. Therefore, even if the issue on the constitutionality of the subject clause was first raised, not in petitioner's appeal with the NLRC, but in his Motion for Partial Reconsideration with said labor tribunal, and reiterated in his Petition for *Certiorari* before the CA, the issue is deemed seasonably raised because it is not the NLRC but the CA which has the competence to resolve the constitutional issue. *(Serrano v. NLRC, G.R. No. 167614, Mar. 29, 2009)*

4. *Necessity of deciding constitutional questions* – as a 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. As long as there are other bases which courts can use for decision, constitutionality of the law will not be touched.

Q: What are the requisites before a law can be declared partially unconstitutional?

A:

1. The legislature must be willing to retain valid portion (separability clause)

2. The valid portion can stand independently as law

Q: What is the Principle of *Stare Decisis*?

A: 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. *(De Castro v. JBC, G.R. No. 191002, Apr. 20, 2010)*

Q: Is the SC obliged to follow precedents?

A: No. 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. *(De Castro v. JBC, G.R. No. 191002, April 20, 2010)*

Q: X filed a petition to set aside the award of the ZTE-DOTC Broadband Deal. The OSG opposed the petition on the ground that the Legal Service of the DOTC has informed it of the Philippine Government's decision not to continue with the ZTE-NBN Project. That said there is no more justiciable controversy for the court to resolve. Hence, the OSG claimed that the petition should be dismissed. X countered by saying that despite the mootness, the Court must nevertheless take cognizance of the case and rule on the merits due to the Court's symbolic function of educating the bench and the bar by formulating guiding and controlling principles, precepts, doctrines, and rules. Decide.

A: The OSG is correct. The petition should be dismissed for being moot. Judicial power presupposes actual controversies, the very antithesis of mootness. In the absence of actual justiciable controversies or disputes, the Court generally opts to refrain from deciding moot issues. Where there is no more live subject of controversy, the Court ceases to have a reason to render any ruling or make any pronouncement. *(Suplico v. NEDA, G.R. Nos. 178830, July 14, 2008)*

Q: What are the functions of judicial review?

A:
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 that results from a mere dismissal of a case challenging the validity of the law

Note: Rule on double negative: uses the term "not unconstitutional"; the court cannot declare a law constitutional because it already enjoys a presumption of constitutionality.

3. *Symbolic* – to educate the bench and bar as to the controlling principles and concepts on matters of grave public importance for the guidance of and restraint upon the future *(Igot v. COMELEC, G.R. No. L-352245, Jan. 22, 1980)*

Q: What is the extent of power of judicial review in impeachment proceedings?

A: The power of judicial review includes the power of review over justiciable issues in impeachment proceedings *(Francisco, Jr. v. House of Representatives, G.R. No. 160261, Nov. 10, 2003).*

Q: What is the Doctrine of Relative Constitutionality?

A: The constitutionality of certain rules may depend upon the times and get affected by the changing of the seasons. A classification that might have been perfectly alright at the time of its inception may be considered dubious at a later time.

1. Operative Fact Doctrine

Q: What is meant by the operative fact doctrine?

A: It is a rule of equity. Under this doctrine, the law is recognized as unconstitutional but the effects of the unconstitutional law, prior to its declaration of nullity, may be left undisturbed as a matter of equity and fair play. *(League of Cities of the Philippines v. COMELEC, G.R. No. 176951, Nov. 18, 2008)*

Q: Will the invocation of this doctrine an admission that the law is unconstitutional?

A: Yes. *(League of Cities of the Philippines v. COMELEC, G.R. No. 176951, Nov. 18, 2008)*

2. Moot Questions

Q: What are moot questions?

A: Questions whose answers cannot have any practical legal effect or, in the nature of things, cannot be enforced. *(Baldo, Jr. v. COMELEC, G.R. No. 176135, June 16, 2009)*

Q: When is a case moot and academic?

A: It is moot and academic when it ceases to present a justiciable controversy by virtue of supervening events so that a declaration thereon would be of no practical use or value.

Q: Should courts decline jurisdiction over moot and academic cases?

A: GR: The courts should decline jurisdiction over such cases or dismiss it on ground of mootness.

XPNs:

1. There is a grave violation of the Constitution

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

2. There is an 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

4. The case is capable of repetition yet evading review. *(David v. Arroyo, G.R. No. 171396, May 3, 2006)*

3. Political Question

Q: What is meant by the political question doctrine?

A: The doctrine means that the power of judicial review cannot be exercised when the issue is a political question. It constitutes another limitation on such power of the judiciary.

Q: What are political questions?

A: Those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government. *(Tañada v. Cuenco, G.R. No. L-10520, February 28, 1957)*

c. JUDICIAL INDEPENDENCE SAFEGUARDS

Q: What are the constitutional safeguards that guarantee independence of the judiciary?

A:

1. The SC is a constitutional body and may not be abolished by law
2. Members are only removable by impeachment
3. The SC may not be deprived of its minimum and appellate jurisdiction; appellate jurisdiction may not be increased without its advice or concurrence
4. The SC has administrative supervision over all inferior courts and personnel
5. The SC has exclusive power to discipline judges/justices of inferior courts
6. The members of the judiciary enjoy security of tenure *(Sec. 2 [2], Art. VIII, 1987 Constitution)*
7. The members of the judiciary may not be designated to any agency performing quasi-judicial or administrative functions
8. The salaries of judges may not be reduced; the judiciary enjoys fiscal autonomy *(Sec. 3, Art. VIII, 1987 Constitution)*
9. The SC alone may initiate the promulgation of the Rules of Court
10. The SC alone may order temporary detail of judges
11. The SC can appoint all officials and employees of the Judiciary. *(Nachura, Reviewer in Political Law, pp. 310-311)*

Q: What does the mandate of the Constitution that the judiciary shall enjoy fiscal autonomy contemplate?

A: In *Bengzon v. Drilon, G.R. No. 103524, April 15, 1992*, the SC explained that fiscal autonomy contemplates a guarantee of full flexibility to allocate and utilize resources with the wisdom and dispatch that the needs require. It recognizes the power and authority to deny, assess and collect fees, fix rates of compensation not exceeding the highest rates authorized by law for compensation and pay plans of the government and allocate and disburse such sums as may be provided by law or prescribed by it in the course of the discharge of its functions.

d. JUDICIAL RESTRAINT

Q: What does the Principle of Judicial Restraint mean?

A: It is a theory of judicial interpretation that encourages judges to limit the exercise of their own power.

The common-law principle of judicial restraint serves the public interest by allowing the political processes to operate without undue interference. *(Sinaca vs Mula, G.R. No. 135691, September 27, 1999)*

In terms of legislative acts, the principle of judicial restraint means that every intendment of the law must be adjudged by the courts in favor of its constitutionality, invalidity being a measure of last resort. In construing therefore the provisions of a statute, courts must first ascertain whether an interpretation is fairly possible to sidestep the question of constitutionality. *(Estrada v.*

Sandiganbayan, G.R. No. 148560, November 19, 2001)

The doctrine of separation of powers imposes upon the courts proper restraint born of the nature of their functions and of their respect for the other departments in striking down acts of the legislature as unconstitutional. *(Francisco, Jr. v. The House of Representatives, G.R. No. 160261, Bellosillo J., Separate Opinion, November 10, 2003)*

e. APPOINTMENTS TO THE JUDICIARY

Q: How are members of the judiciary appointed?

A: The members of the judiciary are appointed by the President of the Philippines from among a list of at least three nominees prepared by the Judicial and Bar Council (JBC) for every vacancy.

Note: The appointment shall need no confirmation by the Commission on Appointments. *(Sec. 9, Art. VIII)*

Vacancies in the SC should be filled within 90 days from the occurrence of the vacancy.

Vacancies in lower courts should be filled within 90 days from submission to the President of the JBC list.

The filling of the vacancy in the Supreme Court within the 90 day period is an exception to the prohibition on midnight appointments of the president. This means that even if the period falls on the period where the president is prohibited from making appointments (midnight appointments), the president is allowed to make appointments to fill vacancies in the Supreme Court. *(De Castro v. JBC, G.R. No. 191002, Apr. 20, 2010)*

Q: What is the composition of the JBC?

A: The JBC is composed of:

1. Chief Justice, as *ex-officio* chairman
2. Secretary of Justice, as an *ex-officio* member
3. Representative of Congress, as an *ex-officio* member
4. Representative of the Integrated Bar
5. A professor of law
6. A retired member of the SC
7. Private sector representative

Q: What are the functions of the JBC?

A: The principal function of the JBC is to recommend appointees to the judiciary. It may, however, exercise such functions as the SC may assign to it.

Q: How long can members of the SC and judges hold office?

A: Members of the SC and judges of lower courts can hold office during good behavior until:

1. The age of 70 years old; or
2. They become incapacitated to discharge their duties.

Q: Does the prohibition against midnight appointments (Sec. 15, Art. VII - 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) affect appointments to the Supreme Court?

A: It does not. The prohibition under Sec. 15, Art. VII does not apply to appointments to fill a vacancy in the SC. *(De Castro v. JBC, G.R. No. 191002, Mar. 17, 2010)*

Q: What are the general qualifications for appointments to the judiciary?

A: Of proven competence, integrity, probity and independence *(Sec. 7 [3], Art. VIII)*

Q: What are the qualifications for appointments to the SC?

A:

1. Natural born citizen of the Philippines;
2. At least 40 years of age;
3. A judge of a lower court or engaged in the practice of law in the Philippines for 15 years or more *(Sec. 7 [1], Art. VIII)*

Q: What are the qualifications for appointments to lower collegiate courts?

A:

1. Natural born citizen of the Philippines
2. Member of the Philippine Bar

Note: Congress may prescribe other qualifications. *(Sec. 7 [1] and [2], Art. VIII)*

Q: What are the qualifications for appointments to lower courts?

TEAM BAROPS

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

A:

1. Citizen of the Philippines
2. Member of the Philippine Bar

Note: Congress may prescribe other qualifications. *(Sec. 7 [1] and [2], Art. VIII)*

f. SUPREME COURT

1. *En Banc* and Division Cases

Q: What are the cases that should be heard by the SC *en banc*?

A:

1. All cases involving the constitutionality of a treaty, international or executive agreement, or law;

2. All cases which under the Rules of Court may be 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 SC modifies or reverses a doctrine or principle of law previously laid either en banc or in division;

6. Administrative cases involving the discipline or dismissal of judges of lower courts;

7. Election contests for president or vice-president.

Note: Other cases or matters may be heard in division, and decided or resolved with the concurrence of a majority of the members who actually took part in the deliberations on the issues and voted thereon, but in no case without the concurrence of at least three such members.

Congress shall have the power to define, prescribe and apportion the jurisdiction of the various courts but may not deprive the SC of its jurisdiction over cases enumerated in Sec. 5, Art. VII, 1987 Constitution.

No law shall be passed increasing the appellate jurisdiction of the SC as provided in the Constitution without its advice and concurrence. *(Sec. 30, Art. VI)*

2. Procedural Rule-Making Power

Q: What is the scope of the rule making power of the SC?

A: Promulgate rules concerning:

1. The protection and enforcement of constitutional rights
2. Pleadings, practice and procedure in all courts
3. Admission to the practice of law
4. The Integrated Bar
5. Legal assistance to the underprivileged

Q: What are the limitations on its rule making power?

A:

1. It should provide a simplified and inexpensive procedure for the speedy disposition of cases.
2. It should be uniform for all courts of the same grade.
3. It should not diminish, increase, or modify substantive rights.

g. ADMINISTRATIVE SUPERVISION OVER LOWER COURTS

Q: Who holds the power of disciplinary action over judges of lower courts?

A:

1. Only the SC *en banc* has jurisdiction to discipline or dismiss judges of lower courts.

2. *Disciplinary action/dismissal* – majority vote of the SC Justices who took part in the deliberations and voted therein *(Sec. 11, Art. VIII)*

Note: The Constitution provides that the SC is given exclusive administrative supervision over all courts and judicial personnel.

Q: Does the CSC have jurisdiction over an employee of the judiciary for acts committed while said employee was still in the executive branch?

A: No. Administrative jurisdiction over a court employee belongs to the SC, regardless of whether the offense was committed before or after employment in the Judiciary. *(Ampong v. CSC, G.R. No. 167916, Aug. 26, 2008)*

F. CONSTITUTIONAL COMMISSIONS

Q: What are the Constitutional Commissions?

A:

1. Civil Service Commission (CSC)
2. Commission on Elections (COMELEC)
3. Commission on Audit (CoA)

Note: The CSC, COMELEC, and CoA are equally pre-eminent in their respective spheres. Neither one may claim dominance over the others. In case of conflicting rulings, it is the Judiciary, which interprets the meaning of the law and ascertains which view shall prevail (*CSC v. Pobre, G.R. No. 160508, Sept. 15, 2004*)

Q: Discuss the creation of the Constitutional Commission.

A: The creation of the Constitutional Commissions is established in the Constitution because of the extraordinary importance of their functions and the need to insulate them from the undesired political interference or pressure. Their independence cannot be assured if they were to be created merely by statute.

1. INSTITUTIONAL INDEPENDENCE SAFEGUARDS

Q: What are the guarantees of independence provided for by the Constitution to the 3 Commissions?

A:

1. They are constitutionally-created; may not be abolished by statute
2. Each is conferred certain powers and functions which cannot be reduced by statute
3. Each is expressly described as independent
4. Chairmen and members are given fairly long term of office for 7 years
5. Chairmen and members cannot be removed except by impeachment
6. Chairmen and members may not be reappointed or appointed in an acting capacity
7. Salaries of chairmen and members are relatively high and may not be decreased during continuance in office
8. Commissions enjoy fiscal autonomy
9. Each commission may promulgate its own procedural rules
10. Chairmen and members are subject tocertian disqualifications calculated to strengthen their integrity
11. Commissions may appoint their own officials and employees in accordance with Civil Service Law

Note: The Supreme Court held that the "no report, no release" policy may not be validly enforced against offices vested with fiscal autonomy, without violating Sec. 5, Art. IX-A of the Constitution. The automatic release of approved annual appropriations to a Constitutional Commission vested with fiscal autonomy should thus be construed to mean that no condition to fund releases may be imposed. *(CSC v. DBM, G.R. No. 158791, July 22, 2005)*

Q: What are the prohibitions and inhibitions attached to the officers of Constitutional Commissions?

A: No member of a Constitutional Commission shall, during his tenure:

1. Hold any other office or employment
2. Engage in the practice of any profession
3. Engage in the active management and control of any business which in any way may be affected by the function of his office
4. Be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies or instrumentalities, including GOCCs or their subsidiaries

Q: Discuss the *certiorari* jurisdiction of the SC over these Commissions.

A: Proceedings are limited to issues involving grave abuse of discretion resulting in lack or excess of jurisdiction and does not ordinarily empower the Court to review the factual findings of the Commissions. *(Aratuc v. COMELEC, G.R. No. L-49705-09, Feb. 8, 1979)*

Q: What are the requisites for the effective operation of the rotational scheme of terms of constitutional bodies?

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

A:

1. The original members of the Commission shall begin their terms on a common date

2. Any vacancy occurring before the expiration of the term shall be filled only for the balance of such term. (*Republic v. Imperial, G.R. No. L-8684, Mar. 31, 1995*)

Q: Discuss the decision-making process in these Commissions.

A: 1. Each Commission shall decide matter or cases by a majority vote of all the members within 60 days from submission.

   a. COMELEC may sit *en banc* or in 2 divisions.
   b. Election cases, including pre-proclamation controversies are decided in division, with motions for reconsideration filed with the COMELEC *en banc.*
   c. The SC has held that a majority decision decided by a division of the COMELEC is a valid decision.

2. As collegial bodies, each Commission must act as one, and no one member can decide a case for the entire commission

Q: Discuss the rule on appeals.

A:

1. Decisions, orders or rulings of the COMELEC/CoA may be brought on *certiorari* to the SC under Rule 65.

2. Decisions, orders or rulings of the CSC should be appealed to the CA under Rule 43.

2. CONCEPTS COMPOSITIONS AND FUNCTIONS

a. CIVIL SERVICE COMMISSION

Q: What are the functions of the CSC?

A: As the central personnel agency of the government, it:

1. Establishes a career service
2. Adopts measures to promote morale, efficiency, integrity, responsiveness, progressiveness and courtesy in the Civil Service
3. Strengthens the merits and rewards system
4. Integrates all human resources and development programs for all levels and ranks
5. Institutionalizes a management climate conducive to public accountability (*Sec. 3, Art. IX-B*)

Q: What is the composition of the CSC?

A:

1. 1 Chairman
2. 2 Commissioners

Q: What are the qualifications of the CSC Commissioners?

A:

1. Natural-born citizens of the Philippines
2. At least 35 years old at the time of their appointments
3. With proven capacity for public administration
4. Not candidates for any elective position in the elections immediately preceding their appointment
5. Appointees by the President to the CSC need Commission on Appointments' confirmation

Q: What is the term of office of the CSC Commissioners?

A: 7 years (except for the 1st appointees where the Chairman has 7 years, 1 Commissioner has 5 years while another has 3 years).

Q: What is the meaning and guarantee of security of tenure?

A: According to *Palmera v. CSC, G.R. No. 110168, Aug. 4, 1994,* security of tenure means that no officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process.

Note: It guarantees both procedural and substantive due process.

b. COMMISSION ON ELECTIONS

Q: What is the composition of the COMELEC?

A:

1. 1 Chairman
2. 6 Commissioners

Q: What are the qualifications of the COMELEC Commissioners?

A:

1. Natural-born citizens of the Philippines
2. At least 35 years old at the time of their appointments
3. College degree holder
4. Not a candidate for any elective position in the elections immediately preceding their appointment
5. Majority, including the chairman, must be members of the Philippine Bar who have been engaged in the practice of law at least 10 years. *(Sec. 1, Art. IX-C)*

Q: What is the term of office of the COMELEC Commissioners?

A: Seven (7) years without re-appointment. If however, the appointment was *ad interim,* a subsequent renewal of the appointment does not violate the prohibition on re-appointments because no previous appointment was confirmed by the CA. Furthermore, the total term of both appointments must not exceed the 7-year limit. (*Matibag v. Benipayo, G.R. No. 149036, Apr. 2, 2002*)

Q: May the President designate a member of the COMELEC as acting Chairman? Explain.

A: No The Constitution says that in no case shall any member be appointed or designated in a temporary or acting capacity. The designation by the President violates the independence of the COMELEC. *(Sec. 1[2], Art. IX-B, C, D).*

Q: What are the constitutional powers and functions of the COMELEC?

A:

1. *Enforce and administer* all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

2. *Exercise*:
   a. Exclusive original jurisdiction over all contests relating to the election, returns and qualifications of all elective:
      i. Regional
      ii. Provincial
      iii. City officials

   b. Exclusive appellate jurisdiction over all contests involving:
      i. Elective municipal officials decided by trial courts of general jurisdiction
      ii. Elective barangay officials decided by courts of limited jurisdiction.

   c. Contempt powers
      i. COMELEC can exercise this power only in relation to its adjudicatory or quasi-judicial functions. It cannot exercise this in connection with its purely executive or ministerial functions
      ii. If it is pre-proclamation controversy, the COMELEC exercises quasi-judicial/ administrative powers.
      iii. Its jurisdiction over contests (after proclamation), is in exercise of its judicial functions.

   Note: The COMELEC may issue writs of certiorari, prohibition, and mandamus in exercise of its appellate functions.

3. *Decide*, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.

   Note: Questions involving the right to vote fall within the jurisdiction of ordinary courts.

4. *Deputize*, with the concurrence of the President, law enforcement agencies and instrumentalities of the government, including the AFP, for the exclusive purpose of ensuring free, orderly, honest, peaceful and credible elections.

5. *Registration* of political parties, organizations, or coalitions and accreditation of citizens' arms of the COMELEC.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

6. *File*, upon a verified complaint, or on its own initiative, petitions in court for inclusion or exclusion of voters; investigate and, where appropriate, prosecute cases of violations of election laws, including acts or omissions constituting election frauds, offenses and malpractices.

    a. COMELEC has exclusive jurisdiction to investigate and prosecute cases for violations of election laws.

    b. COMELEC can deputize prosecutors for this purpose. The actions of the prosecutors are the actions of the COMELEC.

    Note: Preliminary investigation conducted by COMELEC is valid.

7. *Recommend* to the Congress effective measures to minimize election spending, including limitation of places where propaganda materials shall be posted, and to prevent and penalize all forms of election frauds, offenses, malpractices, and nuisance candidacies.

8. *Recommend* to the President the removal of any officer or employee it has deputized, or the imposition of any other disciplinary action, for violation or disregard of, or disobedience to its directive, order, or decision.

9. *Submit* to the President and the Congress a comprehensive report on the conduct of each election, plebiscite, initiative, referendum, or recall.

Q: All election cases, including pre-proclamation controversies, must be decided by the COMELEC in division. Should a party be dissatisfied with the decision, what remedy is available?

A: The dissatisfied party may file a motion for reconsideration before the COMELEC *en banc*. If the *en* banc's decision is still not favorable, the same, in accordance with Art. IX-A, Sec. 7, "may be brought to the Supreme Court on *certiorari*." *(Reyes v. RTC of Oriental Mindoro, G.R. No. 108886, May 5, 1995)*

Note: The fact that decisions, final orders or rulings of the COMELEC in contests involving elective municipal and barangay offices are final, executory and not appealable, (Art. IX-C, Sec. 2[2]) does not preclude a recourse to the Supreme Court by way of a special civil action of *certiorari*. *(Galido v. COMELEC, G.R. No. 95346, Jan. 18, 1991)*

Q: Can the COMELEC exercise its power of contempt in connection with its functions as the National Board of Canvassers during the elections?

A: Yes. The effectiveness of the quasi-judicial power vested by law on a government institution hinges on its authority to compel attendance of the parties and/or their witnesses at the hearings or proceedings. In the same vein, to withhold from the COMELEC the power to punish individuals who refuse to appear during a fact-finding investigation, despite a previous notice and order to attend, would render nugatory the COMELEC's investigative power, which is an essential incident to its constitutional mandate to secure the conduct of honest and credible elections. (*Bedol v. COMELEC, G.R. No. 179830, Dec. 3, 2009)*

Q: What cases fall under the jurisdiction of COMELEC by division?

A: Election cases should be heard and decided by a division. If a division dismisses a case for failure of counsel to appear, the MR may be heard by the division.

Note: In *Balajonda v. COMELEC, G.R. No. 166032, Feb. 28, 2005,* the COMELEC can order immediate execution of its own judgments.

Q: What cases fall under the jurisdiction of COMELEC *en banc*?

A: Motion for Reconsideration of decisions should be decided by COMELEC *en banc*. It may also directly assume jurisdiction over a petition to correct manifest errors in the tallying of results by Board of Canvassers.

Note: Any decision, order or ruling of the COMELEC in the exercise of its quasi-judicial functions may be brought to the SC on *certiorari* under Rules 64 and 65 of the Revised Rules of Court within 30 days from receipt of a copy thereof.

These decisions or rulings refer to the decision or final order of the COMELEC *en banc* and not of any division thereof.

Q: What are the acts that fall under the COMELEC's power to supervise or regulate?

A:

1. The enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information.
2. Grants, special privileges or concessions granted by the government or any subdivision, agency or instrumentality thereof, including any GOCC or its subsidiary. *(Sec. 4, Art. IX-C)*

Q: When can COMELEC exercise its constitutional powers and functions?

A:

1. During election period – 90 days before the day of the election and ends 30 days thereafter. In special cases, COMELEC can fix a period.

2. Applies not only to elections but also to plebiscites and referenda.

c. COMMISSION ON AUDIT

Q: What is its composition?

A:

1. 1 Chairman
2. 2 Commissioners

Q: What are the qualifications of COA Commissioners?

A:

1. Natural-born citizens of the Philippines
2. At least 35 years old at the time of their appointments
3. Either:
   a. CPA's with at least 10 years of auditing experience; or
   b. Members of Philippine Bar with 10 years of practice of law.
4. Members cannot all belong to the same profession
5. Subject to confirmation of the CA
6. Not a candidate for any elective position in the elections immediately preceding their appointment. *(Sec. 1, Art. IX-D)*

Q: What is the term of office of the COA Commissioners?

A: 7 years without reappointment.

Q: What are the powers and duties of COA?

A:

1. Examine, audit and settle all accounts pertaining to revenue and receipts of, and expenditures or uses of funds and property owned or held in trust or pertaining to government

2. Keep general accounts of government and preserve vouchers and supporting papers

3. Authority to define the scope of its audit and examination, establish techniques and methods required therefore

4. Promulgate accounting and auditing rules and regulations, including those for prevention and disallowance. *(Sec. 2, Art. IX-D)*

Q: Can the COA be divested of its power to examine and audit government agencies?

A: No law shall be passed exempting any entity of the Government or its subsidiary in any guise whatsoever, or any investment of public funds, from the jurisdiction of the Commission on Audit.

The mere fact that private auditors may audit government agencies does not divest the COA of its power to examine and audit the same government agencies. *(DBP v. COA, G.R. No. 88435, Jan. 16, 2002)*

Q: The PNB was then one of the leading government-owned banks and it was under the audit jurisdiction of the COA. A few years ago, it was privatized. What is the effect, if any, of the privatization of PNB on the audit jurisdiction of the COA?

A: Since the PNB is no longer owned by the Government, the COA no longer has jurisdiction to audit it as an institution. Under Sec. 2(2), Art. IX-D of the Constitution, it is a GOCC and their subsidiaries which are subject to audit by the COA. However, in accordance with Sec. 2(1), Art. IX-D, the COA can audit the PNB with respect to its accounts because the Government still has

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

equity in it. *(PAL vs. COA, G.R. No. 91890, June 9, 1995)*

3. JUDICIAL REVIEW

Q: How are decisions of the commissions reviewed by the SC?

A:
1. *COA*: Judgments or final orders of the Commission on Audit may be brought by an aggrieved party to the Supreme Court on certiorari under Rule 65. Only when COA acts without or excess in jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may the SC entertain a petition for certiorari under Rule 65.

2. *CSC*: In the case of decisions of the CSC, Administrative Circular 1-95538 which took effect on June 1, 1995, provides that final resolutions of the CSC shall be appealable by certiorari to the CA within 15 days from receipt of a copy thereof. From the decision of the CA, the party adversely affected thereby shall file a petition for review on certiorari under Rule 45 of the Rules of Court.

3. *COMELEC*: only decision en banc may be brought to the Court by certiorari since Article IX-C, says that motions for reconsideration of decisions shall be decided by the Commission *en banc. (Reyes v. Mindoro, G.R. No. 108886, May 5, 1995)*

Q: When certiorari to the Supreme Court is chosen, what is required?

A: Rule 65, Section 1 says that certiorari may be resorted to when there is no other plain or speedy and adequate remedy. But reconsideration is a speedy and adequate remedy. Hence, a case may be brought to the Supreme Court only after reconsideration.

4. QUASI-JUDICIAL FUNCTION

Q; Does the CSC have the power to hear and decide administrative cases?

A: Yes, Under the Administrative Code of 1987, the CSC has the power to hear and decide administrative cases instituted before it directly or on appeal, including contested appointments.

Q: Which body has the jurisdiction on personnel actions, covered by the civil service?

A: The CSC. It is the intent of the Civil Service Law, in requiring the establishment of a grievance procedure, that decisions of lower officials (in cases involving personnel actions) be appealed to the agency head, then to the CSC. The RTC does not have jurisdiction over such personal actions. *(G. R. No. 140917. October 10, 2003)*

Q: Which body has the exclusive original jurisdiction over all contests relating to the elections?

A: It is the COMELEC.

Note: The COMELEC also have the exclusive original jurisdiction over all contests relating to returns, and qualifications of all elective regional, provincial, and city officials.

The COMELEC also have the appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction.

Q: What is the difference between the jurisdiction of the COMELEC before the proclamation and its jurisdiction after proclamation?

A: The difference lies in the due process implications.

OVER PRE-PROCLAMATION CONTROVERSY	OVER CONTESTS (AFTER PROCLAMATION)
COMELEC's jurisdiction is administrative or quasi-judicial and is governed by the less stringent requirements of administrative due process (although the SC has insisted that question on "qualifications" should be decided only after a full-dress hearing).	COMELEC's jurisdiction is judicial and is governed by the requirements of judicial process.

Note: Hence, even in the case of regional or provincial or city offices, it does make a difference whether the COMELEC will treat it as a pre-proclamation controversy or as a contest.

G. BILL OF RIGHTS

a. FUNDAMENTAL POWERS OF THE STATE

Q: What are the fundamental powers of the State?

A:

1. Police Power
2. Power of Eminent Domain
3. Power of Taxation

Q: What are the similarities among the fundamental powers of the State?

A:

1. They are inherent in the State and may be exercised by it without need of express constitutional grant.
2. They are not only necessary but indispensable. The State cannot continue or be effective unless it is able to exercise them.
3. They are methods by which the State interferes with private rights.
4. They all presuppose an equivalent compensation for the private rights interfered with.
5. They are exercised primarily by the legislature.

Q: What are the common limitations of these powers?

A:

1. May not be exercised arbitrarily to the prejudice of the Bill of Rights
2. Subject at all times to the limitations and requirements of the Constitution and may in proper cases be annulled by the courts, *i.e.* when there is grave abuse of discretion.

Q: How do these powers differ from one another?

A:

Police Power	Taxation	Eminent Domain
Extent of power		
Regulates liberty and property	Affects only property rights	Affects only property rights
Power exercised by whom		
Exercised only by the government	Exercised only by the government	Maybe exercised by private entities
Purpose		
Property taken is destroyed	Property is taken for public use	Property is taken for public use
Compensation		
Intangible; general welfare	Protection and public improvements	Value of the property expropriated

1. POLICE POWER

Q: What are the characteristics of police power as compared to the powers of taxation and eminent domain?

A: Police power easily outpaces the other two powers. It regulates not only property, but also the liberty of persons. Police power is considered the most pervasive, the least limitable, and the most demanding of the three powers. It may be exercised as long as the activity or property sought to be regulated has some relevance to the public welfare. *(Gerochi v. Department of Energy, G. R. 159796, July 17, 2007)*

Q: What are the aspects of police power?

A: Generally, police power extends to all the great public needs. However, its particular aspects are the following:

1. Public health
2. Public morals
3. Public safety
4. Public welfare

Q: Who exercises police power?

A:

GR: Police power is lodged primarily in the national legislature.

XPN: By virtue of a valid delegation of legislative power, it may be exercised by the:

1. President
2. Administrative bodies
3. Lawmaking bodies on all municipal levels, including the barangay. Municipal governments exercise this power under the general welfare clause. *(Gorospe, Constitutional Law: Notes and Readings on the Bill of Rights, Citizenship and Suffrage, Vol. 2.)*

Q: What are the requisites for the valid exercise of police power by the delegate?

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

A:

1. Express grant by law
2. Must not be contrary to law
3. **GR**: Within territorial limits of LGUs
   XPN: When exercised to protect water supply *(Wilson v. City of Mountain Lake Terraces, 417 P.2d 632, 1966)*

Q: Can anyone compel the government to exercise police power?

A: No. The exercise of police power lies in the discretion of the legislative department. The only remedy against legislative inaction is a resort to the bar of public opinion, a refusal of the electorate to turn to the legislative members who, in their view, have been remiss in the discharge of their duties.

Q: Can the courts interfere with the exercise of police power?

A: No. If the legislature decides to act, the choice of measures or remedies lies within its exclusive discretion, as long as the requisites for a valid exercise of police power have been complied with.

Q: What are the tests to determine the validity of a police measure?

A:

1. *Lawful subject* – The interests of the public generally, as distinguished from those of a particular class, require the exercise of the police power

2. *Lawful means* – The means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals

2. EMINENT DOMAIN

Q: What are the conditions for the exercise of the power of eminent domain?

A:

1. Taking of private property
2. For public use
3. Just compensation
4. Observance of due process

Q: Who exercises the power of eminent domain?

A: Congress. However, the following may exercise this power by virtue of a valid delegation:

1. The President of the Philippines
2. Various local legislative bodies
3. Certain public corporations like the Land Authority and National Housing Authority
4. Quasi-public corporations like the Philippine National Railways

Q: Distinguish the between the power of expropriation as exercised by Congress and the power of expropriation as exercised by delegates.

A: When exercised by Congress, the power is pervasive and all-encompassing but when exercised by delegates, it can only be broad as the enabling law and the conferring authorities want it to be.

As to the question of necessity, the same is a political question when the power is exercised by Congress. On the other hand, it is a judicial question when exercised by delegates. The courts can determine whether there is genuine necessity for its exercise, as well as the value of the property.

Q: What are the requisites for a valid taking?

A: PMAPO

1. The expropriator must enter a **P**rivate property
2. Entry must be for more than a **M**omentary period
3. Entry must be under warrant or color of legal **A**uthority
4. Property must be devoted to **P**ublic use or otherwise informally appropriated or injuriously affected
5. Utilization of property must be in such a way as to **O**ust the owner and deprive him of beneficial enjoyment of the property (*Republic v. vda. De Castellvi, G.R. No. L-20620, Aug. 15, 1974)*

Q: What properties can be taken?

A: All private property capable of ownership, including services.

Q: What properties cannot be taken?

A: Money and choses in action, personal right not reduced in possession but recoverable by a suit at law, right to receive, demand or recover debt, demand or damages on a cause of action *ex contractu* or for a tort or omission of duty.

Q: Distinguish eminent domain from destruction from necessity.

A:

Eminent domain	Destruction from necessity
Who can exercise	
Only authorized public entities or public officials	May be validly undertaken by private individuals
Kind of right	
Public right	Right of self-defense, self-preservation, whether applied to persons or to property
Requirement	
Conversion of property taken for public use; payment of just compensation	No need for conversion; no just compensation but payment in the form of damages when applicable
Beneficiary	
State/public	Private

(Gorospe, Constitutional Law: Notes and Readings on the Bill of Rights, Citizenship and Suffrage, Vol. 2)

Q: Does the requisite of public use mean "use by the public at large?

A: No. Whatever may be beneficially employed for the general welfare satisfies the requirement. Moreover, that only few people benefits from the expropriation does not diminish its public-use character because the notion of public use now includes the broader notion of indirect public benefit or advantage.*(Manosca v. CA, G.R. 166440, Jan. 29, 1996)*.

Q: What is just compensation?

A: It is the full and fair equivalent of the property taken from the private owner (owner's loss) by the expropriator. It is usually the fair market value (FMV) of the property and must include consequential damages (damages to the other interest of the owner attributed to the expropriation) minus consequential benefits (increase in the value of other interests attributed to new use of the former property).

Note: FMV is the price fixed by the parties willing but not compelled to enter into a contract of sale.

Q: Does compensation have to be paid in money?

A:

GR: Yes.

XPN: In cases involving CARP, compensation may be in bonds or stocks, for it has been held as a non-traditional exercise of the power of eminent domain. It is not an ordinary expropriation where only a specific property of relatively limited area is sought to be taken by the State from its owner for a specific and perhaps local purpose. It is rather a revolutionary kind of expropriation *(Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, G.R. No. 78742, 14 July 1989).*

Q: When should assessment of the value of the property be determined?

A: The value of the property must be determined either at the time of taking or filing of the complaint, whichever comes first.*(EPZA v. Dulay, G.R. No. 59603, April 29, 1987).*

Q: Does non-payment of just compensation entitle the private owner to recover possession of the expropriated property?

A:

GR: Non-payment by the government does not entitle private owners to recover possession of the property because expropriation is an *in rem* proceeding, not an ordinary sale, but only entitle them to demand payment of the fair market value of the property.

XPNS:

1. When there is deliberate refusal to pay just compensation
2. Government's failure to pay compensation within 5 years from the finality of the judgment in the expropriation proceedings. This is in connection with the principle that the government cannot keep the property and dishonor the judgment. *(Republic v. Lim, G.R. No. 161656, June 29, 2005*)

Q: Is the owner entitled to the payment of interest? How about reimbursement of taxes paid on the property?

A: Yes, the owner is entitled to the payment of interest from the time of taking until just compensation is actually paid to him. Taxes paid by him from the time of the taking until the transfer of title (which can only be done after actual payment of just compensation), during which he did not enjoy any beneficial use of the property, are reimbursable by the expropriator.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Q: What legal interest should be used in the computation of interest on just compensation?

A: An interest of 12% per annum on the just compensation due the landowner. (*LBP v. Wycoco G.R. No. 140160, January 13, 2004)*

3. TAXATION

Q: What are taxes and what is taxation?

A: Taxes are:

1. Enforced proportional contributions from persons and property
2. Levied by the State by virtue of its sovereignty
3. For the support of the government
4. For public needs

Taxation is the method by which these contributions are exacted. *(Gorospe, Constitutional Law: Notes and Readings on the Bill of Rights, Citizenship and Suffrage, Vol. 2)*

Q: What is the source of the obligation to pay taxes?

A: Payment of taxes is an obligation based on law, and not on contract. It is a duty imposed upon the individual by the mere fact of his membership in the body politic and his enjoyment of the benefits available from such membership.

Note: Except only in the case of poll (community) taxes, non-payment of a tax may be the subject of criminal prosecution and punishment. The accused cannot invoke the prohibition against imprisonment for debt as taxes are not considered debts.

Q: What are the matters left to the discretion of the legislature?

A:

1. Whether to tax in the first place
2. Whom or what to tax
3. For what public purpose
4. Amount or rate of the tax

Q: What are the limitations, in general, on the power of taxation?

A: Inherent and Constitutional limitations.

Q: What are inherent limitations?

A:

1. Public purpose
2. Non-delegability of power
3. Territoriality or situs of taxation
4. Exemption of government from taxation
5. International comity

Q: What are Constitutional limitations?

A:

1. Due process of law *(Art. III, Sec.1)*
2. Equal protection clause *(Art. III, Sec.1)*
3. Uniformity, equitability and progressive system of taxation *(Art. VI, Sec 28)*
4. Non-impairment of contracts *(Art. III, Sec. 10)*
5. Non-imprisonment for non-payment of poll tax *(Art. III, Sec. 20)*
6. Revenue and tariff bills must originate in the House of Representatives *(Art I, Sec. 7)*
7. Non-infringement of religious freedom *(Art. III, Sec.4)*
8. Delegation of legislative authority to the President to fix tariff rates, import and export quotas, tonnage and wharfage dues
9. Tax exemption of properties actually, directly and exclusively used for religious, charitable and educational purposes *(NIRC, Sec 30)*
10. Majority vote of all the members of Congress required in case of legislative grant of tax exemptions
11. Non-impairment of SC's jurisdiction in tax cases
12. Tax exemption of revenues and assets of, including grants, endowments, donations or contributions to educational institutions

Q: Do local government units have the power of taxation?

A: Yes. Each LGU shall have the power to create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments *(Sec. 5, Art. X)*.

Q: Should there be notice and hearing for the enactment of tax laws?

A: From the procedural viewpoint, due process does not require previous notice and hearing before a law prescribing fixed or specific taxes on certain articles may be enacted. But where the tax to be collected is to be based on the value of

taxable property, the taxpayer is entitled to be notified of the assessment proceedings and to be heard therein on the correct valuation to be given the property.

Q: What is the meaning of uniformity in taxation?

A: It refers to geographical uniformity, meaning it operates with the same force and effect in every place where the subject of it is found.

Q: What is a progressive system of taxation?

A: This means that the tax rate increases as the tax base increases.

Q: What is double taxation?

A: It occurs when:

1. Taxes are laid on the same subject
2. By the same authority
3. During the same taxing period
4. For the same purpose

Note: There is no provision in the Constitution specifically prohibiting double taxation, but it will not be allowed if it violates equal protection. *(Gorospe, Constitutional Law: Notes and Readings on the Bill of Rights, Citizenship and Suffrage, Vol. 2)*

Q: What are the kinds of tax exemptions?

A: Tax exemptions may either be:

1. Constitutional
2. Statutory

Q: Once an exemption is granted by the legislature, may such exemption be revoked at will?

A:

1. If exemption is granted *gratuitously* – revocable
2. If exemption is granted *for valuable consideration* (non-impairment of contracts) – irrevocable

Q: What is the nature of a license fee?

A: Ordinarily, license fees are in the nature of the exercise of police power because they are in the form of regulation by the State and considered as a manner of paying off administration costs. However, if the license fee is higher than the cost of regulating, then it becomes a form of taxation *(Ermita-Malate Hotel and Motel Operators Assoc., Inc. vs. City Mayor of Manila, G.R. No. L-24693, Oct. 23, 1967).*

b. PRIVATE ACTS AND THE BILL OF RIGHTS

Q: What is the Bill of Rights?

A: It is the set of prescriptions setting forth the fundamental civil and political rights of the individual, and imposing limitations on the powers of government as a means of securing the enjoyment of those rights.

Q: When can the Bill of Rights be invoked?

A: In the absence of governmental interference, the liberties guaranteed by the Constitution cannot be invoked against the State. The Bill of Rights guarantee governs the relationship between the individual and the State. Its concern is not the relation between private individuals. What it does is to declare some forbidden zones in the private sphere inaccessible to any power holder. *(People v. Marti, G.R. No. 81561, Jan. 18, 1991)*

Q: Can the Bill of Rights be invoked against private individuals?

A: No. In the absence of governmental interference, the liberties guaranteed by the Constitution cannot be invoked. Put differently, the Bill of Rights is not meant to be invoked against acts of private individuals. *(Yrasegui vs. PAL, G.R. No. 168081, Oct. 17, 2008)*

Note: However, the Supreme Court in *Zulueta v. CA*, *G.R. No. 107383, Feb. 20 1996*, where the husband invoked his right to privacy of communication and correspondence against a private individual, his wife, who had forcibly taken from his cabinet and presented as evidence against him documents and private correspondence, held these papers inadmissible in evidence, upholding the husband's right to privacy.

c. DUE PROCESS

Q: What is due process?

A: Due process means:

1. That there shall be a law prescribed in harmony with the general powers of the legislature
2. That it shall be reasonable in its operation

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

3. That it shall be enforced according to the regular methods of procedure prescribed, and
4. That it shall be applicable alike to all citizens of the State or to all of a class. *(People v. Cayat, G.R. No. L-45987, May 5, 1939)*

Q: What are the requirements of due process in judicial proceedings?

A: Whether in civil or criminal judicial proceedings, due process requires that there be:

1. An impartial and disinterested court clothed by law with authority to hear and determine the matter before it.

   Note: Test of impartiality is whether the judge's intervention tends to prevent the proper presentation of the case or the ascertainment of the truth.

2. Jurisdiction lawfully acquired over the defendant or the property which is the subject matter of the proceeding

3. Notice and opportunity to be heard be given the defendant

4. Judgment to be rendered after lawful hearing, clearly explained as to the factual and legal bases *(Art. VII, Sec. 14, 1987 Constitution)*

Note: An extraditee does not have the right to notice and hearing during the evaluation stage of an extradition proceeding. The nature of the right being claimed is nebulous and the degree of prejudice an extraditee allegedly suffers is weak. *(US v. Purganan, G.R. No. 148571, Sept. 24, 2002)*

Note: Pilotage as a profession is a property right protected by the guarantee of due process. (*Corona v. United Harbor Pilots Association of the Philippines, G.R. No. 111953, Dec.12, 1987*)

Note: When a regulation is being issued under the quasi-legislative authority of an administrative agency, the requirements of notice, hearing and publication must be observed. (*Commissioner of Internal Revenue v. CA, G.R. No. 119761, Aug. 29, 1996*)

Q: Is the right to appeal part of due process?

A:

GR: The right to appeal is not a natural right or a part of due process.

XPN: In cases where the right to appeal is guaranteed by the Constitution *(Art. VIII, Sec. XIV)* or by a statute.

Q: Distinguish due process in administrative proceedings from due process in judicial proceeding.

A:

ADMINISTRATIVE	JUDICIAL
Essence	
Opportunity to explain one's side	A day in court
Means	
Usually through seeking a reconsideration of the ruling or the action taken, or appeal to a superior authority	Submission of pleadings and oral arguments
Notice and Hearing	
When exercising quasi-judicial function (PhilCom-Sat v. Alcuaz, G.R. No. 84818, Dec. 18, 1989)	Both are essential: 1. *Notice* 2. *Hearing*

Note: The assistance of counsel is not indispensable to due process in forfeiture proceedings since such proceedings are not criminal in nature. Moreover, the strict rules of evidence and procedure will not apply in administrative proceedings like seizure and forfeiture proceedings. What is important is that the parties are afforded the opportunity to be heard and the decision of the administrative authority is based on substantial evidence. (*Feeder International Line, Pte. Ltd. v. CA, G.R. No. 94262, May 31, 1991)*

Q: What is the nature of procedural due process in student discipline proceedings?

A: Student discipline proceedings may be summary and cross-examination is not an essential part thereof. To be valid however, the following requirements must be met:

1. Written notification sent to the student/s informing the nature and cause of any accusation against him/her;
2. Opportunity to answer the charges, with the assistance of a counsel, if so desired;
3. Presentation of one's evidence and examination of adverse evidence;
4. Evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case. *(Guzman v.*

National University, G.R. No. L-68288, July 11, 1986)

5. The student has the right to be informed of the evidence against him
6. The penalty imposed must be proportionate to the offense.

Q: What are the instances when hearings are not necessary?

A:

1. When administrative agencies are exercising their *quasi*-legislative functions.
2. Abatement of nuisance *per se*.
3. Granting by courts of provisional remedies.
4. Cases of preventive suspension.
5. Removal of temporary employees in the government service.
6. Issuance of warrants of distraint and/or levy by the BIR Commissioner.
7. Cancellation of the passport of a person charged with a crime.
8. Suspension of a bank's operations by the Monetary Board upon a *prima facie* finding of liquidity problems in such bank.

1. Procedural and Substantive Due Process

Q: What are the two aspects of due process?

A:

SUBSTANTIVE DUE PROCESS	PROCEDURAL DUE PROCESS
This serves as a restriction on the government's law and rule-making powers	Serves as a restriction on actions of judicial and quasi-judicial agencies of the government
Requisites	
1. The interests of the public in general, as distinguished from those of a particular class, require the intervention of the state 2. The means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.	1. Impartial court or tribunal clothed with judicial power to hear and determine the matters before it. 2. Jurisdiction properly acquired over the person of the defendant and over property which is the subject matter of the proceeding 3. Opportunity to be heard 4. Judgment rendered upon lawful hearing and based on evidence adduced.

2. Procedural Due Process

Q: What are the fundamental elements of procedural due process?

A:

1. Notice (to be meaningful must be as to time and place)
2. Opportunity to be heard
3. Court/tribunal must have jurisdiction

Q: Does due process require a trial-type proceeding?

A: No. The essence of due process is to be found in the reasonable opportunity to be heard and to submit any evidence one may have in support of one's defense. "To be heard" does not always mean verbal arguments in court. One may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process *(Zaldivar v. Sandiganbayan, G.R. No. L-32215, Oct. 17, 1988).*

Note: The meetings in the nature of consultations and conferences cannot be considered as valid substitutes for the proper observance of notice and hearing (*Equitable Banking Corporation v. NLRC, G.R. No. 102467, June 13, 1987*).

3. Constitutional and Statutory Due Process

Q: Differentiate constitutional due process from statutory due process.

A:

Constitutional due process	Statutory due process
Protects the individual from the government and assures him of his rights in criminal, civil or administrative proceedings	While found in the Labor Code and Implementing Rules protects employees from being unjustly terminated without just cause after notice and hearing (*Agabon v. NLRC, G.R. No. 158693, November 17, 2004)*

4. Hierarchy of Rights

Q: Is there a hierarchy of constitutional rights?

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

A: Yes. While the Bill of Rights also protects property rights, the primacy of human rights over property rights is recognized. Property and property rights can be lost thru prescription; but human rights are imprescriptible. In the hierarchy of civil liberties, the rights of free expression and of assembly occupy a preferred position as they are essential to the preservation and vitality of our civil and political institutions (*Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc., G.R. No. L-31195 June 5, 1973*).

5. Judicial Standards of Review

Q: Given the fact that not all rights and freedoms or liberties under the Bill of Rights and other values of society are of similar weight and importance, governmental regulations that affect them would have to be evaluated based on different yardsticks, or standards of review. What are these standards of review?

A:

1. *Deferential review* – laws are upheld if they rationally further a legitimate governmental interest, without courts seriously inquiring into the substantiality of such interest and examining the alternative means by which the objectives could be achieved

2. *Intermediate review* – the substantiality of the governmental interest is seriously looked into and the availability of less restrictive alternatives are considered.

3. *Strict scrutiny* – the focus is on the presence of compelling, rather than substantial governmental interest and on the absence of less restrictive means for achieving that interest *(Separate opinion of Justice Mendoza in Estrada v. Sandiganbayan, G.R. No. 148965, Feb. 26, 2002)*

6. Void-for-Vagueness Doctrine

Q: Explain the void for vagueness doctrine?

A: It holds that a law is vague when it lacks comprehensive standards that men of common intelligence must necessarily guess at its common meaning and differ as to its application. In such instance, the statute is repugnant to the Constitution because:

1. It violates due process for failure to accord persons, especially the parties targeted by it, fair notice of what conduct to avoid
2. It leaves law enforcers an unbridled discretion in carrying out its provisions *(People v. de la Piedra, G.R. No. 128777, Jan. 24, 2001)*

Q: What is the Overbreadth Doctrine?

A: The overbreadth doctrine decrees that a governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.

Note: It is an analytical tool developed for testing on their face statutes in free speech cases. Claims of facial over breadth are entertained in cases involving statutes which, by their terms, seek to regulate only spoken words and again, that overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct.

Q: Can criminal statutes be declared invalid for being overbroad?

A: No. The overbreadth doctrine is not intended for testing the validity of a law that reflects legitimate state interest in maintaining comprehensive control over harmful, constitutionally unprotected conduct. Claims of facial overbreadth are entertained in cases involving statutes which, by their terms, seek to regulate only spoken words and again, that overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct. (*Romualdez v. COMELEC, G.R. No. 167011, Dec. 11, 2008*)

Note: The most distinctive feature of the overbreadth technique is that it marks an exception to some of the usual rules of constitutional litigation. In overbreadth analysis, those rules give way; challenges are permitted to raise the rights of third parties; and the court invalidates the entire statute "on its face," not merely "as applied for" so that the overbroad law becomes unenforceable until a properly authorized court construes it more narrowly.

Q: Is legislation couched in imprecise language void for vagueness?

A: No. The "void-for-vagueness" doctrine does not apply as against legislations that are merely couched in imprecise language but which specify

a standard though defectively phrased; or to those that are apparently ambiguous yet fairly applicable to certain types of activities. The first may be "saved" by proper construction, while no challenge may be mounted as against the second whenever directed against such activities.

In the Supreme Court held that the doctrine can only be invoked against that species of legislation that is utterly vague on its face, i.e., that which cannot be clarified either by a saving clause or by construction. (*Estrada v. Sandiganbayan, G.R. No. 148560, Nov. 19, 2001*)

Q: What is the test in determining whether a criminal statute is void for uncertainty?

A: The test is whether the language conveys a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice. It must be stressed, however, that the "vagueness" doctrine merely requires a reasonable degree of certainty for the statute to be upheld - not absolute precision or mathematical exactitude. *(Estrada vs. Sandiganbayan*, *G.R. No. 148560, Nov. 19, 2001)*

d. EQUAL PROTECTION OF THE LAWS

1. CONCEPT

Q: What is the concept of equal protection of the laws?

A: It means that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. It guarantees equality, not identity of rights. It does not forbid discrimination as to persons and things that are different. What it forbids are distinctions based on impermissible criteria unrelated to a proper legislative purpose, or class or discriminatory legislation, which discriminates against some and favors others when both are similarly situated. (*2 Cooley, Constitutional Limitations, 824-825)*

Note: It must be borne in mind that the Arroyo administration is but just a member of a class, that is, a class of past administrations. It is not a class of its own. Not to include past administrations similarly situated constitutes arbitrariness which the equal protection clause cannot sanction. Such discriminating differentiation clearly reverberates to label the commission as a vehicle for vindictiveness and selective retribution. *(Biraogo v. The Philippine Truth Commission of 2010, G.R. No. 192935, Dec. 7, 2010)*

2. REQUISITES FOR VALID CLASSIFICATION

Q: What are the requisites for a valid classification?

A: The classification must:

1. Rest on substantial distinctions
2. Be germane to the purpose of the law
3. Not be limited to existing conditions only;
4. Apply equally to all members of the same class. *(Gorospe, Constitutional Law: Notes and Readings on the Bill of Rights, Citizenship and Suffrage, Vol. 2., p.334)*

Q: Does equal protection of the laws apply to both citizens and aliens?

A:

GR: It applies to all persons, both citizens and aliens. The Constitution places the civil rights of aliens on equal footing with those of the citizens.

XPN: Statutes may validly limit to citizens exclusively the enjoyment of rights or privileges connected with public domain, the public works, or the natural resources of the State

Note: The rights and interests of the State in these things are not simply political but also proprietary in nature and so citizens may lawfully be given preference over aliens in their use or enjoyment.

Aliens do not enjoy the same protection as regards political rights. *(Inchong v. Hernandez, G.R.* No. L-7995*, May 31, 1957)*

Q: Is classification of citizens by the legislature unconstitutional?

A:

GR: The legislature may not validly classify the citizens of the State on the basis of their origin, race, or parentage.

XPN: The difference in status between citizens and aliens constitutes a basis for reasonable classification in the exercise of police power. *(Demore v. Kim, 538 U.S. 510, 2003)*

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Q: What is the rationale for allowing, in exceptional cases, valid classification based on citizenship?

A: Aliens do not naturally possess the sympathetic consideration and regard for customers with whom they come in daily contact, nor the patriotic desire to help bolster the nation's economy, except in so far as it enhances their profit, nor the loyalty and allegiance which the national owes to the land. These limitations on the qualifications of aliens have been shown on many occasions and instances, especially in times of crisis and emergency. *(Ichong v. Hernandez, G.R. No. L-7995, May 31, 1957)*

Q: What is the intensified means test or the balancing of interest/equality test?

A: It is the test which does not look solely into the government's purpose in classifying persons or things (as done in Rational Basis Test) nor into the existence of an overriding or compelling government interest so great to justify limitations of fundamental rights (Strict Scrutiny Test) but closely scrutinizes the relationship between the classification and the purpose, based on spectrum of standards, by gauging the extent to which constitutionally guaranteed rights depend upon the affected individual's interest.

e. SEARCHES AND SEIZURES

Q: What is the essence of privacy?

A: The essence of privacy is the right to be left alone. In context, the right to privacy means the right to be free from unwarranted exploitation of one's person or from intrusion into ones' private activities in such a way as to cause humiliation to a person's ordinary sensibilities.

1. Warrant Requirement

Q: What are the requisites of a valid search warrant and warrant of arrest?

A:

1. There should be a search warrant or warrant of arrest
2. Probable cause supported the issuance of such warrant
3. Such probable cause had been determined personally by a judge
4. Judge personally examined the complainant and his witnesses
5. The warrant must particularly describe the place to be searched and the persons or things to be seized. *(Gorospe, Constitutional Law: Notes and Readings on the Bill of Rights, Citizenship and Suffrage, Vol. 2., p.334)*

Note: General warrant is not allowed. It must be issued pursuant to specific offense.

Q: What are general warrants?

A: These are warrants of broad and general characterization or sweeping descriptions which will authorize police officers to undertake a fishing expedition to seize and confiscate any and all kinds of evidence or articles relating to an offense.

Q: What is the purpose of particularity of description?

A: The purpose is to enable the law officers serving the warrant to:

1. Readily identify the properties to be seized and thus prevent them from seizing the wrong items

2. Leave said peace officers with no discretion regarding the articles to be seized and thus prevent unreasonable searches and seizures. (*Bache and Co. v. Ruiz, 37 SCRA 823)*

Q: When is particularity of description complied with?

A: For *warrant of arrest*, this requirement is complied with if it contains the name of the person/s to be arrested. If the name of the person to be arrested is not known, a John Doe warrant may be issued. A John Doe warrant will satisfy the constitutional requirement of particularity of description if there is some *descriptio personae* which is sufficient to enable the officer to identify the accused.

For a *search warrant*, the requirement is complied with:

1. When the description therein is as specific as the circumstances will ordinarily allow; or
2. When the description expresses a conclusion of fact, not of law, by which the warrant officer may be guided in making the search and seizure; or

3. When the things described are limited to those which bear direct relation to the offense for which the warrant is being issued

Note: If the articles desired to be seized have any direct relation to an offense committed, the applicant must necessarily have some evidence other than those articles, to prove said offense. The articles subject of search and seizure should come in handy merely to strengthen such evidence.

Q: What are the properties subject to seizure?

A:

1. Property subject of the offense
2. Stolen or embezzled property and other proceeds or fruits of the offense
3. Property used or intended to be used as means for the commission of an offense

Q: What is probable cause?

A: Probable cause is such facts and circumstances antecedent to the issuance of a warrant that in themselves are sufficient to induce a cautious man to rely on them and act in pursuance thereof.

Q: How is probable cause determined personally by the judge?

A:

SEARCH WARRANT	WARRANT OF ARREST
The judge must personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them.	It is not necessary that the judge should personally examine the complainant and his witnesses; the judge would simply personally review the initial determination of the prosecutor to see if it is supported by substantial evidence.
The determination of probable cause depends to a large extent upon the finding or opinion of the judge who conducted the required examination of the applicant and the witnesses.	He merely determines the probability, not the certainty of guilt of the accused and, in so doing, he need not conduct a new hearing.

Q: What constitutes personal knowledge?

A:

1. The person to be arrested must execute an overt act indicating that he had just committed, is actually committing, or is attempting to commit a crime; *and*
2. Such overt act is done in the presence or within the view of the arresting officer.

Q: What constitutes searching questions?

A: Examination by the investigating judge of the complainant and the latter's witnesses in writing and under oath or affirmation, to determine whether there is a reasonable ground to believe that an offense has been committed and whether the accused is probably guilty thereof so that a warrant of arrest may be issued and he may be held liable for trial.

2. Warrantless Arrests

Q: What are the instances of a valid warrantless arrest?

A:

1. *In flagrante delicto* – The person to be arrested has either committed, is actually committing, or is about to commit an offense in the presence of the arresting officer

2. *Hot Pursuit* – When an offense has in fact just been committed and the arresting officer has probable cause to believe, based on personal knowledge of the facts and circumstances indicating, that the person to be arrested has committed it

3. *Escaped Prisoner or Detainee* – When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. (*Sec. 5, Rule 113, Rules of Court*)

Q: Can there be a waiver of the right to question an invalid arrest?

A: When a person who is detained applies for bail, he is deemed to have waived any irregularity of his arrest which may have occurred. However, if the accused puts up bail before he enters his

TEAM BAROPS

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

plea, he is not barred from later questioning the legality of his arrest.

Note: The waiver is limited to invalid arrest and does not extend to illegal search

Q: Are there any other instances where a peace officer can validly conduct a warrantless arrest?

A: Yes, in cases of continuing offenses. The crimes of rebellion, subversion, conspiracy or proposal to commit such crimes, and crimes or offenses committed in furtherance thereof, or in connection therewith constitute direct assaults against the State, are in the nature of continuing crimes.

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

A: No. Such a change is proscribed by the Constitution which requires a search warrant to particularly describe the place to be searched; otherwise it would open the door to abuse of the search process, and grant to officers executing the search that discretion which the Constitution has precisely removed from them.

Q: Which court has the primary jurisdiction in issuing search warrants?

A: The RTC where the criminal case is pending or if no information has yet been filed, in RTC in the area/s contemplated. However an RTC not having territorial jurisdiction over the place to be searched may issue a search warrant where the filing of such is necessitated and justified by compelling considerations of urgency, subject, time, and place.

Q: Does the Constitution limit to judges the authority to issue warrants of arrests?

A: No, the legislative delegation of such power to the Commissioner of Immigration is not violative of the Bill of Rights.

Note: Section 1 (3), Article III of the Constitution does not require judicial intervention in the execution of a final order of deportation issued in accordance with law. The constitutional limitation contemplates an order of arrest in the exercise of judicial power as a step preliminary or incidental to prosecution or proceedings for a given offense or administrative action, not as a measure indispensable to carry out a valid decision by a competent official, such as a legal order of deportation, issued by the Commissioner of Immigration, in pursuance of a valid legislation. (*Morano vs. Vivo, G.R. No. L-22196, June 30, 1967)*

Q: What is the nature of a search warrant proceeding?

A: It is neither a criminal action nor a commencement of a prosecution. It is solely for the possession of personal property. *(United Laboratories, Inc. v. Isip, G.R. No. 163858, June 28, 2005)*

3. Warrantless Searches

Q: What are the instances of a valid warrantless search?

A:

1. Visual search is made of moving vehicles at checkpoints
2. Search is an incident to a valid arrest

   Note: An officer making an arrest may take from the person:
   a. Any money or property found upon his person which was used in the commission of the offense
   b. Was the fruit thereof
   c. Which might furnish the prisoner with the means of committing violence or escaping
   d. Which might be used in evidence in the trial of the case

3. Search of passengers made in airports
4. When things seized are within plain view of a searching party
5. Stop and frisk (precedes an arrest)
6. When there is a valid express waiver made voluntarily and intelligently

Note: Waiver is limited only to the arrest and does not extend to search made as an incident thereto, or to any subsequent seizure of evidence found in the search. *(People v. Peralta, G.R. 145176, March 30, 2004)*

7. Customs search
8. Exigent and emergency circumstances. (*People v. De Gracia, 233 SCRA 716))*

Q: What is the Plain View Doctrine?

A: Objects falling in plain view of an officer who has a right to be in the position to have that view are subject to seizure even without a search

warrant and may be introduced as evidence. Requisites for the application of the doctrine are:

a. The law enforcer in search of the evidence has a prior justification for an intrusion, or is in a position from which he can view a particular area;
b. The discovery of the evidence in plain view is inadvertent;

Q: What is a "stop-and-frisk" search?

A: It is a limited protective search of outer clothing for weapons. Probable cause is not required but a genuine reason must exist in light of a police officer's experience and surrounding conditions to warrant the belief that the person detained has weapons concealed. *(Malacat v. CA, G.R. No. 123595, Dec. 12, 1997)*

Q: Are searches conducted in checkpoints lawful?

A: Yes, provided the checkpoint complies with the following requisites:

1. The establishment of checkpoint must be pronounced
2. It must be stationary, not roaming
3. The search must be limited to visual search and must not be an intrusive search.

Note: Not all searches and seizures are prohibited. Between the inherent right of the State to protect its existence and promote public welfare and an individual's right against warrantless search which is however reasonably conducted, the former should prevail.

A checkpoint is akin to a stop-and-frisk situation whose object is either to determine the identity of suspicious individuals or to maintain the *status quo* momentarily while the police officers seek to obtain more information. (*Valmonte vs. De Villa, 178 SCRA 211)*

Q: When may motorists and their vehicles passing though checkpoints be stopped and extensively searched?

A: While, as a rule, motorists and their vehicles passing though checkpoints may only be subjected to a routine inspection, vehicles may be stopped and extensively searched when there is probable cause which justifies a reasonable belief among those at the checkpoints that either the motorist is a law offender or the contents of the vehicle are or have been instruments of some offense. (*People v. Vinecario, G.R. No. 141137, Jan. 20, 2004*)

Q: Valeroso was arrested by virtue of a warrant of arrest. At that time, Valeroso was sleeping. He was pulled out of the room. The other police officers remained inside the room and ransacked the locked cabinet where they found a firearm and ammunition. Is the warrantless search and seizure of the firearm and ammunition justified as an incident to a lawful arrest?

A: No. The scope of the warrantless search is not without limitations. A valid arrest allows the seizure of evidence or dangerous weapons either on the person of the one arrested or within the area of his immediate control. The purpose of the exception is to protect the arresting officer from being harmed by the person arrested, who might be armed with a concealed weapon, and to prevent the latter from destroying evidence within reach. In this case, search was made in the locked cabinet which cannot be said to have been within Valeroso's immediate control. Thus, the search exceeded the bounds of what may be considered as an incident to a lawful arrest. (*Valeroso v. Court of Appeals, G.R. No. 164815, Sept. 3, 2009)*

5. Administrative Arrest

Q: When is there an administrative arrest?

A: There is an administrative arrest as an incident to deportation proceedings.

Q: When is a person arrested in a deportation proceedings?

A: The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of any other officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charges against the alien.

1. Any alien who enters the Philippines after the effective date of this Act by means of false and misleading statements or without inspection and admission by the immigration authorities at a designated port of entry or at any place other than at a

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

designated port of entry; [As amended by Republic Act No. 503, Sec. 13]

2. Any alien who enters the Philippines after the effective date of this Act, who was not lawfully admissible at the time of entry;
3. Any alien who, after the effective date of this Act, is convicted in the Philippines and sentences for a term of one year or more for a crime involving moral turpitude committed within five years after his entry to the Philippines, or who, at any time after such entry, is so convicted and sentenced more than once;
4. Any alien who is convicted and sentenced for a violation of the law governing prohibited drugs; [As amended by Republic Act No. 503, Sec. 13]
5. Any alien who practices prostitution or is an inmate of a house of prostitution or is connected with the management of a house of prostitution, or is a procurer;
6. Any alien who becomes a public charge within five years after entry from causes not affirmatively shown to have arisen subsequent to entry;
7. Any alien who remains in the Philippines in violation of any limitation or condition under which he was admitted as a non-immigrant;
8. Any alien who believes in, advises, advocates or teaches the overthrow by force and violence of the Government of the Philippines, or of constituted law and authority or who disbelieves in or is opposed to organized government, or who advises, advocates or teaches the assault or assassination of public officials because of their office, or who advises, advocates, or teaches the unlawful destruction of property, or who is a member of or affiliated with any organization entertaining, advocating or teaching such doctrines, or who in any manner whatsoever lends assistance, financial or otherwise, to the dissemination of such doctrines;
9. Any alien who commits any of the acts described in sections forty-five of this Act, independent of criminal action which may be brought against him: Provided, that in the case of alien who, for any reason, is convicted and sentenced to suffer both imprisonment and deportation, said alien shall first serve the entire period of his imprisonment before he is actually deported: Provided, however, that the imprisonment may be waived by the Commissioner of Immigration with the consent of the Department Head, and upon payment by the alien concerned of such amount as the Commissioner may fix and approved by the Department Head; [Paragraph added pursuant to Republic Act No. 144, Sec. 3]
10. Any alien who, at any time within five years after entry, shall have been convicted of violating the provisions of the Philippine Commonwealth Act Numbered Six hundred and fifty-three, otherwise known as the Philippine Alien Registration Act of 1941**(now Alien Registration Act of 1950, Republic Act No. 562, as amended] or who, at any time after entry, shall have been convicted more than once of violating the provisions of the same Act; [Added pursuant to Republic Act No. 503, Sec. 13]
11. Any alien who engages in profiteering, hoarding, or black-marketing, independent of any criminal action which may be brought against him; [Added pursuant to Republic Act No. 503, Sec. 13]
12. Any alien who is convicted of any offense penalized under Commonwealth Act Numbered Four hundred and seventy-three, otherwise known as the Revised Naturalization Laws of the Philippines, or any law relating to acquisition of Philippine citizenship; [Added pursuant to Republic Act No. 503, Sec. 13]
13. Any alien who defrauds his creditor by absconding or alienating properties to prevent them from being attached or executed. [Added pursuant to Republic Act No. 503, Sec. 13] *(Philippine Immigration Act of 1940)*

6. Drug, Alcohol, and Blood Tests

Q: Is a law requiring mandatory drug testing for students of secondary and tertiary schools unconstitutional?

A: No. It is within the prerogative of educational institutions to require, as a condition for admission, compliance with reasonable school rules and regulations and policies. To be sure, the

right to enroll is not absolute; it is subject to fair, reasonable, and equitable requirements. In sum:

1. Schools and their administrators stand *in loco parentis* with respect to their students;
2. Minor students have contextually fewer rights than an adult, and are subject to the custody and supervision of their parents, guardians, and schools;
3. Schools acting *in loco parentis*, have a duty to safeguard the health and well-being of their students and may adopt such measures as may reasonably be necessary to discharge such duty; and
4. Schools have the right to impose conditions on applicants for admission that are fair, just and non-discriminatory. *(SJS v. DDB, G.R. No. 157870, Nov. 3, 2008)*

Q: Is a law requiring mandatory drug testing for officers and employees of public and private offices unconstitutional?

A: No. As the warrantless clause of Sec. 2, Art. III of the Constitution is couched and as has been held, "reasonableness" is the touchstone of the validity of a government search or intrusion. And whether a search at issue hews to the reasonableness standard is judged by the balancing of the government-mandated intrusion on the individual's privacy interest against the promotion of some compelling state interest. In the criminal context, reasonableness requires showing probable cause to be personally determined by a judge. Given that the drug-testing policy for employees—and students for that matter—under R.A. 9165 is in the nature of administrative search needing what was referred to in *Veronia* case as "swift and informal procedures," the probable cause standard is not required or even practicable. *(SJS v. DDB and PDEA, G.R. No. 157870, Nov. 3, 2008)*

f. RIGHT TO PRIVACY IN COMMUNICATION AND CORRESPONDENCE

Q: The general rule is that the right to privacy of communication and correspondence is inviolable. What are the exceptions?

A:

1. By lawful order of the court;
2. Public safety or public order as prescribed by law

Q: Is the use of telephone extension a violation of R.A. 4200 (Anti-Wire Tapping Law)?

A: No. The use of a telephone extension to overhear a private conversation is neither among those devices, nor considered as a similar device, prohibited under the law. *(Gaanan v. IAC, G.R. No. L-69809 October 16, 1986)*

Note: Anti-Wiretapping Act only protects letters, messages, telephone calls, telegrams and the like.

The law does not distinguish between a party to the private communication or a third person. Hence, both a party and a third person could be held liable under R.A. 4200 if they commit any of the prohibited acts under R.A. 4200. (*Ramirez v. CA, G.R. No. 93833 Sept. 28, 1995*)

Q: Is the tape recording of a telephone conversation containing a person's admission admissible in evidence? Why?

A: No. The tape-recorded conversation is not admissible in evidence. R.A. 4200 makes the tape-recording of a telephone conversation done without the authorization of all the parties to the conversation, inadmissible in evidence. In addition, the taping of the conversation violated the guarantee of privacy of communications enunciated in Section 3, Article III of the Constitution. (*Salcedo- Ortanez v. CA (G.R. No. 110662, August 4, 1994)*

Q: Are letters of a husband's paramour kept inside the husband's drawer, presented by the wife in the proceeding for legal separation, admissible in evidence?

A: No, because marriage does not divest one of his/her right to privacy of communication. (*Zulueta v. CA*, *G.R. No. 107383, Feb. 20, 1996*)

Q: What does the exclusionary rule state?

A: Any evidence obtained in violation of the Constitution shall be inadmissible for any purpose in any proceeding. However, in the absence of governmental interference, the protection against unreasonable search and seizure cannot be extended to acts committed by private individuals. *(People v. Marti, G.R. No. 78109. January 18, 1991)*

Q: What is the writ of *habeas data*?

A: It 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

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

information regarding the person, family, home and correspondence of the aggrieved party. *(Sec. 1, The Rule on the Writ of Habeas Data, A. M. No. 08-1-16-SC, Jan. 22, 2008)*

Q: What are the reliefs that may be obtained in the petition for issuance of writ of habeas data?

A: The reliefs may include the updating, rectification, suppression or destruction of the database or information or files kept by the respondent and in case of threats of the unlawful act, the relief may include a prayer for an order enjoining the act complained of. A general prayer for other reliefs that are just and equitable under the circumstances is also allowed.

g. FREEDOM OF EXPRESSION

Q: What is the concept and scope of protected freedom of expression under the Constitution?

A:

1. Freedom of speech
2. Freedom of the press
3. Right of assembly and to petition the government for redress of grievances
4. Right to form associations or societies not contrary to law
5. Freedom of religion
6. Right to access to information on matters of public concern.

Q: What are considered protected speech?

A: Protected speech includes every form of expression, whether oral, written, tape or disc recorded. It includes motion pictures as well as what is known as symbolic speech such as the wearing of an armband as a symbol of protest. Peaceful picketing has also been included within the meaning of speech.

Q: Does a violation of any law justify the suppression of exercise of freedom of speech and of the press?

A: Not every violation of a law will justify straitjacketing the exercise of freedom of speech and of the press. There are laws of great significance but their violation, by itself and without more, cannot support suppression of free speech and free press. The totality of the injurious effects of the violation to private and public interest must be calibrated in light of the preferred status accorded by the Constitution and by related international covenants protecting freedom of speech and of the press. The need to prevent the violation of a law cannot *per se* trump the exercise of free speech and free press, a preferred right whose breach can lead to greater evils. *(Francisco Chavez v. Raul M. Gonzales, G.R. No. 168338, Feb. 15, 2008)*

Q. What is the concept behind the provision?

A. Consistent with its intended role in society, it means that the people are kept from any undue interference from the government in their thoughts and words. The guarantee basically flows from the philosophy that the authorities do not necessarily know what is best for the people. *(R.B. Gorospe, Constitutional Law: Notes And Readings On The Bill Of Rights, Citizenship And Suffrage 442 (2004)*

Q: What are the limitations of freedom of expression?

A: It should be exercised within the bounds of laws enacted for the promotion of social interests and the protection of other equally important individual rights such as:

1. Laws against obscenity, libel and slander (contrary to public policy)
2. Right to privacy of an individual
3. Right of state/government to be protected from seditious attacks
4. Legislative immunities
5. Fraudulent matters
6. Advocacy of imminent lawless conducts
7. Fighting words
8. Guarantee implies only the right to reach a willing audience but not the right to compel others to listen, see or read

Q: What are the four aspects of freedom of speech and press?

A:

1. Freedom from censorship or prior restraint
2. Freedom from subsequent punishment
3. Freedom of access to information
4. Freedom of circulation

Note: There need not be total suppression; even restriction of circulation constitutes censorship.

1. Prior Restraint

Q: What is the first prohibition of the free speech and press clause?

A: The first prohibition of the constitutional provision is the prohibition of prior restraint.

Note: Prior Restraint means official government restrictions on the press or other forms of expression in advance of actual publication or dissemination. *(Bernas, The 1987 Philippine Constitution A Comprehensive Reviewer 2006)*

Q: Is the prohibition of prior restraint absolute?

A: No. There are exceptions to the rule. *Near v. Minnesota, 283 US 697 (1931)* enumerates them:

1. When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no court could regard them as protected by any constitutional right.
2. The primary requirements of decency may be enforced against obscene publications.
3. The security of community life may be protected against incitements to acts of violence and the overthrow by force of orderly government.

2. Subsequent Punishment

Q. What is the second basic prohibition of the free speech and press clause?

A: The free speech and press clause also prohibits systems of subsequent punishment which have the effect of unduly curtailing expression. *(Bernas, The 1987 Philippine Constitution A Comprehensive Reviewer 2006, p.64)*

Q. Is freedom from subsequent punishment absolute?

A: No, it may be properly regulated in the interest of the public. The State may validly impose penal and/or administrative sanctions such as in the following:

1. *Libel* – a public and malicious imputation of a crime, vice or defect, real or imaginary or any act omission, status tending to cause dishonor, discredit or contempt of a natural or judicial person, or blacken the memory of one who is dead *(Art 353, Revised Penal Code)*
2. *Obscenity* – in *Pita v Court of Appeals,* the Supreme Court declared that the determination of what is obscene is a judicial function.
3. *Criticism of Official Conduct* – In *New York Times v. Sullivan, 376 US 254 (1964),* the constitutional guarantee requires a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with actual malice.
4. *Rights of students to free speech in school premises not absolute* – the school cannot suspend or expel a student solely on the basis of the articles he has written except when such article materially disrupts class work or involves substantial disorder or invasion of rights of others. *(Miriam College Foundation v. CA, GR 127930, December 15, 2000)*

Q: Discuss the Doctrine of Fair Comment.

A: The doctrine provides that while as a general rule, every discreditable public imputation is false because every man is presumed innocent, thus every false imputation is deemed malicious, as an exception, when the discreditable imputation is directed against a public person in his public capacity, such is not necessarily actionable. For it to be actionable, it must be shown that either there is a false allegation of fact or comment based on a false supposition. However, if the comment is an expression of opinion, based on established facts; it is immaterial whether the opinion happens to be mistaken, as long as it might reasonably be inferred from facts. *(Borjal v. CA, G.R. No. 126466, Jan. 14, 1999)*

Q: A national daily newspaper carried an exclusive report stating that Senator XX received a house and lot located at YY Street, Makati, in consideration for his vote cutting cigarette taxes by 50%. The Senator sued the newspaper, its reporter, editor and publisher for libel, claiming the report was completely false and malicious. According to the Senator, there is no YY Street in Makati, and the tax cut was only 20%. He claimed one million pesos in damages. The defendants denied "actual malice," claiming privileged communication and absolute freedom of the press to report on public officials and matters of public concern. If there was any error, the newspaper said it would publish the correction promptly. Is there "actual malice" in the newspaper's reportage? How is "actual

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

malice" defined? Are the defendants liable for damages?

A: Since Senator XX is a public person and the questioned imputation is directed against him in his public capacity, in this case actual malice means the statement was made with knowledge that it was false or with reckless disregard of whether it was false or not. Since there is no proof that the report was published with knowledge that it is false or with reckless disregard of whether it was false or not, the defendants are not liable for damage. *(Borjal v. CA, G.R. No. 126466, Jan. 14, 1999)*

Q: Is the *Borjal* doctrine applicable in a case where the allegations against a public official were false and that the journalist did not exert effort to verify the information before publishing his articles?

A: No. *Borjal* may have expanded the protection of qualified privileged communication beyond the instances given in Art. 354 of the RPC, but this expansion does not cover such a case. The expansion speaks of "fair commentaries on matters of public interest." While *Borjal* places fair commentaries within the scope of qualified privileged communication, the mere fact that the subject of the article is a public figure or a matter of public interest does not automatically exclude the author from liability. His articles cannot even be considered as qualified privileged communication under the second paragraph of Art. 354 of the RPC which exempts from the presumption of malice a fair and true report. Good faith is lacking. (*Tulfo vs. G.R. No. 161032, September 16, 2008)*

3. Content-Based & Content-Neutral Regulation

Q: Distinguish content-neutral regulation from content-based restraint or censorship.

A:

CONTENT-NEUTRAL REGULATION	CONTENT-BASED RESTRAINT
Substantial governmental interest is required for their validity, and they are not subject to the strictest form of judicial scrutiny rather only an intermediate approach-somewhere between the rationality that is required of a law and the compelling interest standard applied to content-based restrictions.	They are given the strictest scrutiny in light of their inherent and invasive impact.

Note: When the prior restraint partakes of a content-neutral regulation, it is subject to an intermediate review. A content-based regulation or any system or prior restraint comes to the Court bearing a heavy presumption against its unconstitutionality and thus measured against the clear and present danger rule, giving the government a heavy burden to show justification for the imposition of such restraint and such is neither vague nor overbroad.

Q: The NTC issued a warning that that the continuous airing or broadcast by radio and television stations of the an alleged wiretapped conversation involving the President allegedly fixing votes in the 2004 national elections is a continuing violation of the Anti-Wiretapping Law and shall be just cause for the suspension, revocation and/or cancellation of the licenses or authorizations issued to the said companies. Were the rights to freedom of expression and of the press, and the right of the people to information on matters of public concern violated?

A: Yes, said rights were violated applying the clear and present danger test. The challenged acts need to be subjected to the clear and present danger rule, as they are content-based restrictions. The acts of NTC and the DOJ Sec. focused solely on but one object—a specific content— fixed as these were on the alleged taped conversations between the President and a COMELEC official. Undoubtedly these did not merely provide regulations as to the time, place or manner of the dissemination of speech or expression.

A governmental action that restricts freedom of speech or of the press based on content is given the strictest scrutiny, with the government having the burden of overcoming the presumed unconstitutionality by the clear and present danger rule. It appears that the great evil which government wants to prevent is the airing of a tape recording in alleged violation of the anti-wiretapping law.

The evidence falls short of satisfying the clear and present danger test. Firstly, the various statements of the Press Secretary obfuscate the identity of the voices in the tape recording. Secondly, the integrity of the taped conversation is also suspect. The Press Secretary showed to the public two versions, one supposed to be a "complete" version and the other, an "altered" version. Thirdly, the evidence on the who's and the how's of the wiretapping act is ambivalent,

especially considering the tapes' different versions. The identity of the wire-tappers, the manner of its commission and other related and relevant proofs are some of the invisibles of this case. Fourthly, given all these unsettled facets of the tape, it is even arguable whether its airing would violate the anti-wiretapping law. There is no showing that the feared violation of the anti-wiretapping law clearly endangers the national security of the State. *(Chavez v. Gonzales, G.R. No. 168338, Feb. 15, 2008)*

4. Facial Challenges and Overbreadth Doctrine

Q: What do you mean by Facial Challenges?

A. A facial challenge is a challenge to a statute in court, in which the plaintiff alleges that the legislation is always, and under all circumstances, unconstitutional, and therefore void.

Note: Facial challenge to a statute is allowed only when it operates in the area of freedom of expression. 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. *(Separate opinion of Justice Mendoza in Cruz v. Secretary of Environment and Natural Resources, 347 SCRA 128, 2000)*

Q: How is "facial" challenge different from "as-applied" challenge?

A: Distinguished from an as-applied challenge which considers only extant facts affecting real litigants, a facial invalidation is an examination of the entire law, pinpointing its flaws and defects, not only on the basis of its actual operation to the parties, but also on the assumption or prediction that its very existence may cause others not before the court to refrain from constitutionally protected speech or activities. *(KMU v. Ermita, G.R. No. 17855, October 5, 2010)*

Q: Are facial challenges allowed in penal statutes?

A: No. Criminal statutes have general *in terrorem* effect resulting from their very existence, and, if facial challenge is allowed for this reason alone, the State may well be prevented from enacting laws against socially harmful conduct. In the area of criminal law, the law cannot take chances as in the area of free speech. *(KMU v. Ermita, G.R. No. 17855, October 5, 2010)*

Q: What is the Overbreadth Doctrine?

A: The overbreadth doctrine permits a party to challenge the validity of 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. *(Separate opinion of Justice Mendoza in Cruz v. Secretary of Environment and Natural Resources, 347 SCRA 128, 2000)* It is a type of facial challenge that prohibits the government from achieving its purpose by means that "sweep unnecessarily broadly, reaching constitutionally protected as well as unprotected activity.

5. Tests

Q: What are the tests for valid governmental interference to freedom of expression?

A:

1. *Clear and Present Danger test*

Question: Whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree *(Schenck v. US, 249 US 47, 1919)*

Emphasis: The danger created must not only be clear and present but also traceable to the ideas expressed. *(Gonzales v. COMELEC, G.R. No. L-27833, April 18, 1969)*

Note: This test has been adopted by our SC, and is most applied to cases involving freedom of expression.

2. *Dangerous Tendency test*

Question: Whether the speech restrained has a rational tendency to create the danger apprehended, be it far or remote, thus government restriction would then be allowed. It is not necessary though that evil is actually created for mere tendency towards the evil is enough.

Emphasis: Nature of the circumstances under which the speech is uttered, though the speech per se may not be dangerous.

3. *Grave-but-Improbable Danger test*

Question: Whether the gravity of the evil, discounted by its improbability, justifies such an invasion of free speech as is necessary to

TEAM BAROPS

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

avoid the danger *(Dennis v. US, 341 US 494, 1951)*

Note: This test was meant to supplant the clear and present danger test.

4. *Balancing of interest test*

Question: which of the two conflicting interests (not involving national security crimes) demands the greater protection under the particular circumstances presented:

a. When particular conduct is regulated in the interest of public order

b. And the regulation results in an indirect, conditional and partial abridgement of speech *(Gonzales v. COMELEC, G.R. No. L-27833, Apr. 18, 1969)*.

5. *O'Brien test*

Question: in situations when "speech" and "non-speech" elements are combined in the same course of conduct, whether there is a sufficiently important governmental interest that warrants regulating the non-speech element, incidentally limiting the "speech" element.

Note: A government regulation is valid if:

a. It is within the constitutional power of the government;
b. In furtherance of an important or substantial governmental interest;
c. Governmental interest is unrelated to the suppression of free expression; and
d. The incidental restriction on the freedom is essential to the furtherance of that interest. *(US v. O'Brien, 391 US 367, 1968; SWS v. COMELEC, G.R. 147571, May 5, 2001)*

6. *Direct Incitement test*

Question: What words did a person utter and what is the likely result of such utterance

Emphasis: The very words uttered, and their ability to directly incite or produce imminent lawless action.

Note: It criticizes the clear and present danger test for being too dependent on the specific circumstances of each case.

6. State Regulation of Different Types of Mass Media

Q: Can an offensive and obscene language uttered in a prime-time television broadcast which was easily accessible to the children be reasonably curtailed and validly restrained?

A: Yes. In *Soriano v. MTRCB, G.R. No. 165636, Apr. 29, 2009*, the Court, applying the balancing of interest doctrine, ruled that the government's interest to protect and promote the interests and welfare of the children adequately buttresses the reasonable curtailment and valid restraint on petitioner's prayer to continue as program host of *Ang Dating Daan* during the suspension period. Soriano's offensive and obscene language uttered on prime-time television broadcast, without doubt, was easily accessible to the children. His statements could have exposed children to a language that is unacceptable in everyday use. As such, the welfare of children and the State's mandate to protect and care for them, as *parens patriae*, constitute a substantial and compelling government interest in regulating Soriano's utterances in TV broadcast.

Q: Is broadcast media entitled to the same treatment under the free speech guarantee of the Constitution as the print media?

A: No. Because of the unique and pervasive influence of the broadcast media, "Necessarily . . . the freedom of television and radio broadcasting is somewhat lesser in scope than the freedom accorded to newspaper and print media. *(Eastern Broadcasting (DYRE) Corporation v. Dans, Jr., 137 SCRA at 635)*

Q: Can the trial of Estrada in the Sandiganbayan or any other court be broadcasted in TV or radio?

A: No. An accused has a right to a public trial, but it is not synonymous with a publicized trial. Freedom of the press and the accused's protection from a possible prejudicial publicized trial must be taken into consideration. And unless there are safety nets to prevent this event, broadcast media cannot be allowed to publicize the trial. *(Re: Request for Radio-TV Coverage of the Estrada Trial, A.M. No 01-4-03-SC, June 29, 2001)*

7. Commercial Speech

Q: What is the meaning of commercial speech?

A: It is communication which "no more than proposes a commercial transaction. Advertisements of goods or of services is an example of this. *(Bernas, the 1987 Constitution of the Republic of the Philippines Comprehensive Reviewer 2006)*

Q: In order for government to curtail commercial speech what must be shown?

A: To enjoy protection, commercial speech:

1. Must not be false or *misleading (Friedman v. Rogers, 440 US 1 (1979)* and
2. Should not propose an illegal transaction, *Pittsburgh Press Co. v Human Relations Commissions, 413 US 376(1973).*

Note: However, even truthful and lawful commercial speech maybe regulated if (1) government has a substantial interest to protect; (2) the regulation directly advances that interest; and (3) it is not more than extensive than is necessary to protect that interest. *(Central Hudson Gas & Electric Corp v. Public Service Commission of NY, 447 US 557 (1980)*

8. Pivate v. Government Search

Q: Differentiate Government Speech From Private Speech.

A:

Government Speech	Private Speech
A speech where the government may advance or restrict its own speech in a manner that would clearly be forbidden were it regulating the speech of a private citizen. (doctrine was implied in *Wooley v. Maynard* in 1971)	The right of a person to freely speak one's mind is a highly valued freedom in a republican and democratic society. *(Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002))*

9. Heckler's Veto

Q: What is a Heckler's Veto?

A: A heckler's veto occurs when an acting party's right to freedom of speech is curtailed or restricted by the government in order to prevent a reacting party's behavior. The term Heckler's Veto was coined by University of Chicago professor of law Harry Kalven.

It may be in the guise of a permit requirement in the holding of rallies, parades, or demonstrations conditioned on the payment of a fee computed on the basis of the cost needed to keep order in view of the expected opposition by persons holding contrary views. (*Gorospe, 2006, citing Forsyth County v. Nationalist Movement, 315 U.S. 568, 1942)*

h. FREEDOM OF ASSEMBLY AND PETITION

Q: Is the right to assembly subject to prior restraint?

A: No. It may not be conditioned upon the prior issuance of a permit or authorization from government authorities. However, the right must be exercised in such a way as will not prejudice the public welfare.

Q: What is the so-called permit system?

A: Under the permit system, before one can use a public place, one must first obtain prior permit from the proper authorities. Such is valid if:

1. It is concerned only with the time, place, and manner of assembly; and
2. It does not vest on the licensing authority unfettered discretion in choosing the groups which could use the public place and discriminate others.

Note: Permits are not required for designated freedom parks.

Q: What is the rule on assembly in private properties?

A: Only the consent of the owner of the property or person entitled to possession thereof is required.

Q: What are the two tests applicable to the exercise of the right to assembly?

A:

1. *Purpose Test* – looks into the purpose of the assembly regardless of its backers. (*De Jonge v. Oregon, 299 US 353, 365, 1937)*

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

2. *Auspices Test* – looks into the backers/supporters.

Note: The ruling in *Evangelista v. Earnshaw (G.R. No. 36453, Sept. 28, 1932*) is not yet abrogated--Mayor revoked permits he already granted because the group, the Communist Party of the Philippines, was found by the fiscal to be an illegal association. When the intention and effect of the act is seditious, the constitutional guaranties of freedom of speech and press and of assembly and petition must yield to punitive measures designed to maintain the prestige of constituted authority, the supremacy of the Constitution and the laws, and the existence of the State.

Q: Is the concept of people power recognized in the Constitution? Discuss briefly.

A: Yes. The Constitution:

1. Guarantees the right of the people to peaceably assemble and petition the government for redress of grievances *(Sec. 4, Article III,).*
2. Requires Congress to pass a law allowing the people to directly propose and enact laws through initiative and to approve or reject any act or law or part of it passed by Congress or a local legislative body *(Sec. 32, Article VI)*.
3. Provides that the right of the people and their organizations to participate at 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 *(Sec. 16, Article XIII).*
4. Provides that subject to the enactment of an implementing law, the people may directly propose amendments to the Constitution through initiative *(Sec. 2, Article XVII)*.

i. FREEDOM OF RELIGION

Q: What are the two guarantees contained in Sec. 5 Article III of the 1987 Constitution?

A:

1. Non-establishment clause;
2. Free exercise clause, or the freedom of religious profession and worship

1. Non-establishment Clause

Q: What is the non-establishment clause?

A: The non-establishment clause states that the State cannot:

1. Set up a church
2. Pass laws which aid one or all religions or prefer one over another
3. Influence a person to go to or stay away from church against his will
4. Force him to profess a belief or disbelief in any religion

2. Free-Exercise Clause

Q: What are the aspects of freedom of religious profession and worship?

A: These are the right to believe, which is absolute, and the right to act on one's belief, which is subject to regulation.

Q: Give some exceptions to the non-establishment clause as held by jurisprudence.

A:

1. Tax exemption on property actually, directly and exclusively used for religious purposes;

2. Religious instruction in public schools:
   a. At the option of parents/guardians expressed in writing;
   b. Within the regular class hours by instructors designated or approved by religious authorities of the religion to which the children belong;
   c. Without additional costs to the government;

3. Financial support for priest, preacher, minister, or dignitary assigned to the armed forces, penal institution or government orphanage or leprosarium;

4. Government sponsorship of town fiestas, some purely religious traditions have now been considered as having acquired secular character; and

5. Postage stamps depicting Philippines as the venue of a significant religious event – benefit to the religious sect involved was merely incidental as the

promotion of Philippines as a tourist destination was the primary objective.

Q: What is the Lemon test?

A: It is a test to determine whether an act of the government violates the non-establishment clause. To pass the Lemon test, a government act or policy must:

1. Have a secular purpose;
2. Not promote or favor any set of religious beliefs or religion generally; and
3. Not get the government too closely involved ("entangled") with religion.

Q: What is the Compelling State Interest test?

A: It is the test used to determine if the interests of the State are compelling enough to justify infringement of religious freedom. It involves a three-step process:

1. *Has the statute or government action created a burden on the free exercise of religion?* – Courts often look into the sincerity of the religious belief, but without inquiring into the truth of the belief since the free exercise clause prohibits inquiring about its truth.

2. *Is there a sufficiently compelling state interest to justify this infringement of religious liberty?* – In this step, the government has to establish that its purposes are legitimate for the State and that they are compelling.

3. *Has the State in achieving its legitimate purposes used the least intrusive means possible so that the free exercise is not infringed any more than necessary to achieve the legitimate goal of the State?* – The analysis requires the State to show that the means in which it is achieving its legitimate State objective is the least intrusive means, or it has chosen a way to achieve its legitimate State end that imposes as little as possible intrusion on religious beliefs.

Q: A religious organization has a weekly television program. The program presents and propagates its religious doctrines and compares their practices with those of other religions. As the MTRCB found as offensive several episodes of the program which attacked other religions, the MTRCB required the organization to submit its tapes for review prior to airing. The religious organization brought the case to court on the ground that the action of the MTRCB suppresses its freedom of speech and interferes with its right to free exercise of religion. Decide.

A: The religious organization cannot invoke freedom of speech and freedom of religion as grounds for refusing to submit the tapes to the MTRCB for review prior to airing. When the religious organization started presenting its program over television, it went into the realm of action. The right to act on one's religious belief is not absolute and is subject to police power for the protection of the general welfare. Hence the tapes may be required to be reviewed prior to airing.

However, the MTRCB cannot ban the tapes on the ground that they attacked other religions. In *Iglesia ni Cristo v. CA, G.R. No. 119673, July 26, 1996,* the Supreme Court held that: "Even a side glance at Sec. 3 of P.D. No. 1986 will reveal that it is not among the grounds to justify an order prohibiting the broadcast of petitioner's television program."

Moreover, the broadcasts do not give rise to a clear and present danger of a substantive evil.

Q: X, a court interpreter, is living with a man not her husband. Y filed the charge against X as he believes that she is committing an immoral act that tarnishes the image of the court, thus she should not be allowed to remain employed therein as it might appear that the court condones her act. X admitted that she has been living with Z without the benefit of marriage for twenty years and that they have a son. But as a member of the religious sect known as the Jehovah's Witnesses and the Watch Tower and Bible Tract Society, their conjugal arrangement is in conformity with their religious beliefs. In fact, after ten years of living together, she executed on July 28, 1991 a "Declaration of Pledging Faithfulness. Should X's right to religious freedom carve out an exception from the prevailing jurisprudence on illicit relations for which government employees are held administratively liable?

A: Yes. Escritor's conjugal arrangement cannot be penalized as she has made out a case for exemption from the law based on her fundamental right to freedom of religion. The Court recognizes that State interests must be upheld in order that freedoms – including religious freedom – may be enjoyed. In the area of religious exercise as a preferred freedom,

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

however, man stands accountable to an authority higher than the State, and so the State interest sought to be upheld must be so compelling that its violation will erode the very fabric of the State that will also protect the freedom. In the absence of a showing that such State interest exists, man must be allowed to subscribe to the Infinite (*Estrada v. Escritor, A.M. No. P-02-1651, June 22, 2006*).

Q: "X" is serving his prison sentence in Muntinlupa. He belongs to a religious sect that prohibits the eating of meat. He asked the Director of Prisons that he be served with meatless diet. The Director refused and "X" sued the Director for damages for violating his religious freedom. Decide.

A: Yes. The Director of Prison is liable under Article 32 of the Civil Code for violating the religious freedom of "X". According to the decision of the United States Supreme Court in the case of *O'Lone v. Estate of Shabazz, 107 S. Ct. 2400,* convicted prisoners retain their right to free exercise of religion. At the same time, lawful incarceration brings about necessary limitations of many privileges and rights justified by the considerations underlying the penal system. In considering the appropriate balance between these two factors, reasonableness should be the test. Accommodation to religious freedom can be made if it will not involve sacrificing the interests of security and it will have no impact on the allocation of resources of the penitentiary. In this case, providing "X" with a meatless diet will not create a security problem or unduly increase the cost of food being served to the prisoners. In fact, in the case of *O' Lone v. Estate of Shabazz,* it was noted that the Moslem prisoners were being given a different meal whenever pork would be served.

Q: Ang Ladlad is an organization composed of men and women who identify themselves as lesbians, gays, bisexuals, or trans-gendered individuals (LGBTs). Ang Ladlad applied for registration with the COMELEC. The COMELEC dismissed the petition on moral grounds, stating that definition of sexual orientation of the LGBT sector makes it crystal clear that petitioner tolerates immorality which offends religious beliefs based on the Bible and the Koran. Ang Ladlad argued that the denial of accreditation, insofar as it justified the exclusion by using religious dogma, violated the constitutional guarantees against the establishment of religion. Is this argument correct?

A: Yes. It was grave violation of the non-establishment clause for the COMELEC to utilize the Bible and the Koran to justify the exclusion of Ang Ladlad. Our Constitution provides in Article III, Section 5 that "no law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof." At bottom, what our non-establishment clause calls for is government neutrality in religious matters. Clearly, governmental reliance on religious justification is inconsistent with this policy of neutrality (*Ang Ladlad LGBT Party v. COMELEC, G.R. No. 190582, Apr. 8, 2010*).

The government must act for secular purposes and in ways that have primarily secular effects. That is, the government proscribes this conduct because it is "detrimental (or dangerous) to those conditions upon which depend the existence and progress of human society" and not because the conduct is proscribed by the beliefs of one religion or the other. (*Estrada v. Escritor, 492 SCRA 1, 2006*)

j. LIBERTY OF ABODE AND RIGHT TO TRAVEL

Q: What are the rights guaranteed under Section 6 of the Bill of Rights?

A:

a. Freedom to choose and change one's place of abode; and
b. Freedom to travel within the country and outside.

1. Limitations

Q: What is the limitation on the liberty of abode?

A: The liberty of abode may be impaired only upon lawful order of the court and within the limits prescribed by law.

2. Return to One's Country

Q: Is the right to return to one's country guaranteed in the Bill of Rights?

A: The right to return to one's country is not among the rights specifically guaranteed in the Bill of Rights, which treats only of the liberty of abode and the right to travel. Nevertheless, the right to return may be considered as a generally

accepted principle of International law, and under the Constitution, is part of the law of the land. However, it is distinct and separate from the right to travel and enjoys a different protection under the Intl. Covenant of Civil and Political Rights. *(Marcos v. Manglapus, G.R. No. 88211, Sept. 15, 1989 & Oct. 27, 1989)*

Q: The military commander in charge of the operation against rebel groups directed the inhabitants of the island which would be the target of attack by government forces to evacuate the area and offered the residents temporary military hamlet. Can the military commander force the residents to transfer their places of abode without a court order?

A: No, the military commander cannot do so without a court order. Under Sec. 6, Art. III of the Constitution, a lawful order of the court is required before the liberty of abode and of changing the same can be impaired.

Q: What is the limitation on the right to travel?

A: The limitations are the interest of national security, public safety or public health, as may be provided by law.

With respect to the right to travel, it is settled that only a court may issue a hold departure order against an individual addressed to the Bureau of Immigration and Departure. However, administrative authorities, such as passport-officers, may likewise curtail such right in the interest of national security, public safety, or public health, as may be provided by law.

k. RIGHT TO INFORMATION AND ACCESS TO PUBLIC RECORDS

Q: What is the scope of the right?

A: This covers information on matters of public concern. It pertains to access to official records, documents and papers pertaining to official acts, transactions or decisions, as well as to government research data used as basis for policy development.

The SC has held in *Chavez v. PEA and AMARI (G.R. No. 133250, July 9, 2002)* that the right to information contemplates inclusion of negotiations leading to the consummation of the transaction.

Note: The right only affords access to records, documents and papers, which means the opportunity to inspect and copy them at his expense. The exercise is also subject to reasonable regulations to protect the integrity of public records and to minimize disruption of government operations.

1. Limitations

Q: What are the limitations and exceptions to the right to information and access to public records?

A:

GR: The access must be for a lawful purpose and is subject to reasonable conditions by the custodian of the records.

XPNS: The right does not extend to the following:

1. Information affecting national security, military and diplomatic secrets. It also includes inter-government exchanges prior to consultation of treaties and executive agreement as may reasonably protect the national interest

2. Matters relating to investigation, apprehension, and detention of criminals which the court may not inquire into prior to arrest, prosecution and detention

3. Trade and industrial secrets and other banking transactions as protected by the Intellectual Property Code and the Secrecy of Bank Deposits Act

4. Other confidential information falling under the scope of the Ethical Safety Act concerning classified information

2. Publication of Laws and Regulations

Q: Is there a need for publication of laws to reinforce the right to information?

A: Yes. In *Tanada v. Tuvera,* the Court said Laws must come out in the open in the clear light of the sun instead of skulking in the shadows with their dark, deep secrets. Mysterious pronouncements and rumored rules cannot be recognized as binding unless their existence and contents are confirmed by a valid publication

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

intended to make full disclosure and give proper notice to the people.

3. Access to Court Records

Q: During the pendency of the intestate proceedings, Ramon, a creditor of the deceased, filed a motion with a prayer that an order be issued requiring the Branch Clerk of Court to furnish him with copies of all processes and orders and to require the administratrix to serve him copies of all pleadings in the proceedings. The judge denied the motion because the law does not give a blanket authority to any person to have access to official records and documents and papers pertaining to official acts. The judge said that his interest is more of personal than of public concern. Is the judge correct?

A: No. The right to information on matters of public concern is a constitutional right. However, such is not absolute. Under the Constitution, access is subject to limitations as may be provided by law. Therefore, a law may exempt certain types of information from public scrutiny such as national security. The privilege against disclosure is recognized with respect to state secrets bearing on the military, diplomatic and similar matter. Since intestate proceedings do not contain any military or diplomatic secrets which will be disclosed by its production, it is an error on the part of the judge to deny Ramon's motion. (*Hidalgo v. Reyes, AM No. RTJ-05-1910, Apr. 15, 2005*)

4. Government Contract Negotiations

Q: May the government, through the PCGG, be required to reveal the proposed terms of a compromise agreement with the Marcos heirs as regards their alleged ill-gotten wealth?

A: It is incumbent upon the PCGG, and its officers, as well as other government representatives, to disclose sufficient public information on any proposed settlement they have decided to take up with the ostensible owners and holders of ill-gotten wealth. Such information must pertain to definite propositions of the government. (*Chavez v.PCGG, G.R. No. 130716, December 9, 1998)*

5. Diplomatic Negotiations

Q: Petitioners request that they be given a copy of the text of the JPEPA and the offers and negotiations between the Philippines and Japan. Are these matters of public concern? Can they be disclosed?

A: There is a distinction between the text of the treaty and the offers and negotiations. They may compel the government to disclose the text of the treaty but not the offers between RP and Japan, because these are negotiations of executive departments. Diplomatic Communication negotiation is privileged information. *(Akbayan v. Aquino, G.R. No. 170516, July 16, 2008)*

l. FREEDOM OF ASSOCIATION

Q: What is the difference between the right to unionize and the right to association?

A: The right to unionize is an economic and labor right while the right to association in general is a civil-political right.

Q: What constitutes freedom of association?

A: Freedom of association includes the freedom not to associate, or, if one is already a member, to disaffiliate from the association

Q: Is the right to strike included in the right to form unions or freedom of assembly by government employees?

A: No, the right to strike is not included. Their employment is governed by law. It is the Congress and administrative agencies which dictate the terms and conditions of their employment. The same is fixed by law and circulars and thus not subject to any collective bargaining agreement.

Note: Pursuant to Sec. 4, Rule III of the Rules and Regulations to Govern the Exercise of the Right of Government Employees to Self-Organization, the terms and conditions of employment in the Government, including any of its instrumentalities, political subdivision and government owned and controlled corporations with original charters, are governed by law and employees therein shall not strike for the purpose of securing changes thereof. *(SSS Employees Association v. CA, GR. No. 85279, July 28, 1989)* The only available remedy for them is to lobby for better terms of employment with Congress.

m. EMINENT DOMAIN

1. Abandonment of Intended Use and Right of Repurchase

Q. When a particular public use is abandoned, does its former owner acquire a cause of action for recovery of the property?

A: When land has been acquired for public use in fee simple, unconditionally, either by the exercise of eminent domain or by purchase, the former owner retains no rights in the land, and the public use may be abandoned or the land may be devoted to a different use, without any impairment of the estate or title acquired, or any reversion to the former owner. *(ATO petitioners, vs. Apolonio Gopuco, Jr. G.R No. 158563, June 30, 2005)*

2. Miscellaneous Application

Q: An ordinance of Quezon City requires memorial park operators to set aside at least 6% of their cemetery for charity burial of deceased persons. Is this a valid exercise of police power?

A: No, it constitutes taking of property without just compensation. Instead of building or maintaining a public cemetery for this purpose, the city passes the burden to private cemeteries. *(City Government of Quezon City vs. Ericta, G.R. No. L-34915, Jun. 24, 1983)*

Q: Can there be expropriation in right of way easement?

A: Yes. Expropriation is not limited to the acquisition of real property with a corresponding transfer of title or possession – the right of way easement resulting in a restriction of limitation on property right over the land traversed by transmission lines also falls within the ambit of the term expropriation. *(NPC v. Maria Mendoza San Pedro G.R. No. 170945 September 26, 2006)*

Q: Causby sued the United States for trespassing on his land, complaining specifically about how "low-flying military planes caused the plaintiffs' chickens to 'jump up against the side of the chicken house and the walls and burst themselves open and die. Are they entitled to compensation by reason of taking clause?

A: There is taking by reason of the frequency and altitude of the flights. Causby could not use his land for any purpose. (*US v. Causby, 328 U.S. 256 , 1946)*

Q: The National Historical Institute declared the parcel of land owned by Petitioners as a national historical landmark, because it was the site of the birth of Felix Manalo, the founder of Iglesia ni Cristo. The Republic of the Philippines filed an action to appropriate the land. Petitioners argued that the expropriation was not for a public purpose. Is this correct?

A: Public use should not be restricted to the traditional uses. The taking is for a public use because of the contribution of Felix Manalo to the culture and history of the Philippines. *(Manosca v. CA , GR No 106440, Jan. 29, 1996)*

Q: Is expropriation of private lands for slum clearance and urban development for public purpose?

A: Yes it is for public purpose even if the developed area is later sold to private homeowners, commercial firms, entertainment and service companies and other private concerns. *(Reyes v. NHA G.R. No. 47511. January 20, 2003)*

n. CONTRACT CLAUSE or NON-IMPAIRMENT CLAUSE

Q: May laws be enacted even if the result would be the impairment of contracts?

A:

GR: Valid contracts should be respected by the legislature and not tampered with by subsequent laws that will change the intention of the parties or modify their rights and obligations. The will of the parties to a contract must prevail. A later law which enlarges, abridges, or in any manner changes the intent of the parties to the contract necessarily impairs the contract itself and cannot be given retroactive effect without violating the constitutional prohibition against impairment of contracts. *(Sangalang v. IAC, GR No. 71169, December 22, 1988)*

XPN: Enactment of laws pursuant to the exercise of police power because public welfare prevails over private rights. It is deemed embedded in every contract a reservation of the State's exercise of police power, eminent domain and taxation, so long as it deals with a matter affecting the public welfare. *(PNB v Remigio, G.R. No 78508, March 21, 1994)*

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Q: What constitutes impairment?

A: Any statute which introduces a change into the express terms of the contract, or its legal construction, or its validity, or its discharge, or the remedy for its enforcement, impairs the contract. *(Black's Law Dictionary)*

Note: Franchises, privileges, licenses, etc. do not come within the context of the provision, since these things are subject to amendment, alteration or repeal by Congress when the common good so requires.

Q: PAL (a former GOCC) and Kuwait Airways entered into a Commercial Agreement and Joint Services Agreement. Can the execution of the Commercial Memorandum of Understanding between Kuwait and Philippine Government automatically terminate the aforementioned agreement?

A: No, because an act of the Phil. Gov't negating the commercial agreement between the two airlines would infringe the vested rights of a private individual. Since PAL was already under private ownership at the time the CMU was entered into, the Court cannot presume that any and all commitments made by the Phil. Gov't are unilaterally binding on the carrier even if this comes at the expense of diplomatic embarrassment. Even granting that the police power of the State may be exercised to impair the vested rights of privately-owned airlines, the deprivation of property still requires due process of law. (*Kuwait Airline Corporation v. PAL, G.R. No. 156087, May 8, 2009*)

Q: May there be a valid impairment of contracts even if the act in question is done by an entity other than the legislature?

A: Yes. The act need not be by a legislative office; but it should be legislative in nature. *(Philippine Rural Electric Cooperatives Assoc. v. DILG Sec, G.R. No. 143076, June 10, 2003)*

o. LEGAL ASSISTANCE AND FREE ACCESS TO COURTS

Q. What is the significance of this provision?

A. It is the basis for the provision of Section 17, Rule 5 of the New Rules of Court allowing litigation in *forma pauperis* . Those protected include low paid employees, domestic servants and laborers. *(Cabangis v. Almeda Lopez, G.R. No. 47685, September 20, 1940)*

They need not b e persons so poor that they must be supported at public expense. It suffices that the plaintiff is indigent. And the difference between paupers and indigent persons is that the latter are persons who have no property or sources of income sufficient for their support aside from their own labor though self supporting when able to work and in employment. *(Acar v. Rosal, G.R. No. L-21707, March 18, 1967)*

p. RIGHTS OF SUSPECTS

Q: What are the Miranda rights?

A: These are the rights to which a person under custodial investigation is entitled. These rights are:

1. Right to remain silent
2. Right to competent and independent counsel, preferably of his own choice
3. Right to be reminded that if he cannot afford the services of counsel, he would be provided with one
4. Right to be informed of his rights
5. Right against torture, force, violence, threat, intimidation or any other means which vitiate the free will
6. Right against secret detention places, solitary, incommunicado, or similar forms of detention
7. Right to have confessions or admissions obtained in violation of these rights considered inadmissible in evidence *(Miranda v Arizona, 384 US 436, 1966)*

Note: Even if the person consents to answer questions without the assistance of counsel, the moment he asks for a lawyer at any point in the investigation, the interrogation must cease until an attorney is present.

The "Miranda Rights" are available to avoid involuntary extrajudicial confession.

The purpose of providing counsel to a person under custodial investigation is to curb the police-state practice of extracting a confession that leads appellant to make self-incriminating statements. *(People vs. Rapeza, GR 169431, 3 April 2007)*

Q: What are the rights and limitations of a person in a preliminary investigation?

A:

1. He cannot cross-examine
2. No right to counsel except when confession is being obtained

3. He cannot file complaint or information without authority
4. Right to be present not absolute
5. No dismissal without approval
6. Right to discovery proceedings

1. Availability

Q: When do these rights become available?

A: During custodial investigation or as soon as the investigation ceases to be a general inquiry unto an unsolved crime and direction is aimed upon a particular suspect, as when the suspect who has been taken into police custody and to whom the police would then direct interrogatory questions which tend to elicit incriminating statements.

Note: Sec. 2 of R.A. 7438 provides that custodial investigation shall include the practice of issuing an invitation to a person who is under investigation in connection with an offense he is suspected to have committed

Rights during custodial investigation apply only against testimonial compulsion and not when the body of the accused is proposed to be examined (i.e. urine sample; photographs; measurements; garments; shoes) which is a purely mechanical act.

In the case of *Galman v. Pamaran,* it was held that the constitutional safeguard is applied notwithstanding that the person is not yet arrested or under detention at the time. However, Fr. Bernas has qualified this statement by saying that jurisprudence under the 1987 Constitution has consistently held, following the stricter view, that the rights begin to be available only when the person is already in custody. *(People v. Ting Lan Uy, G.R. No. 157399, Nov.17, 2005)*

Q: X was criminally charged. An information was filed against him and he was subsequently arrested pursuant to a warrant of arrest issued by the court. Later X executed an extrajudicial confession thru a Sinumpaang Salaysay without the assistance of counsel. X's counsel moved that the Sinumpaang Salaysay bedeclared inadmissible in court since the same was in violation of his Miranda Rights. The court denied on the ground that the Miranda Rights are only applicable during custodial investigation and after the filing of the information he can no longer invoke the same. Decide.

A: The rights are not confined to that period prior to the filing of a complaint or information but are available at that stage when a person is under investigation for the commission of the offense. The fact that the framers of our Constitution did not choose to use the term "custodial" by having it inserted between the words "under" and "investigation" goes to prove that it has broadened the application of the Miranda doctrine to investigation for commission of an offense of a person not in custody alone. (*People v. Maqueda*, *G.R. No. 112983, Mar. 22, 1995)*

Q: When are the Miranda rights unavailable?

A:

1. During a police line-up, unless admissions or confessions are being elicited from the suspect *(Gamboa Vs. Cruz,L-56291, 27 Jun 1988)*
2. During administrative investigations *(Sebastian, Jr v Garchitorena, G.R. No 114028)*
3. Confessions made by an accused at the time he voluntarily surrendered to the police or outside the context of a formal investigation; *(People v Baloloy, G.R. No 140740, April 12, 2002)* and
4. Statements made to a private person *(People v Tawat, G.R. No 62871, May 25, 1985)*

2. Waiver

Q: What are the rights that may be waived?

A:

1. Right to remain silent
2. Right to counsel

Note: However, the right to be informed of these rights cannot be waived.

3. Requisites

Q: What are the requisites for a valid waiver of these rights?

A:

1. Made voluntarily, knowingly and intelligently
2. Waiver should be made in writing
3. Made with the presence of counsel *(People v Galit, 135 SCRA 465,1980)*

Q: Is a confession given to a mayor admissible in court?

A: Yes, if such confession was given to the mayor as a confidant and not as a law enforcement

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

officer. In such case, the uncounselled confession did not violate the suspect's constitutional rights. *(People v Zuela, G.R. No 112177, January 28, 2000)*

Note: What the Constitution bars is the compulsory disclosure of the incriminating facts or confessions. The rights under Sec. 12 are guarantees to preclude the slightest use of coercion by the State, and not to prevent the suspect from freely and voluntarily telling the truth. *(People v. Andan*, *G.R. No. 116437, Mar. 3, 1997)*

Q: Decide on the admissibility as evidence of confessions given to news reporters and/or media and videotaped confessions.

A: Confessions given in response to a question by news reporters, not policemen, are admissible. Where the suspect gave spontaneous answers to a televised interview by several press reporters, his answers are deemed to be voluntary and are admissible.

Videotaped confessions are admissible, where it is shown that the accused unburdened his guilt willingly, openly and publicly in the presence of the newsmen. Such confessions do not form part of confessions in custodial investigations as it was not given to police men but to media in attempt to solicit sympathy and forgiveness from the public.

However, due to inherent danger of these videotaped confessions, they must be accepted with extreme caution. They should be presumed involuntary, as there may be connivance between the police and media men. *(People v. Endino, G.R. No. 133026, Feb. 20, 2001)*

Q: What is the fruit of the poisonous tree doctrine?

A: This doctrine states that once the primary source (the tree) is shown to have been unlawfully obtained, any secondary or derivative evidence (the fruit) derived from it is also inadmissible. The rule is based on the principle that evidence illegally obtained by the State should not be used to gain other evidence, because the originally illegally obtained evidence taints all evidence subsequently obtained.

4. REPUBLIC ACT 7438 (AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF)

Q: What is the relevance of this act in relation to Rights of Suspects?

A: This is in implementation of Article Section 12 of the Constitution, enacted on 27 April 1992, strengthens the rights of persons arrested, detained or under custodial investigation stated as Miranda rights and other rights such as:

1. Any person arrested, detained or under custodial investigation shall at all times be assisted by counsel.
2. The custodial investigation report shall be reduced to writing by the investigating office and it shall be read and adequately explained to him by his counsel or by the assisting counsel
3. Any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in writing and signed by such person in the presence of his counsel

Note: As used this Act, "custodial investigation" shall include the practice of issuing an "invitation" to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the "inviting" officer for any violation of law. *(RA 7438)*

5. ANTI-TORTURE ACT OF 2009 (RA 9745)

Q: What is the relevance of Anti Torture Act of 2009 in relation to Rights of Suspects?

A: It is meant to implement the guarantees in Section 12 of the Bill of Rights against torture and other related acts. It *adds* the right, among others, to be informed of one's right to demand physical examination by an independent and competent doctor of his/her own choice, which may be waived, provided it is in writing and in the presence of counsel.

Note: It was enacted on 10 November 2009 specifically to curb and punish torture (physical and mental) and other cruel, inhuman and degrading treatment or punishment inflicted by a person in authority or agent of a person in authority upon another person in his/her custody. *(Anti-Torture Act Of 2009)*

Q. What are the salient features of this act?

A.

1. An impartial investigation by the Commission on Human Rights (CHR)

and other concerned government agencies.
2. Investigation of the torture completed within a maximum period 60 working days
3. Sufficient government protection
4. Be given sufficient protection in the manner by which he/she testifies and presents evidence in any forum to avoid further trauma
5. Claim for compensation under Republic Act No. 7309
6. Be informed of his/her right to demand physical examination by an independent and competent doctor of his/her own choice.
7. To immediate access to proper and adequate medical treatment

Note: If he/she cannot afford the services of his/her own doctor, he/she will be provided by the State with a competent and independent doctor to conduct the physical examination. If the person arrested is female, she will be attended to preferably by a female doctor. *(Anti-Torture Act of 2009 , RA 9745)*

q. RIGHTS OF THE ACCUSED

Q: What are the rights of the accused?

A: Right to:
1. Due process
2. Be presumed innocent
3. Be heard by himself and counsel
4. Be informed of the nature and cause of the accusation against him
5. A speedy, impartial and public trial
6. Meet the witnesses face to face
7. Have compulsory process to secure the attendance of witnesses and production of evidence on his behalf
8. Against double jeopardy
9. Bail

1. Criminal Due Process

Q: What are the requisites of criminal due process?

A:
1. Accused is heard by a court of competent jurisdiction
2. Accused is proceeded against under the orderly processes of law
3. Accused is given notice and opportunity to be heard
4. Judgment rendered was within the authority of a constitutional law

Q: Is right to appeal a part of due process?

A: The right to appeal is not a natural right or part of due process. It is a mere statutory right, but once given, denial constitutes violation of due process

2. Right to Bail

Q: What is meant by bail?

A: It is the security given for the release of a person in custody of law, furnished by him or a bondsman, conditioned upon his appearance before any court as required.

Q: When may the right to bail be invoked?

A: The right to bail may be invoked once detention commences even if no formal charges have yet to be filed. *(Teehankee v. Rovira, G.R.No. L-101, Dec. 20, 1945)*

Q: When is bail a matter of right?

A: All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or be released on recognizance as prescribed by law or the Rules of Court.

Q: When is bail a matter of discretion?

A: Upon conviction by the RTC of an offense not punishable by death, reclusion perpetua, or life imprisonment, bail becomes discretionary. (*Sec. 5, Rule 114, Revised Rules of Criminal Procedure*)

Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.

Q: When shall bail be denied?

A: If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

a. That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;
b. That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without valid justification;
c. That he committed the offense while under probation, parole, or conditional pardon;
d. That the circumstances of his case indicate the probability of flight if released on bail; or
e. That there is undue risk that he may commit another crime during the pendency of the appeal.

The appellate court may, *motu proprio* or on motion of any party, review the resolution of the RTC after notice to the adverse party in either case. *(Sec. 5, Rule 114, Rules of Court)*

Note: The conduct of petitioner in applying for bail indicated that he had waived his objection to whatever defect, if any, in the preliminary examination conducted by respondent judge *(Luna v. Plaza, G.R. No.L-27511, Nov. 29, 1968)* The right to bail is available from the very moment of arrest (which may be before or after the filing of formal charges in court) up to the time of conviction by final judgment (which means after appeal). No charge need be filed formally before one can file for bail, so long as one is under arrest. *(Heras Teehankee v. Rovira, G.R. No. L-101, Dec. 20 1945)*

Q: Who are not entitled to bail?

A:

1. Persons charged with offenses punishable by reclusion perpetua or death, when evidence of guilt is strong
2. Persons convicted by the trial court. Bail is only discretionary pending appeal
3. Persons who are members of the AFP facing a court martial

Q: What are the factors to be considered in setting the amount of bail?

A:

1. Financial ability of accused
2. Nature and circumstances of offense
3. Penalty for offense
4. Character and reputation of accused
5. Age and health of accused
6. Weight of evidence against him
7. Probability of appearance at trial
8. Forfeiture of other bail
9. Whether he was a fugitive from justice when arrested
10. Pendency of other cases where he is on bail *(Sunga v. Judge Salud, A.M. No. 2205-MJ, Nov. 19, 1981*)

Q: Should there be a hearing?

A: Whether bail is a matter of right or of discretion, reasonable notice of hearing is required to be given the prosecutor, or at least he must be asked for his recommendation, because in fixing the amount of bail, the judge is required to take into account a number of factors. *(Cortes v. Judge Catral, A.M. No. RTJ-97-1387, Sept. 10, 1997*)

When the accused is charged with an offense punishable by *reclusion perpetua* or higher, a hearing on the motion for bail must be conducted by the judge to determine whether or not the evidence of guilt is strong. *(Baylon v. Judge Sison, A.M. No. 92-7-360-0, Apr. 6, 1995*)

Q: Is the right to bail available to an alien during the pendency of deportation proceedings?

A: Yes, provided that potential extraditee must prove by clear and convincing proof that he is not a flight risk and will abide with al orders and processes of the extradition court. (*Government of Hong Kong Special Administrative Region v. Olalia Jr., G.R 153675, Apr. 19, 2007)*

3. Presumption of Innocence

Q: How is the presumption applied?

A: Every circumstance favoring the innocence of the accused must be taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment *(People v. Austria, G.R. No. 55109, Apr. 8, 1991)*

Q: Who may invoke the presumption of innocence?

A: It can be invoked only by an individual accused of a criminal offense; a corporate entity has no personality to invoke the same.

Q: What is the Equipoise Rule?

A: Under the equipoise rule, when the evidence of both sides are equally balanced, the

constitutional presumption of innocence should tilt the scales in favor of the accused *(Corpuz v. People, G.R. No. 74259, Feb. 14, 1991)*

Q: OZ lost five heads of cattle which he reported to the police as stolen from his barn. He requested several neighbors, including RR, for help in looking for the missing animals. After an extensive search, the police found two heads in RR's farm. RR could not explain to the police how they got hidden in a remote area of his farm. Insisting on his innocence, RR consulted a lawyer who told him he has a right to be presumed innocent under the Bill of Rights. But there is another presumption of theft arising from his unexplained possession of stolen cattle under the penal law.

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

A: The two presumptions can be reconciled. The presumption of innocence stands until the contrary is proved. It may be overcome by a contrary presumption founded upon human experience. The presumption that RR is the one who stole the cattle of OZ is logical, since he was found in possession of the stolen cattle. RR can prove his innocence by presenting evidence to rebut the presumption. The burden of evidence is shifted to RR, because how he came into possession of the cattle is peculiarly within his knowledge. *(Dizon-Pamintuan v. People, G.R. No. 111426, July 11, 1994)*

Q: The RTC QC rendered a decision convicting Judge Angeles of violation of R.A. 7610. The criminal cases are now on appeal before the Court of Appeals. Meanwhile, Senior Sate Prosecutor Velasco (SSP Velasco) suggested the immediate suspension of Angeles. SSP Velasco posited that since Judge Angeles stands convicted of two counts of child abuse, her moral qualification as a judge is in question. Judge Angeles manifested that she still enjoys the presumption of innocence since the criminal cases are on appeal. Does she still enjoy the presumption of innocence if the judgment convicting her is on appeal?

A: Judge Angeles still enjoys constitutional presumption of innocence. Since her conviction of the crime of child abuse is currently on appeal before the CA, the same has not yet attained finality. As such, she still enjoys the constitutional presumption of innocence. It must be remembered that the existence of a presumption indicating the guilt of the accused does not in itself destroy the constitutional presumption of innocence unless the inculpating presumption, together with all the evidence, or the lack of any evidence or explanation, proves the accused's guilt beyond a reasonable doubt. Until the accused's guilt is shown in this manner, the presumption of innocence continues. (*Re: Conviction of Judge Adoracion G. Angeles, A.M. No. 06-9-545-RTC, Jan. 31, 2008)*

4. Right to be Heard by Himself and Counsel

Q: Does this right pertain to mere presence of a lawyer in the courtroom?

A: No. The accused must be amply accorded legal assistance extended by a counsel who commits himself to the cause of the defense and acts accordingly; an efficient and truly decisive legal assistance, and not simply a perfunctory representation. *(People v. Bermas, G.R. No. 120420, Apr. 21, 1999)*

Q: Several individuals were tried and convicted of Piracy in Philippine Waters as defined in PD 532. However, it was discovered that the lawyer, Mr. Posadas, who represented them was not a member of the bar although evidence shows that he was knowledgeable in the rules of legal procedure.

The accused now allege that their conviction should be set aside since they were deprived of due process. Are they correct?

A: No. *Sec. 1* of Rule 115 of the Revised Rules of Criminal Procedure states that "upon motion, the accused may be allowed to defend himself in person when it sufficiently appears to the court that he can properly protect his rights without the assistance of counsel." By analogy, but without prejudice to the sanctions imposed by law for the illegal practice of law, it is amply shown that the rights of accused were sufficiently and properly protected by the appearance of Mr. Posadas. An examination of the record will show that he knew the technical rules of procedure. Hence, there was a valid waiver of the right to sufficient representation during the trial, considering that it was unequivocally, knowingly, and intelligently made and with the full assistance of a *bona fide* lawyer, Atty. Abdul Basar. Accordingly, denial of due process cannot be successfully invoked where a valid waiver of rights has been made. *(People v. Tulin, G.R. 111709, Aug. 30, 2001)*

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Note: In *Flores v. Ruiz, G.R. No. L-35707, May 31, 1979,* the Supreme Court held that the right to counsel during the trial cannot be waived, because "even the most intelligent or educated man may have no skill in the science of law, particularly in the rules of procedure, and without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence".

Q: X was criminally charged in court. He hired as counsel Y, who has many high-profile clients. Due to his many clients, Y cannot attend the hearing of the case of X. He requested many times to have the hearings postponed. The case dragged on slowly. The judge in his desire to finish the case as early as practicable under the continuous trial system appointed a counsel *de officio* and withdrew the counsel *de parte*. Is the action of the judge valid?

A: The appointment of counsel *de officio* under such circumstances is not proscribed under the Constitution. The preferential discretion is not absolute as would enable an accused to choose a particular counsel to the exclusion of others equally capable. The choice of counsel by the accused in a criminal prosecution is not a plenary one. If the counsel deliberately makes himself scarce the court is not precluded from appointing a counsel *de officio* whom it considers competent and independent to enable the trial to proceed until the counsel of choice enters his appearance. Otherwise the pace of criminal prosecution will entirely be dictated by the accused to the detriment of the eventual resolution of the case. *(People v. Larranaga, G.R. No. 138874-75, Feb. 3, 2004)*

5. Right to be Informed of the Nature and Cause of Accusation

Q: What is the rationale for this right?

A:

1. To furnish the accused with such a description of the charge against him as will enable him to make his defense
2. To avail himself of his conviction or acquittal for protection against further prosecution for the same cause
3. To inform the court of the facts alleged so that it may decide whether they are sufficient in law to support a conviction, if one should be had *(US v. Karelsen G.R. No. 1376, Jan. 21, 1904)*

Q: What would determine the nature and cause of accusation?

A: Description, not designation of the offense, is controlling. The real nature of the crime charged is determined from the recital of facts in the information. It is neither determined based on the caption or preamble thereof nor from the specification of the provision of the law allegedly violated.

Q: What are the requisites for properly informing the accused of the nature and cause of accusation?

A:

1. Information must state the name of the accused
2. Designation given to the offense by statute
3. Statement of the acts or omission so complained of as constituting the offense
4. Name of the offended party
5. Approximate time and date of commission of the offense
6. Place where offense was committed
7. Every element of the offense must be alleged in the complaint or information

Q: What happens if the information fails to allege the material elements of the offense?

A: The accused cannot be convicted thereof even if the prosecution is able to present evidence during the trial with respect to such elements.

Q: How is the void for vagueness doctrine related to this right?

A: The accused is also denied the right to be informed of the charge against him, and to due process as well, where the statute itself is couched in such indefinite language that it is not possible for men of ordinary intelligence to determine therefrom what acts or omissions are punished. In such a case, the law is deemed void.

Q: May a person be convicted of the crime proved if the same is different from the crime charged?

A: Under the variance doctrine, in spite of the difference between the crime that was charged and that which was eventually proved, the accused may still be convicted of whatever offense that was proved even if not specifically set out in the information provided it is necessarily included in the crime charged. *(Teves v. Sandiganbayan, G.R. No. 154182, Dec. 17, 2004)*

Q: May the right to be informed of the nature and cause of accusation be waived?

A: No. However, the defense may waive the right to enter a plea and let the court enter a plea of "not guilty".

6. Right to Speedy, Impartial and Public

Q: What is meant by speedy trial?

A: The term "speedy" means free from vexatious, capricious and oppressive delays. The factors to be considered are:

1. Time expired from the filing of information
2. Length of delay
3. Reasons for the delay
4. Assertion or non-assertion of the right by the accused
5. Prejudice caused to the defendant

Q: What is meant by impartial trial?

A: The accused is entitled to cold neutrality of an impartial judge, one who is free from interest or bias.

Q: Why must the trial be public?

A: It is in order to prevent possible abuses which may be committed against the accused. The attendance at the trial is open to all, irrespective of their relationship to the accused. However, if the evidence to be adduced is "offensive to decency or public morals," the public may be excluded.

Note: The denial of the right to speedy trial is a ground for acquittal.

7. Right to Meet the Witnesses Face to Face

Q: What is the purpose of the right of confrontation?

A: Primarily, to afford the accused an opportunity to test the testimony of a witness by cross-examination, and secondarily, to allow the judge to observe the deportment of the witness

Q: What is the effect of failure to cross-examine?

A: If the failure of the accused to cross-examine a witness is due to his own fault or was not due to the fault of the prosecution, the testimony of the witness should not be excluded.

Q: Are affidavits of witnesses who are not presented during trial admissible?

A: No. They are inadmissible for being hearsay. The accused is denied the opportunity to cross-examine the witnesses.

Note: Depositions are admissible under circumstances provided by the Rules of Court.

8. Right to Compulsory Process to Secure Attendance of Witness and Production of Evidence

Q: What are the means available to the parties to compel the attendance of witnesses and the production of documents and things needed in the prosecution or defense of a case?

A:

1. Subpoena *ad testificandum* and subpoena *duces tecum*
2. Depositions and other modes of discovery
3. Perpetuation of testimonies

Q: What is the difference between subpoena *ad testificandum* and subpoena *duces tecum*?

A:

Ad Testificandum	*Duces Tecum*
A process directed to a person requiring him to attend and to testify at the hearing or trial of an action, or at any investigation conducted by competent authority, or for the taking of his deposition.	The person is also required to bring with him any books, documents, or other things under his control.

Q: What is the requirement for the issuance of subpoena *duces tecum*?

A: The subpoena shall contain a reasonable description of the books, documents or things demanded which must appear to the court as *prima facie* relevant.

Q: What are the requirements for the exercise of the right to secure attendance of witness?

A:

1. The witness is really material
2. The attendance of the witness was previously obtained

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

3. The witness will be available at the time desired
4. No similar evidence could be obtained

Q: When is the right to cross-examine demandable?

A: It is demandable only during trials. Thus, it cannot be availed of during preliminary investigations.

Q: What are the principal exceptions to the right of confrontation?

A:

1. Admissibility of dying declarations and all exceptions to the hearsay rule
2. Trial in absentia under Sec.14(2) of Art. III of the Constitution
3. With respect to child testimony

9. Trial in *Absentia*

Q: When may trial in *absentia* proceed?

A: Trial in absentia may proceed if the following requisites are present:

1. Accused has been validly arraigned
2. Accused has been duly notified of the dates of hearing
3. Failure to appear is unjustifiable

Q: Is the presence of the accused mandatory?

A: Yes, in the following instances:

1. During arraignment and plea
2. During trial, for identification, unless the accused has already stipulated on his identity during the pre-trial and that he is the one who will be identified by the witnesses as the accused in the criminal case
3. During promulgation of sentence, unless for a light offense

Note: While the accused is entitled to be present during promulgation of judgment, the absence of his counsel during such promulgation does not affect its validity.

Q: Can there be promulgation of judgment in absentia?

A: Promulgation of judgment in absentia is valid provided that the essential elements are present:

1. Judgment be recorded in the criminal docket
2. Copy be served upon accused or counsel

Note: Recording the decision in the criminal docket of the court satisfies the requirement of notifying the accused of the decision wherever he may be. *(Estrada v. People, G.R. No. 162371, Aug. 25, 2005*)

r. PRIVILEGE OF WRIT OF *HABEAS CORPUS*

Q: What is the Writ of *Habeas Corpus*?

A: Writ of *Habeas Corpus* is a writ directed to the person detaining another, commanding him to produce the body of the detainee at a designated time and place, and to show the cause of his detention.

Q: What is the Privilege of the Writ of *Habeas Corpus*?

A: It is the right to have an immediate determination of the legality of the deprivation of physical liberty.

Q: When may the privilege of the writ be suspended?

A: The privilege of the writ may be suspended by the President, provided that the following requisites are present:

1. Existence of actual invasion or rebellion
2. Public safety requires the suspension

Q: To what situations does the writ apply?

A: The Writ of *Habeas Corpus* extends 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 one entitled thereto.

Q: May the Writ of *Habeas Corpus* be used as a means of obtaining evidence on the whereabouts of a person?

A: In *Martinez v. Mendoza (499 SCRA 234 200*6), the Court held that the grant of relief in a habeas corpus proceeding is not predicated on the disappearance of a person, but on his illegal detention. It may not be used as a means of obtaining evidence on the whereabouts of a person, or as a means of finding out who has specifically abducted or caused the disappearance of a certain person. When forcible taking and disappearance – not arrest and detention – have been alleged, the proper remedy is not habeas

corpus proceedings, but criminal investigation and proceedings.

Q: X was arrested by the military on the basis of a mission order issued by the Department of Defense. A petition for habeas corpus was filed. The writ was issued. Later an information for rebellion was filed against X. The military moved that the petition should be dismissed for having become moot and academic. Decide.

A: The function of the special proceeding of habeas corpus is to inquire into the legality of one's detention. Now that the detainee's incarceration is by virtue of a judicial order in relation to criminal cases subsequently filed against them, the remedy of habeas corpus no longer lies. The writ has served its purpose. *(Ilagan v. Enrile, G.R. No. 70748, Oct. 21, 1985)*

1. Writ of *Amparo*

Q: What is the Writ of *Amparo*?

A: It is a remedy available to any person whose right to life, liberty, and security has been violated or is threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. The writ covers extralegal killings and enforced disappearances or threats thereof. *(Rule on Writ of Amparo)*

Q: What are extralegal killings?

A: Killings committed without due process of law, i.e., without legal safeguards or judicial proceedings.

Q: What constitutes enforced disappearances?

A: An arrest, detention or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government. It is further characterized by the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such persons outside the protection of law.

Q: What are the main advantages of the Writ of *Amparo* over the Writ of *Habeas Corpus*?

A:

Writ of Amparo	*Writ of Habeas Corpus*
Interim reliefs, such as temporary protection order, witness protection order, inspection order and production order, are available	No interim reliefs
Covers acts which violate or threaten to violate the right to life, liberty and security	Limited to cases involving actual violation of right to liberty
General denial is not allowed; detailed return is required of the respondent	Mere denial is a ground for dismissal of the petition
No presumption of regularity; must prove observance of extraordinary diligence	Presumption of regular performance of official duty
Enforceable anywhere in the Philippines	Only enforceable anywhere in the Phil. if filed with the CA or SC justice
Exempted from payment of docket fees	Not exempted
Release of detained person does not render the petition moot and academic	Release of detained person renders it moot and academic

Q: Engr. Tagitis disappeared one day and his wife filed a petition for the Writ of *Amparo* with the CA directed against the PNP, claiming that the "unexplained uncooperative behaviour" of the respondents request for help and their failure and refusal to extend assistance in locating the whereabouts of Tagitis were indicative of their actual physical possession and custody of the missing engineer." The PNP was held responsible for the "enforced disappearance" of Engr. Tagitis. Is this valid?

A: Yes. The government in general, through the PNP and the PNP-CIDG, and in particular, the Chiefs of these organizations together with Col. Kasim, should be held fully accountable for the enforced disappearance of Tagitis. Given their mandates, the PNP and the PNP-CIDG officials and members were the ones who were remiss in their duties when the government completely failed to exercise extraordinary diligence that the *Amparo* rule requires. *(Razon v. Tagitis, G.R. No. 182498, Dec. 3, 2009)*

Q: Fr. Reyes was charged with rebellion and his name was included in the hold departure list. The case was later on dismissed but the Hold Departure Order still subsisted. Can the Writ of *Amparo* be invoked to protect his right to travel?

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

A: No. The restriction on his right to travel as a consequence of the pendency of the criminal case filed against him was not unlawful. Fr. Reyes also failed to establish that his right to travel was impaired in the manner and to the extent that it amounted to a serious violation of his right to life, liberty, and security, for which there exists no readily available legal remedy. (*Reyes v. CA, G.R. No. 182161, Dec. 3, 2009)*

Q: X and Y were abducted by the Citizens Armed Forces Geographical Unit (CAGFU). They were taken to various military camps, put in chains, and tortured. While detained, they were threatened that if they escape, they and their families would be killed. While in captivity, they met A, B, and C who were also prisoners. Eventually, X and Y were able to escape.

Presently, X and Y are now in protective custody under private individuals. X and Y then filed a petition for the issuance of the Writ of *Amparo*, implicating several officers of the military as their abductors. They allege that their cause of action consists in the threat to their right to life and liberty, and a violation of their right to security. Considering the fact that they have already escaped, will the petition still prosper?

A: Yes. While X and Y were detained, they were threatened that if they escaped, their families, including them, would be killed. In time, they were able to escape. The condition of the threat to be killed has come to pass. It should be stressed that they are now free from captivity not because they were released by virtue of a lawful order or voluntarily freed by their abductors. It ought to be recalled that towards the end of their ordeal their captors even told them that they were still deciding whether they should be executed.

The possibility of X and Y being executed stared them in the eye while they were in detention. With their escape, this continuing threat to their life is apparent, more so now that they have surfaced and implicated specific officers in the military not only in their own abduction and torture, but also in those of other persons known to have disappeared such as A, B, and C, among others.

Understandably, since their escape, they have been under concealment and protection by private citizens because of the threat to their life, liberty and security. The threat vitiates their free will as they are forced to limit their movements or activities. Precisely because they are being shielded from the perpetrators of their abduction, they cannot be expected to show evidence of overt acts of threat such as face-to-face intimidation or written threats to their life, liberty and security. Nonetheless, the circumstances of their abduction, detention, torture and escape reasonably support a conclusion that there is an apparent threat that they will again be abducted, tortured, and this time, even executed. These constitute threats to their liberty, security, and life, actionable through a petition for a Writ of *Amparo*. *(Sec. of National Defense and AFP Chief of Staff v. Manalo, G.R. No. 180906, Oct. 7, 2008)*

s. RIGHT AGAINST SELF-INCRIMINATION

Q: When is the right available?

A: The right is available not only in criminal prosecutions but also in all other government proceedings, including civil actions and administrative or legislative investigations that possess a criminal or penal aspect—but not to private investigations done by private individual *(BPI vs. CASA, 430 SCRA 261)*. It may be claimed not only by the accused but also by any witness to whom a question calling for an incriminating answer is addressed.

Q: When is a question incriminating?

A: A question tends to incriminate when the answer of the accused or the witness would establish a fact which would be a necessary link in a chain of evidence to prove the commission of a crime by the accused or the witness.

Q: When is the right against self-incrimination applied?

A: The privilege against self-incrimination can be claimed only when the specific question, incriminatory in character, is actually addressed to the witness. It cannot be claimed at any other time. It does not give a witness the right to disregard a subpoena, to decline to appear before the court at the time appointed.

The privilege against self-incrimination is not self-executing or automatically operational. It must be claimed. It follows that the right may be waived, expressly, or impliedly, as by a failure to claim it at the appropriate time.

Q: What is the difference between an accused and an ordinary witness with respect to the right against self-incrimination?

A:

Accused	*Ordinary Witness*
Can refuse to take the witness stand altogether by invoking the right against self-incrimination	Cannot refuse to take the witness stand; can only refuse to answer specific questions which would incriminate him in the commission of an offense

1. Scope and Coverage

Q: What is the scope of the Privilege against Self-incrimination?

A: This constitutional privilege has been defined as a protection against testimonial compulsion, but this has since been extended to any evidence "communicative in nature" acquired under circumstances of duress *(People v. Olvis, G.R. No. 71092, Sept. 30, 1987*)

What is prohibited is the use of physical or moral compulsion to extort communication from the witness or to otherwise elicit evidence which would not exist were it not for the actions compelled from the witness.

Note: It applies only to testimonial compulsion and production of documents, papers and chattels in court except when books of account are to be examined in the exercise of police power and the power of taxation. An accused may be compelled to be photographed or measured, his garments may be removed, and his body may be examined. However, an order requiring the accused to write so that his handwriting may be validated with the documentary evidence is covered by the constitutional proscription against self-incrimination.

Q: Do re-enactments violate a person's right against self-incrimination?

A: Yes. A person who is made to re-enact a crime may rightfully invoke his privilege against self-incrimination, because by his conduct of acting out how the crime was supposedly committed, he thereby practically confesses his guilt by action which is as eloquent, if not more so, than words.

Q: Fiscal A petitioned the lower court to order X to appear before the former to take dictation in X's own handwriting to determine whether or not it was X who wrote certain documents supposed to be falsified. The lower court granted the petition of the fiscal. X refused what the fiscal demanded and sought refuge in the constitutional provision of his right against self-incrimination. Is X's contention valid?

A: X's contention is tenable. Under Article HI, Section 17 of the 1987 Constitution, "no person shall be compelled to be a witness against himself." Since the provision prohibits compulsory testimonial incrimination, it does not matter whether the testimony is taken by oral or written. Writing is not purely a mechanical act because it requires the application of intelligence and attention. The purpose of the privilege is to avoid and prohibit thereby the repetition and recurrence of compelling a person, in a criminal or any other case, to furnish the missing evidence necessary for his conviction. *(Bermudez v. Castillo, July 26, 1937; Beltran v. Samson, G.R. No. 32025, September 23, 1929)*

Note: There is similarity between one who is compelled to produce a private document *(Boyd vs. US, 1886)*, and one who is compelled to furnish a specimen of his handwriting, for in both cases, the witness is required to furnish evidence against himself.

2. Immunity Statutes

Q: Distinguish Derivative-Use Immunity from Transactional Immunity.

A:

Derivative-Use Immunity	*Transactional Immunity*
Whatever is elicited from the witness, as well as any other evidence which the investigators were led to because of the testimony given, would not be admissible in evidence against the witness	Witness is immunized from prosecution in relation to the crime in which he was compelled to provide testimony

Q: Republic of the Philippines filed a case against Westinghouse Corporation before the US District Court due to the belief that Westinghouse contract for the construction of the Bataan Nuclear power plant, which was brokered by Herminio's Disini's company, had been attended by anomalies. Having worked as Herminio's executive in the latter's company for 15 years, the Republic asked Jesus Disini to give his testimony regarding the case.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

An immunity agreement was entered between Jesus and the Republic which Disini undertook to testify for his government and provide its lawyers with informations needed to prosecute the case. Said agreement gave Jesus an assurance that he shall not be compelled to give further testimonies in any proceeding other than the present matter. Jesus complied with his undertaking but 18 years after the Sandiganbayan issued a subpoena against him, commanding to testify and produce documents before said court in an action filed against Herminio.

Can Jesus be compelled to testify before the Sandiganbayan?

A: No. A contract is the law between the parties. It cannot be withdrawn except by their mutual consent. In the case at bar, the Republic, through the PCGG, offered Jesus not only criminal and civil immunity but also immunity against being compelled to testify in any proceeding other than the civil and arbitration cases identified in the agreement, just so he would agree to testify. When the Republic entered in such agreement, it needs to fulfill its obligations honorably as Jesus did. The government should be fair. *(Disini v. Sandiganbayan, G.R. No. 180564, June 22, 2010)*

Q: X and Y were called before the AGRAVA Board to elicit and determine the surrounding facts and circumstances of the assassination of Benigno Aquino Sr. Section 5 of the same law (P.D. 1886) creating the Board compels a person to take the witness stand, testify or produce evidence, under the pain of contempt if they failed or refused to do so. X and Y gave their testimonies without having been informed of their right to remain silent and that any statement given by them may be used against them. The Board then used the information from the testimonies of X and Y to support the prosecution's case against them in Sandiganbayan. The Board contends that the fact that X and Y testified before the Board constituted as a valid waiver of their constitutional rights to remain silent and not to be compelled to be a witness against themselves.
1. Was there a valid waiver of the rights?
2. Are the testimonies of X and Y admissible in court?
3. How can the unconstitutional effects be reconciled?

A:
1. None. In the case at bar, X and Y were under the directive of law and under the compulsion of fear for the contempt powers of the Board. They were left with no choice but to provide testimonies before the Board.

2. No. The manner in which testimonies were taken from X and Y falls short of the constitutional standards both under the due process clause and under the exclusionary rule.

3. As a rule, such infringement of constitutional right renders inoperative the testimonial compulsion, meaning, the witness cannot be compelled to answer UNLESS a co-extensive protection in the form of IMMUNITY is offered. The only was to cure the law of its unconstitutional effects is to construe it in the manner as if IMMUNITY had in fact been offered. The applicability of the immunity granted by P.D. 1886 cannot be made to depend on a claim of the privilege against self-incrimination which the same law practically strips away from the witness. *(Galman vs. Pamaran, 138 SCRA 294, 1985)*

Note: Sec. 5, P.D. 1886, grants merely immunity from use of any statement given before the Agrava Board, but not immunity from prosecution by reason or on the basis thereof. *(Galman v. Pamaran, G.R. Nos. 71208-09, Aug. 30, 1985)*

Q: What is the effect of denial of privilege against self-incrimination?

A: When the privilege against self-incrimination is *violated outside of court*, say, by the police, then the testimony, as already noted, is not admissible under the exclusionary rule. When the privilege is *violated by the court itself*, that is, by the judge, the court is ousted of its jurisdiction, all its proceedings are null and void, and it is as if no judgment has been rendered . *(Chavez v. CA, G.R. No. L-29169, Aug. 19, 1968*)

Q: R.A. 9165 requires mandatory drug testing for persons charged before the prosecutor's office with criminal offenses punishable with 6 years and 1 day imprisonment. Petitioner SJS questions the constitutionality of the law on the ground that it violates the rights to privacy and against self-incrimination of an accused. Decide.

A: The Court finds the situation entirely different in the case of persons charged before the public prosecutor's office with criminal offenses punishable with imprisonment. The operative concepts in the mandatory drug testing are "randomness" and "suspicionless". In the case of

persons charged with a crime before the prosecutor's office, a mandatory drug testing can never be random or suspicionless. The ideas of randomness and being suspicionless are antithetical to their being made defendants in a criminal complaint. They are not randomly picked; neither are they beyond suspicion. When persons suspected of committing a crime are charged, they are singled out and are impleaded against their will. The persons thus charged, by the bare fact of being haled before the prosecutor's office and peaceably submitting themselves to drug testing, if that be the case, do not necessarily consent to the procedure, let alone waive their right to privacy. To impose mandatory drug testing on the accused is a blatant attempt to harness a medical test as a tool for criminal prosecution, contrary to the stated objectives of R.A. 9165. Drug testing in this case would violate a person's right to privacy guaranteed under Sec. 2, Art. III of the Constitution. Worse still, the accused person's are veritably forced to incriminate themselves. *(SJS v. DDB, G.R. No. 157870, Nov. 3, 2008)*

t. RIGHT AGAINST INVOLUNTARY SERVITUDE

Q: What is involuntary servitude?

A: It is the condition where one is compelled by force, coercion, or imprisonment, and against his will, to labor for another, whether he is paid or not.

GR: No involuntary servitude shall exist.

XPNs:

1. Punishment for a crime for which the party has been duly convicted
2. Personal military or civil service in the interest of national defense
3. In naval enlistment, a person who enlists in a merchant ship may be compelled to remain in service until the end of a voyage
4. *Posse comitatus* or the conscription of able-bodied men for the apprehension of criminals
5. Return to work order issued by the DOLE Secretary or the President
6. Minors under *patria potestas* are obliged to obey their parents

u. PROHIBITED PUNISHMENT AND POLITICAL PRISONERS

Q: What are the punishments covered?

A: Cruel, degrading, and inhuman form, extent, and duration punishments

Q: When is a penalty cruel and inhuman?

A: A penalty is cruel and inhuman if it involves torture or lingering suffering.

Q: When is a penalty degrading?

A: A penalty is degrading if it exposes a person to public humiliation.

Q: What are the standards used to determine if the penalty is cruel and inhuman?

A:

1. The punishment must not be so severe as to be degrading to the dignity of human beings
2. It must not be applied arbitrarily
3. It must not be unacceptable to contemporary society
4. It must not be excessive, and it must serve a penal purpose more effectively than a less severe punishment would
5. Excessive fine, or one which is disproportionate to the offense

Note: Mere severity does not constitute cruel or inhuman punishment. To violate constitutional guarantee, penalty must be flagrant and plainly oppressive, disproportionate to the nature of the offense as to shock the senses of the community.

v. NON-IMPRISONMENT FOR DEBT

Q: What is the coverage of this section?

A:

1. *Debt* – any civil obligation arising from contract
2. *Poll tax* – a specific sum levied upon any person belonging to a certain class without regard to property or occupation (*e.g.* Community tax)

Note: A tax is not a debt since it is an obligation arising from law. Hence, its non-payment maybe validly punished with imprisonment. Only poll tax is covered by the constitutional provision.

If an accused fails to pay the fines imposed upon him, this may result in his subsidiary imprisonment because his liability is *ex delicto* and not *ex contractu.*

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Q: If the debtor contracted the debt through fraud, may he be imprisoned?

A: Generally, a debtor cannot be imprisoned for failure to pay his debt. However, if he contracted his debt through fraud, he can be validly punished in a criminal action as his responsibility arises not from the contract of loan but from commission of a crime. *(Lozano v. Martinez, G.R. No. L-63419, Dec.18, 1986)*

w. DOUBLE JEOPARDY

Q: What is Double Jeopardy?

A: When a person was charged with an offense and the case was terminated by acquittal or conviction or in any other manner without his consent, he cannot again be charged with the same or identical offense. (*Melo v. People, G.R. No. L-3580, Mar. 22, 1950*)

Q: What are the two types of double jeopardy?

A:

1. No person shall be twice put in jeopardy of punishment for the same offense
2. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act

Q: When will double jeopardy attach?

A:

1. The first jeopardy must have attached prior to the second
2. The first jeopardy must have been validly terminated
3. The second jeopardy must be for the commission of the same offense or the second offense must include or is necessarily included in the first information, or is an attempt to commit the same or a frustration thereof

Q: What are the requisites of double jeopardy?

A:

1. Court of competent jurisdiction
2. A Complaint or Information sufficient in form and substance to sustain a conviction
3. Arraignment and plea by the accused;
4. Conviction, acquittal, or dismissal of the case without the express consent of the accused. *(Sec 7, Rule 117, Rules of Court; People v. Obsania, G.R. No. L-24447, June 29, 1968)*

Q: When is the defense of double jeopardy not available?

A:

GR: Double jeopardy is not available when the case is dismissed other than on the merits or other than by acquittal or conviction upon motion of the accused personally, or through counsel, since such dismissal is regarded as with express consent of the accused, who is therefore deemed to have waived the right to plea double jeopardy.

XPNs:

1. Dismissal based on insufficiency of evidence
2. Dismissal because of denial of accused's right to speedy trial
3. Accused is discharged to be a State witness

Q: What is the Doctrine of Supervening Event?

A: It allows the prosecution of another offense if subsequent development changes the character of the first indictment under which he may have already been charged or convicted.

Q: Will the conviction of an accused bar another prosecution for an offense which necessarily includes the offense originally charged?

A: No. Conviction will not bar prosecution for another offense if the graver offense developed due to supervening facts arising from the same act or omission, facts constituting the graver offense arose or discovered only after the filing of the former complaint or information, and plea of guilty to a lesser offense was made without the consent of prosecutor or offended party. *(People v. Judge Villarama, G.R. No. 99287, June 23, 1992).*

Q: X was charged with a criminal case in the court. He was arraigned and he pleaded not guilty. Later the prosecution moved to dismiss the case. The counsel for the accused wrote "No Objection" at the bottom of the prosecutor's motion. The court granted the motion and dismissed the case against X. A year after, X was later charged for the same case. May X invoke the right against double jeopardy?

A: No. The act of the X's counsel in writing "No Objection" constituted an express consent to the termination within the meaning of Sec. 9 of Rule 117 Rules of Court. He could not thereafter revoke that conformity since the court had already acted upon it by dismissing the case. X was bound by his counsel's consent to the dismissal. *(People v. Pilpa, G.R. No. L-30250, Sept. 22, 1977)*

Q: Two policemen were charged before the Sandiganbayan for the death of two men. However, the prosecution was ordered to amend the information and the accused were arraigned anew and consequestly convicted. Were they placed in double jeopardy?

A: No. The first requirement for jeopardy to attach – that the Informations were valid – has not been complied with. (*Herrera v. Sandiganbayan, G.R. Nos. 119660-61, Feb. 13, 2009)*

Q: If the first case was dismissed due to insufficiency of evidence without giving the prosecution the opportunity to present its evidence, has jeopardy attached?

A: The first jeopardy has not yet attached. There is no question that four of the five elements of legal jeopardy are present. However, the last element – valid conviction, acquittal, dismissal or termination of the case – is wanting since the right to due process was violated. (*People v. Dumlao, G.R. No. 168918, Mar. 2, 2009)*

x. *EX POST FACTO* LAW AND BILL OF ATTAINDER

Q: What are the kinds of *ex post facto* law?

A: It can be a law that:

1. Makes an act, which was innocent when done, criminal and punishes such action
2. Aggravates a crime or makes it greater than when it was committed
3. Changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed
4. Alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense in order to convict the defendant
5. Assumes to regulate civil rights and remedies only. In effect imposes penalty or deprivation of a right for something which when done was lawful
6. Deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty

Q: What is a bill of attainder?

A: A "bill of attainder" is a legislative act that inflicts punishment without trial, its essence being the substitution of legislative fiat for a judicial determination of guilt. *(People vs. Ferrer)*

Note: It is only when a statute applies either to a named individuals or easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial that it becomes a bill of attainder.

Q: What are the two kinds of bill of attainder?

A:

1. Bill of attainder proper (legislative imposition of the death penalty)

2. Bill of pains and penalties (imposition of a lesser penalty).

Q: X was charged with illegal possession of firearms. When X committed the offense, the governing law was PD 1866, which provided for the penalty of *reclusion temporal* to *reclusion perpetua*. However, while the case was pending, PD 1866 was amended by RA 8294, which reduced the penalty to *prision correccional* but increasing the amount of fine. If X is convicted, which penalty shall be imposed?

A: R.A. 8294 is the applicable law. As a general rule, penal laws should not have retroactive application, lest they acquire the character of an *ex post facto* law. An exception to this rule, however, is when the law is advantageous to the accused. Although an additional fine of ₱15,000.00 is imposed by R.A. 8294, the same is still advantageous to the accused, considering that the imprisonment is lowered to *prision correccional* in its maximum period from *reclusion temporal* in its maximum period to *reclusion perpetua* under P.D. 1866.

Hence, R.A. 8294 should be applied, without prejudice to the application of the Indeterminate Sentence Law. *(Valeroso v. People, G.R. No. 164815, Feb. 22, 2008)*

TEAM BAROPS

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

H. CITIZENSHIP

Q: What is citizenship?

A: It is membership in a political community which is personal and more or less permanent in character.

Q: What are the modes of acquiring citizenship?

A:

1. By birth
    1. *Jus sanguinis* – acquisition of citizenship on the basis of blood relationship.
    2. *Jus soli* – acquisition of citizenship on the basis of the place of birth.

2. By naturalization – the legal act of adopting an alien and clothing him with the privilege of a native-born citizen.

3. By marriage

Note: *Jus sanguinis* and naturalization are the modes followed in the Philippines.

Q: Can there be judicial declaration that a person is a Filipino citizen? Why?

A: No. He has to apply for naturalization and adduce evidence of his qualifications. (*Yung Uan Chu v. Republic, G.R. No. L-34973, Apr. 14, 1988*)

Q: Who are citizens of the Philippines?

A:

1. Those who are Filipino citizens at the time of the adoption of the 1987 Constitution:
    a. Those who are citizens under the Treaty of Paris;
    b. Those declared citizens by judicial declaration applying the *jus soli* principle, before *Tio Tam v. Republic, 25 Apr. 1957, G.R. No. L-9602.*
    c. Those who are naturalized in accordance with law. (*Act* 2927)
    d. Those who are citizens under the 1935 Constitution.
    e. Those who are citizens under the 1973 Constitution.

2. Those whose fathers or mothers are Filipino citizens

3. Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority;

    Note: Time to elect: within 3 years from reaching the age of majority.

4. Those naturalized in accordance with law. *(Sec.1, Art. IV, 1987 Constitution)*

Q: What is the Caram Rule?

A: Under the 1935 Constitution, those born in the Philippines of foreign parent, who before the adoption of the Constitution had been elected to public office, are considered Filipino citizens. *(Chiongbian v. de Leon, G.R. No. L-2007, Jan. 31, 1949)*

The 1935, Constitution, during which regime FPJ had seen first light, confers citizenship to all persons whose fathers are Filipino citizens regardless of whether such children are legitimate or illegitimate. *(Tecson v. COMELEC, G.R. No. 161434, Mar. 3, 2004)*

Q: Who are natural-born citizens?

A:

1. Citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship

2. Those born before January 17, 1973 of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority

Q: What is the rule regarding marriage of a Filipino with an alien?

A:

GR: The Filipino retains Philippine citizenship.

XPN: If, by their act or omission they are deemed, under the law, to have renounced it. *(Sec.4, Art.IV, 1987 Constitution)*

Q: State the qualifications for naturalization.

A:

1. Not less than 18 years of age on the date of hearing the petition *(as amended by R.A. 6809);*

2. Resided in the Philippines for not less than 10 years; may be reduced to 5 years, if;

a. Honorably held office in the Philippines
b. Established new industry or introduced a useful invention
c. Married to a Filipino woman
d. Engaged as teacher in Philippine public or private school not established for exclusive instruction of a particular nationality or race, or in any branches of education or industry for a period of not less than 2 years; and
e. Born in the Philippines

3. Character
   1. Good moral character
   2. Believes in the Constitution
   3. Conducted himself in an irreproachable conduct during his stay in the Philippines

4. Owns real estate in the Philippines not less than P5,000 in value; or has some lucrative trade, profession or lawful occupation that can support himself and his family

5. Speaks and writes English or Filipino and any principal Philippine dialects *(as amended by Sec. 6 Art. XIV)*; and

6. Enrolled minor children in any public or private school recognized by the government where Philippine history, government and civics are taught as part of the curriculum, during the entire period of residence prior to hearing of petition.

Q: Who are disqualified for naturalization?

A:

1. Persons opposed to organized government or affiliated with any association or group of persons which uphold and teach doctrines opposing all organized governments
2. Persons defending or teaching necessity or propriety of violence, personal assault or assassination for the success or predominance of their ideas
3. Polygamists or believers of polygamy
4. Persons suffering from mental alienation or incurable contagious disease
5. Persons convicted of crime involving moral turpitude
6. Persons who, during residence in the Philippines, have not mingled socially with Filipinos, or did not evince sincere desire to learn and embrace customs, traditions and ideals of Filipinos
7. Citizens or subjects of nations with whom the Philippines is at war, during the period of such war
8. Citizens or subjects of a foreign country whose laws do not grant Filipinos the right to become naturalized citizens or subjects thereof (no reciprocity)

Q: Differentiate a Direct naturalization from a Derivative naturalization.

A: Direct naturalization is effected:

1. By individual proceedings, usually judicial, under general naturalization laws
2. By specific act of the legislature, often in favor of distinguished foreigners who have rendered some notable service to the local state
3. By collective change of nationality (naturalization en masse) as a result of cession or subjugation
4. In some cases, by adoption of orphan minors as nationals of the State where they are born

Derivative naturalization is conferred:

1. On the wife of the naturalized husband
2. On the minor children of the naturalized parent
3. On the alien woman upon marriage to a national
4. The unmarried child whether legitimate, illegitimate or adopted, below 18 years of age, of those who re-acquire Philippine citizenship upon effectivity of R.A. 9225 shall be deemed citizens of the Philippines.

Note: Derivative naturalization does not always follow as a matter of course, for it is usually made subject to stringent restrictions and conditions. Our own laws, for instance, provide that an alien woman married to a Filipino shall acquire his citizenship only if she herself might be lawfully naturalized.

Q: What are the effects of naturalization?

A:

ON THE WIFE
Vests citizenship on the wife who might herself be lawfully naturalized; She need not prove her qualifications but only that she is not disqualified.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

(*Moy Ya Lim Yao v. Comm. of Immigration, G.R. No. L-21289, Oct. 4, 1971.)*	
ON THE MINOR CHILDREN	
Born in the Philippines	
Automatically becomes a citizen	
Born Abroad	
Before the naturalization of the father	
If residing in the Phil. At the time of naturalization	Automatically becomes a citizen.
If not residing in the Phil. At the time of naturalization	**GR:** Considered citizen only during minority **XPN:** He begins to reside permanently in the Phil.
After parents' naturalization	
Considered Filipino, *provided* registered as such before any Phil. consulate within 1 year after attaining majority age and takes oath of allegiance.	

Q: What are the grounds for denaturalization?

A:

1. Naturalization certificate obtained fraudulently or illegally
2. If, within 5 years, he returns to his native country or to some foreign country and establishes residence therein
3. Naturalization obtained through invalid declaration of intention
4. Minor children failed to graduate through the fault of parents either by neglecting support or by transferring them to another school
5. Allowing himself to be used as a dummy.

Q: What are the effects of denaturalization?

A:

1. If ground affects intrinsic validity of proceedings, denaturalization shall divest wife and children of their derivative naturalization
2. If the ground is personal, the wife and children shall retain citizenship.

Q: What are the grounds for loss of Philippine citizenship?

A:

1. Naturalization in a foreign country; or

2. Express renunciation of citizenship (expatriation); or

   Note: The mere application or possession of an alien certificate of registration does not amount to renunciation *(Mercado v. Manzano, G.R. No. 135083, May 26, 1999).*

3. Subscribing to an oath of allegiance to the constitution or laws of a foreign country upon attaining 21 years of age; or

   Note: Citizens may not divest citizenship when the Philippines is at war.

4. Rendering service to or accepting commission in the armed forces of a foreign country; or

   Note: It shall not divest a Filipino of his citizenship if: (a) the Philippines has a defensive and/or offensive pact of alliance with the said foreign country; (b) the said foreign country maintains armed forces in the Philippine territory with its consent provided that at the time of rendering said service, or acceptance of said commission, and taking the oath of allegiance incident thereto, states that he does so only in connection with its service to said foreign country.

5. Cancellation of certificate of naturalization; or

6. Having been declared by final judgment a deserter of the armed forces of the Philippines in times of war.

7. In case of a woman, upon her marriage, to a foreigner if, by virtue of the laws in force in her husband's country, she acquires his nationality.

Q: How is citizenship renounced?

A: Expressly. *(Mercado v. Manzano, G.R. No. 135083, May 26, 1999)*

Q: Does *res judicata* set in citizenship cases?

A:

GR: No.

XPN:

1. Person's citizenship is resolved by a court or an administrative body as a material issue in the controversy, after a full-blown hearing

2. With the active participation of the Solicitor General or his representative; and

3. Finding of his citizenship is affirmed by the Supreme Court. *(Burca v. Republic G.R. No. L-24252, Jan. 30, 1967)*

Q: What are the ways to reacquire citizenship?

A: By:
1. Naturalization
2. Repatriation
3. Direct act of Congress

Q: Distinguish naturalization from repatriation.

Naturalization	Repatriation
Nature	
A mode of acquisition and reacquisition of Philippine citizenship	Mode of reacquisition of Philippine Citizenship
As to process	
Very cumbersome and tedious	Simpler process

Q: How is repatriation effected?

A: Repatriation shall be effected by taking the necessary oath of allegiance to the Republic of the Philippines and registration in the proper civil registry and in the Bureau of Immigration. The Bureau of Immigration shall thereupon cancel the pertinent alien certificate of registration and issue the certificate of identification as Filipino citizen to the repatriated citizen.

Q: What is the effect of repatriation?

A: Repatriation results in the recovery of the original nationality. This means that a naturalized Filipino who lost his citizenship will be restored to his prior status as a naturalized Filipino citizen. On the other hand, if he was originally a natural-born citizen before he lost his Philippine citizenship, he will be restored to his former status as a natural-born Filipino. *(Bengzon v. HRET and Cruz, G.R. No. 142840, May 7, 2001)*

Q: What is an example of reacquisition of citizenship by the direct act of congress?

A: R.A. 9225 also known as the "Citizenship Retention and Re-acquisition Act of 2003," approved on August 29, 2003 provides that, upon taking the oath of allegiance to the Republic:

1. Natural-born citizens of the Philippines who have lost their naturalization as citizens of a foreign country are deemed to have re-acquired Philippine citizenship; and

2. Natural-born citizens of the Philippines who, after the effectivity of said RA, become citizens of a foreign country shall retain their Philippine citizenship.

Q: Distinguish dual citizenship from dual allegiance.

A:

Dual Citizenship	Dual Allegiance
Arises when, as a result of concurrent application of the different laws of two or more States, a person is simultaneously considered a citizen of said states.	Refers to the situation where a person simultaneously owes, by some positive act, loyalty to two or more States.
Involuntary	Result of an individual's volition and is prohibited by the Constitution.

Q: What is the effect of re-acquisition of citizenship on civil and political rights?

A: Those who retain or re-acquire Philippine citizenship shall enjoy full civil and political rights subject to the following conditions:

1. *Right to vote:* must meet the requirements of Section 1, Article V of the Constitution, and of Republic Act No. 9189 (The Overseas Absentee Voting Act of 2003) and other existing laws;

2. *Elective Public Office:*
   i. Possess qualification for holding such public office as required by the Constitution and existing laws

   ii. Make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath, at the time of the filing of the certificate of candidacy.

   iii. *Appointive Public Office* - subscribe and swear to an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

office: *Provided*, That they renounce their oath of allegiance to the country where they took that oath;

Note: That right to vote or be elected or appointed to any public office in the Philippines cannot be exercised by, or extended to, those who:

a. are candidates for or are occupying any public office in the country of which they are naturalized citizens; and/or
b. are in active service as commissioned or non-commissioned officers in the armed forces of the country which they are naturalized citizens.*(R.A. 9225)*

iv. *Practice of profession*: apply with the proper authority for a license or permit to engage in such practice *(R.A. 9225).*

Q: Are persons possessing dual citizenship by virtue of birth barred from running for public office?

A: No, the fact that a person has dual citizenship does not disqualify him from running for public office. *(Cordora v. COMELEC, G.R. No. 176947, Feb. 19, 2009)*

Q: A, a naturalized US citizen, sought to reacquire his Philippine citizenship. He took his oath of allegiance to the Republic of the Philippines before the Vice Consul. He then ran and won as Vice Mayor of a municipality. The COMELEC, however, disqualified him on the ground that he failed to renounce his US citizenship.

Is A disqualified from running as a candidate in the local elections for his failure to make a personal and sworn renunciation of his US citizenship?

A: Yes. Section 5(2) of R.A. 9225 (on the making of a personal and sworn renunciation of any and all foreign citizenship) requires the Filipinos availing themselves of the benefits under the said Act to accomplish an undertaking other than that which they have presumably complied with under Section 3 thereof (oath of allegiance to the Republic of the Philippines). There is little doubt, therefore, that the intent of the legislators was not only for Filipinos reacquiring or retaining their Philippine citizenship under R.A. 9225 to take their oath of allegiance to the Republic of the Philippines, but also to explicitly renounce their foreign citizenship if they wish to run for elective posts in the Philippines. To qualify as a candidate in Philippine elections, Filipinos must only have one citizenship, namely, Philippine citizenship.

The oath of allegiance contained in the Certificate of Candidacy, does not constitute the personal and sworn renunciation sought under Section 5(2) of R.A. No. 9225. It bears to emphasize that the said *oath of allegiance* is a general requirement for all those who wish to run as candidates in Philippine elections; while the *renunciation of foreign citizenship* is an additional requisite only for those who have retained or reacquired Philippine citizenship under R.A. No. 9225 and who seek elective public posts, considering their special circumstance of having more than one citizenship. *(Jacot v. Dal, G.R. No. 179848, Nov.27, 2008)*

Q: "A" is a naturalized citizen of another country who reacquires Filipino citizenship. On the other hand, "B" possesses dual citizenship by birth. If they desire to run for elective public office, what requirement must they comply as regards their citizenship?

A: A must comply with the requirements set in R.A 9225. Sec 5(3) of R.A. 9225 states that naturalized citizens who reacquire Filipino citizenship and desire to run for public office shall "…make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath" aside from the oath of allegiance prescribed in Section 3 of R.A. 9225.

B need not comply with the twin requirements of swearing an oath of allegiance and executing a renunciation of foreign citizenship because he is a natural-born Filipino who did not subsequently become a naturalized citizen of another country. It is sufficed, if upon the filing of his certificate of candidacy, he elects Philippine citizenship to terminate his status as person with dual citizenship considering that his condition in the unavoidable consequence of conflicting laws of different States. *(Cordora v. COMELEC, G.R. No. 176947, Feb. 19, 2009)*

I. LAW ON PUBLIC OFFICERS

a. GENERAL PRINCIPLES

Q: Define public office.

A: It is the right, authority, and duty created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public *(Fernandez v. Sto. Tomas, G.R. No. 116418, Mar. 7, 1995).*

Q: How are public offices created?

A: By:

1. The Constitution
2. Valid statutory enactments
3. Authority of law *(Secretary of Department of Transportation and Communications v. Mabalot, G.R. No. 138200, Feb. 27, 2002)*

Q: What are the elements of a public office?

A: PILAC

1. **C**reated by Constitution or by law or by somebody or agency to which the power to create the office has been delegated;
2. Invested with **A**uthority to exercise some portion of the sovereign power of the State
3. The powers conferred and the duties to be discharged must be defined directly or impliedly by the **L**egislature or through legislative authority;
4. Duties are performed **I**ndependently without control unless those of a subordinate.
5. Continuing and **P**ermanent

(*Fernandez v. Sto. Tomas, G.R. No. 116418, Mar. 7, 1995; Tejada v. Domingo, G.R. No. 91860, Jan. 13, 1992)*

Q: President Benigno Aquino III issue Executive Order No. 1 creating the Philippine Truth Commission (PTC). The legality of the creation of the PTC was assailed before the Supreme Court. The petitioners contend that the PTC is a public office and thus the president is without authority to create it. It was further contended that the creation of a public office lies within the province of the legislature. The Office of the Solicitor General (OSG) countered that the creation of a fact-finding body like the PTC is covered by the President's power of reorganization under the Administrative Code and the President's power of control. The OSG likewise contends that Congress has delegated to the President the power to create public offices by virtue of P.D. 1416, as amended by P.D. 1772.

Does the creation of the PTC fall within the ambit of the power to reorganize as expressed in Section 31 of the Revised Administrative Code?

A: No. The provision refers to reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions. These point to situations where a body or an office is already existent but a modification or alteration thereof has to be effected. The creation of an office is nowhere mentioned, much less envisioned in said provision. To say that the PTC is borne out of a restructuring of the Office of the President under Section 31 is a misplaced supposition, even in the plainest meaning attributable to the term 'restructure'-an 'alteration of an existing structure.' Evidently, the PTC was not part of the structure of the Office of the President prior to the enactment of Executive Order No. 1. *(Biraogo v. Philippine Truth Commission of 2010, G.R. No. 192935, December 7, 2010)*

Q: Is the creation of the PTC justified by the President's power of control.

A: No, control is essentially the power 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 with that of the latter. Clearly, the power of control is entirely different from the power to create public offices. The former is inherent in the Executive, while the latter finds basis from either a valid delegation from Congress, or his inherent duty to faithfully execute the laws. *(Biraogo v. Philippine Truth Commission of 2010, G.R. No. 192935, December 7, 2010)*

Q: Can P.D. 1416 be used as justification for the President's power to create public offices, particularly the PTC?

A: No, said decree is already stale, anachronistic and inoperable. P.D. No. 1416 was a delegation to then President Marcos of the authority to reorganize the administrative structure of the national government including the power to create offices and transfer appropriations pursuant to one of the purposes of the decree

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

embodies in its last 'Whereas' clause: 'WHEREAS, the transition towards the parliamentary form of government will necessitate flexibility in the organization of the national government.'

Clearly, as it was only for the purpose of providing manageability and resiliency during the interim, P.D. No. 1416, as amended by P.D. No. 1772, became *functus oficio* upon the convening of the First Congress, as expressly provided in Section 6, Article XVIII of the 1987 Constitution. *(Biraogo v. Philippine Truth Commission of 2010, G.R. No. 192935, December 7, 2010)*

Q: What then could be the justification for the President's creation of the PTC?

A: The creation of the PTC finds justification under Section 17, Article VII of the Constitution, imposing upon the President the duty to ensure that the laws are faithfully executed. The President's power to conduct investigations to aid him in ensuring the faithful execution of laws – in this case, fundamental laws on public accountability and transparency – is inherent in the President's powers as the Chief Executive. That the authority of the President to conduct investigations and to create bodies to execute this power is not explicitly mentioned in the Constitution or in statutes does not mean that he is bereft of such authority.

The Executive is given much leeway in ensuring that our laws are faithfully executed. The powers of the President are not limited to those specific powers under the Constitution. One of the recognized powers of the President granted pursuant to this constitutionally-mandated duty is the power to create *ad hoc* committees. This flows from the obvious need to ascertain facts and determine if the laws have been faithfully executed. It should be stressed that the purpose of allowing *ad hoc* investigating bodies to exist is to allow an inquiry into matters which the President is entitled to know so that he can be properly advised and guided in the performance of his duties relative to the execution and enforcement of the laws of the land. *(Biraogo v. Philippine Truth Commission of 2010, G.R. No. 192935, December 7, 2010)*

Q: What are the characteristics of a public office?

A:

1. It is a public trust.
2. It is not a property and is outside the commerce of man. It cannot be the subject of a contract.
3. It is not a vested right.
4. It cannot be inherited.

(Sec. 1, Art. XI, Constitution; Santos v. Secretary of Labor, G.R. No.L-21624, Feb 27, 1968)

Q. What is the principle of "public office is a public trust?"

A: It means that the officer holds the public office in trust for the benefit of the people—to whom such officers are required to be accountable at all times, and to serve with utmost responsibility, loyalty, and efficiency, act with patriotism and justice, and lead modest lives. *(Sec. 1, Art. XI, Constitution)*

Q: What does the concept "public office is not a property" mean?

A: It means no officer can acquire vested right in the holding of a public office, nor can his right to hold the office be transmitted to his heirs upon his death. Nevertheless, the right to hold a public office is a protected right—secured by due process and the provision of Constitution on security of tenure. *(Santos v. Secretary of Labor, G.R. No.L-21624, Feb 27, 1968)*

Q: What are the classifications of government employment?

A:

1. Career Service
2. Non-career Service

Q: What are included in the career service?

A:

1. *Open career positions* for appointment to which prior qualifications in an appropriate examination is required
2. *Closed career positions* which are scientific or highly technical in nature
3. Positions in the *Career executive service*
4. Career officers other than those in the career executive service, who are appointed by the President
5. Commissioned officers and enlisted men of the Armed Forces
6. Personnel of GOCCs, whether performing governmental or proprietary functions, who do not fall under the non-career service; and
7. Permanent laborers, whether skilled, semi-skilled, or unskilled *(Sec. 5, P.D. No. 807).*

Q. What are the distinctions between career service and non-career service?

A:

CAREER SERVICE	NON-CAREER SERVICE
Entrance based on merits and fitness except positions which are 1. primarily confidential, 2. highly technical and 3. Policy determining.	Entrance other than based on the merit and fitness.
Determined by competitive examination	Determine not by competitive examination
Opportunity for advancement to higher career position	No such opportunity
There is security of tenure	Tenure is limited to a period specified by law, coterminous with the appointing authority or subject to his pleasure, or which is limited to the duration of a particular purpose *(Jocom v. Regalado, G.R. No. 77373, Aug. 22, 1991).*

b. MODES OF ACQUIRING TITLE TO PUBLIC OFFICE

Q: What are the modes of filling up public offices?

A: Public offices are filled up either by:

1. Appointment
2. Election
3. In some instances by contract or by some other modes authorized by law. *(Preclaro v. Sandiganbayan, G.R. No. 111091, Aug. 21, 1995)*

c. MODES AND KINDS OF APPOINTMENT

Q: What are the classifications of appointments?

A:

1. *Permanent* – Extended to a person who meets all the requirements for the position to which he is being appointed, including the appropriate eligibility required, for the position and thus enjoys security of tenure.

2. *Temporary* – Extended to a person who may not possess the requisite qualifications or eligibility and is revocable at will without necessity of just cause or investigation. However, if the appointment is for a specific period, the appointment may not be revoked until the expiration of the term.

Note: Temporary appointments shall not exceed 12 months. Acquisition of civil service eligibility will not automatically convert the temporary appointment into a permanent one *(Prov. Of Camarines Sur v. Court of Appeals, G.R. No. 104639, July 14, 1995).*

3. *Regular appointment* – one made by the President while the Congress is in session, takes effect only after confirmation by the CA, and once approved, continues until the end of the term of the appointee.

4. *Ad interim appointment* – one made by the President while Congress is not in session, takes effect immediately, but ceases to be valid if disapproved by the CA or upon the next adjournment of Congress.

Q: What is the nature of an "acting appointment" to a government office? Does such an appointment give the appointee the right to claim that the appointment will, in time, ripen into a permanent one? Explain.

A: According to *Sevilla v. CA, G.R. No. 88498, June 9, 1992*, an acting appointment is merely temporary. As held in *Marohombsar v. Alonto, G.R. No. 93711, Feb. 25, 1991*, a temporary appointment cannot become a permanent appointment, unless a new appointment which is permanent is made. This holds true unless the acting appointment was made because of a temporary vacancy. In such a case, the temporary appointee holds office until the assumption of office by the permanent appointee.

Q: What is a provisional appointment?

A: It is one which may be issued, upon the prior authorization of the Commissioner of the Civil Service Commission, to a person who has not qualified in an appropriate examination but who otherwise meets the requirements for appointment to a regular position in the

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

competitive service, whenever a vacancy occurs and the filling thereof is necessary in the interest of the service and there is no appropriate register of eligibles at the time of appointment. *(Jimenea v. Guanzon, G.R. No. L-24795, Jan. 29, 1968)*

Q: Can the President submit to the Commission on Appointments an appointment for confirmation when it does not need the consent of the same?

A: No. The Constitution made an exclusive enumeration of the appointments that are to be approved by the CA. Only in the first sentence of Sec. 16 Art. VII does consent of the CA is needed for the appointments made by the President.

Q: When is an appointment in the civil service permanent?

A: Under Section 25(a) of the Civil Service Decree, an appointment in the civil service is *permanent* when issued to a person who meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof.

Q: What is the nature of an *ad interim* appointment?

A: *Ad interim* appointment is a permanent appointment. It is permanent 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 CA does not alter its permanent character. *(Matibag v. Benipayo, G.R. No. 130657, Apr. 1, 2002).*

Ad interim appointments are permanent until:

1. Disapproved by the CA; or
2. Next adjournment of the Congress, either in regular or special session (inaction by the CA).

Note: Being a permanent appointment, an *ad interim* appointee pending action by the Commission on Appointments enjoys security of tenure. *(Marombhosar v. CA, G.R. No. 126481, Feb. 18, 2000)*

An ad interim appointee, whose term had expired by virtue of inaction by the Commission on Appointments, may be reappointed to the same position without violating the Constitutional provision prohibiting an officer whose term has expired from being re-appointed *(Matibag v. Benipayo, G.R. No. 130657, Apr. 1, 2002).*

Q: What is the rationale behind *ad interim* appointments?

A: *Ad interim* appointments are intended to prevent a hiatus in the discharge of official duties. Obviously, the public office would be immobilized to the prejudice of the people if the President had to wait for Congress and the Commission of Appointments to reconvene before he could fill a vacancy occurring during the recess. *(Guevara v Inocentes, G.R. No. L-25577, Mar. 15, 1966)*

Q: Differentiate regular from *ad interim* appointments?

A:

REGULAR	*AD INTERIM*
Made when Congress is in session	Made when Congress is in recess
Made only after the nomination is confirmed by CA	Made before such confirmation
Continues until the expiration of the term	Shall cease to be valid if disapproved by CA. *(Sec. 16, Art. VII, Constitution)*

Q: Distinguish between an "appointment in an acting capacity" extended by a Department Secretary from an *ad interim* appointment extended by the President.

A: An appointment in an *acting capacity* extended by a Department Secretary is not permanent but temporary. Hence, the Department Secretary may terminate the services of the appointee at any time.

On the other hand, an *ad interim appointment* extended by the President is an appointment which is subject to confirmation by the Commission on Appointments and was made during the recess of Congress. As held in *Summers v. Ozaeta (G.R. No. L-1534, Oct. 24, 1948)*, an ad interim appointment is permanent.

Q: Distinguish between a provisional and a temporary appointment.

A:

TEMPORARY APPOINTMENT	PROVISIONAL APPOINTMENT
Issued to a person to a position needed only for a limited period	Issued prior to authorization of CSC
Not to exceed 6 months/no definite tenure and is dependent on the pleasure of the appointing power	Regular position in the meantime that no suitable eligible does not qualify for the position
Meets all requirements for position except civil service eligibility	Has not qualified in an appropriate examination but otherwise meets requirements for appointments

Note: Provisional appointments in general have already been abolished by R.A. No. 6040. However, it still applies with regard to teachers under the Magna Carta for Public School Teachers.

Concepts on appointments are discussed under the Chapter on Executive Department.

Q: Can the CSC revoke an appointment by the appointing power and direct the appointment of an individual of its choice?

A: No. The CSC cannot dictate to the appointing power whom to appoint. Its function is limited to determining whether or not the appointee meets the minimum qualification requirements prescribed for the position. Otherwise, it would be encroaching upon the discretion of the appointing power. *(Medalla v. Sto. Tomas, G.R. 94255, May 5, 1992)*

Q: What is the concept of "protest to appointment"?

A: Any person who feels aggrieved by the appointment may file an administrative protest against such appointment. Protests are decided in the first instance by the Department Head, subject to appeal to the CSC.

The protest must be for a cause (i.e. appointee is not qualified; appointee was not the next-in-rank; unsatisfactory reasons given by the appointing authority in making the questioned appointment). The mere fact that the protestant has the more impressive resume is not a cause for opposing an appointment *(Aquino v. CSC, G.R. No. 92403, April 22, 1992).*

Q: What is the concept of "revocation" and "recall" of appointment?

A: Where an appointment requires the approval of the CSC, such appointment may be revoked or withdrawn by the appointing authority anytime before the approval by the CSC. After an appointment is completed, the CSC has the power to recall an appointment initially approved on any of the following grounds:

1. Non-compliance with procedures/criteria in merit promotion plan;
2. Failure to pass through the selection board;
3. Violation of existing collective relative agreement to promotion;
4. Violation of CSC laws, rules and regulations *(Debulgado v. CSC, G.R. No. 111471, Sept. 26, 1994)*

Q: Distinguish term from tenure.

A:

TERM	TENURE
Fixed and definite period of time which the law prescribes that an officer may hold an office.	Period during which the incumbent actually holds the office.

Q: What are the three (3) kinds of terms?

A:

1. Term fixed by law
2. Term dependent on good behavior until reaching retirement age
3. Indefinite term, which terminates at the pleasure of the appointing authority. *(Borres v. Court of Appeals, G.R. No. L-36845, Aug. 21, 198; Ruben E. Agpalo, Administrative Law, Law on Public Officers and Election Law, 2005 ed., p. 304)*

Q: What is the concept of "hold-over"?

A: In the absence of an express or implied constitutional or statutory provision to the contrary, an officer is entitled to hold office until his successor is elected or appointed and has qualified. *(Lecaroz v. Sandiganbayan, G.R. No. 130872, Mar. 25,1999)*

d. ELIGIBILITY AND QUALIFICATION REQUIREMENTS

Q: What are the requirements for public office?

A:

1. *Eligibility* – It is the state or quality of

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

being legally fit or qualified to be chosen.

2. *Qualification* – This refers to the act which a person, before entering upon the performance of his duties, is by law required to do such as the taking, and often, subscribing and filing of an official oath, and, in some cases, the giving of an official bond. It may refer to:

   a. Endowments, qualities or attributes which make an individual eligible for public office, *(e.g. citizenship);* or
   b. The act of entering into the performance of the functions of a public office, *(i.e. taking oath of office).*

Note: These qualifications must be possessed at the time of the appointment or election and continuously for as long as the official relationship continues *(Aguila v. Genato, G. R No. L-55151, Mar. 17, 1981).*

e. DISABILITIES AND INHIBITIONS OF PUBLIC OFFICERS

Q: State the prohibitions imposed under the 1987 Constitution against the holding of 2 or more positions.

A:

A. Members of Congress shall not:
   1. Appear as counsel before any court, electoral tribunal, or quasi-judicial and other administrative bodies;
   2. Shall not be interested in any contract with, or in any franchise, or special privilege granted by the Government, or any subdivision, agency or instrumentality thereof, including GOCCs, or its subsidiary;
   3. 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

B. The President, Vice President, Members of the Cabinet, and their deputies or assistants*, unless* otherwise allowed by the Constitution, shall not:
   1. Directly or indirectly practice any other profession;
   2. 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 GOCCs, or its subdivisions; shall avoid conflict of interest in the conduct of their office

C. Members of the Constitutional Commission shall not:
   1. Hold any other office or employment or engage in the practice of any profession or in the active management or control of any business which in anyway may be affected by the functions of his office;
   2. Be financially interested, directly or indirectly, in any contract with, or in any franchise, or special privilege granted by the Government, or any subdivision, agencies or instrumentalities including GOCCs, or their subsidiaries. These shall also apply to the Ombudsman and his deputies during his term.

Q: What is the rule against the appointment of members of the official family of the President?

A: The spouses and relatives by consanguinity or affinity within the 4th civil degree of the President shall not be appointed as members of the Constitutional Commissions, Office of the Ombudsman, or as Secretaries, Undersecretaries, chairmen or heads of bureaus or offices, including GOCCs and their subsidiaries during his tenure. *(Sec. 13, Art. VII, Constitution)*

Q: As an exception to the rule against holding 2 or more positions, which public officers are allowed by the Constitution to hold other positions in the Government?

A: The Vice-President being appointed as a member of the Cabinet under *Section 3, par. (2), Article VII*; or acting as President in those instances provided under *Section 7, pars. (2) and (3), Article VII*; and, the Secretary of Justice being ex-officio member of the Judicial and Bar Council by virtue of *Section 8 (1), Article VIII*. Thus, the Supreme Court held in Civil Liberties Union v Executive Secretary *(194 SCRA 317),* that while all other appointive officials in the Civil Service are allowed to hold other office or employment in the government during their tenure when such is allowed by law or by the primary functions of their positions, members of the Cabinet, their

deputies and assistants may do so only when expressly authorized by the Constitution itself.

Q: What are the other prohibitions imposed on public officers?

A:

1. Prohibition against solicitation of gifts *(Sec. 7(d), R.A. No. 6713)*
2. Prohibition against partisan political activities *(Sec. 2(4), Art. IX(B), Constitution)*
3. Prohibition against engaging in strike *(Social Security System Employees Assn. v. CA, G.R No. 85279, Jul 28,1989).*
4. Restriction against engaging in the practice of law *(Sec. 90, R.A. No. 7160)*
5. Prohibition against practice of other professions *(Sec. 90, R.A. No. 7160)*
6. Restriction against engaging in private business *(Abeto v. Garces, A.M. No. P-88-269, Dec. 29, 1995)*
7. Restriction against accepting certain employment *(Sec. 7(b), R.A. No. 6713)*

Q: What kind of gifts or grants may public officers accept from foreign governments?

A:

1. Gifts of nominal value received a s souvenir or mark of courtesy;
2. Scholarship or fellowship grant or medical treatment;
3. Travel grants or expenses for travel outside the Philippines *(Sec. 7(d), R.A. No. 6713)*

Q: What is meant by "partisan political activity"?

A: It is an act designed to promote the election or defeat of a particular candidate/s to a public office. It is also known as "electioneering" *(Sec. 79, Omnibus Election Code).*

Q: Can appointive officials engage in partisan political activities?

A: No. Officers or employees in the Civil Service including members of the Armed Forces cannot engage in such activity except to vote. They shall not use their official authority or influence to coerce the political activity of any person *(Sec. 55, Subtitle A, Title I, Book V, 1987 Administrative Code).*

Note: Officers and employees in the Civil Service can nonetheless express their views on current political issues and mention the names of the candidates they support.

Q: What kind of public officers may engage in partisan political activities?

A:

1. Those holding political offices, such as the President of the Philippines; Vice President of the Philippines; Executive Secretary/Department Secretaries and other Members of the Cabinet; All other elective officials at all levels; and those in the personal and confidential staff of the above officials. However, it shall be unlawful for them to solicit contributions from their subordinates or subject them to any of the acts involving subordinates prohibited in the Election Code.

2. National, provincial, city and municipal elective officials. *(Alejo Santos v. Yatco, G.R. No. L- 16133, Nov. 6, 1959)*

Q: Describe the extent of the right to self-organization of employees in the public service?

A: While the Constitution recognizes the right of public employees to organize, they are prohibited from staging strikes, demonstrations, mass leaves, walk-outs and other forms of mass action which may result to temporary cessation of work or disturbance of public service. Their right to self organization is limited only to form unions or to associate without including the right to strike. Labor unions in the government may bargain for better terms and conditions of employment by either petitioning the Congress for better terms and conditions, or negotiating with the appropriate government agencies for the improvement of those not fixed by law. *(SSS Employees Assn. v. CA, G.R No. 85279, Jul 28,1989)*

Q: Does the election or appointment of an attorney to a government office disqualify him from engaging in the private practice of law?

A: As a general rule, judges, other officials of the superior courts, of the office of the Solicitor General and of other Government prosecution offices; the President; Vice-President, and members of the cabinet and their deputies or assistants; members of constitutional commissions; and civil service officers or employees whose duties and responsibilities require that their entire time be at the disposal of

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

the government are strictly prohibited from engaging in the private practice of law. *(Ruben E. Agpalo, Legal Ethics, 6th 1997 ed., pp.42 et. seq.)*

Q: Is a lawyer member who is also a member of the Legislature absolutely prohibited from engaging the private practice of law?

A: No. He is only prohibited from "appearing" as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies. The word appearance includes not only arguing a case before any such body but also filing a pleading on behalf of a client such as filing a motion, plea or answer. Neither is his name allowed to appear in such pleadings by itself or as part of a firm name under the signature of another qualified lawyer. *(Ruben E. Agpalo, Administrative Law, Law on Public Officers and Election Law, 2005 ed., p. 410)*

Q: Under the Local Government Code, can the members of Sanggunian engage in the practice of law?

A: GR: Yes.

XPNs:

1. Cannot appear as counsel in any civil case where in a local government unit or any office, agency or instrumentality of the Govt. is the adverse party;
2. Cannot appear as counsel in any criminal case wherein an officer or employee of the national or local Govt. is accused of an offense committed in relation to his office;
3. Shall not collect any fee for their appearance in administrative proceeding involving the LGU of which he is an official; and
4. May not use property and personnel of the Govt., except when defending the interest of the Govt.

Q: Under the Local Government Code, what are the prohibitions against the practice of other professions?

A:

1. Local Chief Executives (governors, city and municipal mayors) are prohibited from practicing their profession
2. Sanggunian members may practice their profession, engage in any occupation, or teach in schools except during session hours
3. Doctors of medicine may practice their profession even during official hours of work in cases of emergency provided that they do not derive monetary compensation therefrom.

Q: Can public officers engage in a private business?

A: Yes, provided that a written permission is granted by the head of the department or agency, provided further that the time devoted outside of office hours is fixed by the chief of the agency to the end that it will not impair his duties and efficiency as a public officer. However if the private business does not appear to have any conflict of interest or any influence to his public duties, no permission is necessary but he is prohibited to take part in the management or become an officer or member of the board of directors. *(Abeto v. Garces, A.M. No. P-88-269, Dec. 29, 1995)*

Q: What are the prohibitions under RA 6713 or Code of Conduct and Ethical Standards for Public Officials and Employees?

A: Prohibition against financial and material interest- Directly or indirectly having any financial or material interest in any transaction requiring the approval of their office.

Prohibition against outside employment and other activities related thereto-

1. Owning, controlling, managing or accepting employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office.
2. Engaging in the private practice of their profession
3. Recommending any person to any position in any private enterprise which has a regular or pending official transaction with their office. These prohibitions shall continue to apply for a period of one year after resignation, retirement, or separation from public office, except in the case of subparagraph (b) (2) above, but the professional concerned cannot practice his profession in connection with any matter before the office he used to be with, in which case the one-year prohibition shall likewise apply.

f. POWERS AND DUTIES OF PUBLIC OFFICERS

Q: What powers may be exercised by public officers?

A:

1. Expressly conferred upon him by the Act appointing him;
2. Expressly annexed to the office by law;
3. Attached to the office by common law as incidents to it.

Q: What is the Doctrine of Necessary Implication?

A: All powers necessary for the effective exercise of the express powers are deemed impliedly granted. *(Pimentel v. COMELEC, G.R. No. L-53581, Dec. 19, 1980)*

Q: Is there any protection in the exercise of this power?

A: Yes. A public officer has some measures of immunity and he would not incur liabilities provided he does an act within the scope of his authority and in good faith. *(Sanders v. Veridiano II,G.R. No. L-46930, Jun 10, 1988)*

Q: What are the kinds of duties of public officers?

A:

MINISTERIAL	DISCRETIONARY
Discharge is imperative and it must be done by the public officer	Public officer may do whichever way he wants provided it is in accordance with law and not whimsical
Can be compelled by mandamus	Cannot be compelled by mandamus except when there is grave abuse of discretion
Can be delegated	Cannot be delegated unless otherwise provided by law

Q: What are the duties of public officers?
A:

1. To be accountable to the people;
2. To serve the people with utmost responsibility, integrity, and efficiency;
3. To act with patriotism and justice and to lead modest lives;
4. To submit a declaration under oath of his assets, liabilities, and net worth upon assumption of office and as often thereafter as may be required by law;
5. To owe the State and the Constitution allegiance at all times.

g. RIGHTS OF PUBLIC OFFICCERS

Q: What are the rights and privileges of public officers?

A:

1. Right to office
2. Right to compensation/salary
3. Right to appointments
4. Right to vacation and sick leave
5. Right to maternity leave
6. Right to retirement pay
7. Right to longevity pay
8. Right to pension
9. Right to self-organization
10. Right to protection of temporary employees.

Q: Is the suspended public official entitled to payment of salary?

A: Yes. A public official is not entitled to any compensation if he has not rendered any service and the justification for the payment of the salary during the period of suspension if that suspension was unjustified or that the official was innocent. To entitle to payment of salary during suspension, there must be reinstatement or exoneration. *(Reyes v Hernandez, G.R. No. 47346, 8 April 1941)*

Q: Can the *de jure* officer recover the salary received by the *de facto* officer?

A: Yes. As a rule, the rightful incumbent of the public office may recover from a de facto officer the salaries received by the latter during the time of the latter's wrongful tenure even though he entered into the office in good faith and under a colorable title. The de facto officer takes the salaries at his risks and must therefore account to the de jure officer for the amounts he received. However, where there is no de jure officer, a de facto officer shall be entitled to the salaries and emoluments accruing during the period when he actually discharged the duties. *(Monroy v. CA, G.R. No. L-23258, Jul 1, 1967)*

Q: Can public officials avail of the services of the Solicitor General?

A: If the public official is sued for damages arising out of a felony for his own account, the State is not liable and the SolGen is not authorized to represent him therefore. The

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

SolGen may only do so in suits for damages arising not from a crime but from the performance of a public officer's duties. *(Vital-Gozon v. Court of Appeals, G.R No. 101428 , Aug. 5, 1992)*

h. LIABILITIES OF PUBLIC OFFICERS

1. Preventive Suspension and Back Salaries
2. Illegal Dismissal, Reinstatement and Back Salaries

Q: State the three-fold responsibility/liability of public officers.

A:

1. Criminal liability
2. Civil liability
3. Administrative liability

Q: Are public officers liable for injuries sustained by another in the performance of his official acts done within the scope of his authority?

A:

GR: No.

XPNs:

1. Otherwise provided by law;
2. Statutory liability under the Civil Code *(Articles 27, 32, & 34)*;
3. Presence of bad faith, malice, or negligence;
4. Liability on contracts entered into in excess or without authority;
5. Liability on tort if the public officer acted beyond the limits of authority and there is bad faith *(United States of America v. Reyes, G.R. No. 79253, Mar. 1, 1993).*

Q: What are the liabilities of ministerial officers?

A:

1. *Non-feasance* – Neglect to perform an act which is the officer's legal obligation to perform.
2. *Misfeasance* – The failure to observe the proper degree of care, skill, and diligence required in the performance of official duty; and
3. *Malfeasance* – Performance of an act which the officer had no legal right to perform.

Q: What is the doctrine of Command Responsibility?

A: This doctrine provides that a superior officer is liable for the acts of his subordinate in the following instances:

1. He negligently or willfully employs or retains unfit or incompetent subordinates;
2. He negligently or willfully fails to require his subordinates to conform to prescribed regulations;
3. He negligently or carelessly oversees the business of the office as to give his subordinates the opportunity for default;
4. He directed, cooperated, or authorized the wrongful act;
5. The law expressly makes him liable. *(Sec.38-39, Chap. 9, Book I, E.O. No. 292, Administrative Code of 1987)*

Q: What are the grounds for the discipline of public officers?

A:

1. Dishonesty
2. Oppression
3. Neglect of duty
4. Misconduct
5. Disgraceful and immoral conduct
6. Discourtesy in the course of official duties
7. Inefficiency and incompetence in the performance of official duties
8. Conviction of a crime involving moral turpitude
9. Being notoriously undesirable
10. Falsification of official documents
11. Habitual drunkenness
12. Gambling
13. Refusal to perform official duty or render overtime service
14. Physical or mental incapacity due to immoral or vicious habits
15. Willful refusal to pay just debts or willful failure to pay taxes

Q: What is the concept of security of tenure?

A: It means that no officer or employee in the civil service shall be suspended or dismissed except for a cause provided by law and after due process or after he shall have been given the opportunity to defend himself.

Note: Once an appointment is issued and completed and the appointee assumes the position, he acquires a legal right, not merely an equitable right to the position. *(Lumigued v. Exevea, G.R. No. 117565, Nov. 18, 1997)*

Regardless of the characterization of the position held by a government employee covered by civil service rules, be it career or non career position, such employee may not be removed without just cause *(Jocom v. Regalado, G.R. No. 77373,Aug. 22, 1991).*

Acceptance of a temporary appointment or assignment without reservation or upon one's own volition is deemed waiver of security of tenure *(Palmera v. Civil Service Commission, G.R. No. 110168, Aug.4, 1994).*

Q: What is the nature of preventive suspension?

A: Preventive suspension is not a penalty by itself; it is merely a measure of precaution so that the employee who is charged may be separated from the scene of his alleged misfeasance while the same is being investigated, to prevent him from using his position or office to influence prospective witnesses or tamper with the records which may be vital in the prosecution of the case against him. *(Beja v. CA, G.R. No. 91749, Mar. 31, 1992)*

It can be ordered even without a hearing because this is only preliminary step in an administrative investigation. *(Alonzo v. Capulong, et al., G.R. No. 110590, May 10, 1995)*

The lifespan of preventive suspension is limited to 90 days after which the respondent must be automatically reinstated provided that when the delay is due to the fault, negligence or petition of the respondent, such period of delay shall not be counted. *(Sec. 42, P.D. No. 807)*

Note: When a public officer is charged with violation of the Anti-Graft and Corrupt Practices Act or R. A No. 3019, a pre-suspension hearing is required solely to determine the applicability of such law and for the accused be given a fair and adequate opportunity to challenge the validity of the criminal proceedings against him. This may be done through various pleadings. *(Torres v. Garchitorena, G.R. No. 153666, Dec. 27, 2002)*

Q: What are the periods for preventive suspension? Under what law are they imposable?

A:

1. *For administrative cases:*
   a. Civil Service Law – 90 days
   b. Local Government Code *(R.A. 7160)* –
      i. Sec.85: 60 days for appointive officials
      ii. Sec. 63: 60 or 90 days for elective officials
   c. Ombudsman Act – 6 months

2. *For criminal cases:* Anti-Graft and Corrupt Practices Act (R.A. 3019) – 90 days by analogy

Q. What are the distinctions between preventive suspension pending investigation and pending appeal?

A:

PENDING INVESTIGATION	PENDING APPEAL
Not a penalty but only a means of enabling the disciplinary authority an unhampered investigation	Punitive in character
After the lapse of 90 days, the law provides that he be automatically reinstated	If exonerated, he should be reinstated with full pay for the period of suspension
During such preventive suspension, the employee is not entitled to payment of salaries	If during the appeal he remains suspended and the penalty imposed is only reprimand, the suspension pending appeal becomes illegal and he is entitled to back salary corresponding to the period of suspension

Q: Is a public officer entitled to back wages during his suspension pending appeal when the result of the decision from such appeal does not amount to complete exoneration but carries with it a certain number of days of suspension?

A: No. Although entitled to reinstatement, he is not entitled to back wages during such suspension pending appeal. Only one who is completely exonerated, or merely reprimanded is entitled to such back wages. *(Sec. of Education, etc. v. CA. G.R. No. 128559, Oct. 4, 2000)*

Q: What is a disciplinary action?

A: It is a proceeding which seeks the imposition of disciplinary sanction against, or the dismissal or suspension of, a public officer or employee on any of the grounds prescribed by law after due hearing. *(Ruben E. Agpalo, Administrative Law, Law on Public Officers and Election Law, 2005 ed., p 416)*

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Q. Are decisions in a disciplinary action appealable?

A:

GR: Decisions are initially appealable to the department heads and then to the CSC.

XPNs: Decisions in a disciplinary action which:
1. exonerate the respondent; or
2. impose upon him the penalty of suspension for not more than 30 days or a fine in an amount not exceeding thirty days salary or reprimand are final and unappealable.

Note: Only the respondent in the administrative disciplinary case, not the complainant, can appeal to the CSC from an adverse decision. The complainant in an administrative disciplinary case is only a witness, and as such, the latter cannot be considered as an aggrieved party entitled to appeal from an adverse decision. *(Mendez v. Civil Service Commission, G. R. No. 95575, Dec. 23, 1991)*

Q. Is appeal available in administrative disciplinary cases?

A: It depends on the penalty imposed:

1. Appeal is available if the penalty is:
   a. Demotion
   b. Dismissal, or
   c. Suspension for more than 30 days or fine equivalent to more than 30 day salary *(P.D. 807, Sec.37 par [a]).*

2. Appeal is not available if the penalty is:
   a. Suspension for not more than 30 days
   b. Fine not more than 30 day salary
   c. Censure
   d. Reprimand
   e. Admonition

Note: In the second case, the decision becomes final and executory by express provision of law.

Q: Petitioner MJ, an Elementary School Principal, was found guilty to have violated R.A. 3019. His conviction was based merely on technical error and for which he was granted absolute pardon by the President. With this, he applied for reinstatement to his former office, only to be reinstated to the wrong position of a mere classroom teacher. Can he be reinstated to his former office? Explain.

A: As a general rule, the question of whether petitioner should be reappointed to his former position is a matter of discretion of the appointing authority, but under the circumstances of this case, if the petitioner had been unfairly deprived of what is rightfully his, the discretion is qualified by the requirements of giving justice to the petitioner. It is no longer a matter of discretion on the part of the appointing power, but discretion tempered with fairness and justice. (*Sabello v. DECS, G.R. No. 87687, Dec. 26 1989)*

Q: Does executive clemency carry with it payment of backwages?

A: No. A dismissed officer who has been granted executive clemency and who has been re-employed is not entitled to backwages. Letter of Instruction 647 provides that employees who were not recommended for reinstatement but are qualified to reenter the government service are granted executive clemency for purpose of re-employment subject to Civil Service Rules and if recommended by their respective department heads. Re-employment is different from reinstatement. Re-employment implies that one is hired anew, which does not carry with it payment of backwages. *(Echeche v. Court of Appeals, G.R. No. 89865, June 27, 1991)*

i. IMMUNITY OF PUBLIC OFFICERS

Q: What is Immunity?

A: An exemption that a person or entity enjoys from the normal operation of the law such as a legal duty or liability, either criminal or civil.

Q: Are public officers immune from liabilities?

A: It is well settled as a general rule that public officers of the government, in the performance of their public functions, are not liable to third persons, either for the misfeasances or positive wrongs, or for the nonfeasances, negligences, or omissions of duty of their official subordinates**.** *(McCarthy vs. Aldanese, G.R. No. L-19715, March 5, 1923)*

Q: What is the basis for this immunity?

A: The immunity of public officers from liability for the non-feasances, negligence or omissions of duty of their official subordinates and even for the latter's misfeasances or positive wrongs rests upon obvious considerations of public policy, the

necessities of the public service and the perplexities and embarrassments of a contrary doctrine. *(Alberto V. Reyes, Wilfredo B. Domo-Ong and Herminio C. Principio vs Rural Bank of San Miguel (Bulacan), INC., G.R. No. 154499, Feb. 27, 2004)*

Q: When is this doctrine applicable?

A: This doctrine is applicable only whenever a public officer is in the performance of his public functions. On the other hand, this doctrine does not apply whenever a public officer acts outside the scope of his public functions.

j. PUBLIC OFFICERS

Q: What are the classifications of a public officer?

A: A public officer may be:

1. Constitutional or statutory
2. National or local
3. Legislative, executive, or judicial
4. Lucrative or honorary
5. Discretionary or ministerial
6. Appointive or elective
7. Civil or military
8. De jure or de facto

Q: What are the elements of a public office?

A:

1. Created by law or by authority of law
2. Possess a delegation of a portion of the sovereign powers of government, to be exercised for the benefit of the public
3. Powers conferred and duties imposed must be defined, directly or impliedly, by the legislature or by legislative authority
4. Duties must be performed independently and without the control of a superior power other than the law, unless they be those of an inferior or subordinate office created or authorized by the legislature, and by it placed under the general control of a superior office or body; and
5. Must have permanence of continuity. *[Outline on Political Law, Nachura, (2006)]*

Q: What are the formal requirements of public officers?

A:

1. Citizenship
2. Age
3. Residence
4. Education
5. Suffrage
6. Civil service examination
7. Ability to read and write
8. Political affiliation as a rule, it is not a qualification

   XPN: in Party-List, Membership in the Electoral Tribunal, Commission on appointment

Q: When does the right of the public officer to enter in office perfected?

A: Upon his oath of office, it is deemed perfected. Only when the public officer has satisfied this prerequisite can his right to enter into the position be considered complete. Until then, he has none at all, and for as long as he has not qualified, the holdover officer is the rightful occupant. *(Lecaroz v. Sandiganbayan, G.R. No. 130872, Mar. 25, 1999)*

Q: What are the grounds for disqualification to hold office?

A:

1. Mental or physical incapacity
2. Misconduct or commission of a crime
3. Impeachment
4. Removal or suspension from office
5. Previous tenure of office
6. Consecutive terms exceeding the allowable number of terms
7. Holding more than one office (except *ex officio)*
8. Relationship with the appointing power (nepotism)
9. Office newly created or the emoluments of which have been increased (forbidden office)
10. Being an elective official (*Flores v Drilon, G.R. No. 104732, June 22, 1993)*
11. Losing candidate in the election within 1 year following the date of election (prohibitions form office not employment); and
12. Grounds provided for under the local government code.

1. *De Facto* Officers

Q: What is the concept of a *de jure* officer?

A: A *de jure* Officer is one who is in all respects legally appointed or elected and qualified to exercise the office.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Q: Who is a *de facto* officer?

A: A *de facto* officer is one who assumed office under the color of a known appointment or election but which appointment or election is void for reasons that the officer was not eligible, or that there was want of power in the electing body, or that there was some other defect or irregularity in its exercise, wherein such ineligibility, want of power, or defect being unknown to the public.

Note: A *de facto* officer is entitled to emoluments for actual services rendered, and he cannot be made to reimburse funds disbursed during his term of office because his acts are valid as those of a *de jure* officer.

Q: What are the elements of a *de facto* officer?

A:

1. Without a known appointment or election, but under such circumstances of reputation or acquiescence as were calculated to induce people, without inquiry, to submit to or invoke his action, supposing him to the be the officer he assumed to be; or

2. Under color of a known and valid appointment or election, but where the officer has failed to conform to some precedent requirement or condition (e.g., taking an oath or giving a bond);

3. Under color of a known election or appointment, void because:
    a. The officer was not eligible
    b. There was a want of power in the electing or appointing body
    c. There was a defect or irregularity in its exercise; such ineligibility, want of power, or defect being unknown to the public

4. Under color of an election or an appointment by or pursuant to a public, unconstitutional law, before the same is adjudged to be such.

Note: Here, what is unconstitutional is not the act creating the office, but the act by which the officer is appointed to an office legally existing. *(Norton v. County of Shelby, 118 U.S. 425)*

Q: What are the effects of the acts of *de facto* officers?

A:

1. The lawful acts, so far as the rights of third persons are concerned are, if done within the scope and by the apparent authority of the office, considered valid and binding

2. The *de facto* officer cannot benefit from his own status because public policy demands that unlawful assumption of public office be discouraged

    Note: The general rule is that a *de facto* officer cannot claim salary and other compensations for services rendered by him as such.

    However, the officer may retain salaries collected by him for services rendered in good faith when there is no *de jure* officer claiming the office.

3. The *de facto* officer is subject to the same liabilities imposed on the *de jure* officer in the discharge of official duties, in addition to whatever special damages may be due from him because of his unlawful assumption of office

Q: How is a challenge to a *de facto* officer made?

A:

1. The incumbency may not be challenged collaterally or in an action to which the *de facto* officer is not a party
2. The challenge must be made in a direct proceeding where title to the office will be the principal issue
3. The authorized proceeding is *quo warranto* either by the Solicitor General in the name of the Republic or by any person claiming title to the office

Q: Differentiate a *de jure* officer from a *de facto* officer.

A:

***DE JURE* OFFICER**	***DE FACTO* OFFICER**
Has lawful title to the office	Has possession and performs the duties under a colorable title without being technically qualified in all points of law to act
Holding of office rests on right	Holding of office rests on reputation
Officer cannot be removed through a direct proceeding (*quo warranto*)	Officer may be ousted in a direct proceeding against him

Q: What are the differences between a *de facto* officer and a mere usurper?

A:

***DE FACTO* OFFICER**	**USURPER**
Complies with the 4 elements of a *de jure* officer	Takes possession of an office and does official acts without any actual or apparent authority
Has color of right or title to office	Has neither color of right or title to office
Acts are rendered valid as to the public until his title is adjudged insufficient	Acts are absolutely void
Entitled to compensation for services rendered	Not entitled to compensation

Q: AVE ran for Congressman of QU province. However, his opponent, BART, was the one proclaimed as the winner by the COMELEC. AVE filed seasonably a protest before HRET (House of Representatives Electoral Tribunal). After two years, HRET reversed the COMELEC's decision and AVE was proclaimed finally as the duly elected Congressman. Thus, he had only one year to serve in Congress.

1. **Can AVE collect salaries and allowances from the government for the first two years of his term as Congressman?**
2. **Should BART refund to the government the salaries and allowances he had received as Congressman?**
3. **What will happen to the bills that BART alone authored and were approved by the House of Representatives while he was seated as Congressman? Reason and explain briefly.**

A:

1. AVE cannot collect salaries and allowances from the government for the first two years of his term, because in the meanwhile BART collected the salaries and allowances. BART was a *de facto* officer while he was in possession of the office. To allow AVE to collect the salaries and allowances will result in making the government pay a second time. *(Mechem, A Treatise on the Law of Public Offices and Public Officers, [1890] pp. 222-223.)*

2. BART is not required to refund to the government the salaries and allowances he received. As a *de facto* officer, he is entitled to the salaries and allowances because he rendered services during his incumbency.

3. The bills which BART alone authored and were approved by the House of Representatives are valid because he was a *de facto* officer during his incumbency. The acts of a *de facto* officer are valid insofar as the public is concerned. (*People v. Garcia, G.R. No. 126252, Aug. 30, 1999)*

2. Termination of Official Relation

Q: What are the modes of terminating official relationships?

A:

1. Expiration of term or tenure
2. Reaching the age limit for retirement
3. Resignation
4. Recall
5. Removal
6. Abandonment
7. Acceptance of an incompatible office
8. Abolition of office
9. Prescription of the right to office
10. Impeachment
11. Death
12. Failure to assume office
13. Conviction of a crime
14. Filing for a certificate of candidacy

Q. What is the term of office of an elected local official?

A: Three (3) years starting from noon of June 30 following the election or such date as may be provided by law, except that of elective barangay officials, for maximum of 3 consecutive terms in same position (Section 43, LGC).

The term of office of Barangay and Sangguniang Kabataan elective officials, by virtue of R.A. No. 9164, is three (3) years.

Q: What is the term limit of Barangay officials?

A: The term of office of barangay officials was fixed at three years under R.A. No. 9164 (19 March 2002). Further, Sec.43 (b) provides that "no local elective official shall serve for more than three (3) consecutive terms in the same position. The Court interpreted this section referring to all local elective officials without exclusions or

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

exceptions. *(COMELEC v. Cruz, G.R. No. 186616, 19 Nov. 2009)*

Q: What are the policies embodied in the constitutional provision barring elective local officials, with the exception of barangay officials, from serving more than three consecutive terms?

A: To prevent the establishment of political dynasties is not the only policy embodied in the constitutional provision in question (barring elective local officials, with the exception of barangay officials, from serving more than three consecutive terms). The other policy is that of enhancing the freedom of choice of the people. To consider, therefore, only stay in office regardless of how the official concerned came to that office – whether by election or by succession by operation of law – would be to disregard one of the purposes of the constitutional provision in question. *(Borja, Jr. v. COMELEC, G.R. No. 133495, Sept. 3, 1998)*

Q: Under Section 8, Article X of the Constitution, "The term of office of elective local officials shall be three years and no such official shall serve for more than three consecutive terms." How is this term limit for elective local officials to be interpreted?

A: The term limit for elective local officials must be taken to refer to the *right to be elected* as well as *the right to serve in the same elective position.* Consequently, it is not enough that an individual has served three consecutive terms in an elective local office, he must also have been *elected* to the same position for the same number of times before the disqualification can apply. *(Borja, Jr. v. COMELEC, G.R. No. 133495, Sept. 3, 1998)*

Q. Suppose A is a vice-mayor who becomes mayor by reason of the death of the incumbent. Six months before the next election, he resigns and is twice elected thereafter. Can he run again for mayor in the next election?

A: Yes, because although he has already first served as mayor by succession and subsequently resigned from office before the full term expired, he has not actually served three full terms in all for the purpose of applying the term limit. Under Art. X, Sec. 8, voluntary renunciation of the office is not considered as an interruption in the continuity of his service for the full term only if the term is one "for which he was elected." Since A is only completing the service of the term for which the deceased and not he was elected, A cannot be considered to have completed one term. His resignation constitutes an interruption of the full term.

Q: Suppose B is elected Mayor and, during his first term, he is twice suspended for misconduct for a total of 1 year. If he is twice reelected after that, can he run for one more term in the next election?

A: Yes, because he has served only two full terms successively.

In both cases, the mayor is entitled to run for re-election because the two conditions for the application of the disqualification provisions have not concurred, namely, (1) that the local official concerned has been elected three consecutive times and (2) that he has fully served three consecutive terms. In the first case, even if the local official is considered to have served three full terms notwithstanding his resignation before the end of the first term, the fact remains that he has not been elected three times. In the second case, the local official has been elected three consecutive times, but he has not fully *served* three consecutive terms. *(Borja, Jr. V. COMELEC, G.R. No. 133495 September 3, 1998)*

Q: The case of Vice Mayor C who becomes mayor by succession involves a total failure of the two conditions to concur for the purpose of applying Art. X, Sec. 8. Suppose he is twice elected after that term, is he qualified to run again in the next election?

A: Yes, because he was not elected to the office of mayor in the first term but simply found himself thrust into it by operation of law. Neither had he served the full term because he only continued the service, interrupted by the death, of the deceased mayor. *(Borja, Jr. v. COMELEC, G.R. No. 133495, Sept. 3, 1998)*

Q: X occupied the position of mayor of Mabalacat for the following periods: 1 July 1995 to 30 June 1998, 1 July 1998 to 30 June 2001, 1 July 2001 to 30 June 2004, and 1 July 2004 to 16 May 2007. However, the SC ruled in a previous case that X was not the duly elected mayor for the 2004-2007 term. Eventually, X also won the elections and assumed the mayoralty position for the 2007-2010 term. Y filed a petition to disqualify X as mayor on the ground that X's assumption of the mayoralty position on 1 July 2007 makes the 2007-2010 term his fifth term in office, which violates the three-term limit rule. Is Y correct?

A: No. For purposes of determining the resulting disqualification brought about by the three-term limit, it is not enough that an individual has served three consecutive terms in an elective local office, he must also have been elected to the same position for the same number of times. There should be a concurrence of two conditions for the application of the disqualification: (1) that the official concerned has been elected for three consecutive terms in the same local government post and (2) that he has fully served three consecutive terms.

X cannot be deemed to have served the full term of 2004-2007 because he was ordered to vacate his post before the expiration of the term. X's occupancy of the position of mayor of Mabalacat from 1 July 2004 to 16 May 2007 cannot be counted as a term for purposes of computing the three-term limit. Indeed, the period from 17 May 2007 to 30 June 2007 served as a gap for purposes of the three-term limit rule. Thus, the present 1 July 2007 to 30 June 2010 term is effectively X's first term for purposes of the three-term limit rule. *(Dizon v. COMELEC G.R. No. 182088, Jan. 30, 2009)*

Q: NB, an elected Punong Barangay, ran for Municipal Councilor while serving his last term as the PB. He won and later assumed office and served the full term of the Sanggunian Bayan. After serving his term as Municipal Councilor, he filed his Certificate of Candidacy for PB. His opponent filed a Petition for Disqualification on the ground the he had already served the three-term limit. Does the assumption of office of NB as Municipal Councilor considered as a voluntary renunciation of the Office of PB so that he is deemed to have fully served his third term as PB warranting his disqualification from running for the position of PB?

A: Yes. NB was serving his third term as PB when he ran for SB member and, upon winning, assumed the position of SB member, thus, voluntarily relinquishing his office as PB which the Court deems a voluntary renunciation of said office. Under Sec.8 of Art X of the Constitution, 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. *(Bolos v COMELEC, G.R. No. 184082, Mar. 17, 2009)*

Q: WA was elected City Councilor for three consecutive terms. During his last term, the Sandiganbayan preventively suspended him for 90 days in relation with a criminal case he then faced. The Court, however, subsequently lifted the suspension order; hence he resumed performing his functions and finished his term. He filed his Certificate of Candidacy for the same position. SA sought to deny due course to WA's COC on the ground that he had been elected and he served for three terms. Does preventive suspension of an elected local official an interruption of the three-term limit rule?

A: No. The intent of the three-term limit rule demands that preventive suspension should not be considered an interruption that allows an elective official's stay in office beyond three terms. A preventive suspension cannot simply be a term interruption because the suspended official continues to stay in the office although he is barred from exercising his functions and prerogatives of the office within the suspension period. The best indicator of the suspended official's continuity in office is the absence of a permanent replacement and the lack of authority to appoint one since no vacancy exists. (*Aldovino v. COMELEC, G.R. No. 184836, Dec. 23, 2009)*

Q: What is resignation?

A: It is the act of giving up or declining a public office and renouncing the further right to use such office. It must be in writing and accepted by the accepting authority as provided for by law.

Q: What is the age limit for retirement?

A:

1. For members of the judiciary – 70 y.o.
2. Gov't officers and employees – 65 y.o.
3. Optional retirement – must have rendered at least 20 service years

Q: Who are the accepting authorities for resignation?

A:

1. For *appointed* officers the tender of resignation must be given to the appointing authority.

2. For *elected* officers, tender to officer authorized by law to call an election to fill the vacancy. The following authorized officers are:
   a. *Respective chambers* – For members of Congress;
   b. *President* – For governors, vice-governors, mayors and vice-mayors of highly urbanized cities

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

and independent component cities;
c. *Provincial governor* – For municipal mayors and vice-mayors, city mayors and vice-mayors of component cities;
d. *Sanggunian concerned* – For sanggunian members;
e. Municipal/city mayors – For barangay officials.

Q: What is courtesy resignation?

A: It cannot properly be interpreted as resignation in the legal sense for it is not necessarily a reflection of a public official's intention to surrender his position. Rather, it manifests his submission to the will of the political authority and the appointing power. *(Ortiz V. COMELEC, G.R. No. 78957 June 28, 1988)*

Q: What is removal?

A: Forcible and permanent separation of the incumbent from office before the expiration of the public officer's term. *(Feria, Jr.. v. Mison, G.R. No. 8196, August 8, 1989)*

Q: What is recall?

A: It is an electoral mode of removal employed directly by the people themselves through the exercise of their right of suffrage. It is a political question not subject to judicial review. It is a political question that has to be decided by the people in their sovereign capacity. *(Evardone v. COMELEC, G.R. No. 94010, Dec. 2, 1991)*

Q: What are the limitations on recall?

A:
1. An elective official can be subjected to recall only once
2. No recall shall take place within one (1) year from the assumption of office or one year immediately preceding a regular local election.
(Section 74 (b) of Republic Act No. 7160)

Q: What is abandonment?

A: It is the voluntary relinquishment of an office by the holder with the intention of terminating his possession and control thereof. *(Words and Phrases, Vol. 1, p. 127, citing Board of Com'rs of Dearbon County v Droege, Ind. App., 66 N.E. 2d 134, 138)*

Q: Does the acceptance of an incompatible office pertain to its physical impossibility or its nature?

A: It refers to the nature and relation of the two offices to each other, they should not be held by one person from the contrariety and antagonism which would result in the attempt by one person to faithfully and impartially discharge the duties of one, toward the incumbent of the other. *(Treatise on the Law of Public Offices and Officers, Mechem,1890 edition)*

Q: Does the acceptance of an incompatible office ipso facto vacate the other?

A: GR: Yes.

XPN: Where such acceptance is authorized by law.

Q: What are the requisites for a valid abolition of office?

A:
1. Must be made in good faith;
2. Clear intent to do away with the office;
3. Must not be for personal or political reasons; and
4. Must not be contrary to law.

Q: What is the prescriptive period for petitions for reinstatement or recovery of public office?

A: It must be instituted within one (1) year from the date of unlawful removal from the office.

Such period may be extended on grounds of equity.

Q: What is the period provided to take the oath of office to avoid failure to assume office?

A: Failure to take the oath of office within six (6) months from proclamation of election shall cause the vacancy of the office unless such failure is for a cause beyond his control. *(Sec. 11 B.P. 881)*

Q: When does conviction by final judgment automatically terminate official relationship?

A: When the penalty imposed carries with it the accessory penalty of disqualification.

Q: Will the grant of plenary pardon restore the public office to the officer convicted?
A: No. Although a plenary pardon extinguishes the accessory penalty of disqualification, she is not entitled to an automatic reinstatement on the

basis of the absolute pardon granted to her but must secure an appointment to her former position and that, notwithstanding said absolute pardon, she is liable for the civil liability concomitant to her previous conviction. *(Monsanto v. Factoran, Jr. G.R. No. 78239 February 9, 1989)*

k. THE CIVIL SERVICE

Q: What is the scope of civil service?

A: The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the government including GOCCs with original charters.

Q: How are appointments to civil service made?

A:

1. *Competitive positions* – according to merit and fitness to be determined by competitive examinations, as far as practicable.
2. *Non-competitive positions* – no need for competitive examinations.
   It has 3 kinds:
   a. *Policy-determining* – tasked to formulate a method of action for the government or any of its subdivisions.
   b. *Primarily confidential* – duties are not merely clerical but devolve upon the head of an office, which, by reason of his numerous duties, delegates his duties to others, the performance of which requires skill, judgment, trust and confidence.
   c. *Highly technical* – requires technical skill or training in the highest degree

Note: The test to determine whether the position is non-competitive is the nature of the responsibilities, not the description given to it.

The Constitution does not exempt the above-given positions from the operation of the principle that "no officer or employee of the civil service shall be removed or suspended except for cause provided by law."

Q: What test is applied to determine whether a particular position is highly confidential?

A: Proximity rule. The occupant of a particular position could be considered a confidential employee if the predominant reason why he was chosen by the appointing authority was the latter's belief that he can share a close intimate relationship with the occupant which ensures freedom of discussion without fear of embarrassment or misgivings of possible betrayals of personal trust and confidential matters of State. (*De los Santos v. Mallare, G.R. No. L-3881, Aug. 31, 1950*)

Q: What is the nature of an appointment?

A: Appointment is an essentially discretionary power and must be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should possess the qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. This is a political question involving considerations of wisdom which only the appointing authority can decide. *(Luego v. CSC, G.R. No. L-69137, Aug. 5, 1986)*

Q: What characterizes the career service and what are included therein?

A: According to Sec. 7, Chapter 2, Title 1, Book V of the Administrative Code of 1987, the career service is characterized by:

1. Entrance based on merit and fitness to be determined as far as practicable by competitive examination or based on highly technical qualification;
2. Opportunity for advancement to higher career position; and
3. Security of tenure.

The career service includes:

1. Open career position for appointment to which prior qualification in an appropriate examination is required;
2. Closed career positions which are scientific or highly technical in nature;
3. Positions in the career executive service;
4. Career officers other than those in the career executive service, who are appointed by the President;
5. Commissioned officers and enlisted men of the Armed Forces;
6. Personnel of GOCCs, whether performing governmental or

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

proprietary functions, who do not fall under the non-career service; and
7. Permanent laborers, whether skilled, semi-skilled, or unskilled.

Q: Who may be appointed in the civil service?

A: Whoever fulfills all the qualifications prescribed by law for a particular position may be appointed therein.

Note: The CSC cannot disapprove an appointment just because another person is better qualified, as long as the appointee is himself qualified. It cannot add qualifications other than those provided by law. *(Cortez v. CSC, G.R. No. 92673 March 13, 1991)*

Q: What is does the security of tenure of officers or employees of the civil service guarantee?

A: Officers or employees of the Civil Service cannot be removed or suspended except for cause provided by law. It guarantees both procedural and substantive due process. *(Sec. 32, R.A. 2260)*

Q: What characterizes security of tenure?

A: It is the nature of the appointment that characterizes security of tenure and not the nature of one's duties or functions. Where the appointment is permanent, it is protected by the security of tenure provision. But if it is temporary or in an acting capacity, which can be terminated at any time, the officer cannot invoke the security of tenure.

Note: The holder of a temporary appointment cannot claim a vested right to the station to which assigned, nor to security of tenure thereat. Thus, he may be reassigned to any place or station. *(Teotico v. Agda, G.R. No. 87437, May 29, 1991)*

Q: When does security of tenure attaches?

A: It attaches once an appointment is issued and the moment the appointee assumes a position in the civil service under a completed appointment, he acquires a legal, not merely equitable, right (to the position) which is protected not only by statute, but also by the constitution, and cannot be taken away from him either by revocation of the appointment, or by removal, except for cause, and with previous notice and hearing. *(Aquino v. CSC, G.R. No. 92403 April 22, 1992)*

Q: What is legal cause?

A: It is a cause related to and affects the administration of office and must be substantial - directly affects the rights and interests of the public.

Q: Discuss the security of tenure for non-competitive positions.

A:

1. *Primarily confidential* officers and employees hold office only for so long as confidence in them remains. If there is genuine loss of confidence, there is no removal, but merely the expiration of the term of office.
2. *Non-career* service officers and employees do not enjoy security of tenure.
3. *Political appointees* in the foreign service possess tenure coterminous with that of the appointing authority or subject to his pleasure.

Note: One must be validly appointed to enjoy security of tenure. Thus, one who is not appointed by the proper appointing authority does not acquire security of tenure.

Q: Javier was first employed as private secretary in the GSIS in 1960 on a "confidential" status. In 1962 Javier was promoted to Tabulating Equipment Operator with "permanent" status. In 1986, she was appointed corporate secretary of the Board of Trustees (BOT) of the corporation. In 2001, she opted for early retirement. In 2002, Javier, who was 64 years old at the time, was reappointed by GSIS President (with approval of BOT) as corporate secretary. The BOT classified her appointment as "confidential in nature and the tenure of office is at the pleasure of the Board."

On October 10, 2002, CSC issued a resolution invalidating the reappointment of Javier as corporate secretary, on the ground that the position is a permanent, career position and not primarily confidential.

May the courts determine the proper classification of a position in government? Is the position of corporate secretary in a GOCC primarily confidential in nature?

A: The courts may determine the proper classification of a position in government. A strict reading of the law (EO 292) reveals that primarily confidential positions fall under the non-career service. It is also clear that, unlike career positions, primarily confidential and other non-

career positions do not have security of tenure. The tenure of a confidential employee is co-terminous with that of the appointing authority, or is at the latter's pleasure. However, the confidential employee may be appointed or remain in the position even beyond the compulsory retirement age of 65 years.

Jurisprudence establishes that the Court is not bound by the classification of positions in the civil service made by the legislative or executive branches, or even by a constitutional body like the CSC. The Court is expected to make its own determination as to the nature of a particular position, such as whether it is a primarily confidential position or not, without being bound by prior classifications made by other bodies.

In fine, a primarily confidential position is characterized by the *close proximity* of the positions of the appointer and appointee as well as the high degree of trust and confidence inherent in their relationship.

In the light of the instant controversy, the Court's view is that the greater public interest is served if the position of a corporate secretary is classified as primarily confidential in nature. (*CSC v. Javier, G.R. No. 173264, Feb. 22, 2008)*

Q: When does reorganization or abolition of office takes place?

A: Reorganization takes place when there is an alteration of the existing structure of government officers or units therein, including the lines of control, authority and responsibility between them. It involves a reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions. (*Canonizado v. Aguirre, G. R. No. 133132. January 25, 2000)*

Q: What are the requisites for a valid abolition of office?

A:

1. In good faith; (good faith is presumed)
2. Not for political or personal reasons; and
3. Not in violation of law. *(Administrative Law, Law on Public Officers and Election Law, Agpalo, 2006)*

Note: The Congress has the right to abolish an office even during the term for which an existing incumbent may have been elected EXCEPT when restrained by the Constitution.

Q: The Civil Service Commission passed a Resolution abolishing the Career Executive Service Board (CESB). Is the resolution valid?

A: No. The CESB was created by law *(P.D. No. 1*); it can only be abolished by the legislature. This follows an unbroken stream of rulings that the creation and abolition of public offices is primarily a legislative function. *(Eugenio v. Civil Service Commission, et al., G.R. No. 115863, Mar. 31, 1995)*

Q: What rules apply to temporary employees?

A:

1. Not protected by security of tenure- can be removed anytime even without cause.
2. If they are separated, this is considered an expiration of term. But, they can only be removed by the one who appointed them.
3. Entitled to such protection as may be provided by law. *(Sec. 2[6], Art. IX-B, 1987 Constitution)*

Note: No officer or employee in the civil service shall engage in any electioneering or in partisan political activity. However, they are allowed to express views on political issues, and to mention the names of the candidates whom he supports. (*Sec. 2[4], Art. IX-B, 1987 Constitution)*

The prohibition does not apply to department secretaries.

Q: Do employees of the civil service have the right to organize?

A: Yes, but The right to self-organize accorded to government employees shall not carry with it the right to engage in any form of prohibited concerted activity or mass action causing or intending to cause work stoppage or service disruption, albeit of temporary nature. *(Sec. 4, CSC Resolution No. 021316, 2002)*

Q: What are the disqualifications attached to the civil service employees or officials?

A:

1. Losing candidate in any election
   a. cannot be appointed to any office in the government or GOCCs or their subsidiaries
   b. period of disqualification: 1 year after such election

2. Elective officials:

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

GR: not eligible for appointment or designation in any capacity to any public office or position during their tenure.

XPN: May hold *ex officio* positions. *E.g.* The Vice President may be appointed as a Cabinet member

3. Appointive officials:
   GR: cannot hold any other office or agency, instrumentality, including GOCCs and their subsidiaries
   XPN: unless otherwise allowed by law, or by the primary functions of his position.

Note: The exception does not apply to Cabinet members, and those officers mentioned in Art. VII, Sec. 13. They are governed by the stricter prohibitions contained therein.

In ascertaining the legal qualifications of a particular appointee to a public office, "there must be a law providing for the qualifications of a person to be nominated or appointed" therein. The qualification to hold public office may refer to educational attainment, civil service eligibility or experience. One who is under the one year prohibition imposed on losing candidates is disqualified from being appointed during that one year period even if he has the other qualifications. (*People v. Sandiganbayan, G.R. No. 164185, July 23, 2008)*

Q: What are the prohibitions attached to elective and appointive officials in terms of compensation?

A:

GR: They cannot receive:

1. *Additional compensation* – an extra reward given for the same office e.g. bonus
2. *Double compensation* – when an officer is given 2 sets of compensation for 2 different offices held concurrently by 1 officer.
3. *Indirect compensation*

XPN: Unless specifically authorized by law.

Note: Specifically authorized means a specific authority particularly directed to the officer or employee concerned.

But per diems and allowances given as reimbursement for expenses actually incurred are not prohibited.

They cannot accept any present, emolument, office, title of any kind from foreign governments without the consent of Congress

Pensions and gratuities are not considered as additional, double, or indirect compensation. *(Sec. 7-8, Art. IX-B, 1987 Constitution)*

I. ACCOUNTABILITY OF PUBLIC OFFICERS

1. Impeachment

Q: What is impeachment?

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

Note: It is a national inquest into the conduct of public men. *(Outline on Political Law, Nachura, 2006)*

Q: Who are the impeachable officers?

A:

1. President
2. Vice-President
3. Members of the Supreme Court
4. Members of the Constitutional Commissions
5. Ombudsman

Note: The enumeration is exclusive. *(Sec. 2, Art. XI, 1987 Constitution)*

Q: What are the grounds for impeachment?

A:

1. *Culpable violation of the*
2. *Treason*
3. *Bribery*
4. *Other high crimes*
5. *Betrayal of public trust (Sec. 2, Art. XI, 1987 Constitution)*

Q: What is Culpable Violation of the Constitution?

A: Culpable violation of the Constitution is wrongful, intentional or willful disregard or flouting of the fundamental law. Obviously, the act must be deliberate and motivated by bad faith to constitute a ground for impeachment. Mere mistakes in the proper construction of the Constitution, on which students of law may sincerely differ, cannot be considered a valid ground for impeachment. *(Cruz, Isagani. Philippine Political Law)*

Q: What is Betrayal of Public Trust?

A: The 1987 Constitution has added "betrayal of public trust," which means any form of violation of the oath of office even if such violation may not be criminally punishable offense. *(Bernas, Bernas Primer, 2006 ed.)*

This is a catch-all to cover all manner of offenses unbecoming a public functionary but not punishable by the criminal statutes, like "inexcusable negligence of duty, tyrannical abuse of authority, breach of official duty by malfeasance or misfeasance, cronyism, favoritism, obstruction of justice. *(Cruz, Isagani. Philippine Political Law)*

Q: What are the steps in the impeachment process?

A:

1. *Initiating impeachment case*

    a. Verified complaint filed by any member of the House of Representatives or any citizen upon resolution of endorsement by any member thereof.
    b. Included in the order of business within 10 session days.
    c. Referred to the proper committee within 3 session days from its inclusion.
    d. The committee, after hearing, and by majority vote of all its members, shall submit its report to the House of Representatives together with the corresponding resolution.
    e. Placing on calendar the Committee resolution within 10 days from submission;
    f. Discussion on the floor of the report;

Note: If the verified complaint is filed by at least 1/3 of all its members of the House of Representatives, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed. *(Sec. 3 (4)Art. XI, 1987 Constitution)*

    g. A vote of at least 1/3 of all the members of the House of Representatives shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the committee or override its contrary resolution. *(Sec. 3 (2-3), Art. XI. 1987 Constitution)*

2. *Trial and Decision in impeachment proceedings*

    a. The Senators take an oath or affirmation
    b. When the President of the Philippines is on trial, the Chief Justice of the SC shall preside but shall not vote.
    c. A decision of conviction must be concurred in by at least 2/3 of all the members of Senate.

Note: The Senate has the sole power to try and decide all cases of impeachment. *(Sec. 3(6), Art. XI, 1987 Constitution)*

Q: When is an impeachment deemed initiated?

A: The proceeding is initiated or begins, when a verified complaint is filed and referred to the Committee on Justice for action. This is the initiating step which triggers the series of step that follow. The term "to initiate" refers to the filing of the impeachment complaint coupled with Congress' taking initial action of said complaint. *(Francisco v. House of Rep., G.R. No. 160261, November 10, 2003)*

Q: What is the salutary reason of confining only one impeachment proceeding in a year?

A: Justice Azcuna stated that the purpose of the one-year bar is two-fold:

1. To prevent undue or too frequent harassment
2. To allow the legislature to do its principal task of legislation. *(Francisco v. House of Rep., G.R. No. 160261, Nov. 10, 2003)*

The consideration behind the intended limitation refers to the element of time, and not the number of complaints. The impeachable officer should defend himself in only one impeachment proceeding, so that he will not be precluded from performing his official functions and duties. Similarly, Congress should run only one impeachment proceeding so as not to leave it with little time to attend to its main work of law-making. The doctrine laid down in *Francisco* that initiation means filing and referral remains congruent to the rationale of the constitutional provision. *(Gutierrez v. The House of Representatives Committee on Justice, G.R. No. 193459, Feb. 15, 2011)*

Q: What are the effects of conviction in impeachment?

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

A:

1. Removal from office
2. Disqualification to hold any other office under the Republic of the Philippines
3. Party convicted shall be liable and subject to prosecution, trial and punishment according to law. *(Sec. 3 (7). Art. XI, 1987 Constitution)*

Q: What are the limitations imposed by the Constitution upon the initiation of impeachment proceedings?

A:

1. The House of Representatives shall have the exclusive power to initiate all cases of impeachment.
2. Not more than one impeachment proceeding shall be initiated against the same official within a period of one year.

Note: An impeachment case is the legal controversy that must be decided by the Senate while an impeachment proceeding is one that is initiated in the House of Representatives. For purposes of applying the one year ban rule, the proceeding is initiated or begins when a verified complaint is filed and referred to the Committee on Justice for action**.** *(Francisco v. House of Representatives, et. al., G.R. No. 160261, Nov. 10, 2003)*

The power to impeach is essentially a non-legislative prerogative and can be exercised by Congress only within the limits of the authority conferred upon it by the Constitution. *(Francisco v. House of Representatives, et. al., G.R. No. 160261, Nov. 10, 2003)*

Q: Can A Supreme Court Justice be charged in a criminal case or disbarment proceeding instead of an impeachment proceeding?

A: No, 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, April 15, 1988)*

An impeachable officer who is a member of the Philippine bar cannot be disbarred first without being impeached. *(Jarque v. Desierto, 250 SCRA 11, 1995)*

2. Ombudsman

Q: What is the function of an Ombudsman?

A: He is tasked to entertain complaints addressed to him against erring public officers and take all necessary actions thereon.

Note: The powers of the Ombudsman are not merely recommendatory. His office was given teeth to render this constitutional body not merely functional but also effective. Under R.A. No. 6770 and the 1987 Constitution, the Ombudsman has the constitutional power to directly remove from government service an erring public official other than a member of Congress and the Judiciary. *(Estarija v. Ranada, G.R No. 159314, June 26, 2006).*

Q: Does the Ombudsman enjoy fiscal autonomy?

A: Yes. It shall enjoy fiscal autonomy. Its approved annual appropriations shall be automatically and regularly released. *(Section 14 of Article XI of the 1987 Constitution)*

Q: What is the duration of the term of office of the Ombudsman?

A: 7 years without reappointment. *(Section 11 of Article XI of the 1987 Constitution)*

Q: What are the disqualifications and inhibitions of the Ombudsman?

A:

1. Shall not hold any other office or employment;
2. Shall not engage in the practice of any profession or in the active management or control of any business which in any way may be affected by the functions of his office;
3. Shall not be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the government, or any of its subdivisions, etc.
4. Shall not be qualified to run for any office in the election immediately succeeding their cessation from office. *(Section 9 of R.A. No. 6770)*

2.a. Powers and Duties

Q: What is the scope of the powers of the Ombudsman?

A: Over the years the scope of the powers of the Ombudsman under Section 12 has been clarified thus settling various disputed issues:

1. The ombudsman can investigate only officers of government owned

corporations with original charter. (*Khan, Jr v Ombudsman*, *G.R. No. 125296, July 20. 2006)*

2. The jurisdiction of the Ombudsman over disciplinary cases involving public school teachers has been modified by Section 9 of R.A. 4670, otherwise known as the Magna Carta for Public School Teachers, which says that such cases must first go to a committee appointed by the Secretary of Education. (*Ombudsman v. Estandarte, GR 168670, April 13, 2007.)*

3. The Ombudsman Act authorizes the Ombudsman to impose penalties in administrative cases. *(Ombudsman v. CA, November 22, 2006; Ombudsman v. Lucero,November 24, 2006)*

Note: According to the Local Government Code, elective officials may be dismissed only by the proper court. "Where the disciplining authority is given only the power to suspend and not the power to remove, it should not be permitted to manipulate the law by usurping the power to remove."*(Sangguniang Barangay v. Punong Barangay, G.R. No. 170626, March 3, 2008)*

4. The Special Prosecutor may not file an information without authority from the Ombudsman. *(Perez v. Sandigabayan, G.R. No. 166062, September 26, 2006)*

5. The Ombudsman has been conferred rule making power to govern procedures under it. *(703 Buencamino v. CA, GR 175895,April 4, 2007)*

6. The power to investigate or conduct a preliminary investigation on any Ombudsman case may be exercised by an investigator or prosecutor of the Office of the Ombudsman, or by any Provincial or City Prosecutor or their assistance, either in their regular capacities or as deputized Ombudsman prosecutors. (*Honasan II v. Panel of Investigators of the DOJ, G.R. No.159747, April 13, 2004)*

7. A preventive suspension will only last ninety (90) days, not the entire duration of the criminal case. *(Villasenor v Sandiganbayan G.R. No. 180700, March 4, 2008)*

Q: Are the powers of Ombudsman delegable?

A: The power to investigate or conduct a preliminary investigation on any Ombudsman case may be exercised by an investigator or prosecutor of the Office of the Ombudsman, or by any Provincial or City Prosecutor or their assistance, either in their regular capacities or as deputized Ombudsman prosecutors. *(Honasan II v. Panel of Investigators of the DOJ, 2004)*

"In any form or manner" means that the fact that the Ombudsman may start an investigation on the basis of any anonymous letter does not violate the equal protection clause. For purposes of initiating preliminary investigation before the Office of the Ombudsman, a complaint "in any form or manner" is sufficient. (*Garcia v. Miro, G.R. No. 148944. February 5, 2003)*

Q: Can the Ombudsman directly dismiss a public officer from government service?

A: Under Section 13(3) of Article XI, the Ombudsman can only recommend to the officer concerned the removal of a public officer or employee found to be administratively liable. *(Tapiador v. Office of the Ombudsman, G.R. No. 129124. March 15, 2002)* Be that as it may, the refusal, without just cause, of any officer to comply with such an order of the Ombudsman to penalize erring officer or employee is a ground for disciplinary action. Thus, there is a strong indication that the Ombudsman's recommendation is not merely advisory in nature but actually mandatory within the bounds of law. This, should not be interpreted as usurpation of the Ombudsman of the authority of the head of office or any officer concerned. It has long been settled that the power of the Ombudsman to investigate and prosecute any illegal act or omission of any public official is not an exclusive authority, but a shared or concurrent authority in respect of the offense charged. *(Ledesma v. CA, GR 161629, 29 July 2005)*

Q: Is the power of the ombudsman to investigate exclusive?

A: No, While the Ombudsman's power to investigate is primary, it is not exclusive and, under the Ombudsman Act of 1989, he may delegate it to others and take it back any time he wants to. *(Acop v. Ombudsman, G.R. No. 120422 September 27, 1995).*

Q: May the military deputy investigate civilian police?

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

A: Because the power of the Ombudsman is broad and because the Deputy Ombudsman acts under the direction of the Ombudsman, the power of the Military Deputy to investigate members of the civilian police has also been affirmed. *(Acop v. Ombudsman, G.R. No. 120422 September 27, 1995)*

Q: Can the Claim of Confidentiality prevent the Ombudsman from demanding the production of documents needed for the investigation?

A: No, In *Almonte v. Vasquez,* G.R. No. 95367 May 23, 1995**,** the Court said that where the claim of confidentiality does not rest in the need to protect military, diplomatic or the national security secrets but on general public interest in preserving confidentiality, the courts have declined to find in the Constitution an absolute privilege even for the President. *(Bernas Primer, Primer, (2006 ed.)*

Moreover, even in cases where matters are really confidential, inspection can be done in camera.

2.b. Judicial Review in Administrative Proceedings

Q: What is the authority granted to the Ombudsman under existing laws in reviewing Administrative proceedings?

A: Section 19 of the Ombudsman Act further enumerates the types of acts covered by the authority granted to the Ombudsman:

SEC. 19. Administrative Complaints. - The Ombudsman shall act on all complaints relating, but not limited to acts or omissions which:

1. Are contrary to law or regulation;
2. Are unreasonable, unfair, oppressive or discriminatory;
3. Are inconsistent with the general course of an agency's functions, though in accordance with law;
4. Proceed from a mistake of law or an arbitrary ascertainment of facts;
5. Are in the exercise of discretionary powers but for an improper purpose; or
6. Are otherwise irregular, immoral or devoid of justification

In the exercise of its duties, the Ombudsman is given full administrative disciplinary authority. His power is not limited merely to receiving, processing complaints, or recommending penalties. He is to conduct investigations, hold hearings, summon witnesses and require production of evidence and place respondents under preventive suspension. This includes the power to impose the penalty of removal, suspension, demotion, fine, or censure of a public officer or employee. *(Ombudsman v. Galicia, G.R. No. 167711, October 10, 2008)*

2.c. Judicial Review in Penal Proceedings

Q: What is the authority granted to the Ombudsman in reviewing Penal Proceedings?

A: In the exercise of its investigative power, this Court has consistently held that courts will not interfere with the discretion of the fiscal or the Ombudsman to determine the specificity and adequacy of the averments of the offense charged. He may dismiss the complaint forthwith if he finds it to be insufficient in form and substance or if he otherwise finds no ground to continue with the inquiry; or he may proceed with the investigation of the complaint if, in his view, it is in due and proper form. (*Ocampo v. Ombudsman, 225 SCRA 725, 1993)*

Note: In *Garcia-Rueda v. Pascasio, G.R. No. 118141. September 5, 1997,* the Court held that "while the Ombudsman has the full discretion to determine whether or not a criminal case is to be filed, the Court is not precluded from reviewing the Ombudsman's action when there is grave abuse of discretion."

3. Sandiganbayan

Q: What is the composition of the Sandiganbayan?

A: Under PD 1606, it is composed of:

1. Presiding Justice
2. Eight Associate Justices, with the rank of Justice of the Court of Appeals

Note: It sits in three [3] divisions of three members each.

Q: What is the nature of the Sandiganbayan?

A: Sandiganbayan is NOT a constitutional court. It is a statutory court; that is, it is created not only by the Constitution but by statute, although its creation is mandated by the Constitution. *(Bernas Primer at 443 2006 ed.)*

Q: What are the requisites that must concur in order that a case may fall under the exclusive jurisdiction of the Sandiganbayan:
A:

1. The offense committed is a violation of RA 1379, Chapter II, Section , Title VII, Book II of the Revised Penal Code, Executive Orders Nos. 1, 2 14 and 14-A, issued in 1986, or other offenses or felonies whether simple or complexed with other crimes
2. The offender committing the offenses (violating RA 3019, RA 1379, the RPC provisions, and other offenses, is a public official or employee holding any of the positions enumerated in par. A, Section 4, RA 8249
3. The offense committed is in relation to the office. *(Lacson v. Executive Secretary, G.R. No. 128096 January 20, 1999)*

Q: Can a private individual be charged jointly with a public officer?

A: Yes. **"**In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees, they shall be tried jointly with said public officers and employees. *(Section 4, PD 1606)*"

"Private persons may be charged together with public officers to avoid repeated and unnecessary presentation of witnesses and exhibits against conspirators in different venues, especially of the issues involved are the same. It follows therefore that if a private person may be tried jointly with public officers, he may also be convicted jointly with them, as in the case of the present petitioners." *(Balmadrid v. Sandiganbayan, 1991)*

Q: What determines the jurisdiction whether or not the Sandiganbayan or the RTC has jurisdiction over the case?

A: It shall be determined by the allegations in the information specifically on whether or not the acts complained of were committed in relation to the official functions of the accused. It is required that the charge be set forth with particularity as will reasonably indicate that the exact offense which the accused is alleged to have committed is one in relation to his office. *(Lacson v. Executive Secretary, G.R. No. 128096 January 20, 1999)*

Note: In *Binay v. Sandiganbayan, G.R. Nos. 120681-83, October 1, 1999***,** the Supreme Court discussed the ramifications of Section 7, RA 8249, as follows:

1. If trial of the cases pending before whatever court has already begun as of the approval of RA 8249, the law does not apply;
2. If trial of cases pending before whatever court has not begun as of the approval of RA 8249, then the law applies, and the rules are:
    i. If the Sandiganbayan has jurisdiction over a case pending before it, then it retains jurisdiction;
    ii. If the Sandiganbayan has no jurisdiction over a cased pending before it, the case shall be referred to the regular courts;
    iii. If the Sandiganbayan has jurisdiction over a case pending before a regular court, the latter loses jurisdiction and the same shall be referred to the Sandiganbayan;
    iv. If a regular court has jurisdiction over a case pending before it, then said court retains jurisdiction.

Q: How are pronouncements of decisions/review made by the SB?

A: The unanimous vote of all the three members shall be required for the pronouncement of judgment by a division. Decisions of the Sandiganbayan shall be reviewable by the Supreme Court on a petition for *certiorari*.

Q: Is it mandatory for the Sandiganbayan to suspend a public officer against whom a valid information is filed?

A: It is now settled that Section 13, RA 3019, makes it mandatory for the Sandiganbayan to suspend any public officer against whom a valid information charging violation of that law, or any offense involving fraud upon the government or public funds or property is filed. *(Bolastig v. Sandiganbayan, 235 SCRA 103)*

Q: Can both questions of fact and law be raised before the Supreme Court in an appeal of a decision of the Sandiganbayan?

A: The appellate jurisdiction of the Supreme Court over decisions and final orders of the Sandiganbayan is limited to questions of law. *(Cabaron v. People,* G.R. No. 156981, October 5, 2009

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

4. Ill-Gotten Wealth

Q: Define Ill-gotten wealth?

A: Ill-gotten wealth means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

1. Through Misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury

2. By Receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned

3. By the Illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or -controlled corporations and their subsidiaries

4. By Obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including promise of future employment in any business enterprise or undertaking

5. By establishing agricultural, industrial or commercial Monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests

6. By taking Undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines. *(RA 7080, "AN ACT DEFINING AND PENALIZING THE CRIME OF PLUNDER")*

Q: Can ill-gotten wealth be characterized by a series of events that would make a public officer liable?

A: Yes, in cases of plunder, any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1 (d) of RA 7659, in the aggregate amount or total value of at least fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder. *(Sec. 2 of RA 7659)*

Q: Can prosecution for the recovery of ill-gotten wealth be barred by prescription, laches and estoppel?

A: Yes. The provision found in Section 15, Article XI of the 1987 Constitution that "the right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppels," has already been settled in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto. G.R. No. 130140,* where the Court held that the above cited constitutional provision "applies only to civil actions for recovery of ill-gotten wealth, and not to criminal cases. *(Presidential Ad Hoc Fact-Finding Committee On Behest Loans v. Desierto, G.R. No. 135715, April 13, 2011)*

J. ADMINISTRATIVE LAW

a. GENERAL PRINCIPLES

Q: Define Administrative Law?

A: It is a branch of public law fixing the organization and determines the competence of administrative authorities, and indicates the individual remedies for the violation of the rights.

Q: What are the kinds of Administrative Law?

A:

1. Statutes setting up administrative authorities.
2. Body of doctrines and decisions dealing with the creation, operation, and effect of determinations and regulations of such administrative authorities.
3. Rules, regulations, or orders of such administrative authorities in pursuance of the purposes, for which administrative authorities were created or endowed.
4. Determinations, decisions, and orders of such administrative authorities in the settlement of controversies arising in their particular field.

b. CREATION OF ADMINISTRATIVE BODIES AND AGENCIES

Q: What is an administrative agency?

A: It is an organ of government, other than a court and the legislature, which affects the rights of private parties either through adjudication or rule making.

Q: How are agencies created?

A: By:

1. Constitutional provision
2. Authority of law
3. Legislative enactment

Q: Cite reasons for the creation of administrative agencies.

A: To:

1. Help unclog court dockets
2. mMeet the growing complexities of modern society
3. Help in the regulation of ramified activities of a developing country
4. Entrust to specialized agencies the task of dealing with problems as they have the experience, expertise, and power of dispatch to provide solution thereto.

Q: What is an instrumentality?

A: An *instrumentality* refers to any agency of the national government not integrated within the departmental framework, vested with special functions or jurisdiction by law, with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. (*Iron and Steel Authority v. CA, G.R. No. 102976, Oct. 25, 1995*)

Q: What is an Agency?

A: An *agency* is any department, bureau, office, commission, authority or officer of the national government, authorized by law or executive order to make rules, issue licenses, grant rights or privileges, and adjudicate cases; research institutions with respect to licensing functions; government corporations with respect to functions regulating private rights, privileges, occupation or business, and officials in the exercise of the disciplinary powers as provided by law.

Q: What is the distinction between the two?

A: There is *no practical distinction* between an instrumentality and agency, for all intents and purposes. A distinction, however, may be made with respect to those entities possessing a separate charter created by statute.

Q: What is a quasi-judicial body or agency?

A: A quasi-judicial body or agency is an administrative body with the power to hear, determine or ascertain facts and decide rights, duties and obligations of the parties by the application of rules to the ascertained facts. By this power, quasi-judicial agencies are enabled to interpret and apply implementing rules and regulations promulgated by them and laws entrusted to their administration. **(2006 Bar Question)**

c. POWERS OF ADMINISTRATIVE AGENCIES

Q: What are the three basic powers of administrative agencies?

A:

1. Quasi-legislative power or rule-making power

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

2. Quasi-judicial or adjudicatory power
3. Determinative power

Q: Distinguish between quasi-legislative and quasi-judicial power.

A:

QUASI-LEGISLATIVE	QUASI-JUDICIAL
Operates on the future	Operates based on past facts
Has general application	Has particular application (applies only to the parties involved in a dispute)
Issuance pursuant to the exercise of quasi-legislative power may be assailed in court without subscribing to the doctrine of exhaustion of administrative remedies (DEAR).	Issuance pursuant to the exercise of quasi-judicial power may, as a rule, only be challenged in court with prior exhaustion of administrative remedies.
A valid exercise of quasi-legislative power does not require prior notice and hearing (except when the law requires it).	A valid exercise of quasi-judicial power requires prior notice and hearing (except when the law requires it)
An issuance pursuant to the exercise of quasi-legislative power may be assailed in court through an ordinary action.	An issuance pursuant to the exercise of quasi-judicial function is appealed to the Court of Appeals via petition for review (*Rule 43*).

1. Quasi-Legislative (Rule-Making) Power

Q: Define quasi-legislative power.

A: This is the exercise of delegated legislative power, involving no discretion as to what the law shall be, but merely the authority to fix the details in the execution or enforcement of a policy set out in the law itself.

Q: What are the kinds of quasi-legislative power?

A:

1. *Legislative regulation*
2. *Supplementary or detailed legislation* which is intended to fill in the details of the law and to make explicit what is only general. *e.g.* Rules and Regulations Implementing the Labor Code.
3. *Contingent legislation* in which administrative agencies are allowed to ascertain the existence of particular contingencies and on the basis thereof enforce or suspend the operation of a law.
4. *Interpretative legislation* – rules and regulations construing or interpreting the provisions of a statute to be enforced and binding on all concerned until changed. They have the effect of law and are entitled to great respect having in their favor the presumption of legality. *E.g.* BIR circulars.

Q: What are the requisites for the valid exercise of quasi-legislative power?

A:

1. Promulgated in accordance with the Prescribed procedure.
2. Reasonable.
3. Issued under Authority of law.
4. Administrative regulations, issued for the purpose of implementing existing law, pursuant to a valid delegation are included in the term "laws" under Article 2, of the Civil Code and must therefore be published in order to be effective.
5. It must be within the Scope and purview of the law.
6. Filing with the Office of the National Administrative Register (ONAR) of the University of the Philippines Law Center

Note: But mere interpretative regulations, and those merely internal in nature, i.e. regulating only the personnel of the administrative agency and not the public, need not be published *(Tañada v. Tuvera, G.R. No. 63915, December 29, 1986)*

Q: What are the guidelines to rule-making?

A:

1. It must be consistent with the law and the constitution
2. It must have reasonable relationship to the purpose of the law
3. It must be within the limits of the power granted to administrative agencies
4. May not amend, alter, modify, supplant, enlarge, limit or nullify the terms of the law
5. It must be uniform in operation, reasonable and not unfair or discriminatory
6. Must be promulgated in accordance with the prescribed procedure

Q: What are the limitations on the exercise of quasi-legislative power?

A:

1. It must be within the limits of the powers granted to administrative agencies.
2. Cannot make rules or regulations which are inconsistent with the provision of the Constitution or statute.
3. Cannot defeat the purpose of the statute.
4. May not amend, alter, modify, supplant, enlarge, or limit the terms of the statute.
5. A rule or regulation must be uniform in operation, reasonable and not unfair or discriminatory.

Q: May an administrative agency promulgate rules providing for penal sanction?

A: Yes, provided the following requisites are complied with:

1. The law must declare the act punishable;
2. The law must define the penalty;
3. The rules must be published in the Official Gazette. *(The Hon. Secretary Vincent S. Perez v. LPG Refillers Association of the Philippines, G.R. No. 159149, June 26, 2006)*

Q: Are administrative officers tasked to implement the law also authorized to interpret the law?

A: Yes, because they have expertise to do so. *(PLDT v. NTC, G.R. No. 88404, Oct. 18, 1990)*

Q: Are constructions of administrative officers binding upon the courts?

A: Such interpretations of administrative officer are given great weight, unless such construction is clearly shown to be in sharp contrast with the governing law or statute. *(Nestle Philippines Inc. v. CA, G.R. No. 86738, Nov. 13, 1991)*

Q: What is the Doctrine of Subordinate Legislation?

A: Power of administrative agency to promulgate rules and regulations on matters within their own specialization.

Q: What is the reason behind the delegation?

A: It is well established in this jurisdiction that, while the making of laws is a non-delegable activity that corresponds exclusively to Congress, nevertheless the latter may constitutionally delegate authority to promulgate *rules and regulations* to implement a given legislation and effectuate its policies, for the reason that the legislature often finds it impracticable (if not impossible) to anticipate and provide for the multifarious and complex situations that may be met in carrying the law into effect. All that is required is that the regulation should be germane to the objects and purposes of the law; that the regulation be not in contradiction with it, but conform to the standards that the law prescribes.

Q: What are the limitations on the doctrine of subordinate legislation?

A:

1. Rule making power
2. Cannot contravene a statute or the constitution
3. Partakes the nature of a statute – Rules are not laws but have the force and effect of laws.
4. Enjoys the presumption of legality – therefore courts should respect and apply them unless declared invalid; all other agencies should likewise respect them.

Q: What is the concept of Contemporaneous Construction?

A: The construction placed upon the statute by an executive or administrative officer called upon to execute or administer such statute.

These *interpretative regulations* are usually in the form of circulars, directives, opinions, and rulings.

Note: Contemporaneous construction, while in no case binding upon the courts, is nevertheless entitled to great weight and respect in the interpretation of ambiguous provisions of the law, unless it is shown to be clearly erroneous.

2. Quasi-Judicial (Adjudicatory) Power

Q: Define quasi-judicial power.

A: It is the power of administrative authorities to make determinations of facts in the performance of their official duties and to apply the law as they construe it to the facts so found. It partakes the nature of judicial power, but is exercised by a person other than a judge.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Q: How is the jurisdiction of a quasi-judicial agency construed?

A: An administrative body to which quasi-judicial power has been delegated is a tribunal of limited jurisdiction and as such it could wield only such powers as are specifically granted to it by its enabling statute. Its jurisdiction is interpreted *strictissimi juris.*

2.a. Administrative Due Process

Q: What is the nature of administrative proceedings?

A: It is summary in nature.

Q: Is administrative proceedings bound by technical rules of procedure and evidence?

A: The technical rules of procedure and of evidence prevailing in courts of law and equity are not controlling in administrative proceedings to free administrative boards or agencies from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate an administrative order.

Note: The rules of procedure of quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

Q: What are the cardinal primary requirements of due process in administrative proceedings?

A:

1. Right to a hearing which includes the right to present one's case and submit evidence in support
2. The tribunal must consider the evidence presented
3. The decision must be supported by evidence
4. Such evidence must be substantial
5. The decision must be based on the evidence presented at the hearing or at least contained in the record, and disclosed to the parties affected
6. The tribunal or body of any of its judges must act on its own independent consideration of the law and facts of the controversy in arriving at a decision;
7. The board or body should render decision that parties know the various issues involved and reason for such decision
8. Officer or tribunal must be vested with competent jurisdiction and must be impartial and honest. (*Ang Tibay v. CIR, G.R. No. L-46496, Feb. 27, 1940*)

Note: The essence of procedural due process in administrative proceedings is the opportunity to be heard, i.e. the opportunity to explain one's side or opportunity to seek reconsideration of an adverse decision.

What the law prohibits is not the absence of previous notice but the absolute absence thereof and the lack of opportunity to be heard.

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

A: No. The right to counsel which may not be waived, unless in writing and in the presence of counsel, as recognized by the Constitution, is a right of a suspect in a custodial investigation. It is not an absolute right and may, thus, be invoked or rejected in criminal proceeding and, with more reason, in an administrative inquiry. (*Lumiqued v. Exevea, G.R No.. 117565, Nov. 18, 1997)*

Q: What is the quantum of proof required in administrative proceedings?

A: Only *substantial evidence* – that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

Q: When is the requirement of notice and hearing not necessary?

A:

1. Urgency of immediate action
2. Tentativeness of administrative action
3. Grant or revocation of licenses or permits to operate certain businesses affecting public order or morals
4. Summary abatement of nuisance per se which affects safety of persons or property
5. Preventive suspension of public officer or employee facing administrative charges
6. Cancellation of a passport of a person sought for criminal prosecution
7. Summary proceedings of distraint and levy upon property of a delinquent taxpayer
8. Replacement of a temporary or acting appointee
9. Right was previously offered but not claimed

2.b. Administrative Appeal and Review

Q: What is the concept of Administrative Appeal?

A: It refers to the review by a higher agency of decisions rendered by an administrative agency, commenced by petition of an interested party.

Note: Administrative appeals are established by the 1987 Administrative Code, which will govern primarily in the absence of a specific law applicable. Under the 1987 Administrative Code, administrative appeals from a decision of an agency are taken to the Department Head.

Q: What is the concept of administrative review?

A: Administrative appeals are not the only way by which a decision of an administrative agency may be reviewed. A superior officer or department head may upon his or her own volition review a subordinate's decision pursuant to the *power of control*.

Administrative reviews by a superior officer are, however, subject to the caveat that a final and executory decision is not included within the power of control, and hence can no longer be altered by administrative review.

Q: How may administrative decisions be enforced?

A: It may be enforced.

1. As provided for by law
2. May invoke the courts intervention

2.c. Administrative *Res Judicata*

Q: Does the doctrine of res judicata apply to administrative proceedings?

A: The doctrine of res judicata applies only to judicial or quasi judicial proceedings and not to the exercise of purely administrative functions. Administrative proceedings are non litigious and summary in nature; hence, res judicata does not apply.

3. Licensing, Rate-Fixing and Fact-Finding Powers

Q: What is Licensing Power?

A: The action of an administrative agency in granting or denying, or in suspending or revoking, a license, permit, franchise, or certificate of public convenience and necessity. *(De Leon, Administrative Law, 2010)*

Q: What is the nature of an administrative agency's act if it is empowered by a statute to revoke a license for non-compliance or violation of agency regulations?

A: For procedural purposes, an administrative action is not a purely administrative act if it is dependent upon the ascertainment of facts by the administrative agency. Where a statute empowers an agency to revoke a license for non-compliance with or violation of agency regulations, the administrative act is of a judicial nature, since it depends upon the ascertainment if the existence of certain past or present facts upon which a decision is to be made and rights and liabilities determined.

Q: Define Rate-Fixing Power.

A: It is the power usually delegated by the legislature to administrative agencies for the latter to fix the rates which public utility companies may charge the public. *(De Leon, Administrative Law, 2010)*

Q: What does the term "rate" mean?

A: It means any charge to the public for a service open to all and upon the same terms, including individual or joint rates, tolls, classification or schedules thereof, as well as communication, mileage, kilometrage and other special rates which shall be imposed by law or regulation to be observed and followed by a person.

Note: Fixing rates is essentially legislative but may be delegated. *(Philippine Inter-Island v. CA, G.R. No. 100481, January 22, 1997)*

Q: How is rate-fixing power performed?

A: The administrative agencies perform this function either by issuing rules and regulations in the exercise of their quasi-legislative power or by issuing orders affecting a specified person in the exercise of its quasi-judicial power. *(De Leon, Administrative Law, 2010)*

Q: May the function of fixing rates be either a legislative or adjudicative function?

A: Yes. The function of prescribing rates by an administrative agency may be either a legislative or and adjudicative function. *(De Leon, Administrative Law, 2010)*

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Q: If the power to fix rates is exercised as a legislative function, are notice and hearing required?

A: Where the rules and/or rates laid down are meant to apply to all enterprises of a given kind throughout the country, they may partake of a legislative character. If the fixing of rates were a legislative function, the giving of prior notice and hearing to the affected parties is not a requirement of due process, except where the legislature itself requires it. *(De Leon, Administrative Law, 2010)*

Q: What if it is exercised as a quasi-judicial function?

A: Where the rules and the rate imposed apply exclusively to a particular party, based upon a finding of fact, then its function is quasi-judicial in character.

As regards rates prescribed by an administrative agency in the exercise of its quasi-judicial function, prior notice and hearing are essential to the validity of such rates. But an administrative agency may be empowered by law to approve provisionally, when demanded by urgent public need, rates of public utilities without a hearing. *(De Leon, Administrative Law, 2010)*

Note: As a general rule, notice and hearing are not essential to the validity of an administrative action where the administrative body acts in the exercise of executive, administrative, or legislative functions; but where a public administrative body acts in a judicial or quasi-judicial matter, and its acts are particular and immediate rather than general and prospective, the person whose rights or property may be affected by the action is entitled to notice and hearing. *(Philippine Consumers Foundation, Inc. v Secretary of DECS, G.R. No. 78385, August 31, 1987)*

Q: In case of a delegation of rate-fixing power, what is the only standard which the legislature is required to prescribe for the guidance of administrative authority?

A: That the rate be reasonable and just. *(American Tobacco Co. v Director of Patents, 67 SCRA 287, 1975)*

Q: In the absence of an express requirement as to reasonableness, may the standard be implied?

A: Yes. In any case, the rates must both be non-confiscatory and must have been established in the manner prescribed by the legislature. Even in the absence of an express requirement as to reasonableness, this standard may be implied. A rate-fixing order, temporary or provisional though it may be, is not exempt from the procedural requirements of notice and hearing when prescribed by statute, as well as the requirement of reasonableness. *(De Leon, Administrative Law 2010, pp. 164-165)*

Q: May the delegated power to fix rates be re-delegated?

A: The power delegated to an administrative agency to fix rates cannot, in the absence of a law authorizing it, be delegated to another. This is experessed in the maxim, potestas delagata non delegari protest. *(Kilusang Mayo Uno Labor Center v. Garcia, Jr., 39 SCRA386, 1994)*

Q: May congress delegate to an administrative agency the power to ascertain facts as basis to determine when a law may take into effect or whether a law may be suspended or come to an end, in accordance with the purpose or policy of the law and the standard for the exercise of the power delegated?

A: Yes. This is not delegation of what the law shall be, but how the law will be enforced, which is permissible. Hence the legislature may delegate to an administrative agency the power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend, or the law may provide that it shall become operative only upon the contingency or some certain fact or event, the ascertainment of which is left to an administrative agency. *(1 Am. Jur. 2d 930-931)*

Q: What are the requirements for the delegation of the power to ascertain facts to be valid?

A: The law delegating the power to determine some facts or state of things upon which the law may take effect or its operation suspended must provide the standard, fix the limits within which the discretion may be exercised, and define the conditions therefor. Absent these requirements, the law and the rules issued thereunder are void, the former being an undue delegation of legislative power and the latter being the exercise if rule-making without legal basis. *(U.S. v. Ang Tang Ho, 43 Phil. 1, 1992)*

Q: In connection with the evidence presented before a fact-finding quasi judicial body, do the latter have a power to take into consideration

the result of its own observation and investigation of the matter submitted to it for decision?

A: A fact-finding quasi-judicial body (e.g., Land Transportation Franchising and Regulatory Board) whose decisions (on questions regarding certificated of public convenience) are influenced not only by the facts as disclosed by the evidence in the case before it but also by the reports of its field agents and inspectors that are periodically submitted to it, has the power to take into consideration the result of its own observation and investigation of the matter submitted to it for decision, in connection with other evidence presented at the hearing of the case *(Pantranco South Express, Inc. v Board of Transportaion, 191 SCRA 581,1991)*

4. Determinative Powers

Q: Define determinative powers.

A: It is the power of administrative agencies to better enable them to exercise their quasi-judicial authority.

Q: What consisted determinative powers?

A: DEDE_S

1. E*nabling* – Permits the doing of an act which the law undertakes to regulate and which would be unlawful without government approval.
2. D*irecting* – Orders the doing or performance of particular acts to ensure the compliance with the law and are often exercised for corrective purposes.
3. D*ispensing* – To relax the general operation of a law or to exempt from general prohibition, or to relieve an individual or a corporation from an affirmative duty.
4. E*xamining* – This is also called *investigatory power*. It requires production of books, papers, etc., the attendance of witnesses and compelling their testimony.
5. S*ummary* – Power to apply compulsion or force against persons or property to effectuate a legal purpose without judicial warrants to authorize such actions.

d. JUDICIAL RECOURSE AND REVIEW

1. Doctrine of Primary Administrative Jurisdiction

Q: What is the doctrine of primary jurisdiction or doctrine of prior resort?

A: Under the principle of primary jurisdiction, courts cannot or will not determine a controversy involving question within the jurisdiction of an administrative body prior to the decision of that question by the administrative tribunal where:

1. The question demands administrative determination requiring special knowledge, experience and services of the administrative tribunal;
2. The question requires determination of technical and intricate issues of a fact;
3. The uniformity of ruling is essential to comply with purposes of the regulatory statute administered

Note: In such instances, relief must first be obtained in administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court. The judicial process is accordingly suspended pending referral of the claim to the administrative agency for its view.

Q: What are the reasons for this doctrine?

A:

1. To take full advantage of administrative expertness; and
2. To attain uniformity of application of regulatory laws which can be secured only if determination of the issue is left to the administrative body

Q: When is the doctrine inapplicable?

A:

1. When, by the court's determination, the legislature did not intend that the issues be left solely to the initial determination of the administrative body.
2. When the issues involve purely questions of law.
3. When courts and administrative bodies have concurrent jurisdiction.

TEAM BAROPS

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Q: Can the court *motu proprio* raise the issue of primary jurisdiction?

A: The court may *motu proprio* raise the issue of primary jurisdiction and its invocation cannot be waived by the failure of the parties to argue it, as the doctrine exists for the proper distribution of power between judicial and administrative bodies and not for the convenience of the parties. In such case the court may:

1. Suspend the judicial process pending referral of such issues to the administrative body for its review, or
2. If the parties would not be unfairly disadvantaged, dismiss the case without prejudiced. *(Euro-Med laboratories Phil. vs. Province of Batangas, G.R No. 148706, July 17, 2006)*

2. Doctrine of Exhaustion of Administrative Remedies

Q: What is the doctrine of exhaustion of administrative remedies?

A: This doctrine calls for resort first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction and must first be appealed to the administrative superiors up to the highest level before the same may be elevated to the courts of justice for review.

Note: The premature invocation of the courts intervention is fatal to one's cause of action. Exhaustion of administrative remedies is a prerequisite for judicial review; it is a condition precedent which must be complied with.

Q: What are the reasons for exhausting administrative remedies?

A:

1. To enable the administrative superiors to correct the errors committed by their subordinates.
2. Courts should refrain from disturbing the findings of administrative bodies in deference to the doctrine of separation of powers.
3. Courts should not be saddled with the review of administrative cases.
4. Judicial review of administrative cases is usually effected through special civil actions which are available only if there is no other plain, speedy, and adequate remedy.
5. To avail of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies.

Q: What are the exceptions to the application of the doctrine?

A: DELILA PULP MUN Q

1. Violation of Due process
2. When there is Estoppel on the part of the administrative agency concerned
3. When the issue involved is a purely Legal question
4. When there is Irreparable injury
5. When the administrative action is patently illegal amounting to Lack or excess of jurisdiction
6. When the respondent is a Department Secretary whose acts as an Alter ego of the President bears the implied and assumed approval of the latter
7. When the subject matter is a Private land case proceedings
8. When it would be Unreasonable
9. When no administrative review is provided by Law
10. When the rule does not provide a Plain, speedy, and adequate remedy
11. When the issue of non-exhaustion of administrative remedies has been rendered Moot
12. When there are circumstances indicating the Urgency of judicial intervention
13. When it would amount to a Nullification of a claim; and
14. Where the rule of Qualified political agency applies. *(Laguna CATV Network v. Maraan, G.R. No. 139492, Nov. 19, 2002)*

Q: What is the effect of non-exhaustion of administrative remedies?

A: It will deprive the complainant of a cause of action, which is a ground for a *motion of dismiss*.

Q: Is non-compliance with the doctrines of primary jurisdiction or exhaustion of administrative remedies a jurisdictional defect?

A: No. Non-compliance with the doctrine of primary jurisdiction or doctrine of exhaustion of administrative remedies is not jurisdictional for the defect may be waived by a failure to assert the same at the earliest opportune time.

Q: Distinguish the doctrine of primary jurisdiction from the doctrine of exhaustion of administrative remedies.

A:

DOCTRINE OF PRIMARY JURISDICTION	DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES
Both deal with the proper relationships between the courts and administrative agencies.	
Applies where a case is within the concurrent jurisdiction of the court and an administrative agency but the determination of the case requires the technical expertise of the administrative agency	Applies where a claim is cognizable in the first instance by an administrative agency alone
Although the matter is within the jurisdiction of the court, it must yield to the jurisdiction of the administrative case	Judicial interference is withheld until the administrative process has been completed

3. Doctrine of Ripeness for Review

Q: What is the Doctrine of Ripeness for Review?

A: This doctrine is the similar to that of exhaustion of administrative remedies except that it applies to the rule making and to administrative action which is embodied neither in rules and regulations nor in adjudication or final order.

Q: When does the doctrine apply?

A: VICS

1. When the Interest of the plaintiff is subjected to or imminently threatened with substantial injury.
2. If the statute is Self-executing.
3. When a party is immediately confronted with the problem of complying or violating a statute and there is a risk of Criminal penalties.
4. When plaintiff is harmed by the Vagueness of the statute.

Q: What are the questions reviewable by the courts?

A:

1. *Questions of fact*

   GR: Courts will not disturb the findings of administrative agencies acting within the parameters of their own competence, special knowledge, expertise, and experience. The courts ordinarily accord respect if not finality to factual findings of administrative tribunals.

   XPN: If findings are not supported by substantial evidence.

2. *Questions of Law* – administrative decisions may be appealed to the courts independently of legislative permission. It may be appealed even against legislative prohibition because the judiciary cannot be deprived of its inherent power to review all decisions on questions of law.

3. *Mixed (law and fact)* – when there is a mixed question of law and fact and the court cannot separate the elements to see clearly what and where the mistake of law is, such question is treated as question of fact for purposes of review and the courts will not ordinarily review the decision of the administrative tribunal.

4. Doctrine of Finality of Administrative Action

Q: What is the doctrine of finality of administrative action?

A: This doctrine provides that no resort to courts will be allowed unless administrative action has been completed and there is nothing left to be done in the administrative structure.

Q: What are the instances where the doctrine finds no application?

A: DEAR – PIA

1. To grant relief to Preserve the *status quo* pending further action by the administrative agency
2. When it is Essential to the protection of the rights asserted from the injuries threatened
3. Where an administrative officer Assumes to act in violation of the Constitution and other laws
4. Where such order is not Reviewable in any other way and the complainant will

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

suffer great and obvious damage if the order is carried out
5. To an Interlocutory order affecting the merits of a controversy
6. To an order made in excess of power, contrary to specific prohibition in the statute governing the agency and thus operating as a Deprivation of a right assured by the statute
7. When review is Allowed by statutory provisions.

Q: What are the grounds for reversal of administrative findings?

A:

1. Finding is grounded on speculations or conjectures
2. Inferences made are manifestly mistaken or impossible
3. Grave abuse of discretion
4. Misapprehension of facts, or the agency overlooked certain facts of substance or value which if considered would affect the result of the case.
5. Agency went beyond the issues of the case and the same are contrary to the admissions of the parties or the presented
6. Irregular procedures or the violation of the due process
7. Rights of a party were prejudiced because the findings were in violation of the constitution, or in excess of statutory authority, vitiated by fraud, mistake
8. Findings not supported by substantial evidence

5. Judicial Relief from Threatened Administrative Action

Q: Can courts render a a decree in advance of administrative action?

A: Courts will not render a decree in advance of administrative action. Such action would be rendered nugatory.

It is not for the court to stop an administrative officer from performing his statutory duty for fear that he will perform it wrongly.

6. Judicial Review of Administrative Action

Q: What is the concept of judicial review?

A: Judicial review is the re-examination or determination by the courts in the exercise of their judicial power in an appropriate case instituted by a party aggrieved thereby as to whether the questioned act, rule, or decision has been validly or invalidly issued or whether the same should be nullified, affirmed or modified.

Note: The mere silence of the law does not necessarily imply that judicial review is unavailable.

Q: What are the requisites of judicial review of administrative action?

A:

1. Administrative action must have been completed ("*the principle of finality of administrative action*;") and
2. Administrative remedies must have been exhausted known as ("*the principle of exhaustion of administrative remedies*.")

Q: What are the limitations on judicial review?
A:

1. Final and executory decisions cannot be made the subject of judicial review.
2. Administrative acts involving a political question are beyond judicial review, *except* when there is an allegation that there has been grave abuse of discretion.
3. Courts are generally bound by the findings of fact of an administrative agency.

Q: Is the rule that findings of facts by administrative agencies are binding on the courts subject to any exceptions?

A:
GR: Yes.

XPN: FIPE – GES

1. Findings are vitiated by Fraud, imposition, or collusion
2. Procedure which led to factual findings is Irregular
3. Palpable errors are committed
4. Factual findings not supported by Evidence
5. Grave abuse of discretion, arbitrariness, or capriciousness is manifest
6. When expressly allowed by Statute; and
7. Error in appreciation of the pleadings and in the interpretation of the documentary evidence presented by the parties

Q: What are the grounds which would warrant the reversal of administrative finding?

A: MIGS – VIBE

1. Misapprehension of facts, or the agency overlooked certain facts of substance or value which if considered would affect the result of the case

2. Interferences made are manifestly mistaken, absurd, or impossible

3. Grave abuse of discretion

4. Finding is grounded on Speculations, surmises, or conjectures

5. Rights of the parties were prejudiced because the findings were in Violation of the constitution, or in excess of statutory authority, vitiated by fraud, or mistake

6. Irregular procedures or violations of due process

7. Agency went Beyond the issues of the case and the same are contrary to the admissions of the parties or the evidence presented

8. Findings not supported by substantial Evidence.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

K. ELECTION LAW

Q: What is an election?

A: It is the selection of candidates to public office by popular vote of the people.

Q: What are the components of an election?

A:

1. Choice or selection of candidates to public office by popular vote
2. Conduct of the polls
3. Listing of votes
4. Holding of electoral campaign
5. Act of casting and receiving the ballots from the voters
6. Counting the ballots
7. Making the election returns
8. Proclaiming the winning candidates

Q: What are the types of elections?

A:

1. *Regular election* – refers to an election participated in by those who possess the right of suffrage, are not otherwise disqualified by law, and who are registered voters.

   a. *National Election—*
      i. for President and VP
      ii. for Senators
   b. *Local Elections—*
      i. For Members of HOR
      ii. Party-List Representatives
      iii. Provincial Officials
      iv. City Officials
      v. Municipal Officials
   c. *Barangay Elections*
   d. *ARRM Elections—*
      i. For Regional Governor
      ii. Regional Vice Governor
      iii. Regional Assemblymen
   e. *SangguniangKabataan (SK) Elections*

2. *Special election* – one held to fill a vacancy in office before the expiration of the term for which the incumbent was elected.

   a. *Plebiscite*—electoral process by which an initiative on the Constitution is approved or rejected by the people.
   b. *Initiative*—power of the people to propose amendments to the Constitution
   or to propose and enact legislations through election called for the purpose
      i. Initiative on the Constitution
      ii. Initiative on Statutes
      iii. Initiative on Local Legislation
   c. *Referendum*—power of the electorate to approve or reject a piece of legislation through an election called for the purpose.
      i. Referendum on Statutes
      ii. Referendum on Local Laws
   d. *Recall*—mode of removal of an elective public officer by the people before the end of his term of office.

Q: What are the rules on construction of election laws?

A:

CONSTRUCTION OF ELECTION LAW	
Laws for conduct of elections	1. *Before the election* – Mandatory 2. *After the election* – Directory
Laws for candidates	Mandatory and strictly construed
Procedural rules	Liberally construed in favor of ascertaining the will of the elections

Q: When will the election period commence?

A: The election period shall commence 90 days before the day of the election and shall end 30 days thereafter. *(Sec. 3, B.P. 881 Omnibus Election Code)*

Q: What is the purpose of an election?

A: To give the voters a direct participation in the affairs of their public officials or in deciding some questions of public interest. *(Luna v. Rodriguez, G.R. No. L-13744, November 29, 1918)*

a. SUFFRAGE

Q: What is the right of suffrage?

A: It is the right to vote in the election of officers chosen by the people and in the determination of questions submitted to the people. It includes:

1. Election
2. Plebiscite
3. Initiative and
4. Referendum

Q: Is the right of suffrage absolute?

A: No. Needless to say, the exercise of the right of suffrage, as in the enjoyment of all other rights, is subject to existing substantive and procedural requirements embodied in our Constitution, statute books and other repositories of law. *(AKBAYAN-YOUTH v. COMELEC, G.R. No. 147066, March 26, 2001)*

b. QUALIFICATION AND DISQUALIFICATION OF VOTERS

Q: What are the qualifications for suffrage?

A:

1. Filipino citizenship
2. At least 18 years of age
3. Resident of the Philippines for at least one year
4. Resident of the place where he proposes to vote for at least 6 months; and
5. Not otherwise disqualified by law (*Sec. 9, R.A. No. 8189)*

Q: What are the procedural qualifications?

A: As to the procedural limitation, the right of a citizen to vote is necessarily conditioned upon certain procedural requirements he must undergo: among others, the process of registration. Specifically, a citizen in order to be qualified to exercise his right to vote, in addition to the minimum requirements set by the fundamental charter, is obliged by law to register, at present, under the provisions of Republic Act No. 8189, otherwise known as the "Voter's Registration Act of 1996."*(Akbayan-Youth v. COMELEC, G.R. No. 147066, Mar. 26, 2001)*

Q: Who are disqualified to vote?

A:

1. Persons sentenced by final judgment to suffer imprisonment for not less than one year, unless pardoned or granted amnesty; but right is reacquired before expiration of 5 years after service of sentence
2. Conviction by final judgment of any of the following crimes:
   a. Crime involving disloyalty to the government
   b. Any crime against national security
   c. Firearms laws
   But right is reacquired before expiration of 5 years after service of sentence.
3. Insanity or incompetence declared by competent authority *(Sec. 118, B.P. 881 Omnibus Election Code)*

c. REGISTRATION OF VOTERS

Q: Does registration confer the right to vote?

A: No. It is but a condition precedent to the exercise of the right to vote. Registration is a regulation, not a qualification. *(Yra v. Abano, G.R. No. L-30187, November 15, 1928)*

Q: What is the effect of transfer of residence?

A: Any person, who transfers residence solely by reason of his occupation, profession or employment in private or public service, education, etc., shall not be deemed to have lost his original residence. *(Asistio v. Aguirre, G.R. No. 191124, April 27, 2010)*

Q: What is domicile?

A: A place to which, whenever absent for business or for pleasure, one intends to return, and depends on facts and circumstances in the sense that they disclose intent. *(Romualdez-Marcos vs. COMELEC, G.R. No. 119976, Sept. 18, 1995)*

Q: What is residence for election purposes?

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

A: It implies the factual relationship of an individual to a certain place. It is the physical presence of a person in a given area, community or country. For election purposes the concepts of residence and domicile are dictated by the peculiar criteria of political laws. As these concepts have evolved in our election law, what has clearly and unequivocally emerged is the fact that residence for election purposes is used synonymously with domicile. *(Ibid.)*

Q: Petitioner ran congressman of the First District of Laguna. In his CoC, he indicated that his complete/exact address is in Sta. Rosa City, Laguna. Vicente sought the cancellation of petitioner's COC and the latter's disqualification as a candidate on the ground of an alleged material misrepresentation in his CoC regarding his place of residence, because during past elections, he had declared Pagsanjan, Laguna as his address, and Pagsanjan was located in the *Fourth* District of Laguna and that Vicente is merely leasing a property in his alleged Sta.Rosa residence. Does the constitution require that a candidate be a property owner in the district where he intends to run?

A: No. Although it is true that the latest acquired abode is not necessarily the domicile of choice of a candidate, there is nothing in the Constitution or our election laws which require a congressional candidate to sell a previously acquired home in one district and buy a new one in the place where he seeks to run in order to qualify for a congressional seat in that other district. Neither do we see the fact that Vicente was only leasing a residence in Sta. Rosa at the time of his candidacy as a barrier for him to run in that district. Certainly, the Constitution does not require a congressional candidate to be a property owner in the district where he seeks to run but only that he resides in that district for at least a year prior to Election Day. To use ownership of property in the district as the determinative indicium of permanence of domicile or residence implies that only the landed can establish compliance with the residency requirement. This Court would be, in effect, imposing a property requirement to the right to hold public office, which property requirement would be unconstitutional. *(Fernandez v. HRET, G.R. No. 187478, Dec. 29, 2009)*

Q: Who is a double-registrant?

A: Any person who, being a registered voter, registers anew without filing an application for cancellation of his previous registration. *(Sec. 26 (y)(6), Omnibus Election Code)*

Q: Maruhom registered as a voter in Marawi on 26 July 2003. Only three days after, Maruhom again registered as a voter in Marantao, without first canceling her registration in Marawi; and on 28 March 2007, Maruhom filed her COC declaring that she was a registered voter in Marantao and eligible to run as a candidate for the position of mayor of said municipality. Is she still qualified to run for such position in Marantao?

A: No. Her prior registration makes her subsequent registration null and void. She cannot be considered a registered voter in Marantao and thus she made a false representation in her COC when she claimed to be one. If a candidate states a material representation in the COC that is false, the COMELEC is empowered to deny due course to or cancel the COC. The person whose COC is denied due course or cancelled under Section 78 of the OEC is not treated as a candidate at all, as if such person never filed a COC. However, although Maruhom's registration in Marantao is void, her registration in Marawi still subsists. She may be barred from voting or running for mayor in the former, but she may still exercise her right to vote, or even run for an elective post, in the latter. *(Maruhom v. COMELEC, G.R. No. 179430, July 27, 2009)*

Q: Are double registrants still qualified to vote?

A: Yes, double registrants are still qualified to vote provided that COMELEC has to make a determination on which registration is valid and which is void. COMELEC could not consider both registrations valid because it would then give rise to the anomalous situation where a voter could vote in two precincts at the same time. COMELEC laid down the rule in Minute Resolution No. 00-1513 that while the first registration of any voter

subsists, any subsequent registration thereto is void *ab initio*. *(Maruhom v. COMELEC, G.R. No. 179430, July 27, 2009)*

Q: Y filed a petition for the cancellation of the certificate of candidacy (COC) of X. Essentially, Y sought the disqualification of X for Mayor of South Upi, Maguindanao, alleging, that X was not a registered voter in the Municipality of South Upi, Maguindanao since he failed to sign his application for registration, and that the unsigned application for registration has no legal effect. In refutation, X asseverated that his failure to sign his application for registration did not affect the validity of his registration since he possesses the qualifications of a voter set forth in the Omnibus Election Code as amended by Section 9 of Republic Act 8189. Y insists that the signature in the application for registration is indispensable for its validity as it is an authentication and affirmation of the data appearing therein. Should X be disqualified?

A: Yes. R.A. 8189, The Voter's Registration Act of 1996, specifically provides that an application for registration shall contain specimen signatures of the applicant as well as his/her thumbprints, among others. The evidence shows that X failed to sign very important parts of the application, which refer to the oath which X should have taken to validate and swear to the veracity of the contents appearing in the application for registration. Plainly, from the foregoing, the irregularities surrounding X's application for registration eloquently proclaims that he did not comply with the minimum requirements of RA 8189. This leads to only one conclusion: that X, not having demonstrated that he duly accomplished an application for registration, is not a registered voter. Hence, he must be disqualified to run for Mayor. *(Gunsi Sr. v. COMELEC, G.R. No. 168792, Feb. 23, 2009)*

Q: "A", while of legal age and of sound mind, is illiterate. He has asked your advice on how he can vote in the coming election for his brother is running for mayor. This will be the first time "A" will vote and he has never registered as a voter before. What advice will you give him on the procedure he needs to follow in order to be able to vote?

A: The Constitution provides that until Congress shall have provided otherwise, illiterate and disabled voters shall be allowed to vote under existing laws and regulations (Art, V, Sec. 2). It is necessary for any qualified voter to register in order to vote. (Omnibus Election Code, Sec. 115) In the case of illiterate and disabled voters, their voter's affidavit may be prepared by any relative within the fourth civil degree of consanguinity or affinity or by any member of the board of election inspectors who shall prepare the affidavit in accordance with the data supplied by the applicant. *(Sec. 14, R.A. No. 8189)*

Q: What is the system of continuing registration?

A: **GR:** It is a system where the application of registration of voters shall be conducted daily in the office hours of the election officer during regular office hours.

XPN: No registration shall be conducted during the period starting 120 days before a regular election and 90 days before a special election *(Sec. 8, R.A. 8189)*

Note: The SC upheld COMELEC's denial of the request for two additional registration days in order to enfranchise more than 4 million youth who failed to register on or before December 27, 2000. It is an accepted doctrine in administrative law that the determination of administrative agencies as to the operation, implementation and application of a law is accorded greatest weight, considering that these specialized government bodies are, by their nature and functions, in the best position to know what they can possibly do or not do under prevailing circumstances *(Akbayan Youth v. COMELEC, G.R. No. 147066, Mar. 26, 2001)*

Q: On Nov. 12, 2008 respondent COMELEC issued Resolution 8514 set Dec. 2, 2008 to Dec.15, 2009 as the period of continuing voter registration using the biometrics process in all areas except ARMM. Subsequently COMELEC issued Resolution 8585 on Feb. 12, 2009 adjusting the deadline of voter registration for the May 10, 2010 national and local elections to Oct. 31, 2009 instead of Dec. 15, 2009 as previously fixed by Resolution 8514. Petitioners challenge the validity of COMELEC Resolution

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

8585 and seek the declaration of its nullity. Petitioners further contend that the COMELEC Resolution 8585 is an unconstitutional encroachment on the legislative power of Congress as it amends the system of continuing voter registration under Section 8 of RA 8189. Is COMELEC Resolution 8585 valid? Differentiate from the case of Akbayan-Youth v. COMELEC?

A: In the present case, the Court finds no ground to hold that the mandate of continuing voter registration cannot be reasonably held within the period provided by RA 8189 (Absentee Voting), Sec.8 – daily during the office hours, except during the period starting 120 days before the May 10,2010 regular elections. There is thus no occasion for the COMELEC to exercise its power to fix other dates or deadlines thereof.

The present case differs significantly from the Akbayan-Youth vs. COMELEC. In the said case, the Court held that the COMELEC did not abuse its discretion in denying the request of the therein petitioners for an extension of the Dec. 27, 2000 deadline of voter registration for the May 14, 2001 elections. For the therein petitioners filed their petition with the court within the 120-day period for the conduct of voter registration under Sec. 8, RA 8189, and sought the conduct of a two-day registration of Feb. 17, and 18,2001, clearly within the 120-day prohibited period.

The clear import of the Court's pronouncement in Akbayan-Youth is that had therein petitioners filed their petition – and sought an extension date that was – before the 120-day prohibitive period, their prayer would have been granted pursuant to the mandate of RA 8189 (Absentee Voting). In the present case, as reflected earlier, both the dates of filing of the petition (October 30, 2009) and the extension sought (until January 9, 2010) are prior to the 120 day prohibitive period. The Court therefore, finds no legal impediment to the extension prayed for. *(Kabataan partylist v. COMELEC, G.R. No. 189868, Dec. 15, 2009)*

Q: What is absentee voting?

A: It is a process by which qualified citizens of the Philippines abroad exercise their right to vote pursuant to the constitutional mandate that Congress shall provide a system for absentee voting by qualified Filipinos abroad *(Sec. 2, Art. V, 1987 Constitution)*. Absentee voting is an exception to the six month/one year residency requirement. *(Macalintal v. Romulo, G.R. No. 157013, July 10, 2003)*

Note: The constitutionality of Sec. 18.5 of R.A. 9189 (Absentee Voting) is upheld with respect only to the authority given to the COMELEC to proclaim the winning candidates for the Senators and party-list representatives but not as to the power to canvass votes and proclaim the winning candidates for President and Vice-president. *(Ibid.)*

Q: Who are qualified to vote under the absentee voting law?

A: All citizens of the Philippines abroad, who are not otherwise disqualified by law, at least eighteen (18) years of age on the day of the elections, may vote for president, vice-president, senators and party-list representatives. *(Sec. 4, R.A. 9189)*

Q: Who are disqualified from voting under the absentee voting law?

A:

1. Those who have lost their Filipino citizenship in accordance with Philippine laws;
2. Those who have expressly renounced their Philippine citizenship and who have pledged allegiance to a foreign country;
3. Those who have committed and are convicted in a final judgment by a court or tribunal of an offense punishable by imprisonment of not less than one (1) year, including those who have committed and been found guilty of Disloyalty as defined under Art. 137 of the Revised Penal Code, such disability not having been removed by plenary pardon or amnesty;

   Note: However, any person disqualified to vote under this subsection shall automatically acquire the right to vote upon expiration of five (5) years after service of sentence; Provided further, that the Commission may take cognizance of final judgments issued by foreign courts or

tribunals only on the basis of reciprocity and subject to the formalities and processes prescribed by the Rules of Court on execution of judgments;

4. An immigrant or a permanent resident who is recognized as such in the host country

   Note: An immigrant or permanent resident may vote if he/she executes, upon registration, an affidavit prepared for the purpose by the Commission declaring that he/she shall resume actual physical permanent residence in the Philippines not later than three (3) years from approval of his/her registration under this Act. Such affidavit shall also state that he/she has not applied for citizenship in another country. Failure to return shall be the cause for the removal of the name of the immigrant or permanent resident from the National Registry of Absentee Voters and his/her permanent disqualification to vote in absentia.

5. Any citizen of the Philippines abroad previously declared insane or incompetent by competent authority in the Philippines or abroad, as verified by the Philippine embassies, consulates or foreign service establishments concerned

   Note: Unless such competent authority subsequently certifies that such person is no longer insane or incompetent. *(Sec. 5, Absentee Voting Law)*

Q: How is registration done for absentee voters?

A: Registration as an overseas absentee voter shall be done in person *(Sec. 6, R.A. 9189, Absentee Voting Law)*

Q: How shall voting be done?

A:

1. The overseas absentee voter shall personally accomplish his/her ballot at the embassy, consulate or other foreign service establishment that has jurisdiction over the country where he/she temporarily resides or at any polling place designated and accredited by the Commission. *(Sec. 16, R.A. 9189 Absentee Voting Law)*

2. The overseas absentee voter may also vote by mail. *(R.A. 9189 Absentee Voting Law)*

Q: When may voting by mail be allowed?

A: Voting by mail may be allowed in countries that satisfy the following conditions:

1. Where the mailing system is fairly well-developed and secure to prevent the occasion of fraud
2. Where there exists a technically established identification system that would preclude multiply or proxy voting; and
3. Where the system of reception and custody of mailed ballots in the embassies, consulates and other foreign service establishments concerned are adequate and well-secured.

Thereafter, voting by mail in any country shall be allowed only upon review and approval of the Joint Congressional Oversight Committee. *(Sec. 17.1, R.A. No. 9189 Absentee Voting Law)*

Q: How will the counting and canvassing of the votes be done?

A:

1. It shall be conducted in the country where the votes were actually cast. The opening of the specially-marked envelopes containing the ballots and the counting and canvassing of votes shall be conducted within the premises of the embassies, consulates and other foreign service establishments or in such other places as may be designated by the COMELEC pursuant to the Implementing Rules and Regulations. The COMELEC shall ensure that the start of counting in all polling places abroad shall be synchronized with the start of counting in the Philippines.
2. The COMELEC shall constitute as many Special Boards of Election Inspectors as may be necessary to conduct and supervise the counting of votes.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

3. Immediately upon completion of the counting, the Special Boards of Election Inspectors shall transmit via facsimile and/or electronic mail the results to the Commission in Manila and the accredited major political parties. *(Sec. 18, R.A. 9189 Absentee Voting Law)*

Q: Can the canvass of the overseas absentee votes delay the proclamation of winners?

A: No, if the outcome of the election will not be affected by the results thereof. Notwithstanding the foregoing, the COMELEC is empowered to order the proclamation of winning candidates despite the fact that the scheduled election has not yet taken place in a particular country or countries, if the holding of elections therein has been rendered impossible by events, factors, and circumstances peculiar to such country or countries, and which events, factors and circumstances are beyond the control or influence of the COMELEC. *(Sec. 18, RA 9189 Absentee Voting Law)*

Q: What kind of registration system do the Philippines have?

A:

1. Continuing
2. Computerized; and
3. Permanent

d. INCLUSION AND EXCLUSION PROCEEDINGS

Q: Which court has jurisdiction over inclusion and exclusion proceedings?

A:

1. MTC - original and exclusive
2. RTC - appellate jurisdiction
3. SC - appellate jurisdiction over RTC on question of law

Q: Who may file a petition in an inclusion or exclusion proceedings?

A:

1. Inclusion
   a. Any private person whose application was disapproved by the Election Registration Board or whose name was stricken out from the list of voters
   b. COMELEC

2. Exclusion
   a. Any registered voter in the city or municipality
   b. Representative of political party
   c. Election officer
   d. COMELEC *(BP 881 Omnibus Election Code)*

Q: What is the period for filing a petition in an inclusion or exclusion proceeding?

A:

1. Inclusion - any day except 105 days before regular election or 75 days before a special election. *(COMELEC Reso. No. 8820)*
2. Exclusion - anytime except 100 days before a regular election or 65 days before a special election. *(COMELEC Reso. No. 9021)*

Q: Do decisions in an inclusion or exclusion proceedings acquire the nature of *res judicata*?

A: No. The proceedings for the exclusion or inclusion of voters in the list of voters are summary in character. Except for the right to remain in the list of voters or for being excluded therefrom for the particular election in relation to which the proceedings had been held, a decision in an exclusion or inclusion proceeding, even if final and unappealable, does not acquire the nature of res judicata. In this sense, it does not operate as a bar to any further action that a party may take concerning the subject passed upon in the proceeding. Thus, a decision in an exclusion proceeding would neither be conclusive on the voter's political status, nor bar subsequent proceedings on his right to be registered as a voter in any other election. *(Domino vs. COMELEC, G.R. No. 134015, July 19, 1999)*

e. POLITICAL PARTIES

Q: What is a political party?

A: A political party is any organized group of citizens advocating an ideology or platform,

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

To acquire juridical personality and to entitle it to rights and privileges granted to political parties, it must be registered with COMELEC. *(Sec. 3 (c), R.A. 7941)*

Q: What is a sectoral party?

A: A sectoral party refers to an organized group of citizens belonging to any of the sectors enumerated in Section 5, RA 7941 whose principal advocacy pertains to the special interest and concerns of their sector. *(Sec. 3 (d), R.A. 7941)*

Q: What is a sectoral organization?

A: A sectoral organization refers to a group of citizens or a coalition of groups of citizens who share similar physical attributes or characteristics, employment, interests or concerns. *(Sec. 3 (e), R.A. 7941)*

Q: What are the grounds for the refusal and/or cancellation of registration of a political party?

A:

1. It is a religious sect or denomination, organization or association, organized for religious purposes
2. It advocates violence or unlawful means to seek its goal
3. It is a foreign party or organization
4. It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes
5. It violates or fails to comply with laws, rules or regulations relating to elections
6. It declares untruthful statements in its petition
7. It has ceased to exist for at least one (1) year; or
8. It fails to participate in the last two (2) preceding elections or fails to obtain at least two per centum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered. *(Sec. 6, R.A. 7941)*

f. CANDIDATES

1. Qualifications of Candidates

Q: What are the qualifications for President and Vice President of the Philippines?

A:

1. Natural-born citizen of the Philippines
2. Registered voter
3. Able to read and write
4. At least 40 years of age at the day of election
5. And a resident of the Philippines for at least ten years immediately preceding such election. *(Sec. 63, B.P. No. 881 Omnibus Election Code)*

Q: What are the qualifications of elective local officials?

A:

1. Must be a citizen of the Philippines
2. A registered voter in the barangay, municipality, city, or province or, in the case of a member of the sangguniang panlalawigan, sangguniang panlungsod, or sanggunian bayan, the district where he intends to be elected
3. A resident therein for at least one (1) year immediately preceding the day of the election
4. And able to read and write Filipino or any other local language or dialect. *(Sec. 39, R.A. No. 7160 Local Government Code of the Philippines)*

Q: What are the grounds for disqualification of a candidate?

A:

1. Declared as incompetent or insane by competent authority
2. Convicted by final judgment for subversion, insurrection, rebellion, or any offense for which he has been sentenced to a penalty of 18 months imprisonment

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

3. Convicted by final judgment for a crime involving moral turpitude
4. Election offenses under Sec. 68 of the Omnibus Election Code
5. Committing acts of terrorism to enhance candidacy
6. Spending in his election campaign an amount in excess of that allowed
7. Soliciting, receiving, making prohibited contributions
8. Not possessing qualifications and possessing disqualifications under the Local Government Code
9. Sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one year or more of imprisonment within two years after serving sentence
10. Removed from office as a result of an administrative case
11. Convicted by final judgment for violating the oath of allegiance to the Republic
12. Dual citizenship (more specifically, dual allegiance)
13. Fugitives from justice in criminal or non-political cases here or abroad
14. Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right
15. Insane or feeble- minded
16. Nuisance candidate
17. Violation of Sec. 73 OEC with regard to COC
18. Violation of Sec. 78: material misrepresentation in the COC

Note: When a candidate has not yet been disqualified by final judgment during the election day and was voted for, the votes cast in his favor cannot be declared stray. *(Codilla v. De Venecia, G.R. No. 150605, Dec. 10, 2002)*

2. Filing of Certificates of Candidacy

Q: What is a certificate of candidacy (CoC)?

A: It is the formal manifestation to the whole world of the candidate's political creed or lack of political creed.

Note: A COC may be amended before the elections, even after the date of its filing

Provisions of the election law on certificates of candidacy are mandatory in terms. However, after the elections, they are regarded as directory so as to give effect to the will of the electorate. *(Saya-Ang Sr. v. COMELEC, G.R. No. 155087, November 28, 2003)*

Q: What is the purpose of the law in requiring the filing of certificate of candidacy and in fixing the time limit therefor?

A:

1. To enable the voters to know, at least 60 days before the regular election, the candidates among whom they have to choose, and
2. To avoid confusion and inconvenience in the tabulation of the votes cast. (*Miranda v. Abaya, G.R. No. 136351, July 28, 1999)*

Q: Ka Roger went to Laguna to file his COC. The election officer refused to receive Ka Roger's CoC because he seeks to achieve his goals through violence. Is the refusal valid?

A: No. It is the ministerial duty on the part of the election officer to receive and acknowledge receipt of the CoC. The question of whether or not a person is disqualified belongs to another tribunal in an appropriate disqualification case.

Q: What is the effect of filing a certificate of candidacy on the tenure of incumbent government officials?

A:

1. *Appointive official* – Sec. 66 of the OEC provides that any person holding an appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in GOCCs, shall be considered ipso facto RESIGNED from his office upon the filing of his certificate of candidacy. Such resignation is irrevocable.

2. *Elective official* – No effect. The candidate shall continue to hold office, whether he is running for the same or a different position. *(Sec. 14, Fair Elections Act expressly repealed Sec. 67 of BP 881)*

Q: Do the deemed-resigned provisions which are applicable to appointive officials and not with elective officials violate the equal protection clause of the constitution?

A: No. The legal dichotomy created by the Legislature is a reasonable classification, as there are material and significant distinctions between the two classes of officials. This is because elected public officials, by the very nature of their office, engage in partisan political activities almost all year round, even outside of the campaign period. Political partisanship is the inevitable essence of a political office, elective positions included. The equal protection of the law clause in the Constitution is not absolute, but is subject to reasonable classification. Substantial distinctions clearly exist between elective officials and appointive officials. The former occupy their office by virtue of the mandate of the electorate. They are elected to an office for a definite term and may be removed therefrom only upon stringent conditions. On the other hand, appointive officials hold their office by virtue of their designation thereto by an appointing authority. Some appointive officials hold their office in a permanent capacity and are entitled to security of tenure while others serve at the pleasure of the appointing authority. *(Quinto v. COMELEC, Feb. 22, 2010, G.R. 189698)*

Q: What is the duty of the COMELEC in receiving CoCs?

A:

GR: When a candidate files his COC, the COMELEC has a ministerial duty to receive and acknowledge its receipt pursuant to Section 76, of the Election Code. The COMELEC may not, by itself, without the proper proceedings, deny due course to or cancel a COC filed in due form. *(Luna vs. COMELEC, G.R. No. 165983, April 24, 2007)*

XPN:

1. *Nuisance candidates*—Sec. 69 of the OEC
2. *Petition to deny due course or to cancel a COC*—Sec. 78 of the OEC
3. Filing of a disqualification case on any of the grounds enumerated in Section 68, OEC.

Q: Can you withdraw the CoC?

A: Yes. A person who has filed a CoC may, prior to the election, withdraw the same by submitting to the office concerned (COMELEC) a written declaration under oath. *(Sec. 73, Omnibus Election Code)*

Q: On the last day of filing a CoC, March 31, Jose Monsale withdrew his CoC. April 1, campaign period started. On April 2, he wanted to run again so he filed a written declaration withdrawing his withdrawal. Is his act of withdrawing the withdrawal valid?

A: No. The withdrawal of the withdrawal of the CoC made after the last day of filing is considered as filing of a new CoC. Hence, it was not allowed since it was filed out of time. *(Monsale v. Nico, G.R. No. L-2539, May 28, 1949)*

Q: Explain the concept of "substitution of candidacy".

A: If *after the last day* for the filing of certificates of candidacy, an official candidate of a political party: (1) dies, (2) withdraws or is (3) disqualified for any cause—a person belonging to, and certified by, the same political party may file a certificate of candidacy not later than mid-day of election day to replace the candidate who died, withdrew or was disqualified. *(COMELEC Reso. No. 9140)*

Note: However, no substitution shall be allowed for any independent candidate. *(Ibid.)*

Q: What are the requisites for valid substitution?

A:

GR:

1. The substitute must belong to the same party
2. The deceased, disqualified or withdrawn candidate must have duly file a valid certificate of candidacy. *(Ibid.)*

XPN: This does not include those cases where the certificate of candidacy of the person to be substituted had been denied due course and canceled under Section 78 of the Omnibus

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Election Code. While the law enumerated the occasion where a candidate may be validly substituted, there is no mention of the case where a candidate is excluded not only by disqualification but also by denial and cancellation of his certificate of candidacy. *(Ong v. Alegre, G.R. No. 163295, January 23, 2006)*

Q: When may substitution take place?

A: Substitution can only take place on the first day of campaign period until not later than mid-day of election day. *(COMELEC Reso. No. 9140)*

Q: Martin de Guzman died while campaigning. His son substituted him. Voters on the day of the election wrote Martin de Guzman instead of casting the same in the name of his son, Joel de Guzman. Should the votes be counted in favor of Joel?

A: Yes. As a general rule, the same will be considered as stray votes but will not invalidate the whole ballot. Exception is when the substitute carries the same family name. *(Sec. 12, R.A 9006)*

Q: In the 1998 election, Mayor Miranda already served 8 consecutive terms, yet he still filed a CoC. As a result, Abaya filed a disqualification case. COMELEC then disqualified Miranda and cancelled his CoC. The son of Miranda, Joel, upon nomination of their political party, filed a certificate of substitute. Joel Miranda won. Was the substitution valid?

A: There was no valid substitution. COMELEC did not only disqualify Miranda but also cancelled his CoC. Therefore, he cannot be validly substituted. A disqualified candidate may only be substituted if he had a valid CoC because if the disqualified candidate did not have a valid and seasonably filed CoC, he is and was not a candidate at all. *(Miranda v. Abaya, G.R. No. 136351, July 28, 1999)*

Q: Since there was no valid substitution, should the candidate who obtained the second highest vote be proclaimed? Who will then assume the position of mayorship?

A: No. Under the doctrine on the rejection of second placer, the second placer is just like that—second placer. He was not the choice of the electorate. The wreath of victory cannot be transferred to the repudiated loser. Following the rule on succession, it is the Vice-Mayor who will assume the position of mayorship. *(Cayat v. COMELEC, G.R. No. 163776, Apr. 24, 2010)*

Q: What is the effect of reacquisition of Philippine citizenship as to the domicile/residence requirement for running as a mayoralty candidate?

A: Reacquisition of Philippine citizenship under R.A. 9225 has no automatic impact or effect on a candidate's residence/domicile. He merely has an option to again establish his domicile in the municipality, which place shall become his new domicile of choice. The length of his residence therein shall be determined from the time he made it his domicile of choice and it shall not retroact to the time of his birth. *(Japson v. COMELEC, G.R .No. 180088, Jan. 19,2009)*

Q: May a second placer be declared elected?

A:

GR: No.

XPN:

1. If the one who obtained the highest number of votes is disqualified and
2. The electorate is fully aware in fact and in law of the candidate's disqualification so as to bring such awareness within the realm of notoriety but would nonetheless cast their votes in favor of the ineligible candidate. *(Grego v. COMELEC, G. R. No. 125955, June 19, 1997)*

Q: What is the effect of filing two certificates of candidacy?

A: Filing of two (2) certificates of candidacy disqualifies the person to run for both elective positions. *(Sec. 73, B.P. 881 Omnibus Election Code)*

Q: Who may be considered a nuisance candidate?

A: They are candidates who have no bona fide intention to run for the office for which the COC has been filed and would thus prevent a faithful election. And upon showing that:

1. Said certificate has been filed to put the election process in mockery or disrepute
2. To cause confusion among the voters by the similarity of the names of the registered candidates; or
3. By other circumstances or acts which demonstrate that a candidate has no *bona fide* intention to run for the office for which his certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate. *(Tajanan v. COMELEC, G.R. No. 104443, Apr. 13, 1992)*

The COMELEC may, *motu proprio* or upon verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy upon showing of the above-stated circumstances. *(Sec. 69, B.P. 881 Omnibus Election Code)*

Q: A and B were the only candidates for mayor of Bigaa, Bulacan in the May 1995 local elections. A obtained 10,000 votes as against 3,000 votes for B. In the same elections, X got the highest number of votes among the candidates for the Sangguniang Bayan of the same town. A died the day before his proclamation.

1. **Who should the Board of Canvassers proclaim as elected mayor, A, B or X? Explain.**
2. **Who is entitled to discharge the functions of the office of the mayor, B or X? Explain.**

A: It is A who should be proclaimed as winner, because he was the one who obtained the highest number of votes for the position of mayor, but a notation should be made that he died for the purpose of applying the rule on succession to office.

1. B cannot be proclaimed, because the death of the candidate who obtained the highest number of votes does not entitle the candidate who obtained the next highest number of votes to be proclaimed the winner, since he was not the choice of the electorate. X is not entitled to be proclaimed elected as mayor, because he ran for the Sangguniang Bayan.

2. Neither B nor X is entitled to discharge the functions of the office of mayor. B is not entitled to discharge the office of mayor, since he was defeated in the election. X is not entitled to discharge the office of mayor. Under Section 44 of the Local Government Code, it is the vice mayor who should succeed in case of permanent vacancy in the office of the mayor. It is only when the position of the vice mayor is also vacant that the member of the Sangguniang Bayan who obtained the highest number of votes will succeed to the office of mayor. (*Benito v. COMELEC, G.R. No. 106053 Aug. 17, 1994)*

Q: When can a person file a petition to deny due course to or cancel a certificate of candidacy?

A: A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 of the Omnibus Election Code is false. The petition may be filed at any time not later than twenty-five (25) days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

g. CAMPAIGN

1. Premature Campaigning

Q: What is an election campaign?

A: It refers to an act designed to promote the election or defeat of a particular candidate or candidates to a public office which shall include:

1. Forming organizations, associations, clubs, committees or other groups of persons for the purpose of soliciting votes and/or undertaking any campaign for or against a candidate
2. Holding political caucuses, conferences, meetings, rallies, parades, or other

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

similar assemblies, for the purpose of soliciting votes and/or undertaking any campaign or propaganda for or against a candidate
3. Making speeches, announcements or commentaries, or holding interviews for or against the election of any candidate for public office
4. Publishing or distributing campaign literature or materials designed to support or oppose the election of any candidate; or
5. Directly or indirectly soliciting votes, pledges or support for or against a candidate *(Sec. 79, B.P. 881 Omnibus Election Code)*.

Note: The foregoing enumerated acts if performed for the purpose of enhancing the chances of aspirants for nomination for candidacy to a public office by a political party, aggroupment, or coalition of parties shall not be considered as election campaign or partisan election activity.

Public expressions or opinions or discussions of probable issues in a forthcoming election or on attributes of or criticisms against probable candidates proposed to be nominated in a forthcoming political party convention shall not be construed as part of any election campaign or partisan political activity contemplated under the OEC. *(Sec. 79, B.P. 881 Omnibus Election Code)*

Q: Discuss the period of campaign

A:

1. *Presidential and Vice presidential election* – 90 days;
2. *Election of members of the Congress and local election* – 45 days;
3. *Barangay Election* – 15 days
4. *Special election under Art. VIII, Sec. 5(2) of the Constitution* – 45 days

Note: The campaign periods shall not include the day before and the day of the election *(Sec. 3 OEC)*

Q: What is the rule against premature campaigning?

A: It shall be unlawful for any person, whether or not a voter or candidate, or for any party, or association of persons, to engage in an election campaign or partisan political activity except during the campaign period. *(Sec. 80, B.P. 881).*

The use of lawful election propaganda under the Fair Elections Act is subject to the supervision and regulation by the COMELEC in order to prevent premature campaigning and to equalize, as much as practicable, the situation of all candidates by preventing popular and rich candidates from gaining undue advantage in exposure and publicity on account of their resources and popularity. *(Chavez v. COMELEC, G.R. No. 162777, August 31, 2004)*

Q. Petitioner Penera and respondent Andanar ran for mayor of Sta. Monica, Surigao Del Norte during the May 14, 2007 elections. Penera's political party held a motorcade preceding the filing of her certificate of candidacy announcing her candidacy for mayor. Because of this, Andanar filed a petition to disqualify Penera for engaging in premature campaigning in violation of Sec.80 and 68 of the Omnibus Election Code. Does the act of campaigning for votes immediately preceding the filing of certificate of candidacy violate the prohibition against premature campaigning?

A. The campaign period for local officials begin on 30 March 2007 and ends on 12 May 2007. Penera filed her certificate of candidacy on 29 March 2007. Penera was thus a candidate on 29 March 2009 only for purposes of printing the ballots under Sec.11 of R.A. 8436.On 29 March 2007, the law still did not consider Penera a candidate for purposes other than the printing of ballots. Acts committed by Penera prior to 30 March 2007, the date when she became a "candidate," even if constituting election campaigning or partisan political activities, are not punishable under Section 80 of the Omnibus Election Code. Such acts are within the realm of a citizen's protected freedom of expression. Acts committed by Penera within the campaign period are not covered by Section 80 as Section 80 punishes only acts outside the campaign period.

In layman's language, this means that a candidate is liable for an election offense only for acts done during the campaign period, not before. The law is clear as daylight — any election offense that may be committed by a candidate under any election law cannot be committed before the

start of the campaign period. *(Penera v. COMELEC, G.R. No. 181613, Nov. 25, 2009)*

Q: When can a person be considered a candidate?

A: A candidate refers to any person aspiring for or seeking an elective public office, who has filed a certificate of candidacy by himself or through an accredited political party, aggroupment or coalition of parties. However, it is no longer enough to merely file a certificate of candidacy for a person to be considered a candidate because "any person who files his certificate of candidacy within the filing period shall only be considered a candidate at the start of the campaign period for which he filed his certificate of candidacy." Any person may thus file a certificate of candidacy on any day within the prescribed period for filing a certificate of candidacy yet that person shall be considered a candidate, for purposes of determining one's possible violations of election laws, only during the campaign period. *(Penera v. COMELEC, G.R. No. 181613, Nov. 25, 2009)*

2. Prohibited Contributions

Q: What are considered as lawful election propaganda?

A:

1. Written printed materials (does not exceed 8 ½ in. width by 14 in. length)
2. Handwritten/printed letters
3. Posters (not exceeding 2 x 3 ft.). However, a public meeting or rally, at the site and on the occasion of a public meeting or rally, may be displayed five (5) days before the date of rally but shall be removed within 24 hours after said rally
4. Print ads – ¼ page in broadsheets and ½ page in tabloids thrice a week per newspaper, magazine or other publication during the campaign period;
5. Broadcast media (*i.e.* TV and radio)
6. All other forms of election propaganda not prohibited by the Omnibus Election Code or this Act. *(Sec. 3, R.A. No. 9006)*

ALLOWABLE COMELEC AIR TIME FOR CANDIDATES (Fair Elections Act)	
NATIONAL POSITIONS	**LOCAL POSITIONS**
120 minutes for TV	60 minutes for TV
180 minutes for radio	90 minutes for radio

Note: COMELEC cannot compel newspapers of general circulation to donate free print space as COMELEC space without payment of just compensation. Such compulsion amounts to taking; hence, it is an exercise of eminent domain and not of police power (*Philippine Press Institute v. COMELEC, G.R. No. 119694, May 22, 1995).* The payment of just compensation is now expressly provided under sec. 7 of the Fair Elections Act.

However, all broadcasting stations, whether by radio or television stations, which are licensed by the government, do not own the airways and frequencies; they are merely given the temporary privilege of using them. A franchise is a privilege subject to amendment, and the provision of BP 881 granting free airtime to the COMELEC is an amendment of the franchise of radio and television stations (Telecommunications *and Broadcast Attorneys of the Philippines v. COMELEC, G.R. No. 132922, Apr. 21, 1998).* Payment of just compensation is not necessary since it is a valid exercise of police power.

Q: A COMELEC resolution provides that political parties supporting a common set of candidates shall be allowed to purchase jointly air time and the aggregate amount of advertising space purchased for campaign purposes shall not exceed that allotted to other political parties or groups that nominated only one set of candidates. The resolution is challenged as a violation of the freedom of speech and of the press. Is the resolution constitutionally defensible? Explain.

A: Yes, the resolution is constitutionally defensible. Under Sec. 4, Art. IX-C of the 1987 Constitution, during the election period the COMELEC may supervise or regulate the media of communication or information to ensure equal opportunity, time, and space among candidates with the objective of holding free, orderly, honest, peaceful, and credible elections. To allow candidates who are supported by more than one

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

political party to purchase more air time and advertising space than candidates supported by one political party only will deprive the latter of equal time and space in the media.

Alternative Answer: No. Although the expenditure limitation applies only to the purchase of air time, thus leaving political parties free to spend for other forms of campaign, the limitation nonetheless results in a direct and substantial reduction of the quantity of political speech by restricting the number of issues that can be discussed, the depth of their discussion and the size of the audience that can be reached, through the broadcast media.

Since the purpose of the Free Speech Clause is to promote the widest possible dissemination of information, and the reality is that to do this requires the expenditure of money, a limitation on expenditure for this purpose cannot be justified, not even for the purpose of equalizing the opportunity of political candidates. *(Gonzalez v. COMELEC, G.R. No. L-28783, Apr. 18, 1969)*

Q: What are included as electoral contributions and expenditures?

A:

1. A gift
2. Donation
3. Subscription
4. Loan
5. Advance or deposit of money or anything of value
6. A contract, promise or agreement of contribution, whether or not legally enforceable
7. Use of facilities voluntarily donated by other persons, the money value of which can be assessed based on the rates prevailing in the area
8. Made for the purpose of influencing the results of the elections

Note: Does not include services rendered without compensation by individuals volunteering a portion or all of their time in behalf of a candidate or political party. *(Sec. 94, OEC)*

Q: What are prohibited contributions?

A: Those made directly or indirectly by any of the following:

1. Public or private financial institutions (except loans to a candidate or political party)
2. Public utilities or those exploiting natural resources of the nation
3. Persons with contracts to supply the government with goods or services or to perform construction or other works
4. Grantees of franchises, incentives, exemptions, allocations, or similar privileges or concessions by the government
5. Persons who, within one year prior to the date of the election, have been granted loans or other accommodations in excess of P100,000 by the government
6. Educational institutions which have received grants of public funds not less than P100,000
7. Officials or employees in the Civil Service or members of the Armed Forces of the Philippines; and
8. Foreigners and foreign corporations. *(Sec. 95, B.P. 881 Omnibus Election Code)*

Q: What are prohibited means of raising funds?

A:

1. Holding any of the following activities:
    a. Dances
    b. Lotteries
    c. Cockfights
    d. Games
    e. Boxing bouts
    f. Bingo
    g. Beauty contests
    h. Entertainments
    i. Cinematographic, theatrical, or other performances for the purpose of raising funds for an election campaign or for the support of any candidate from the commencement of the election period up to an election day.

2. It shall also be unlawful for any person or organization to solicit and/or accept from any candidate for public office any gift, food, transportation, contribution or donation in cash or in kind form the commencement of the election period and including election day, except

normal and customary religious stipends, tithes, or collections. *(Sec. 97, OEC)*

Q: What are lawful expenditures?

A:

1. For traveling expenses
2. Compensation of campaigners, clerks, stenographers, messengers and other persons actually employed in the campaign
3. Telegraph and telephone tolls, postage, freight and express delivery charges
4. Stationery, printing and distribution of printed matters relative to candidacy
5. Employment of watchers at the polls
6. Rent, maintenance and furnishing of campaign headquarters, office or place of meetings
7. Political meetings or rallies
8. Advertisements
9. Employment of counsel, the cost of which shall not be taken into account in determining the amount of expenses which a candidate or political party may have incurred
10. Copying and classifying list of voters, investigating and challenging the right to vote of persons registered in the lists, the cost of which shall not be taken into account in determining the amount of expenses which a candidate or political party may have incurred
11. Printing sample ballots, the cost of which shall not be taken into account in determining the amount of expenses which a candidate or political party may have incurred. *(Sec. 102, B.P. 881 Omnibus Election Code)*

Q: What are the limitations on expenses for the candidates and political parties?

A:

1. *For candidates*
   a. *President and Vice-President* – P10/voter
   b. *Other candidates, if with party* – P3/voter
   c. *Other candidates, if without party* – P5/voter
2. *For political parties* – P5/voter *(COMELEC Resolution No. 8758)*

Q: What is a statement of contribution and expenses?

A: Every candidate and treasurer of the political party shall, within 30 days after the day of the election, file in duplicate with the offices of the COMELEC, the full, true and itemized statement of all contributions and expenditures in connection with the election. (*Sec. 14, R.A. 7166)*

Q: Is the conduct of election survey prohibited?

A: No. The SC held that Sec. 5.4 of the Fair Election Act prohibiting publication of survey results 15 days immediately preceding a national election and 7 days before a local election violates the constitutional rights of speech, expression and the press because:

1. It imposes a prior restraint on the freedom of expression
2. It is a direct and total suppression of a category of expression and even though such suppression is only for a limited period; and
3. The governmental interest sought to be promoted can be achieved by means other than the suppression of freedom of expression (*SWS v. COMELEC, G.R. No. 147571, May 5, 2001)*

h. BOARD OF CANVASSERS

Q: What is the composition of the Board of Canvassers (BoC)?

A:

1. *Provincial board of canvassers* - the provincial board of canvassers shall be composed of the provincial election supervisor or a senior lawyer in the regional office of the Commission, as chairman, the provincial fiscal, as vice-chairman, and the provincial superintendent of schools, and one representative from each of the ruling party and the dominant opposition political party in the constituency concerned entitled to be represented, as members.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

2. *City board of canvassers* - the city board of canvassers shall be composed of the city election registrar or a lawyer of the Commission, as chairman, the city fiscal and the city superintendent of schools, and one representative from each of the ruling party and the dominant opposition political party entitled to be represented, as members.

3. *District board of canvassers of Metropolitan Manila* - the district board of canvassers shall be composed of a lawyer of the Commission, as chairman, and a ranking fiscal in the district and the most senior district school supervisor in the district to be appointed upon consultation with the Ministry of Justice and the Ministry of Education, Culture and Sports, respectively, and one representative from each of the ruling party and the dominant opposition political party in the constituency concerned, as members.

4. *Municipal board of canvassers* - the municipal board of canvassers shall be composed of the election registrar or a representative of the Commission, as chairman, the municipal treasurer, and the district supervisor or in his absence any public school principal in the municipality and one representative from each of the ruling party and the dominant opposition political party entitled to be represented, as members.

5. *Board of canvassers for newly created political subdivisions* - the Commission shall constitute a board of canvassers and appoint the members thereof for the first election in a newly created province, city or municipality in case the officials who shall act as members thereof have not yet assumed their duties and functions *(Sec. 221, B.P. 881)*

Q: Who has supervision and control over the board of canvassers?

A: The Commission shall have direct control and supervision over the board of canvassers. Any member of the board of canvassers may, at any time, be relieved for cause and substituted *motu proprio* by the Commission. *(Sec. 227., B.P. 881)*

Q: What is the manner of delivery and transmittal of election returns?

A:

City and Municipal Board of Canvassers	Provincial and District Boards of Canvassers in Metropolitan Manila
the copy of the election returns, duly placed inside a sealed envelope signed and affixed with the imprint of the thumb of the right hand of all the members of the board of election inspectors, shall be personally delivered by the members of the board of election inspectors to the city or municipal board of canvassers under proper receipt to be signed by all the members thereof.	the copy of the election returns shall be personally delivered by the members of the board of election inspectors to the election registrar for transmittal to the proper board of canvassers under proper receipt to be signed by all the members thereof.

The election registrar concerned shall place all the returns intended for the board of canvassers inside a ballot box provided with three padlocks whose keys shall be kept as follows: one by the election registrar, another by the representative of the ruling party and the third by the representative of the dominant political opposition party. *(Sec. 229, B.P. 881)*

Q: How will the safekeeping of transmitted election returns be done?

A: The board of canvassers shall keep the ballot boxes containing the election returns in a safe and secure room before and after the canvass. The door to the room must be padlocked by three locks with the keys thereof kept as follows:

1. One with the chairman,
2. The other with the representative of the ruling party,

3. And the other with the representative of the dominant opposition political party.

The watchers of candidates, political parties, coalition of political parties and organization collectively authorized by the Commission to appoint watchers shall have the right to guard the room. Violation of this right shall constitute an election offense. *(Sec. 230, B.P. 881 Omnibus Election Code)*

Q: How will the canvassing by the board be done?

A:

1. The board of canvassers shall meet not later than six o'clock in the afternoon of election day at the place designated by the Commission to receive the election returns and to immediately canvass those that may have already been received.

2. It shall meet continuously from day to day until the canvass is completed, and may adjourn but only for the purpose of awaiting the other election returns from other polling places within its jurisdiction.

3. Each time the board adjourns, it shall make a total of all the votes canvassed so far for each candidate for each office, furnishing the Commission in Manila by the fastest means of communication a certified copy thereof, and making available the data contained therein to the mass media and other interested parties.

4. As soon as the other election returns are delivered, the board shall immediately resume canvassing until all the returns have been canvassed.

5. The respective board of canvassers shall prepare a certificate of canvass duly signed and affixed with the imprint of the thumb of the right hand of each member, supported by a statement of the votes received by each candidate in each polling place and, on the basis thereof, shall proclaim as elected the candidates who obtained the highest number of votes cast in the province, city, municipality or barangay (*Sec. 231, B.P. 881*).

Note: Failure to comply with this requirement shall constitute an election offense.

Subject to reasonable exceptions, the board of canvassers must complete their canvass within thirty-six hours in municipalities, forty-eight hours in cities and seventy-two hours in provinces. Violation hereof shall be an election offense.

With respect to the election for President and Vice-President, the provincial and city boards of canvassers shall prepare in quintuplicate a certificate of canvass supported by a statement of votes received by each candidate in each polling place and transmit the first copy thereof to the Speaker of the Batasang Pambansa. The second copy shall be transmitted to the Commission, the third copy shall be kept by the provincial election supervisor or city election registrar; the fourth and the fifth copies to each of the two accredited political parties. *(Agujetas v. CA, G.R. No. 106560, August 23, 1996)*

Q: Who are not allowed inside the canvassing room?

A:

1. Any officer or member of the Armed Forces of the Philippines, including the Philippine Constabulary, or the Integrated National Police

2. Any peace officer or any armed or unarmed persons belonging to an extra-police agency, special forces, reaction forces, strike forces, home defense forces, barangay self-defense units, barangay tanod

3. Any member of the security or police organizations of government ministries, commissions, councils, bureaus, offices, instrumentalities, or government-owned or controlled corporations or their subsidiaries

4. Any member of a privately owned or operated security, investigative, protective or intelligence agency performing identical or similar functions to enter the room where the canvassing of the election returns are held by the

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

board of canvassers and within a radius of fifty meters from such room. *(Sec. 232, B.P. 881 Omnibus Election Code)*

Note: The board of canvassers by a majority vote, if it deems necessary, may make a call in writing for the detail of policemen or any peace officers for their protection or for the protection of the election documents and paraphernalia in the possession of the board, or for the maintenance of peace and order, in which case said policemen or peace officers, who shall be in proper uniform, shall stay outside the room within a radius of thirty meters near enough to be easily called by the board of canvassers at any time. *(Ibid.)*

Q: In case the election returns are delayed, lost or destroyed, what should the BOC do?

A: In case its copy of the election returns is missing, the board of canvassers shall:

1. Obtain such missing election returns from the board of election inspectors concerned, or if said returns have been lost or destroyed
2. The board of canvassers, upon prior authority of the Commission, may use any of the authentic copies of said election returns or a certified copy of said election returns issued by the Commission, and forthwith
3. Direct its representative to investigate the case and immediately report the matter to the Commission

Note: The board of canvassers, notwithstanding the fact that not all the election returns have been received by it, may terminate the canvass and proclaim the candidates elected on the basis of the available election returns if the missing election returns will not affect the results of the election (Sec. 233, B.P. 881).

Q: When the integrity of ballots is violated, what should the BoC do?

A:

1. *In case of material defects in the election returns* - If it should clearly appear that some requisites in form or data had been omitted in the election returns, the board of canvassers shall call for all the members of the board of election inspectors concerned by the most expeditious means, for the same board to effect the correction.In case of the omission in the election returns of the name of any candidate and/or his corresponding votes, the board of canvassers shall require the board of election inspectors concerned to complete the necessary data in the election returns and affix therein their initials *(Sec. 234, B.P. 881 Omnibus Election Code)*.

   Note: The right of a candidate to avail of this provision shall not be lost or affected by the fact that an election protest is subsequently filed by any of the candidates.

2. *In case the election returns appear to be tampered with or falsified* - If the election returns submitted to the board of canvassers appear to be tampered with, altered or falsified after they have left the hands of the board of election inspectors, or otherwise not authentic, or were prepared by the board of election inspectors under duress, force, intimidation, or prepared by persons other than the member of the board of election inspectors, the board of canvassers shall use the other copies of said election returns and, if necessary, the copy inside the ballot box which upon previous authority given by the Commission may be retrieved in accordance with Section 220 hereof *(Sec. 235, B.P. 881 Omnibus Election Code).*

3. *In case of discrepancies in the election* return - if it appears to the board of canvassers that there exists discrepancies in the other authentic copies of the election returns from a polling place or discrepancies in the votes of any candidate in words and figures in the same return, and in either case the difference affects the results of

the election, the Commission, upon motion of the board of canvassers or any candidate affected and after due notice to all candidates concerned, shall proceed summarily to determine whether the integrity of the ballot box had been preserved, and once satisfied thereof shall order the opening of the ballot box to recount the votes cast in the polling place solely for the purpose of determining the true result of the count of votes of the candidates concerned *(Sec. 236, B.P. 881 Omnibus Election Code).*

Note: When integrity of ballots is violated. - The Commission shall not recount the ballots but shall forthwith seal the ballot box and order its safekeeping *(Sec. 237, B.P. 881 Omnibus Election Code).*

Canvass of remaining or unquestioned returns to continue. If, after the canvass of all the said returns, it should be determined that the returns which have been set aside will affect the result of the election, no proclamation shall be made except upon orders of the Commission after due notice and hearing. Any proclamation made in violation hereof shall be null and void *(Sec. 238, B.P. 881 Omnibus Election Code).*

Q: If the election resulted into a tie, what should the BOC do?

A: Whenever it shall appear from the canvass that two or more candidates have received an equal and highest number of votes, or in cases where two or more candidates are to be elected for the same position and two or more candidates received the same number of votes for the last place in the number to be elected, the board of canvassers, after recording this fact in its minutes, shall by resolution, upon five days notice to all the tied candidates, hold a special public meeting at which the board of canvassers shall proceed to the drawing of lots of the candidates who have tied and shall proclaim as elected the candidates who may be favored by luck, and the candidates so proclaimed shall have the right to assume office in the same manner as if he had been elected by plurality of vote. The board of canvassers shall forthwith make a certificate stating the name of the candidate who had been favored by luck and his proclamation on the basis thereof. *(Sec. 240, B.P. 881 Omnibus Election Code)*

Q: When will the proceedings of the BoC be considered as an illegal proceeding?

A: There is an illegal proceeding of the BOC when the canvassing is a sham or mere ceremony, the results of which are pre-determined and manipulated as when any of the following circumstances are present:

1. Precipitate canvassing
2. Terrorism
3. Lack of sufficient notice to the members of the BOC's
4. Improper venue. *(Sec. 2, Rule 4, COMELEC Resolution No. 8804, March 22, 2010)*

i. REMEDIES AND JURISDICTION IN ELECTION LAW

1. Petition not to give due course to Certificate of Candidacy

Q: What are the requisites for the grant of a petition to deny due course to or cancel a certificate of candidacy?

A:

1. Material misrepresentation in the qualifications for elective office, which includes age, residency, citizenship, and any other legal qualifications necessary to run for an elective office; and
2. Deliberate attempt to mislead, misinform or hide a fact which would otherwise render a candidate ineligible.

Note: These two requirements must concur to warrant the cancellation of the certificate of candidacy.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

A verified petition may be filed exclusively on the ground that any material representation contained in the certificate as required under Section 74 is false. The petition may be filed not later than 25 days from the time of filing of the certificate of candidacy, and shall be decided, after due notice and hearing, not later than 15 days before the election *(Section 78, B.P. 881 Omnibus Election Code).*

Jurisdiction over a petition to cancel a certificate of candidacy lies with the COMELEC in division, not with the COMELEC *en banc*. *(Garvida v. Sales, G.R. o. 122872, September 10, 1997)*

2. Petition to declare failure of elections

Q: What are the three instances where a failure of election may be declared?

A:

1. The election in any polling place has not been held on the date fixed on account of *force majeure*, violence, terrorism, fraud, or other analogous causes;

2. The election in any polling place had been suspended before the hour fixed by law for the closing of the voting on account of *force majeure,* violence, terrorism, fraud, or other analogous causes; and

3. After the voting and during the preparation and transmission of the election returns or canvass thereof such election results in failure to elect on account of *force majeure*, violence, fraud or analogous causes. *(Banaga Jr vs Comelec, G.R. No. 134696, July 31, 2000)*

Q: Who has the power to declare a failure of election?

A: The COMELEC has the power to declare a failure of election and this can be exercised *motu proprio* or upon verified petition. *(Loong v. COMELEC, G.R. Nos. 107814-15, May 16, 1996)*

Note: The hearing is summary in nature and the COMELEC may delegate to its lawyers the power to hear the case and to receive evidence. *(Ibid.)*

Q: What are the conditions before COMELEC can act on a petition to declare failure of election?

A:

1. No voting took place in the precinct or precincts on the date fixed by law, or even if there was voting, the election resulted in failure to elect; and
2. The votes not cast would have affected the result of the election (*Tan v. COMELEC, G.R. No. 148575-76, Dec. 10, 2003)*

Note: The COMELEC *en banc* has original and exclusive jurisdiction to hear and decide petitions for declaration of failure of election or for annulment of election results *(Sec. 4, R.A. 7166).*

The proclamation of the winning candidate does not divest the COMELEC of such jurisdiction, where the proclamation is null and void or is claimed to be so. *(Ampatuan v. COMELEC, G.R.No. 149803, January 31, 2002)*

Q: Due to violence and terrorism attending the casting of votes in a municipality in Lanaodel Sur, it became impossible to hold therein free, orderly and honest elections. Several candidates for municipal positions withdrew from the race. One candidate for Mayor petitioned the COMELEC for the postponement of the elections and the holding of special elections after the causes of such postponement or failure of elections shall have ceased.

1. **How many votes of the COMELEC Commissioners may be cast to grant the petition? Explain.**

2. **A person who was not a candidate at the time of the postponement of the elections decided to run for an elective position and filed a certificate of candidacy prior to the special elections. May his certificate of candidacy be accepted? Explain.**

3. **Suppose he ran as a substitute for a candidate who previously withdrew his candidacy, will your answer be the same? Explain.**

A:

1. The COMELEC shall decide by a majority vote of all its members on any case or matter brought before it. *(Section 7, Article IX-A of the 1987 Constitution*). In *Cua v. COMELEC, G.R. No. 80519-2, Dec. 17, 1987*, the Supreme Court stated that a two-to-one decision rendered by a Division of the COMELEC and a three-to-two decision rendered by the COMELEC *en banc* was valid where only five members took part in deciding the case.

2. No, his certificate of candidacy cannot be accepted. As a rule, in cases of postponement or failure of election no additional certificate of candidacy shall be accepted. (*Section 75 of the Omnibus Election Code)*

3. No, the answer will be different. An additional certificate of candidacy may be accepted in cases of postponement or failure of election if there was a substitution of candidates; but the substitute must belong to and must be endorsed by the same party. *(Section 75 of the Omnibus Election Code)*

3. Pre-proclamation Controversies

Q: What are pre-proclamation controversies?

A: They refer to any question pertaining to or affecting the proceedings of the board of canvassers, and the preparation, transmission, receipt, custody and appreciation of election returns which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the COMELEC. *(Sec. 241, B.P. 881 Omnibus Election Code)*

Note: The purpose of this kind of controversy is to ascertain winners in the elections on basis of election returns duly authenticated by board of inspectors and admitted by the board of canvassers. *(Abella v. Larrazabal, G.R. No. 87721-30, December 21, 1989)*

Q: Are there pre-proclamation cases in elections for President, Vice-president and Members of the House of Representatives on matters relating to the preparation, transmission, receipt, custody, and appreciation of the election returns or the certificates of canvass?

A:

GR: No *(Sec. 15, Synchronized Election Law).*

XPNS:

1. Correction of manifest errors
2. Questions affecting the composition or proceedings of the board of canvassers and
3. Determination of the authenticity and due execution of certificates of canvass as provided in Sec. 30 of R.A.7166, as amended by R.A. 9369.

Note: GR: The COMELEC is restricted to a mere examination of returns on their face and not to go beyond and investigate irregularities. *(Belac v. COMELEC, G.R. No. 145802, April 4, 2001)*

XPN: If there is a *prima facie* showing that return is not genuine. *(Ibid.)*

No pre-proclamation cases are allowed in case of barangay election. *(Sec. 9, R.A. No. 6679)*

Q: When are pre-proclamation cases terminated?

A:

GR: At the beginning of term of the officers. *(Sec. 16, R.A. No. 7166)*

XPNS:

1. When based on evidence, COMELEC determines that petition is meritorious
2. The SC in a petition for certiorari issues a contrary order; or
3. The case is not a pre-proclamation case. *(Peñaflorida v. COMELEC, G.R. No. 125950, November 18, 1997)*

Q: What issues may be raised in a pre-proclamation controversy?

A:

1. Illegal composition or proceedings of the Board of Canvassers

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

2. Canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified; or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sec. 233, 234, 235, and 236 of B.P. 881

3. Election returns were prepared under duress threat, coercion, or intimidation, or they are obviously manufactured or not authentic

4. When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate/s. *(Sec. 242, B.P. 881 Omnibus Election Code).*

Q: What is a petition to annul or suspend the proclamation?

A: It is a remedy where there is manifest error in the face of the returns, and a winning candidate is about to be, or has already been proclaimed on the basis thereof.

Note: The filing of a petition to annul or suspend the Proclamation shall suspend the running of the period within which to file an election protest or quo warranto proceedings.

Q: Are pre-proclamation controversies allowed under the new Automated Elections Law?

A:

GR: For purpose of the elections for president, vice – president, senator, and member of the House of Representatives, no pre-proclamation cases shall be allowed on matters relating to the preparation, transmission, receipt, custody and appreciation of election returns or the certificates of canvass, as the case may be. *(Sec. 38, R.A. No. 9369)*

XPNS:

1. Illegal composition of the Board of Canvassers (BOC);
2. Illegal proceedings of the BOC. *(Sec. 1, Rule 3, COMELEC Resolution No. 8804, March 22, 2010)*

Note: However, this does not preclude the authority of the appropriate canvassing body *motu propio* or upon written complaint of an interested person to correct manifest errors in the certificate of canvass or election before it. *(Sec. 38, R.A. No. 9369)*

4. Election Protests

Q: What are post-election disputes?

A: They are disputes which arise or are instituted after proclamation of winning candidates and which issues pertain to the casting and counting of votes (Election Protests), or to the eligibility or disloyalty of the winning candidates (*Quo Warranto*).

Q: What is the nature of an election contest?

A: It is a special summary proceeding the object of which is to expedite the settlement of controversies between candidates as to who received the majority of legal votes.

Q: Where are election protests filed?

A:

1. *COMELE*C – sole judge of all contests relating to elections, returns, and qualifications of all elective regional, provincial and city officials.
2. *Supreme Court en banc* – President and Vice President
3. *SET* – Senator

a. *HRET* – representative

4. *RTC* – over contests for municipal officials
5. *MeTC or MTC* – for barangay officials

Q: What are the grounds for the filing of election protests?

A:

1. Fraud
2. Vote-buying
3. Terrorism
4. Presence of flying voters
5. Misreading or misappreciation of ballots
6. Disenfranchisement of voters
7. Unqualified members of board of election inspector
8. Other election irregularities.

Note: Pendency of election protest is not sufficient basis to enjoin protestee from assuming office.

A protestant has the right to withdraw his protest or drop polling places from his protest. The protestee, in such cases, has no cause to complain because the withdrawal is exclusive prerogative of the protestant.

Q: When the protestant dies during the pendency of his/her election protest, may his/her spouse substitute in his/her stead to avoid dismissal of the protest?

A: No right of substitution can inure in favor of a surviving spouse, for the right to hold the disputed public office is a personal right which cannot be transmitted to the latter's legal heirs.

The rule on substitution as applied to election contest must only be in favor of a person who is a real party in interest, e.g. the party who would be benefited or injured by the judgment, and the party who is entitled to avail of the suit. A wife cannot substitute for her deceased husband's protest, for she will not, in any way, be directly or substantially affected by the possible resolution of the protest. *(Poe v. Macapagal-Arroyo, PET Case 002, Mar. 29, 2005)*

Q: On June 23, 2004, the National Board of Canvassers (NBC) proclaimed X as the duly elected Vice-President of the Philippines. Y was the person who obtained the second highest number of votes. Y filed a protest with the PET praying for the annulment of the protestee's proclamation on the ground of fraud and manipulation of the results. While the protest was pending, X was elected and assumed the office of senator. Will the protest prosper?

A: No. In assuming the office of Senator, X has effectively abandoned or withdrawn this protest. Such abandonment or withdrawal operates to render moot the instant protest. Moreover, the dismissal of this protest would serve public interest as it would dissipate the aura of uncertainty as to the results of the election. (*Legarda v. De Castro, PET case no. 003, Jan. 18 2008)*

5. Quo Warranto

Q: What are *quo warranto* proceedings for an elective office?

A: It is a proceeding to determine the right to the use or exercise of an office and to oust the holder from its enjoyment, if his claim is not well founded or if he has forfeited his right to enjoy the privilege.

Unlike an election protest, which can only be filed by a candidate, any voter can file a petition for *quo warranto*.

Note: Election Protests and *Quo warranto* proceedings against a Congressman-elect, Senator-elect, President-elect and VP-elect are brought before the appropriate electoral tribunals created by the Constitution.

Q: Discuss the function of Senate and House of Representative Tribunals.

A: The Senate and the House of Representatives each have an Electoral Tribunal which shall be the sole judge of all contests relating to elections, returns, and qualifications of their respective members. Such jurisdiction begins only after a candidate has become a member of the legislative body. The judicial review of the decisions of these electoral tribunals is possible only in the exercise of the SC's extraordinary jurisdiction.

GR: Electoral Tribunal is the sole judge of all contests relating to the election, returns and qualifications of Congressional members ONLY after the candidate has become a member of Congress and not prior thereto.

XPN: COMELEC has jurisdiction if candidate not yet proclaimed and involving manifest errors in the certificates of canvass and in composition of board or its proceedings.

Q: Who shall act as the sole judge of all contests relating to the election, returns, and qualifications of the President and the VP?

A: The Supreme Court sitting *en banc.*

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Note: Before election, SC has no jurisdiction to entertain any petition relating to the qualifications or disqualifications of candidates for President and VP, the jurisdiction being with the COMELEC.

Q: What is the effect if the protestant accepts a permanent appointment? Why?

A: Acceptance of a permanent appointment to a regular office during the pendency of his protest is an abandonment of the electoral protest. The same is true if a protestant voluntarily sought election to an office whose term would extend beyond the expiry date of the term of the contested office, and after winning the said election, took her oath and assumed office and there after continuously serves it. The reason for this is that the dismissal of the protest would serve public interest as it would dissipate the aura of uncertainty as to the results of the presidential election, thereby enhancing the all-to crucial political stability of the nation during this period of national recovery. *(Santiago v. Ramos, P.E.T. Case No. 001, Feb. 13, 1996)*

j. PROSECUTION OF ELECTION OFFENSES

Q: Who has the authority to prosecute election offenses?

A: The COMELEC is vested with the power of a public prosecutor with the exclusive authority to conduct the preliminary investigation and prosecution of election offenses punishable under the Omnibus Election Code. *(Sec. 265, B.P. 881 Omnibus Election Code)*

Q: May the COMELEC delegate such authority?

A: Yes. The COMELEC *en banc* may delegate such authority to any public prosecutor but always subject to the control and supervision of the COMELEC. *(People v. Delgado, G.R. No. Nos. 93419-32, September 18, 1990)*

Q: In cases where the prosecutor exercises delegated authority to conduct preliminary investigation of election offenses and such officer, after investigation, already resolves the issue of probable cause, where should one appeal the resolution?

A: From such resolution, appeal to the COMELEC lies, and the latter's ruling on the appeal would be immediately final and executory. However, if the preliminary investigation is conducted by the COMELEC itself, appeal to the COMELEC is unavailing, but the respondent may file a motion for reconsideration of the resolution of the COMELEC *en banc* finding probable cause. *(Faelnar v. People, G.R. Nos. 140850-51. May 4, 2000)*

Q: What are the election offenses?

A:

1. Vote buying and vote selling
2. Conspiracy to bribe voters
3. Wagering upon result of election
4. Coercion of subordinates
5. Threats, intimidation, terrorism, use of fraudulent device or other forms of coercion
6. Coercion of election officials and employees
7. Appointment of new employees, creation of new position, promotion, giving of salary increases
8. Intervention of public officers and employees
9. Undue influence
10. Unlawful electioneering
11. Others. *(Sec. 261, B.P. 881 Omnibus Election Code)*

Q: What is the prescriptive period of election offenses?

A: 5 years from the date of their commission. *(Sec. 267, B.P. 881 Omnibus Election Code)*

Q: Which court has jurisdiction to hear and decide election offenses?

A:

GR: The RTC has the exclusive and original jurisdiction to hear and decide any criminal action or proceedings for violation of the OEC.

XPN: The MTC has jurisdiction over offenses relating to failure to register or failure to vote.

L. LOCAL GOVERNMENTS

a. PUBLIC CORPORATIONS

Q: What is a public corporation?

A: It is one created by the State either by general or special act for purposes of administration of local government or rendering service in the public interest. *(Rodriguez, p. 2, LGC 5th Edition)*

Q: Distinguish public corporation from private corporation.

A:

PUBLIC CORPORATION	PRIVATE CORPORATION
Purpose	
Administration of local government	Private purpose
Who creates	
By the state either by general or special act	By incorporators with recognizance of the state
How created	
By legislation	By agreement of members

Q: What is the criterion to determine whether a corporation is a public corporation?

A: By the relationship of the corporation to the state; if created by the State as its own agency to help it in carrying out its governmental functions, it is public, otherwise, it is private.

Q: What are the dual characteristics of a public corporation?

A:

1. *Public or governmental* – acts as an agent of the State for the government of the territory and its inhabitants.

2. *Private or proprietary* – acts as an agent of the community in the administration of local affairs. As such, it acts as separate entity for its own purposes, and not a subdivision of the State. *(Bara Lidasan vs. COMELEC G.R. No. L-28089, October 25, 1967 citing McQuillin, Municipal Corporations, 3d ed., pp. 456-464)*

Note: Every LGU created or recognized under this code is a body politic and corporate endowed with powers to be exercised by it in conformity with law. As such, it shall exercise powers as a political subdivision of the national government and has a corporate entity representing the inhabitants of its territory *(Sec.15, LGC)*

Q: What are the classes of corporations?

A:

1. *Quasi-public corporations* – public corporations created as agencies of the State for narrow and limited purposes without the powers and liabilities of self-governing corporations.

2. *Municipal corporations* – body politic and corporate constituted by the incorporation of inhabitants for purposes of local government. It is established by law partly as an agency of the State to assist in the civil government of the country, but chiefly to regulate and administer the local or internal affairs of the city, town or district which is incorporated. *(Dillon, Municipal Corporations, Vol.2, pp. 58-59.)*

Q: What is a Government Owned and Controlled Corporation (GOCC)?

A: any agency organized as a stock or non-stock corporation vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the government directly or indirectly through its instrumentalities either wholly, or where applicable as in the case of stock corporations to the extent of at least 51% of its capital stock**.** *(Section 2 (13) of Executive Order No. 292 (*Administrative Code of *1987)*

Q: What are the requisites of a GOCC?

A:

1. Any agency organized as a stock or non-stock corporation
2. Vested with functions relating to public needs whether governmental or proprietary in nature
3. Owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

case of stock corporations, to the extent of at least fifty-one (51) of its capital stock. (*Leyson, Jr. v. Office of the Ombudsman, G.R. No. 134990, April 27, 2000)*

Q: What laws may govern GOCCs and how do you determine which will govern?

A: Government corporations may be created by special charters or by incorporation under the general corporation law. Those created by special charters are governed by the Civil Service Law while those incorporated under the general corporation law are governed by the Labor Code. *(Blaquera vs. Alcala, G.R. No. G.R. No. 109406. September 11, 1998)*

Q: Distinguish public corporation from a GOCC.

A:

PUBLIC CORPORATION	GOCCs
Purpose	
Administration of local government	Performance of functions relating to public needs whether Governmental or Proprietary in nature
Who creates	
By the state either by general or special act	By Congress or by incorporators
How created	
By legislation	(1) Original charters or special laws or (2) general corporation law as a stock or non-stock corporation

b. MUNICIPAL CORPORATIONS

Q: What are the essential elements of a municipal corporation?

A:

1. Legal creation
2. Corporate name
3. Inhabitants constituting the population who are vested with political and corporate powers
4. Territory *(Rodriguez, p.4, LGC 5th Edition)*

Note: The sangguniang panlalawigan may, in consultation with the Philippine Historical Commission change the name of component cities and municipalities, upon the recommendation of the sangguniang concerned provided that the same shall be effective only upon ratification in a plebiscite conducted for the purpose in the political unit directly affected. *(R.A. 7160, Sec. 13)*

Q: What is the nature and function of a municipal corporation?

A: It is body politic and corporate constituted by the incorporation of inhabitants for purposes of local government. It is established by law partly as an agency of the State to assist in the civil government of the country, but chiefly to regulate and administer the local or internal affairs of the city, town or district which is incorporated. *(Dillon, Mun. Corp., Vol.2, pp. 58-59.)*

Q: What are the different types of municipal corporations?

A:

1. *De jure municipal corporations* – created or recognized by operation of law.
2. *Municipal corporations by prescription* – exercised their powers from time immemorial with a charter, which is presumed to have been lost or destroyed.
3. *De facto municipal corporations* – where the people have organized themselves, under color of law, into ordinary municipal bodies, and have gone on, year after year, raising taxes, making improvements, and exercising their usual franchises, with their rights dependent quite as much on acquiescence as on the regularity of their origin. *(Rodriguez, pp.17-18, LGC 5th Edition)*

Note: An inquiry into the legal existence of a de facto corporation is reserved to the State in a proceeding for *quo warranto* or other direct proceeding. *(The Municipality of Malabang, Lanao del Sur vs. Pangandapun Benito, G.R. No. L-28113, March 28, 1969)*

Q: What are the essential requisites of a de facto corporation?

A: VACA

1. **V**alid law authorizing incorporation

2. **A**ttempt in good faith to organize under it
3. **C**olorable compliance with law
4. **A**ssumption of corporate powers *(Rodriguez, p. 18, LGC 5th Edition)*

c. CREATION

Q: Who has the authority to create municipal corporations? How is a public corporation created?

A: A Local Government Unit may be created, divided, merged, abolished or its boundaries substantially altered either by:

1. Law enacted by Congress in case of province, city, municipality or any other political subdivision;
2. By an ordinance passed by the Sangguniang Panlalawigan or Sangguniang Panlungsod concerned in the case of a barangay located within its territorial jurisdiction, subject to such limitations and requirements prescribed in the LGC. (*Sec. 6, R.A. 7160)*

Q: What are the requisites or limitations imposed on the creation or conversion of municipal corporations?

A:

1. *Plebiscite requirement* – must be approved by majority of the votes cast in a plebiscite called for such purpose in the political unit or units directly affected.

   Note: The plebiscite must be participated in by the residents of the mother province in order to conform to the constitutional requirement.

2. *Income requirement* – must be sufficient on acceptable standards to provide for all essential government facilities and services and special functions commensurate with the size of its population as expected of the local government unit concerned. Average annual income for the last consecutive year should be at least:

   a. Province – P 20M
   b. Highly Urbanized City – P 50M
   c. City – P 20M (*100M RA. 9009 amending Sec 450 of LGC)*
   d. Municipality – P 2.5M

3. *Population requirement* – to be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned. The required minimum population shall be:

   a. Barangay – 2K
      But 5K in:
      i. Metro Manila
      ii. Highly urbanized cities
   b. Municipality – 25K
   c. City – 150K
   d. Province – 250K

4. Land requirement – must be contiguous, unless it comprises two or more islands or is separated by a local government unit; properly identified by metes and bounds; and sufficient to provide for such basic services and facilities. Area requirements are:

   a. Municipality – 50 sq. km *(Sec.442 R.A. 7160)*
   b. City – 100 sq. km *(Sec.450 R.A. 7160)*
   c. Province – 2,000 sq.km *(Sec.461 R.A. 7160)*

Q: Are the Internal Revenue Allotments (IRAs) considered income and, therefore, to be included in the computation of the average annual income of a municipality for purposes of its conversion into an independent component city?

A: Yes. The IRAs are items of income because they form part of the gross accretion of the funds of the LGU. The IRAs regularly and automatically accrue to the local treasury without need of any further action on the part of the local government unit. They thus constitute income which the local government can invariably rely upon as the source of much needed funds. *(Alvarez v. Guingona, G.R. No. 118303, Jan. 31, 1996)*

Q: When does corporate existence begin?

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

A: Upon the election and qualification of its chief executive and a majority of the members of its sanggunian, unless some other time is fixed therefor by law or ordinance creating it. *(Sec. 14, R.A. 7160)*

Q: What is the rule relative to the merger and division of local government units?

A:

1. Such division or merger shall not reduce the income, population or land area of the LGC concerned to less than the minimum requirement
2. That the income classification of the original LGU/s shall not fall below its current income classification prior to the division
3. A plebiscite must be held in LGUs affected
4. Assets and liabilities of creation shall be equitably distributed between the LGUs affected and new LGU

Note: When a municipal district of other territorial divisions is converted or fused into a municipality all property rights vested in original territorial organization shall become vested in the government of the municipality. *(R.A. 688)*

Q: At the end of the 11th Congress's existence, several bills aiming to convert certain municipalities into cities were pending. The same were not entered into law.

The 12th Congress enacted R.A. No. 9009, amending the Local Government Code (LGC) by increasing the income requirement for conversion of municipalities into cities. Congress deliberated on exempting the municipalities mentioned earlier from the new income requirement; however, no concrete action came out of such deliberations.

The municipalities filed, through their respective sponsors, individual cityhood bills containing a common proviso exempting them from the new income requirement. The Congress approved the same. Concerned parties protested such laws allowing a "wholesale conversion" of municipalities as being unconstitutional. Decide.

1. **Are the cityhood laws valid?**
2. **The challenged "cities" claim that it was the intent of Congress anyway to grant them exemption from the income requirement, as per the deliberations of the 11th Congress. What became of the cityhood bills and their deliberations that were pending at the adjournment of the 11th Congress?**

A:

1. Yes, The 16 cities covered by the Cityhood Laws not only had conversion bills pending during the 11th Congress, but have also complied with the requirements of the LGC prescribed prior to its amendment by R.A. No. 9009. Congress undeniably gave these cities all the considerations that justice and fair play demanded. Hence, this Court should do no less by stamping its imprimatur to the clear and unmistakable legislative intent and by duly recognizing the certain collective wisdom of Congress. (*League of Cities of the Philippines (LCP) v. COMELEC, G.R. No. 176951, April 12, 2011)*

2. Notwithstanding that both the 11th and 12th Congress failed to act upon the pending cityhood bills, both the letter and intent of Section 450 of the LGC, as amended by R.A. No. 9009, were carried on until the 13th Congress, when the Cityhood Laws were enacted. The exemption clauses found in the individual Cityhood Laws are the express articulation of that intent to exempt respondent municipalities from the coverage of R.A. No. 9009. (*League of Cities of the Philippines (LCP) v. COMELEC, G.R. No. 176951, February 15, 2011)*

Note: On November 18, 2008, the SC ruled the cityhood laws unconstitutional. On December 21, 2009, it reversed the ruling. Then again, on August 24, 2010, it decided to uphold the original ruling. And finally, last April 12, 2011 it upheld the constitutionality of the creation of the 16 new cities.

Q: May Congress validly delegate to the ARMM Regional Assembly the power to create provinces, cities, and municipalities within the ARMM, pursuant to Congress's plenary legislative powers?

A: No. There is no provision in the Constitution that conflicts with the delegation to regional legislative bodies of the power to create

municipalities and barangays. However, the creation of *provinces and cities* is another matter. Only Congress can create provinces and cities because the creation of the same necessarily includes the creation of legislative districts, a power only Congress can exercise under Section 5 Art. VI of the Constitution and Section 3 of the Ordinance appended to it. (*Bai Sandra S.A. Sema v. COMELEC, et al. G.R. No. 178628, July 18, 2008*)

Q: Considering the legislative power validly delegated to the ARMM Regional Assembly, what is the limitation of such that prevents the same to create legislative districts?

A: The ARMM Regional Assembly cannot enact a law creating a national office like the office of a district representative of Congress because the legislative powers of the ARMM Regional Assembly operate only within its territorial jurisdiction as provided in Section 20 Art. X of the Constitution. (*Sema v. COMELEC, G.R. No. 178628, July 16, 2008*)

Q: Congress enacted a law creating the legislative district of Malolos based on a *certification* of the demographic projection from NSO stating that by 2010, Malolos is expected to reach the population of 250,000, hence entitling it to one legislative district. Is the law valid?

A: No. Congress cannot establish a new legislative district based on a projected population of the National statistics Office (NSO) to meet the population requirement of the Constitution in the reapportionment of legislative districts.

A city that has attained a population of 250,000 is entitled to a legislative district only in the "immediately following election." In short, a city must first attain the 250,000 population, and thereafter, in the immediately following election, such city shall have a district representative. There is no showing in the present case that the City of Malolos has attained or will attain a population of 250,000, whether actual or projected, before May 10, 2010 elections. Thus, the City of Malolos is not qualified to have a legislative district of its own under Section 5(3), Article VI of the 1987 Constitution and Section 3 of the Ordinance appended to the1987 Constitution. *(Aladaba v. Comelec, G.R. No. 188078, Jan. 25, 2010)*

Q: Congress enacted a law reapportioning the composition of the Province of Camarines Sur and created legislative districts thereon. Aquino challenged the law because it runs afoul to the constitutional requirement that there must be 250,000 population create a legislative districts. Comelec argued that the mention requirement does not apply to provinces. Is the 250,000 population standard an indispensible requirement for the creation of a legislative district in provinces?

A: No. Section 5(3), Article VI of the 1987 Constitution which requires 250,000 minimum population requirement apply only for a city to be entitled to a representative but not for a province.

The provision draws a plain and clear distinction between the entitlement of a city to a district on one hand, and the entitlement of a province to a district on the other. For while a province is entitled to at least a representative, with nothing mentioned about population, a city must first meet a population minimum of 250,00 in order to be similarly situated. *(Aquino and Robredo v. Comelec, G.R. No. 189793, April 7, 2010)*

Q: Congress passed a law providing for the apportionment of a new legislative district in CDO City. The COMELEC subsequently issued a resolution implementing said law. B now assails the resolution, contending that rules for the conduct of a plebiscite must first be laid down, as part of the requirements under the Constitution. According to B, the apportionment is a conversion and division of CDO City, falling under Section 10 Art X of the Constitution, which provides for the rule on creation, division, merger, and abolition of LGUs. Decide.

A: There is no need for a plebiscite. CDO City politically remains a single unit and its administration is not divided along territorial lines. Its territory remains whole and intact. Thus, Section 10 Art. X of the Constitution does not come into play. (*Bagabuyo v. COMELEC, G.R. No. 17690, Dec. 8 2008*)

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

d. DIVISION, MERGER, ABOLITION

Q: What are the requirements for division and merger of local government units?

A: Same requirements as creation of LGU *provided*:

1. It shall not reduce the income, population or land area of the LGU/S concerned to less than minimum requirements prescribed;
2. Income classification of the original LGU/S shall not fall below its current income classification prior to division. *(Sec.8 R.A. 7160)*
3. Plebiscite be held in LGUs affected *(Sec.10 R.A. 7160)*
4. Assets and liabilities of creation shall be equitably distributed between the LGUs affected and new LGU. *(R.A. 688)*

Q: When may an LGU be abolished?

A: When its income, population or land area has been irreversibly reduced to less than the minimum standards prescribed for its creation, as certified by the national agencies mentioned. *(Sec. 9, R.A. 7160)*

Note: A barangay may officially exist on record and the fact that nobody resides in the place does not result in its automatic cessation as a unit of local government. *(Sarangani vs. COMELEC, G.R. No. 135927. June 26, 2000)*

Q: Who may abolish a LGU?

A:

1. Congress – in case of provinces, city, municipality, or any other political subdivision.
2. Sangguniang Panlalawigan or Sangguniang Panglungsod – in case of a barangay, except in Metropolitan Manila area and in cultural communities. *(Sec.9 R.A. 7160)*

Q: What are the requirements prescribed by law in abolishing LGUs?

A:

1. The law or ordinance abolishing a local government unit shall specify the province, city, municipality, or barangay with which the local government unit sought to be abolished will be incorporated or merged. *(Sec.9 R.A. 7160)*
2. Approved by a majority of the votes cast in a plebiscite called for the purpose in the political unit or units directly affected. *(Sec.10 R.A. 7160)*

e. LOCAL GOVERNMENT CODE

Q: How should the Local Government Code be interpreted?

A:

GR: That any doubt or question on a power of local government shall be resolved in favor of devolution of powers and in favor of the LGU. *(Sec.5 (a) R.A. 7160)*

XPN: In case of tax measures enacted by local government, any doubts shall be resolved strictly against the local government and liberally in favor of the taxpayer. *(Sec.5 (b) R.A. 7160)*

Q: What are the other rules in interpreting the Local Government Code?

A:

1. *General Welfare provisions* – liberally interpreted to give more powers to the local government units in accelerating economic development and upgrading the quality of life for the people in the community
2. *Rights and obligations existing on effectivity of this LGC and arising out of contracts* – governed by the original terms and conditions of said contracts or the law in force at the time such rights were vested
3. *Resolution of controversies where no legal provision or jurisprudence applies* – Resort to the customs and traditions of the place where the controversies take place. *(Sec. 5, R.A. 7160)*

1. PRINCIPLES OF LOCAL AUTONOMY

Q: What is the principle of local autonomy?

A: Under the 1987 Constitution, it simply means decentralization; it does not make the local governments sovereign within the state or an "*imperium in imperio*". *(Basco v. PAGCOR, G.R. 91649, May 14, 1991)*

Q: Distinguish decentralization of administration (DA) from decentralization of power (DP).

A:

DA	DP
Consists merely in the delegation of administrative powers to broaden the base of governmental power.	Involves abdication by the national government of political power in favor of LGUs declared autonomous.

Q: Define devolution with respect to local government units.

A: The act by which the national government confers power and authority upon the various local government units to perform specific functions and responsibilities.

2. GENERAL POWERS AND ATTRIBUTES OF A LOCAL GOVERNMENT UNIT

Q: What are the sources of powers of a municipal corporation?

A:

1. Constitution
2. Statutes (e.g. LGC)
3. Charter
4. Doctrine of right to Self-Government (but only to those where it can be applied)

Q: What are the classifications of municipal powers?

A:

1. Express, Implied, Inherent
2. Government or public, Corporate or private
3. Intramural, extramural
4. Mandatory, directory; ministerial, discretionary

Q: How are powers to be executed?

A:

1. Where statute prescribes the manner of exercise, procedure must be followed.
2. Where the law is silent, LGU have the discretion to select reasonable means and methods to exercise *(Rodriguez, pp. 9-10, LGC 5th Edition)*

Q: What are the different governmental powers of the LGU?

A:

1. Police power
2. Basic services and facilities
3. Power to generate and apply resources
4. Power of eminent domain
5. Taxing Power
6. Reclassification of Land
7. Local legislative power
8. Closure and opening of roads
9. Corporate Powers
10. Liability of LGUs
11. Settlement of Boundary Disputes
12. Succession of Local Officials
13. Discipline of Local Officials
14. Authority over police units

2.a. Police Power

Q: What is the nature of the police power of the LGU?

A: The police power of the LGU is not inherent. LGUs exercise the police power under the *general welfare clause*. *(Sec 16, R.A. 7160)*

Q: What are the requisites/limitations for the exercise of the police power for it to be considered as properly exercised?

A:

1. The interests of the public generally, as distinguished from those of a particular class, require the interference of the state. *(Equal protection clause)*
2. The means employed are reasonably necessary for the attainment of the object sought to be accomplished and not duly oppressive. *(Due process clause)*
3. Exercisable only within the territorial limits of the LGU, except for protection of water supply *(Sec 16, R.A. 7160)*
4. Must not be contrary to the Constitution and the laws.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Q: May a nuisance be abated without a judicial proceeding?

A: Yes, provide it is nuisance per se. The abatement of nuisances without judicial proceedings applies to nuisance per se or those which affect the immediate safety of persons and property and may be summarily abated under the undefined law of necessity. *(Tayaban v. People, G.R. No. 150194, Mar. 6, 2007)*

Note: The local sanggunian does not have the power to find, as a fact, that a particular thing is a nuisance per se, a thing which must be determined and resolved in the ordinary courts of law *(AC Enterprise, Inc. v. Frabelle Properties Corporation, G.R. No. 166744, Nov. 2, 2006)*

Q: What does the power to issue licenses and permits include?

A: It includes the power to revoke, withdraw or restrict through the imposition of certain conditions. However, the conditions must be reasonable and cannot amount to an arbitrary interference with the business. *(Acebedo Optical Company, Inc. vs. CA, G.R. No. 100152. March 31, 2000)*

Note: Only the Sanggunian, not the mayor of the city, has the power to allow cockpits, stadiums, etc. Without an ordinance, he cannot compel mayor to issue him a business license (*Canet v. Decena, G.R. No. 155344, Jan. 20, 2004)*

Q: Distinguish between the grant of a license or permit to do business and the issuance of a license to engage in the practice of a particular profession.

A:

LICENSE/PERMIT TO DO BUSINESS	LICENSE TO ENGAGE IN A PROFESSION
Granted by the local authorities	Board or Commission tasked to regulate the particular profession
Authorizes the person to engage in the business or some form of commercial activity	Authorizes a natural person to engage in the practice or exercise of his or her profession

Note: A business permit cannot, by the imposition of condition, be used to regulate the practice of a profession. *(Acebedo Optical v. CA, G.R. No. 100152, Mar. 31, 2000)*

2.b. Eminent Domain

Q: What are the requisites for a valid exercise of power of eminent domain by LGU?

A: OPOC

1. An **O**rdinance is enacted by the local legislative council authorizing the local chief executive, in behalf of the local government unit, to exercise the power of eminent domain or pursue expropriation proceeding over a particular property.

   Note: A resolution will not suffice for a LGU to be able to expropriate private property; a municipal ordinance is different from a resolution in that an ordinance is a law while a resolution is merely a declaration of the sentiment or opinion of a lawmaking authority on a specific matter.

2. For **P**ublic use, purpose or welfare of for the benefit of the poor or landless
3. Payment of just **C**ompensation
4. A valid and definite **O**ffer has been previously made to the owner of the property sought to be expropriated, but said offer was not accepted. *(Municipality of Paranaque vs. V.M. Realty Corporation G.R. No. 127820. July 20, 1998)*

Q. What are the due process requirements in eminent domain?

A: Offer must be in writing specifying:

1. Property sought to be acquired
2. The reason for the acquisition
3. The price offered

   Note:

   a. If owner accepts offer: a contract of sale will be executed

   b. If owner accepts but at a higher price: Local chief executive shall call a conference for the purpose of reaching an agreement on the selling price; If agreed, contract of sale will be drawn. *(Article 35 of LGC IRR)*

Q: What are the requisites for an authorized immediate entry?

A:

1. The filling of a complaint for expropriation sufficient in form and substance
2. The deposit of the amount equivalent to fifteen percent (15%) of the fair market value of the property to be expropriated based on its current tax declaration. *(City of Iloilo vs Legaspi: G.R. No. 154614, November 25, 2004)*

Note: Upon compliance, the issuance of writ of possession becomes ministerial. *(City of Iloilo vs Legaspi, G.R. No. 154614, November 25, 2004)*

Q: What are the two phases of expropriation proceedings?

A:

1. The determination of the authority to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit.

2. The determination by the court of "just compensation for the property sought to be taken. *(Brgy. Son Roque, Talisay, Cebu v. Heirs of Francisco Pastor, G.R. No. 138896, June 20, 2000)*

Q: May the Sangguniang Panlalawigan validly disapprove a resolution or ordinance of a municipality calling for the expropriation of private property to be made site of a Farmers center and other government sports facilities on the ground that said "expropriation is unnecessary considering that there are still available lots of the municipality for the establishment of a government center"?

A: No, The only ground upon which a provincial board may declare any municipal resolution, ordinance or order invalid is when such resolution, ordinance, or order is 'beyond the powers conferred upon the council or president making the same.' A strictly legal question is before the provincial board in its consideration of a municipal resolution, ordinance, or order. The provincial board's disapproval of any resolution, ordinance, or order must be premised specifically upon the fact that such resolution, ordinance, or order is outside the scope of the legal powers conferred by law. If a provincial board passes these limits, it usurps the legislative functions of the municipal council or president. Such has been the consistent course of executive authority." *(Velazco v. Blas G.R. No., L-30456 July 30, 1982)*

2.c. Taxation

Q: What is the nature of the power of taxation? In LGUs?

A: A municipal corporation, unlike a sovereign state, is clothed with no inherent power of taxation. The charter or statue must plainly show an intent to confer that power or the municipality cannot assume it. And the power when granted is to be construed strictissimi juris. *(Medina vs. City of Baguio, G.R. No. L-4060 August 29, 1952)*

Q: Under the Constitution, what are the three main sources of revenues of local government units?

A:

1. Taxes, fees, and charges. *(Sec. 5, Art. X, 1987 Constitution)*
2. Share in the national taxes. *(*Share in the proceeds of the utilizations and development of the national wealth within their areas. *(Sec. 7, Art. X, 1987 Constitution)*
3. *Sec. 6, Art. X, 1987 Constitution)*

Q: What are the fundamental principles that shall govern the exercise of the taxing and revenue-raising powers of local government units?

A:

1. Taxation shall be uniform in each local government unit
2. Taxes, fees, charges and other impositions shall be equitable and based as far as practicable on the taxpayer's ability to pay; be levied and collected only for public purpose; not be unjust, excessive, oppressive, or confiscatory; not be contrary to law, public policy, national economic policy, or restraint of trade;
3. The collection of local taxes, fees, charges and other impositions shall in no case be left to any private person
4. The revenue collected shall inure solely to the benefit of and be subject to

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

disposition by, the local government unit, unless specifically provided therein;

5. Each local government, as far as practicable, evolves a progressive system of taxation. *(Sec. 130, R.A. 7160)*

Q: Under the Constitution, what is the basis of ARMM's taxing power?

A: The ARMM has the legislative power to create sources of revenues within its territorial jurisdiction and subject to the provisions of the 1987 Constitution and national laws. *(Sec. 20[b], Art. X)*

Q: Distinction between the power to tax by ordinary LGUs and that of the Autonomous Regions.

A:

LGU's outside autonomous regions	LGU's inside autonomous regions (*i.e. ARMM*)
Basis of Taxing Power	
Sec. 5, Article X, 1987 Constitution	Organic Act which Sec. 20(b), Article X, 1987 Constitution allows Congress to pass
Governing Guidelines and limitatitons	
Local Government Code of 1991	Respective Organic Act

Note: Unlike Sec. 5, Article X, Sec. 20, Article X of the 1987 Constitution is not self-executing. It merely authorizes Congress to pass the Organic Act of the autonomous regions which shall provide for legislative powers to levy taxes upon their inhabitants.

Q: The president, through AO 372, orders the withholding of 10 percent of the LGUs' IRA "pending the assessment and evaluation by the Development Budget Coordinating Committee of the emerging fiscal situation" in the country. Is the AO valid?

A: No, A basic feature of local fiscal autonomy is the *automatic* release of the shares of LGUs in the national internal revenue. This is mandated by no less than the Constitution. The Local Government Code specifies further that the release shall be made directly to the LGU concerned within five (5) days after every quarter of the year and "*shall not be subject to any lien or holdback that may be imposed by the national government for whatever purpose.*" As a rule, the term "shall" is a word of command that must be given a compulsory meaning. The provision is, therefore, imperative. *(Pimentel, Jr. v. Aguirre, G.R. No.* 132988, July 19, 2000)

Q: What are the fundamental principles governing financial affairs, transactions and operations of LGUs?

A:

1. No money shall be paid out of the local treasury except in pursuance of an appropriation ordinance or law;

2. Local government funds and monies shall be spent solely for public purposes;

3. Local revenue is generated only from sources expressly authorized by law or ordinance, and collection thereof shall at all times be acknowledged property

4. All monies officially received by a local government officer in any capacity or on any occasion shall be accounted for as local funds, unless otherwise provided

5. Trust funds in the local treasury shall not be paid out except in the fulfillment of the purpose for which the trust was created or the funds received

6. Every officer of the local government unit whose duties permit or require the possession or custody of local funds shall be properly bonded, and such officer shall be accountable and responsible for said funds and for the safekeeping thereof in conformity with the provisions of law;

7. Local governments shall formulate a sound financial plans and local budgets shall be based on functions, activities and projects, in terms of expected results

8. Local budget plans and goals shall, so far as practicable, be harmonized with national development plans, goals and strategies in order to optimize the utilization of resources and to avoid duplication in the use of fiscal and physical resources

9. Local budgets shall operationalize approved local development plans

10. Local government units shall ensure that their respective budgets incorporate the requirements of their component units and provide for equitable allocation of resources among these component units

11. National planning shall be based on local planning to ensure that the needs and aspirations of the people as articulated by the local government units in their respective local development places, are considered in the formulation of budgets of national line agencies or offices

12. Fiscal responsibility shall be shared by all those exercising authority over the financial affairs, transactions and operations of the local government units; and

13. The local government unit shall endeavor to have a balanced budget in each fiscal year of operation*(Sec. 305, R.A. 7160)*

Q: What are the taxes that may be imposed by the LGUs?

A:

1. *For provinces*
   a. Tax on transfer of real property ownership (sale, donation, barter, or any other mode of transferring ownership): not more than 50% of 1% of the total consideration involved in the acquisition of the property *(Sec. 135 R.A. 7160)*
   b. Tax on business of printing and publication: not exceeding 50% of 1% of the gross annual receipt *(Sec. 136 R.A. 7160)*
   c. Franchise tax: not exceeding 50% of 1% of the gross annual receipt *(Sec. 137 R.A. 7160)*
   d. Tax on sand, gravel and other quarry resources: not more than 10% of the fair market value per cubic meter. Proceeds will be distributed as follows:
      i. Province- 30%
      ii. Component city or municipality where it was extracted- 30%
      iii. Barangay where it was extracted- 40% *(Sec. 138 R.A. 7160)*

   e. Professional tax: not exceeding P300.00. *(Sec. 139 R.A. 7160)*
   f. Amusement tax: not more than 30% of the gross receipts. *(Sec. 140 R.A. 7160)*
   g. Annual fixed tax for every delivery truck or van of manufacturers or producers, wholesalers of, dealers, or retailers in certain products: not exceeding P500.00 *(Sec. 141 R.A. 7160)*

2. *For municipalities*- May levy taxes, fees, and charges not otherwise levied by provinces, except as provided for in the LGC.
   a. Tax on business. *(Sec. 143 R.A. 7160)*
   b. Fees and charges on business and occupation except those reserved for the province. *(Sec. 147 R.A. 7160)*
   c. Fees for sealing and licensing of weights and measures. *(Sec. 148 R.A. 7160)*
   d. Fishery rentals, fees and charges. *(Sec. 149 R.A. 7160)*

1. *For cities* – May levy taxes, fees and charges which the province and municipality may impose provided:
   a. That the taxes, fees and charges levied and collected of highly urbanized and independent component cities shall accrue to them, and
   b. That the rate that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than 50% except the rates of professional and amusement taxes. *(Sec. 151 R.A. 7160)*

Q: What are the taxes, fees and charges that may be imposed by the barangay?

A:

1. Taxes on stores and retails with fixed business establishment with gross sales

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

of the preceding calendar year of P50,000 or less, in the case of cities and P30,000 or less, in the case of municipalities, at a rate not exceeding 1% on such gross sales or receipts.
2. services rendered
3. barangay clearances
4. commercial breeding of fighting cocks, cockfights and cockpits
5. places of recreation which charge admission fees
6. Billboards, signboards, neon signs and outdoor advertisements. *(Sec. 152 R.A. 7160)*

Note: Where the Secretary of Justice reviews, pursuant to law, a tax measure enacted by a local government unit to determine if the officials performed their functions in accordance with law, i.e, with the prescribed procedure for the enactment of tax ordinances and the grant of powers under the Local Government Code, the same is an act of mere supervision and not control *(Drilon vs. Lim, G.R. No. 112497, Aug.4, 1994).*

Q: What procedures must a LGU comply with for a revenue ordinance to be valid?

A:

1. A prior public hearing on the measure conducted according to prescribed rules.
2. Publication of the tax ordinance, within 10 days after their approval, for 3 consecutive days in a newspaper of local circulation provided that in provinces, cities, and municipalities where there are no newspapers of local circulation, the same may be posted in at least two (2) conspicuous and publicly accessible places.

Note: If the tax ordinance or revenue measure contains penal provisions as authorized in Article 280 of this Rule, the gist of such tax ordinance or revenue measure shall be published in a newspaper of general circulation within the province where the sanggunian concerned belongs. *(Art. 276, IRR of LGC)*

Q: When shall a tax ordinance take effect?

A: In case the effectivity of any tax ordinance or revenue measure falls on any date other than the beginning of the quarter, the same shall be considered as falling at the beginning of the next ensuing quarter and the taxes, fees, or charges due shall begin to accrue therefrom. *(Art. 276, IRR of LGC)*

Q: The Province of Palawan passes an ordinance requiring all owners/operators of fishing vessels that fish in waters surrounding the province to invest ten percent (10%) of their net profits from operations therein in any enterprise located in Palawan. NARCO Fishing Corp., a Filipino corporation with head office in Navotas, Metro Manila, challenges the ordinance as unconstitutional. Decide the case.

A: The ordinance is invalid. The ordinance was apparently enacted pursuant to Art. X, Sec. 7 of the Constitution, which entitles local governments to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas. However, this should be made pursuant to law. A law is needed to implement this provision and a local government cannot constitute itself unto a law. In the absence of a law the ordinance in question is invalid.

Q: Who determines the legality or propriety of a local tax ordinance or revenue measure?

A: It is the Secretary of Justice who shall determine questions on the legality and constitutionality of ordinances or revenue measures. Such questions shall be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: Provided, however, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: Provided, finally, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction (RTC). *(Sec. 187 R.A. 7160)*

Q: What is the nature of a community tax?

A: Community tax is a poll or capitation tax which is imposed upon person who resides within a specified territory.

Q: Who are exempted from the payment of the community tax?

A:

1. Diplomatic and consular representatives;
2. Transient visitors when their stay in the Philippines does not exceed 3 months. *(Sec. 159 R.A. 7160)*

Q: What are the remedies available to the local government units to enforce the payment of taxes?

A:

1. Imposing penalties (surcharges and penalty interest) in case of delinquency *(Sec. 167 R.A. 7160)*
2. Availing local government's liens *(Sec. 173 R.A. 7160)*
3. Administrative action through distraint of goods, chattels, and other personal property *(Sec. 174(a) R.A. 7160)*
4. Judicial action *(Sec. 174(b) R.A. 7160)*

Q: What are the other sources of revenue?

A: The local government units are entitled to definite shares in:

1. The proceeds from development and utilization of mines, forests, and marine resources up to 40% of the gross collections there from by the national government. *(Sec. 290 R.A. 7160)*

2. The proceeds of government owned or controlled corporations engaged in the utilization and development of the national wealth up to 1% of the gross sales or 40% of the gross collections made by the national government there from, whichever is higher. *(Sec. 291 R.A. 7160)*

Q: What are real property taxes?

A: These are directly imposed on privilege to use real property such as land, building, machinery, and other improvements, unless specifically exempted.

Note: Real property taxes are local taxes and not national taxes. *(Pimentel, 2007 Edition, p. 415)*

Q: What are the requisites for a real estate tax protest?

A:

1. The taxpayer has already paid the tax
2. The protest must be in writing
3. Must be filed within 30 days from payment of the tax to the local treasurer concerned who shall decide the same within 60 days from receipt of such protest.

Note: Payment of tax is precondition in protest questioning the reasonableness of the assessment or amount of tax; but not when the issue raised is the authority of assessor or treasurer. *(Ursal, Philippine Law on Local Government Taxation, 2000 Ed.)*

Q: How much real property tax can be imposed by the local government units?

A: A real estate levy may be imposed by the province or city or a municipality w/in metro manila as follows:

1. By the province, not exceeding 1% of the assessed value of the property; and
2. By the city or a municipality w/in metro manila, not exceeding 2% of the assessed value of the property. *(Sec. 233 R.A. 7160)*

Q: Bayantel was granted by Congress after the effectivity of the Local Government Code (LGC), a legislative franchise with tax exemption privileges which partly reads "the grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations are now or hereafter may be required by law to pay." This provision existed in the company's franchise prior to the effectivity of the LGC. Quezon City then enacted an ordinance imposing a real property tax on all real properties located within the city limits and withdrawing all exemptions previously granted. Among properties covered are those owned by the company. Bayantel is imposing that its properties are exempt from tax under its franchise. Is Bayantel correct?

A: Yes. The properties are exempt from taxation. The grant of taxing powers to local governments under the Constitution and the LGC does not

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

affect the power of Congress to grant tax exemptions.

The term "exclusive of the franchise" is interpreted to mean properties actually, directly and exclusively used in the radio and telecommunications business. The subsequent piece of legislation which reiterated the phrase "exclusive of this franchise" found in the previous tax exemption grant to the company is an express and real intention on the part of the Congress to once against remove from the LGC's delegated taxing power, all of the company's properties that are actually, directly and exclusively used in the pursuit of its franchise. *(The City Government of Quezon City, et al., v. Bayan Telecommnications, Inc., G.R. No. 162015, Mar. 6, 2006)*

Note: An ordinance levying taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose. *(Figuerres v. CA, G.R. No. 119172, Mar.25, 1999)*

Q: What are the special levies on real property?

A:

1. A special education fund may also be assessed in provinces, cities, or Metropolitan Manila municipalities up to a maximum of 1% of the assessed value of a real property. *(Sec. 235 R.A. 7160)*

2. Idle lands in provinces, cities or municipalities in Metro Manila may be additionally taxed at not exceeding 5% of their assessed value. *(Sec. 236 R.A. 7160)*
3. Lands benefited by public works projects or improvements in provinces, cities and municipalities may be levied a special tax of not exceeding 60% of the actual cost of the project. *(Sec. 240 R.A. 7160)*

Q: What are the requisites so that the President may interfere in local fiscal matters?

A:

1. An unmanaged public sector deficit of the national government;

2. Consultations with the presiding officers of the Senate and the House of Representatives and the presidents of the various local leagues;
3. And the corresponding recommendation of the secretaries of the Department of Finance, Interior and Local Government, and Budget and Management. *(Pimentel, Jr. vs. Aguirre, G.R. No.* 132988, July 19, 2000)

Q: May a local government unit (LGU) regulate the subscriber rates charged by cable tv operators within its territorial jurisdiction?

A: No. Under E.O. No. 205, the National Telecommunications Commission has exclusive jurisdiction over matters affecting CATV operation, including specifically the fixing of subscriber rates. CATV system is not a mere local concern. The complexities that characterize this new technology demand that it be regulated by a specialized agency. This is particularly true in the area of rate-fixing. However, there is nothing under E.O. 205 precludes LGUs from exercising its general power, under R.A. No. 7160, to prescribe regulations to promote health, morals, peace, education, good order or safety and general welfare of their constituents. *(Batangas CATV, Inc. v. CA, G.R. No. 138810, Sept. 29, 2004)*

2.d. Closure of Roads

Q: What are subject to the power of an LGU to open or close a road?

A: Any local road, alley, park, or square falling within its jurisdiction may be closed, either permanently or temporary. *(Sec 21(a) R.A. 7160)*

Q: What are the limitations in case of permanent and temporary closure?

A:

1. *In case of permanent closure:*
   a. Must be approved by at least 2/3 of all the members of the sanggunian and when necessary provide for an adequate substitute for the public facility
   b. Adequate provision for the public safety must be made
   c. The property may be used or conveyed for any purpose for which other real property may be

lawfully used or conveyed, but no freedom park shall be closed permanently without provision for its transfer or relocation to a new site. *(Sec 21(a&b) R.A. 7160)*

2. *In case of temporary closure:*
   a. For actual emergency, fiesta celebration, public rallies, agricultural or industrial works and highway telecommunications and water work projects
   b. Duration of which shall be specified
   c. Except for those activities not officially sponsored or approved by the LGU concerned *(Sec 21(c) R.A. 7160)*

Note: Any city, municipality or barangay may, by ordinance, temporarily close and regulate the use of a local street, road, thoroughfare or any other public place where shopping, Sunday, flea or night markets may be established and where articles of commerce may be sold or dispensed with to the general public. *(Sec 21(d) R.A. 7160)*

2.e. Local Legislative Power

Q: Who exercises local legislative power and their presiding officer (PO)?

A:

Province	Sangguniang panlalawigan	Vice-governor
City	Sangguniang panlungsod	City vice-mayor
Municipality	Sangguniang bayan	Municipality vice-mayor
Barangay	Sangguniang barangay	Punong barangay

Note: The PO shall vote only to break a tie. *(Sec. 49(a) R.A. 7160)*

Q: In the absence of the regular presiding officer, who presides in the sanggunian concerned?

A: The members present and constituting a quorum shall elect from among themselves a temporary presiding officer.

Note: He shall certify within 10 days from the passage of ordinances enacted and resolutions adopted by the sanggunian in the session over which he temporarily presided. *(Sec. 49(b) R.A. 7160)*

Q: May an incumbent Vice-Governor, while concurrently the acting governor, continue to preside over the sessions of the Sangguniang Panlalawigan? If not, who may preside in the meantime?

A: A vice-governor who is concurrently an acting governor is actually a quasi-governor. For purposes of exercising his legislative prerogatives and powers, he is deemed a non-member of the SP for the time being.

In the event of inability of the regular presiding officer to preside at the sanggunian session, the members present and constituting a quorum shall elect from among themselves a temporary presiding officer.*(Gamboa v. Aguirre, G.R. No. 134213, July 20, 1999)*

Q: What is the quorum in the sanggunian?

A: A majority of all the members of the sanggunian who have been elected and qualified. *(Sec. 53(a) R.A. 7160)*

Q: What are the procedural steps or actions to be taken by the presiding officer if there is a question of quorum and if there is no quorum?

A: Should there be a question of quorum raised during a session, the PO shall immediately proceed to call the roll of the members and thereafter announce the results. *(Sec. 53(a) R.A. 7160)*

If there is no quorum:

1. Declare a recess until such time that quorum is constituted
2. Compel attendance of the member absent without justifiable cause
3. Declare the session adjourned for lack of quorum and no business shall be transacted *(Sec. 53(b) R.A. 7160)*

Q: How are sessions fixed?

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

A:

IF REGULAR SESSIONS	IF SPECIAL SESSIONS
By resolution on the 1st day of the session immediately following the election the elections of its members	When public interests so demand may be called by the local chief executive or by a majority of the members of the sanggunian

Q: What are the requirements of a sanggunian session?

A:

1. Shall be open to public unless it is a closed-door session
2. No two sessions, regular or special, may be held in a single day
3. Minutes of the session be recorded and each sanggunian shall keep a journal and record of its proceedings which may be published upon resolution of the sanggunian concerned.
4. In case of special sessions:

    a. Written notice to the members must be served personally at least 24 hours before
    b. Unless otherwise concurred in by 2/3 votes of the sanggunian members present, there being no quorum, no other matters may be considered at a special session except those stated in the notice. (Sec. 52 R.A. 7160)

Q: On its first regular session, may the Sanggunian transact business other than the matter of adopting or updating its existing rules or procedure?

A: Yes. There is nothing in the language of the LGC that restricts the matters to be taken up during the first regular session merely to the adoption or updating of the house rules. *(Malonzo v. Zamora, G.R. No. 137718, July 27, 1999).*

Q: What are the products of legislative action and their requisites for validity?

A:

ORDINANCE	RESOLUTION
Law	Merely a declaration of the sentiment or opinion of a lawmaking body on a specific matter
General and permanent character	Temporary in nature
Third reading is necessary for an ordinance	**GR:** Not necessary in resolution **XPN:** unless decided otherwise by a majority of all the sangguniang members *(Article 107, pars. a and c, Implementing Rules and Regulations of RA 7160)*

Q. What are the requisites for validity? (must not be CUPPU, must be GC)

A:

1. Must not **C**ontravene the constitution and any statute
2. Must not be **U**nfair or oppressive
3. Must not be **P**artial or discriminatory
4. Must not **P**rohibit, but may regulate trade
5. Must not be **U**nreasonable
6. Must be **G**eneral in application and **C**onsistent with public policy. *(Magtajas vs. Pryce Properties Corporation, Inc, G.R. No. 111097 July 20, 1994)*

Local Initiative and Referendum

Q: Distinguish local initiative from referendum.

A:

INITIATIVE	REFERENDUM
The legal process whereby the registered voters of a LGU may directly propose, enact or amend any ordinance. *(Sec. 120 R.A. 7160)*	The legal process whereby the registered voters of the LGU may approve, amend or reject any ordinance enacted by the sanggunian. *(Sec. 126 R.A. 7160)*

Q: What are the limitations on local initiative?

A:

1. It shall not be exercised for more than once a year.
2. It shall extend only to subjects or matters which are within the legal

powers of the sanggunian to enact. *(Sec. 124 R.A. 7160)*

Note: Any proposition or ordinance approved through an initiative and referendum shall not be repealed, modified or amended by the sanggunian within 6 months from the date of approval thereof, and may be amended, modified or repealed within 3 years thereafter by a vote of ¾ of all its members. In case of barangays, the period shall be 18 months after the approval thereof. *(Sec. 125 R.A. 7160)*

Q: How is a review of the ordinances or resolutions done?

A:

REVIEW OF COMPONENT CITY AND MUNICIPAL ORDINANCES OR RESOLUTIONS	REVIEW OF BARANGAY ORDINANCES
Who reviews	
Sanggunian Panlalawigan	Sangguniang Panglungsod or Sangguniang Bayan
When copies of ordinance or resolutions be forwarded	
Within 3 days after approval	Within 10 days after its enactment
Period to examine	
Within 30 days after the receipt; may examine or may transmit to the provincial attorney or provincial prosecutor. If the latter, must submit his comments or recommendations within 10 days from receipt of the document	Within 30 days after the receipt
When declared valid	
If no action has been taken within 30 days after submission	Same
When invalid (grounds)	
If beyond the power conferred on the sangguniang panlungsod	If inconsistent with the law or city or municipal ordinance *Effect:* Brgy ordinance is suspended until such time as the revision called is effected*(Sec. 56 and 58, R.A. 7160)*

Q: What is the effect of the enforcement of a disapproved ordinance or resolution?

A: It shall be sufficient ground for the suspension or dismissal of the official or employee *(Sec. 58, R.A. 7160)*

Q: When is the effectivity of ordinances or resolutions?

A:

GR: Within 10 days from the date a copy is posted in a bulletin board and in at least 2 conspicuous spaces. *(Sec. 59(a) R.A. 7160)*

XPN: Unless otherwise stated in the ordinance or resolution. *(Sec. 59(a) R.A. 7160)*

Q: What ordinances require publication for its effectivity?

A:

1. Ordinances that carry with them penal sanctions. *(Sec. 59(c) R.A. 7160)*
2. Ordinances and resolutions passed by highly urbanized and independent component cities. *(Sec. 59(d) R.A. 7160)*

Q: What are the instances of approval of ordinances?

A:

1. If the chief executive approves the same, affixing his signature on each and every page thereof
2. If the local chief executive vetoes the same, and the veto is overridden by 2/3 vote of all members of the sanggunian.

   Note: Local Chief Executive may veto the ordinance only once on the ground that the ordinance is *ultra vires* and *prejudicial to public welfare*. The veto must be communicated to the sanggunian within
   a. 15 days = province
   b. 10 days = city or municipality

Q: What are the items that the local chief executive may veto:

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

A:

1. Item/s of an appropriation ordinance.
2. Ordinance/resolution adopting local development plan and public investment program
3. Ordinance directing the payment of money or creating liability

Note: Ordinances enacted by the sangguniang barangay shall, upon approval by a majority of all its members be signed by the punong barangay. The latter has no veto power.

2.f. Corporate Powers

Q: What are the corporate powers of an LGU?

A:

1. To have continuous succession in its corporate name
2. To sue and be sued

Note: Only the Provincial Fiscal or the Municipal Attorney can represent a province or municipality in lawsuits. This is mandatory. Hence, a private attorney cannot represent a province or municipality.

3. To have and use a corporate seal

Note: Any new corporate seals or changes on such shall be registered with DILG.

4. To acquire and convey real or personal property
5. To enter into contracts; and
6. To exercise such other powers as granted to corporations *(Sec. 21, R.A. 7160)*

Q: Who is the proper officer to represent the city in court actions?

A: The city legal officer is supposed to represent the city in all civil actions and special proceedings wherein the city or any of its officials is a party, but where the position is as yet vacant, the City Prosecutor remains the city's legal adviser and officer for civil cases. *(Asean Pacific Planners vs. City of Urdaneta, G.R. No. 162525, September 23, 2008)*

Q: What is the difference between the suability and liability of the Local Government?

A: Where the suability of the state is conceded and by which liability is ascertained judicially, the state is at liberty to determine for itself whether to satisfy the judgment or not. *(Municipality of Hagonoy Bulacan vs. Hon. Simeon Dumdum, G.R. No. 168289 March 22, 2010)*

Q: May LGU funds and properties be seized under writs of execution or garnishment to satisfy judgments against them?

A: No, The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimants action only up to the completion of proceedings anterior to the stage of execution and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriations as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects. *(Traders Royal Bank v. Intermediate Appellate Court, G.R. No. 68514, December 17, 1990)*

Q: What is the exception to the above stated rule?

A: The rule on the immunity of public funds from seizure or garnishment does not apply where the funds sought to be levied under execution are already allocated by law specifically for the satisfaction of the money judgment against the government. In such a case, the monetary judgment may be legally enforced by judicial processes. (*City of Caloocan v. Allarde*, *G.R. No. 107271, September 10, 2003)*

Q: What are the requisites of a valid municipal contract?

A:

1. The local government unit has the express, implied or inherent power to enter into the particular contract

2. The contract is entered into by the proper department board, committee, officer or agent.

Note: No contract may be entered into by the local chief executive on behalf of the local government without prior authorization by the sanggunian concerned, unless otherwise provided. *(Sec 22(c) R.A. 7160)*

3. The contract must comply with certain substantive requirements:
   a. Actual appropriation; and
   b. certificate of availability of funds

4. The contract must comply with the formal requirements of written contracts

Note: This includes the power to acquire and convey properties by the LGU through written contracts.

Q: What are *ultra vires* contracts?

A: These are contracts entered into without the first and third requisites. Such are null and void and cannot be ratified or validated.

Q: What documents must support the contract of sale entered into by the LGU?

A:

1. Resolution of the *sanggunian* authorizing the local chief executive to enter into a contract of sale. The resolution shall specify the terms and conditions to be embodied in the contract;
2. Ordinance appropriating the amount specified in the contract
3. Certification of the local treasurer as to availability of funds together with a statement that such fund shall not be disbursed or spent for any purpose other than to pay for the purchase of the property involved. *(Jesus is Lord Christian School Foundation, Inc. vs. Municipality of Pasig, G.R. No. 152230, August 9, 2005)*

Q: Is Public bidding required when LGUs enter into contracts?

A: Yes, in the award of government contracts, the law requires competitive public bidding. It is aimed to protect the public interest by giving the public the best possible advantages thru open competition. It is a mechanism that enables the government agency to avoid or preclude anomalies in the execution of public contracts. *(Garcia vs.Burgos, G.R. No. 124130, June 29, 1998)*

Q: When is there a failure of bidding?

A: when any of the following occurs:

1. There is only one offeror
2. When all the offers are non-complying or unacceptable. *(Bagatsing vs. Committee on Privatization, G.R. No. 112399 July 14, 1995)*

Q: Can a municipal contract be ratified?

A: No, when the local chief executive enters into contracts, he needs prior authorization or authority from the Sanggunian and not ratification. *(Vergara vs. Ombudsman, G.R. No. 174567, March 12, 2009)*

Q: What properties may be alienated by LGUs?

A: Only Properties owned in its private or proprietary capacity (Patrimonial Property). *(Province of Zamboanga del Norte vs. City of Zamboanga, G.R. No. L-24440, March 28, 1968)*

Article 424 of the Civil Code lays down the basic principle that properties of public dominion devoted to public use and made available to the public in general are outside the commerce of man and cannot be disposed of or leased by the local government unit to private persons. *(Macasiano vs. Diokno, G.R. No. 97764, August 10, 1992)*

Q: Give important rules regarding LGU's power to acquire and convey real or personal property.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

A:

1. In the absence of proof that the property was acquired through corporate or private funds, the presumption is that it came from the State upon the creation of the municipality and, thus, is governmental or public property. *(Salas vs. Jarencio, G.R. No. L-29788, August 30, 1972; Rabuco vs. Villegas, G.R. No. L-24661, February 28, 1974)*
2. Town plazas are properties of public dominion; they may be occupied temporarily, but only for the duration of an emergency *(Espiritu vs. Municipal Council of Pozorrubio, Pangasinan, G.R. No. L-11014, January 21, 1958).*
3. Public plazas are beyond the commerce of man, and cannot be the subject of lease or other contractual undertaking. And, even assuming the existence of a valid lease of the public plaza or part thereof, the municipal resolution effectively terminated the agreement, for it is settled that the police power cannot be surrendered or bargained away through the medium of a contract. *(Villanueva vs. Castaneda, G.R. No. L-61311, September 2l, 1987)*

Q: Who has the authority to negotiate and secure grants?

A: The local chief executive may, upon authority of the sanggunian, negotiate and secure financial grants or donations in kind, in support of the basic services and facilities enumerated under *Sec. 17, R.A. 7160* from local and foreign assistance agencies without necessity of securing clearance or approval of any department, agency, or office of the national government or from any higher local government unit; Provided that projects financed by such grants or assistance with national security implications shall be approved by the national agency concerned.

2.g. Municipal Liability

Q: What is the scope of municipal liability?

A: Municipal liabilities arise from various sources in the conduct of municipal affairs, both governmental and proprietary.

Q: What is the rule with respect to the liabilities of (LGU's) and their officials?

A: LGUs and their officials are not exempt from liability for death or injury to persons or damage to property (*Sec. 24, R.A. 7160).*

Q: What are the specific provisions making LGUs liable?

A:

1. LGU shall be liable for damages for the death of, or injuries suffered by, any person by reason of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision. *(Art. 2189, New Civil Code)*

Note: LGU is liable even if the road does not belong to it as long as it exercises control or supervision over said roads.

2. The State is responsible when it acts through a special agent. (*Art. 2180, NCC)*

3. When a member of a city or municipal police force refuses or fails to render aid or protection to any person in case of danger to life or property, such peace officer shall be primarily liable for damages and the city or municipality shall be subsidiarily responsible therefor.(*Art. 34, NCC)*

Q: What are the bases for municipal liabilities?

A:

1. Liability arising from violation of law

   Note: *Liability arising from violation of law* such as closing municipal streets without indemnifying persons prejudiced thereby, non-payment of wages to its employees or its refusal to abide a temporary restraining order may result in contempt charge and fine.

2. Liability on contracts

   Note: LGU is liable on a contract it enters into provided that the contract is *intra vires*. If it is *ultra vires* they are not liable.

3. Liability for tort

   Note: *Liability for tort* – may be held for torts arising from the performance of its private and proprietary functions under the principle of *respondeat superior*. They are also liable for back salaries for employees illegally dismissed/separated or for its refusal to reinstate employees.

Q: What are the conditions under which a local executive may enter into a contract in behalf of his government unit?

A: WAFAC

1. The contract must be **W**ithin the power of the municipality
2. The contract must be entered into by an **A**uthorized officer (*e.g.* mayor with proper resolution by the Sangguniang Bayan, *Sec. 142 LGC*)
3. There must be appropriation and **C**ertificate of availability of funds
4. The contract must conform with the **F**ormal requisites of a written contract as prescribed by law; and
5. In some cases the contract must be **A**pproved by the President and/or provincial governor *(Sec. 2068 and Sec. 2196, Revised Adm. Code)*

Q: What is the doctrine of Implied Municipal Liability?

A: A municipality may become obligated upon an implied contract to pay the reasonable value of the benefits accepted or appropriated by it as to which it has the general power to contract. (*Province of Cebu v. IAC, G.R. No. L-72841, Jan. 29, 1987)*

Note: *Estoppel* cannot be applied against a municipal corporation in order to validate a contract which the municipal corporation has no power to make or which it is authorized to make only under prescribed limitations or in a prescribed mode or manner – even if the municipal corporations has accepted benefits thereunder. *(Favis vs. Municipality of Sabangan, G.R. No. L-26522, February 27, 1969)*

Q: State the rules on municipal liability for tort.

A:

1. *LGU-engaged (governmental function)* – not liable
2. *LGU-engaged (proprietary function)* – liable *(Rodriguez, p.105, LGC 5th Edition)*

2.h. Settlement of Boundary Disputes

Q: State how the two local government units should settle their boundary dispute.

A: Boundary disputes between local government units should, as much as possible, be settled amicably. After efforts at settlement fail, then the dispute may be brought to the appropriate RTC in the said province. Since the LGC is silent as to what body has exclusive jurisdiction over the settlement of boundary disputes between a municipality and an independent component city of the same province, the RTC have general jurisdiction to adjudicate the said controversy.

Q: What body or bodies are vested by law with the authority to settle disputes involving:

1. **Two or more owns within the same province**
2. **Two or more highly urbanized cities.**

A:

1. Boundary disputes involving two or more municipalities within the same province shall be settled by the sangguniang panlalawigan concerned. (*Section 118[b], Local Government Code)*
2. Boundary disputes involving two or more highly urbanized cities shall be settled by the sangguniang panlungsod of the parties. (*Section 118[d], Local Government Code)*

Q: State the importance of drawing with precise strokes the territorial boundaries of a local government unit.

A: The boundaries must be clear for they define the limits of the territorial jurisdiction of a local government unit. It can legitimately exercise powers of government only within the limits of its territorial jurisdiction. Beyond these limits, its acts are *ultra vires.* Needless to state, any uncertainty in the boundaries of local

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

government units will sow costly conflicts in the exercise of governmental powers which ultimately will prejudice the people's welfare. This is the evil sought to be avoided by the Local Government Code in requiring that the land area of a local government unit must be spelled out in metes and bounds, with technical descriptions. *(Mariano, Jr. v. COMELEC, G.R. No., 118577, Mar. 7, 1995)*

3. LOCAL OFFICIALS

3.a. Elective Officials

Q: What are the qualifications of elective government official?

A:

1. Must be a Filipino citizen
2. Must be a registered voter in:
   a. The *barangay*, municipality, city or province where he intends to be elected
   b. The district where he intends to be elected in case of a member if the *Sangguniang Panlalawigan*, *Sangguniang Panlungsod*, *or Sangguniang Bayan*
3. Must be a resident therein for at least 1 year immediately preceding the day of the election;

Note: The term "residence" under Section 39(a) of the LGC of 1991 is to be understood not in its common acceptation as referring to "dwelling" or "habitation", but rather to "domicile" or "legal residence" that is*, the place where a party actually or constructively has his permanent home, where he, no matter where he may be found at any given time, eventually intends to return and remain (animus manendi)(Coquilla v. COMELEC, G.R. No. 151914, July 31, 2002).*

4. Able to read and write Filipino/ any other local language or dialect
5. Age requirement: *(Sec. 39, LGC)*

At least 23 years old on election day
1. Governor 2. Vice Governor 3. Mayor 4. Vice Mayor 5. Member of *Sangguniang Panlungsod* in highly urbanized cities
At least 21 years old
1. Mayor 2. Vice Mayor of Independent component cities or municipalities
At least 18 years old
a. Member of *Sangguniang Panglungsod* b. Member of *Sangguniang Bayan* c. *Punong Barangay* d. Member of *Sangguniang Barangay*
At least 15 years of age but not more than 18 years of age on election day (as amended under R.A. 9164)
Candidates for the *Sangguniang Kabataan*

Q: When should the citizenship requirement be possessed?

A: The citizenship requirement in the LGC is to be possessed by the elective official, at the latest, as of the time he is proclaimed and at the start of the term of office to which he has been elected. The LGC does not specify any particular date or time when the candidate must possess citizenship, unlike the requirements for residence and age. Repatriation under PD 825 is valid and effective and retroacts to the date of the application. (*Frivaldo v. COMELEC, G.R. No. 120295, June 28, 1996)*

Note: Filing of certificate of candidacy is sufficient to renounce foreign citizenship. However the Court ruling has been superseded by the enactment of R.A. No. 9225 in 2003. R.A. No. 9225 Sec. 5 expressly provides for the conditions before those who re-acquired Filipino citizenship may run for a public office in the Philippines. (*Lopez v. COMELEC, G.R. No. 182701, June 23, 2008*)

Upon repatriation, a former natural-born Filipino is deemed to have recovered his original status as a natural-born citizen. *(Bengzon III v. HRET, GR 142840 May 7, 2001)*

Q: X was a natural-born Filipino who went to the USA to work and subsequently became a naturalized American citizen. However, prior to filing his Certificate of Candidacy for the Office of Mayor of the Municipality of General Macarthur, Eastern Samar, on 28 March 2007, he applied for reacquisition of his Philippine Citizenship. Such application was subsequently granted. Y filed a petition to disqualify X on the ground of failure to comply with the 1-year residency requirement. Y argues that reacquisition of Philippine citizenship, by itself, does not automatically result in making X a resident of the locality. Is Y correct?

A: Yes. X's reacquisition of his Philippine citizenship under R.A. No. 9225 had no automatic impact or effect on his residence/domicile. He could still retain his domicile in the USA, and he did not necessarily regain his domicile in the Municipality of General Macarthur, Eastern Samar, Philippines. X merely had the option to again establish his domicile in the Municipality of General Macarthur, Eastern Samar, Philippines, said place to have become his new domicile of choice. The length of his residence therein shall be determined from the time he made it his domicile of choice, and it shall not retroact to the time of his birth. It is the fact of residence that is the decisive factor in determining whether or not an individual has satisfied the residency qualification requirement.

However, even if Y's argument is correct, this does not mean that X should be automatically disqualified as well, since there is proof that aside from reacquisition of his Philippine Citizenship, there are other subsequent acts executed by X which show his intent to make General Arthur, Eastern Samar his domicile, thus making him qualified to run for Mayor. *(Japzon v. COMELEC, G.R. No. 180088, Jan.19, 2009)*

Q: Who are persons disqualified from running for any elective local position?

A:

1. Sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by 1 year or more of imprisonment, within 2 years after serving sentence
2. Removed from office as a result of an administrative case
3. Convicted by final judgment for violating the oath of allegiance of the Republic
4. With dual citizenship

Note: The phrase "dual citizenship" as a disqualification in R.A. No. 7160, §40(d) and in R.A. No. 7854, §20 must be understood as referring to "dual allegiance." (*Mercado v. Manzano, G.R. No. 135083, May 26,1999*)

5. Fugitives from justice in criminal or non-political cases here or abroad

Note: Fugitives from justice in criminal and non-criminal cases here and abroad include not only those who flee after conviction to avoid punishment, but likewise those who after being charged, flee to avoid prosecution *(Marquez v. COMELEC, G.R. No. 112889, April 18, 1995; Rodriguez v. COMELEC, GR 120099 July 24, 1996)*

6. Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectively of this LGC;
7. Insane or feeble-minded *(Sec. 40, LGC)*
8. Other grounds for disqualification:
   a. Vote buying (upon determination in a summary administrative proceeding) *(Nolasco v COMELEC, GR Nos. 122250 & 122258 July 21, 1997)*
   b. Removal by administrative proceedings (perpetual disqualification) *(Lingating v COMELEC, G.R. No. 153475, Nov. 13, 2002)*

Q: May an official removed from office as a result of an administrative case, before the effectivity of the LGC be disqualified under Section 40 of said law?

A: No. Section 40 (b) of the LGC has no retroactive effect and therefore, disqualifies only those administratively removed from office after January 1,1992 when LGC took effect *(Greco v. COMELEC, G.R. No. 125955, June 19, 1997).* The administrative case should have reached a final

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

determination. (*Lingating v. COMELEC, G.R. No. 153475, Nov. 13, 2002)*

Q: What is the significance of possession of a "green card" by a candidate for an elective position?

A: Possession of a "green card" is ample evidence to show that the person is an immigrant to or a permanent resident of the U.S. Hence, immigration to the US by virtue of a "Green card" which entitles one to reside permanently in that country, constitutes abandonment of domicile in the Philippines. *(Ugdoracion v. COMELEC, G.R. No. 179851, April 18, 2008)*

Q: Can a candidate receiving the next highest vote be declared the winner after the candidate receiving the majority of votes is declared ineligible?

A:

GR: No. The ineligibility of a candidate receiving the majority of votes does not entitle the eligible candidate receiving the next highest number of votes to be declared winner.

XPN: The rule would be different if the electorate, fully aware of a candidate's disqualification so as to bring such awareness within the realm of notoriety, would nonetheless cast the votes in favor of the ineligible candidate. In such case, the electorate may be said to have waived the validity and efficacy of their votes by notoriously applying their franchises or throwing away their votes in which case, the eligible candidate obtaining the next highest number of votes may be deemed elected. *(Labo v. COMELEC, G.R. No. 105111, July 3, 1992)*

3.b. Vacancies and Succession

Q: What are the two classes of vacancies in the elective post?

A:

PERMANENT VACANCY	TEMPORARY VACANCY
Arises when: elective local official: 1. Fills a higher vacant office 2. Refuses to assume office 3. Fails to qualify 4. Dies 5. Removed from office 6. Voluntarily resigns 7. Permanently incapacitated to discharge the functions of his office *(Sec. 44, LGC)*	Arises when an elected official is temporarily incapacitated to perform their duties due to legal or physical reasons such as: 1. Physical sickness, 2. Leave of absence, 3. Travel abroad or 4. Suspension from office. *(Sec. 46, LGC)*

Q: What are the two ways of filling the vacancy?

A:

1. Automatic succession
2. By appointment *(Sec. 45, LGC)*

Q: State the rules of succession in case of permanent vacancies.

A:

1. *In case of permanent vacancy in:*
   a. Office of the governor: vice-governor
   b. Office of the mayor: vice-mayor
   c. Office of the governor, vice governor, mayor or vice-mayor: highest ranking *Sanggunian member* or in case of his permanent inability, the second highest ranking *Sanggunian* member – successor should have come from the same political party.
   d. Office of the punong barangay: the highest ranking *sangguniang barangay* member – successor may or may not have come from the same political party.

Note: For purposes of succession, ranking in the Sanggunian shall be determined on the basis of the proportion of the votes obtained by each winning candidate to the total number of registered voters in each district in the preceding election.

In case of tie between and among the highest ranking Sangguniang members, resolved by drawing lots *(Section 44, LGC).* The general rule is that the successor (by appointment) should come from the same political party as the Sangunian member whose position has become vacant. The exception would be in the case of vacancy in the *Sangguniang barangay.*

2. *In case automatic succession is not applicable and there is vacancy in the membership of the sanggunian:*

   a. The President thru the Executive Secretary shall appoint the political nominee of the local executive for the sangguniang panlalawigan/panlungsod of highly urbanized cities/independent component cities
   b. The Governor, shall appoint the political nominees for the sanggunian panlungsod of component cities/bayan concerned
   c. The city/municipal mayor shall appoint the recommendee of the sangguniang barangay concerned.

   Note: The "last vacancy" in the Sanggunian refers to that created by the elevation of the member formerly occupying the next higher in rank which in turn also had become vacant by any of the causes already enumerated. The term "last vacancy" is thus used in Section 45(b) to differentiate it from the other vacancy previously created. The term by no means refers to the vacancy in the No.8 position which occurred with the elevation of 8th placer to the seventh position in the Sanggunian. Such construction will result in absurdity. *(Navarro v. CA, G.R. No. 141307, Mar. 28, 2001)*

   In case of vacancy in the representation of the youth and the barangay in the Sanggunian, vacancies shall be filled automatically with the official next in rank of the organization concerned.

Q: State the rules in case of temporary vacancies in local positions.

A:

1. In case of temporary vacancy of the post of the local executive (leave of absence, travel abroad, suspension): vice- governor, vice mayor, highest ranking *sangguniang barangay* shall automatically exercise the powers and perform the functions of the local Chief Executive concerned.

   GR: He cannot exercise the power to appoint, suspend or dismiss employees

   XPN: If the period of temporary incapacity exceeds 30 working days.

2. If travelling within the country, outside his jurisdiction, for a period not exceeding 3 days: he may designate in writing the officer-in-charge. The OIC cannot exercise the power to appoint, suspend or dismiss employee.

3. If without said authorization, the vice-governor, vice-mayor or the highest ranking *sangguniang barangay* member shall assume the powers on the 4th day of absence. *(Sec. 46, LGC)*

Q: How is temporary incapacity terminated?

A:

1. It shall terminate upon submission to the appropriate sanggunian of a written declaration by the local chief executive concerned that he has reported back to office – If the temporary incapacity was due to:
   a. Leave of absence
   b. Travel abroad
   c. Suspension.
2. If the temporary incapacity was due to legal reasons, the local chief executive should also submit necessary documents showing that the legal cause no longer exist. *(Sec. 46[b], LGC)*

Q: May the local chief executive authorize any local official to assume the powers, duties and functions of the office other than the vice-governor, city or municipal vice-mayor, or highest ranking sangguniang barangay member as the case maybe?

A:

GR: No.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

XPN: If travelling within the country, outside his jurisdiction. (*Sec. 46[c], LGC)*

Note: A vice-governor who is concurrently an acting governor is actually a *quasi-governor*. For the purpose of exercising his legislative prerogatives and powers, he is deemed a non-member of the sangguninang panlalawigan for the time being. (*Gamboa v. Aguirre, G.R. No. 134213, July 20, 1999)*

3.c. Disciplinary Actions

Q: What are the grounds for disciplinary actions?

A: An elective local official may be disciplined, suspended or removed from office on any of the following grounds:

1. Disloyalty to the Republic of the Philippines

   Note: An administrative, not criminal, case for disloyalty to the Republic only requires substantial evidence *(Aguinaldo v. Santos, G.R. No. 94115, August 21, 1992)*

2. Culpable violation of the Constitution
3. Dishonesty, oppression, misconduct in office, gross negligence, dereliction of duty
4. Commission of nay offense involving moral turpitude or an offense punishable by at least *prision mayor*
5. Abuse of authority
6. **GR:** Unauthorized absence for 15 consecutive working days,

   XPN: in the case of members of the Sangguniang:
   a. Panlalawigan
   b. Panglunsod
   c. Bayan
   d. Barangay

7. Application for or acquisition of foreign citizenship or residence or the status of an immigrant of another country;
8. Such other grounds as may be provided by the Code/other laws. *(Sec. 60, LGC)*

Note: An elective local official may be removed from office on the ground enumerated above by order of the proper court *only.* The Office of the President is without any power to remove elected officials, since such power is exclusively vested in the proper courts as expressly provided for in the last paragraph of Section 60, LGC. *(Salalima v. Guingona, G.R. No. 117589, May 22, 1996)*

Q: What is removal?

A: Removal imports the forcible separation of the incumbent before the expiration of his term and can be done only for cause as provided by law. *(Dario v. Mison, G.R. No. 81954, August 8, 1989)*

Note: The removal not for a just cause or non-compliance with the prescribed procedure constitutes reversible error and this entitles the officer or employee to reinstatement with back salaries and without loss of seniority rights. Basis

Q: Does the Sangguniang Panglungsod and Sangguniang Bayan have the power to remove elective officials?

A: No. The pertinent legal provisions and cases decided by this Court firmly establish that the Sanggunaing Bayan is not empowered to do so. Section 60 of the Local Government Code conferred upon the courts the power to remove elective local officials from office*. (The Sangguniang Barangay of Don Mariano Marcos vs. Martinez, G.R. No. 170626, March 3, 2008)*

Q: Who may file an administrative action?

A:

1. Any private individual or any government officer or employee by filling a sworn written complaint (verified);
2. Office of the President or any government agency duly authorized by law to ensure that LGUs act within their prescribed powers and functions. *(ADMINISTRATIVE ORDER NO. 23, Rule 3 Sec. 1, December 17, 1992)*

Q: Where should an administrative complaint be filed?

A: A verified complaint shall be filed with the following:

1. *Office of the President* – against elective official of provinces, HUC, ICC, component cities.
2. *Sangguniang Panlalawigan* – elective officials of municipalities; and
3. *Sangguniang Panglunsod or Bayan* – elective barangay officials. *(Sec. 61, LGC)*

Note: A re-elected local official may not be held administratively accountable for misconduct committed during his prior term of office. There is no distinction as to the precise timing or period when the misconduct was committed, reckoned from the date of the official's re-election, except that it must be prior to said date. *(Garcia v. Mojica, G.R. No. 139043, Sept. 10, 1999)*

Q: When is subsequent re-election considered a condonation?

A: When proceeding is abated due to elections and there is no final determination of misconduct yet. *(Malinao v Reyes, GR 117618 Mar.29, 1996)*

Note: Subsequent re-election cannot be deemed a condonation if there was already a final determination of his guilt before the re-election. *(Reyes v. COMELEC, G.R. No. 120905 March 7, 1996)*

The rule that public official cannot be removed for administrative misconduct committed during a prior term, since his re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefore, has no application to pending criminal cases against petitioner for the acts he may have committed during a failed coup. *(Aguinaldo v. Santos, G.R. No. 94115, Aug. 21, 1992)*

Q: When should preventive suspension be imposed?

A:

1. After the issues are joined;
2. When the evidence of guilt is strong;
3. Given the gravity of the offense, there is great probability that the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence. *(Sec. 63[b], LGC)*

Q: Who can impose preventive suspension?

A:

Authority to impose suspension belongs to the	Respondent Local Official
President	Elective official of a province, highly urbanized or independent component city
Governor	Elective official of a component city of municipality
Mayor	Elective official of a barangay. *(Sec 63[a], LGC)*

Q: State the rule on preventive suspension.

A:

1. A single preventive suspension shall not extend beyond 60 days;
2. In the event that there are several administrative cases filed, the elective official cannot be preventively suspended for more than 90 days within a single year on the same ground or grounds existing and known at the time of his first suspension. *(Sec. 63[b], LGC)*

Q: State the rules on administrative appeals.

A: Decisions in administrative cases may, within 30 days from receipt thereof, be appealed to the following:

1. The Sangguniang panlalawigan, in case of decisions of the sangguniang panlungsod of component cities and the sangguniang bayan; and
2. The Office of the President, in the case of decisions of the sangguniang panlalawigan and the sangguniang panlungsod of highly urbanized cities and independent component cities. *(Sec. 67, LGC)*

Note: Decisions of the President shall be final and executory.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Q: When is resignation of a public elective official effective?

A: Resignation of elective officials shall be deemed effective only upon acceptance by the following authorities:

1. The *President,* in case of governors, vice-governors, and mayors and vice-mayors of highly urbanized cities and independent and component cities
2. The *Governor*, in the case of municipal mayors and vice-mayors, city mayors and vice-mayors of component cities
3. The *Sanggunian* concerned, in case of sangguninan members
4. The *City or Municipal Mayor*, in case of barangay officials. *(Sec. 82, LGC)*

Q: What is the difference between the preventive suspension provided under R.A. 6770 and under LGC?

A:

PREVENTIVE SUSPENSION UNDER RA 6770	PREVENTIVE SUSPENSION UNDER LGC
Requirements: 1. The evidence of guilt is strong; and 2. That any of the following circumstances are present: a. The charge against the officer of employee should involve dishonesty, oppression or grave misconduct or neglect in the performance of duty; b. The charges should warrant removal from office; or c. The respondent's continued stay in office would prejudice the case filed against him.	*Requirements:* 1. There is reasonable ground to believe that the respondent has committed the act or acts complained of; 2. The evidence of culpability is strong; 3. The gravity of the offense so warrants; 4. The continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence.
Maximum period: 6 months	Maximum period: 60 days. (*Hagad v. Gozo-Dadole, G.R. No. 108072 Dec. 12, 1995)*

Q: Does the LGC withdraw the power of the Ombudsman under R.A. 6770 to conduct administrative investigation?

A: No. Hence, the Ombudsman and the Office of the President have concurrent jurisdiction to conduct administrative investigations over elective officials. *(Hagad v. Gozo-Dadole, G.R. No. 108072, Dec.12, 1995)*

Q: Who may sign an order preventively suspending officials?

A: It is not only the Ombudsman, but also his Deputy, who may sign an order preventively suspending officials. Also, the length of the period of suspension within the limits provided by law and the evaluation of the strength of the evidence both lie in the discretion of the Ombudsman. It is immaterial that no evidence has been adduced to prove that the official may influence possible witnesses or may tamper with the public records. It is sufficient that there exists such a possibility. *(Castilo-Co v. Barbers, G.R. No. 129952 June 16, 1998)*

Q. What is the effect of an appeal on the preventive suspension ordered by the Ombudsman?

A. An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. *(Office of the Ombudsman vs. Samaniego, G.R. No. 175573, October 5, 2010)*

3.d. Recall

Q: What is recall?

A: It is a mode of removal of a public officer by the people before the end of his term. The people's prerogative to remove a public officer is an incident of their sovereign power, even in the absence of constitutional restraint; the power is

implied in all governmental operations. (*Garcia v. Comelec, G.R. No. 111511 October 5, 1993)*

Note: Expenses for the conduct of recall elections: Annual General Appropriations Act has a contingency fund at the disposal of the COMELEC *(Sec. 75, LGC)*

Q: What is the ground for recall? Is this subject to judicial inquiry?

A: The only ground for recall of local government officials is loss of confidence. No, it is not subject to judicial inquiry, the Court ruled that 'loss of confidence' as a ground for recall is a political question. *(Evardone v. COMELEC, G.R. No. 94010 Dec. 2, 1991)*.

Q: Upon whom and how may a recall be initiated?

A:

1. *Who*: any elective
    a. Provincial
    b. City
    c. Municipal
    d. Barangay official

2. How: by a petition of a registered voter in the LGU concerned and supported by the registered voters in the LGU concerned during the election in which the local official sought to be recalled was elected. *(Sec. 70 of R.A. 7160, as amended by R.A. 9244)*

Note: By virtue of R.A. 9244, Secs. 70 and 71 of the Local Government Code were amended, and the Preparatory Recall Assembly has been eliminated as a mode of instituting recall of elective local government officials.

All pending petitions for recall initiated through the Preparatory Recall Assembly shall be considered dismissed upon the effectivity of RA 9244 *(Approved Feb. 19, 2004)*

Q: What are the limitations on recall?

A:

1. Any elective local official may be subject of a recall election only once during his term of office for loss of confidence; and

2. No recall shall take place within one year from the date of the official's assumption to office or one year immediately preceding a regular election. *(Sec. 74, LGC)*

Q: Section 74 of the Local Government Code provides that "no recall shall take place within one year immediately preceding a regular local election." What does the term "regular local election," as used in this section, mean?

A: It refers to one where the position of the official sought to be recalled is to be actually contested and filled by the electorate. *(Paras v. Comelec, G.R. No. 123169, Nov. 4, 1996)*

The one-year time bar will not apply where the local official sought to be recalled is a Mayor and the approaching election is a barangay election. *(Angobung v. COMELEC, G.R. No. 126576, Mar. 5, 1997)*

Q. State the initiation of the recall process.

A:

1. Petition of a registered voter in the LGU concerned, supported by percentage of registered voters during the election in which the local official sought to be recalled was elected.*(% decreases as population of people in area increases. Also, the supporting voters must all sign the petition).*
2. Within 15 days after filing, COMELEC must certify the sufficiency of the required number of signatures. Failure to obtain required number automatically nullifies petition.
3. Within 3 days of certification of sufficiency, COMELEC provides official with copy of petition and causes its publication for three weeks (once a week) in a national newspaper and a local newspaper of general circulation. Petition must also be posted for 10 to 20 days at conspicuous places. Protest should be filed at this point and ruled with finality 15 days after filing.
4. COMELEC verifies and authenticates the signature

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

5. COMELEC announces acceptance of candidates.
6. COMELEC sets election within 30 days upon completion of previous section in barangay/city/municipality proceedings and 45 days in the case of provincial officials. Officials sought to be recalled are automatically candidates. *(Sec 70, R.A. 7160)*

Q: May an elective local official sought to be recalled resign?

A: The elective local official sought to be recalled shall not be allowed to resign while the recall process is in progress. *(Sec. 73, LGC)*

Q. When does recall take effect?

A: Only upon the election and proclamation of a successor in the person of the candidate receiving the highest number of votes cast during the election on recall. Should the official sought to be recalled receive the highest number of votes, confidence in him is thereby affirmed, and he shall continue in office. *(Sec. 72, LGC)*

Q. Will it be proper for the COMELEC to act on a petition for recall signed by just one person?

A: A petition for recall signed by just one person is in violation of the statutory 25% minimum requirement as to the number of signatures supporting any petition for recall. *(Angobung v. COMELEC, G.R. No. 126576, March 5, 1997)*

3.e. Term Limits

Q: What is the term of office of an elected local official?

A: Three (3) years starting from noon of June 30 following the election or such date as may be provided by law, except that of elective barangay officials, for maximum of 3 consecutive terms in same position (Section 43, LGC).

The term of office of Barangay and Sangguniang Kabataan elective officials, by virtue of R.A. No. 9164, is three (3) years.

Q: What is the term limit of Barangay officials?

A: The term of office of barangay officials was fixed at three years under R.A. No. 9164 (19 March 2002). Further, Sec.43 (b) provides that "no local elective official shall serve for more than three (3) consecutive terms in the same position. The Court interpreted this section referring to all local elective officials without exclusions or exceptions. *(COMELEC v. Cruz, G.R. No. 186616, Nov. 19, 2009)*

3.f. Appointive Officials

Q: May a governor designate an acting assistant treasurer?

A: No. Under the LGC and Revised Administrative Code, provincial governor is not authorized to appoint or even designate a person in cases of temporary absence or disability. Power resides in the President or Secretary of Finance. (*Dimaandal v. COA G.R. No. 122197, June 26, 1998)*

Q: May the mayor of Olongapo be appointed as SBMA chairman for the first year of operation?

A: No. This violates constitutional prohibition against appointment or designation of elective officials to other government posts. Appointive officials may be allowed by law or primary functions of his position to hold multiple offices. Elective officials are not so allowed, except as otherwise recognized in the Constitution. The provision also encroaches on the executive power to appoint. *(Flores v. Drilon, G.R. No. 104732, June 22, 1993)*

Q: What is the role of CSC in appointing officials?

A: CSC cannot appoint but can determine qualification. In disapproving or approving appointments, CSC only examines:

1. The conformity of the appointment with applicable provisions of law;
2. Whether or not appointee possesses the minimum qualifications and none of the disqualifications.*(Debulgado v. CSC, G.R. No. 111471 Sept. 26, 1994)*

Q: What are the grounds for recall of appointment?

A:

1. Non-compliance with procedure or criteria provided in the agency's merit promotion plan;
2. Failure to pass through agency's selection/promotion board;
3. Violation of existing collective agreement between management and employees relative to promotion;
4. Violation of other existing civil service law rules and regulations. *(Maniebo v. CA, G.R. No. 158708, August 10, 2010)*

Q: Does the Governor have the authority to terminate or cancel appointments of casual/ job order employees of the Sangguniang Panlalawigan Members and Office of the Vice-Governor?

A: No. While the Governor has the authority to appoint officials and employees whose salaries are paid out of the provincial funds, this does not extend to the officials and employees of the Sangguniang Panlalawigan because such authority is lodged with the Vice-Governor. In the same manner, the authority to appoint casual and job order employees of the Sangguniang Panlalawigan belongs to the Vice-Governor. This authority is anchored on the fact that the salaries of these employees are derived from the appropriation specifically allotted for the said local legislative body *(Atienza v. Villarosa, G.R. No. 161081, May 10, 2005)*

Q: Does the constitutional prohibition on midnight appointments apply to LGUs?

A: No. The prohibition applies only to presidential appointments. They do not apply to LGUs, as long as the appointments meet all the requisites of a valid appointment. Once an appointment has been made and accepted, the appointing authority cannot unilaterally revoke it. But the CSC may do so if it decides that the requirements were not met. *(De Rama v. CA, G.R. No. 131136 Feb. 28, 2001)*

Q: May a mayor appoint his wife as head of Office of General Services?

A: No. Mayor is not allowed even if the wife is qualified because of prohibition against nepotic appointments. (*Sec. 59, Book 5 of RAC)* This prohibition covers all appointments, original and personnel actions (promotion, transfer, reinstatement, re-employment). (*Debulgado v. CSC, G.R. No. 111471, Sept. 26, 1994)*

Note: The boyfriend of the daughter of the mayor was appointed to a post. When his appointment was temporary, he became the son-in-law. Mayor then recommended that his appointment become permanent. This was considered nepotism and was disallowed *(CSC v. Tinaya, GR 154898 Feb.16, 2005)*

3.g. Provisions Applicable to Elective and Appointive Officials

Q: What are the prohibited business and pecuniary interest?

A:

1. Engage in any business transaction with the local government unit in which he is an official or employee or over which he has the power of supervision, or with any of its unauthorized boards, officials, agents, or attorneys, whereby money is to be paid, or property or any other thing of value is to be transferred directly or indirectly, out of the resources of the local government unit to such person or firm.

2. Hold such interests in any cockpit or other games licensed by a local government unit;

3. Purchase any real estate or other property forfeited in favor of such local government unit for unpaid taxes or assessment, or by virtue of a legal process at the instance of the said local government unit.

4. Be a surety for any person contacting or doing business with the local government unit for which a surety is required; and

5. Possess or use any public property of the local government unit for private purposes. (Sec. 89 *LGC*)

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Q: What are the elements of unlawful intervention and prohibited interests?

A:

ELEMENTS OF UNLAWFUL INTERVENTION	ELEMENTS OF PROHIBITED INTEREST
1. Accused is a public officer	1. Public officer
2. Accused has direct or indirect financial or pecuniary interest in any business, contract, or transaction, Whether or not prohibited by law	2. He has direct or indirect financial or pecuniary interest in any business, contract, transaction
3. He intervenes or takes part in his official capacity in connection with such interest *(Teves v. Sandiganbayan, G.R. No. 154182, Dec. 17, 2004)*	3. He is prohibited from having such interest by the Constitution or law. *(Teves v. Sandiganbayan, G.R. No. 154182, Dec. 17, 2004)*

Q: Can local chief executives practice their profession?

A: No. All governors, city and municipal mayors are prohibited from practicing their profession or engaging in any occupation other than the exercise of their functions as local chief executives." (*Sec. 90[a], LGC)*

Q: Can Sanggunian members practice their profession?

A: Yes. Subject to certain limitations:

1. Cannot appear in civil case where the local government unit, officer or agency or instrumentality is the adverse party
2. Cannot appear in criminal case wherein an officer or employee is accused of an offense committed in relation to his office
3. Cannot collect fees for their appearance in administrative proceedings involving local government unit of which he is an official
4. Cannot use property and personnel of the government except when the sanggunian member concerned is defending the interest of the government. *(Sec. 90[b], LGC)*

Note: Doctors of medicine may practice their profession even during official hours of work only on occasions of emergency: Provided, that the officials concerned do not derive monetary compensation therefrom. *(Section 90[c], LGC)*

Q: May a municipality adopt the work already performed in good faith by a private lawyer, which work proved beneficial to it?

A: Although a municipality may not hire a private lawyer to represent it in litigations, in the interest of substantial justice, however, it was held, that a municipality may adopt the work already performed in good faith by such private lawyer, which work is beneficial to it, provided that no injustice is thereby headed on the adverse party and provided further that no compensation in any guise is paid therefore by said municipality to the private lawyer. Unless so expressly adopted, the private lawyer's work cannot bind the municipality *(Ramos v. CA, G.R. No. 99425, Mar. 3, 1997)*

Q: May a municipality be represented by a private law firm which had volunteered its services for free, in collaboration with the municipal attorney and the fiscal?

A: Such representation will be violative of Section 1983 of the old Administrative Code. Private lawyers may not represent municipalities on their own. Neither may they do so even in collaboration with authorized government lawyers. This is anchored on the principle that only accountable public officers may act for and in behalf of public entities and that public funds should not be expended to hire private lawyers. *(Ramos v. CA, G.R. No. 99425, Mar.3, 1997)*

Note: The municipality's authority to employ a private lawyer is expressly limited only to situations where the provincial fiscal is disqualified to represent it. For the exception to apply, the fact that the provincial fiscal was disqualified to handle the municipality's case must appear on record. The refusal of the provincial fiscal to represent the municipality is not a legal justification for employing the services of private counsel. Instead of engaging the services of special attorney, the municipal council should request the Secretary of Justice to appoint an acting provincial fiscal in place of the provincial fiscal who has declined to handle and prosecute its case in court. *(Pililla v. CA, G.R. No. 105909, June 28, 1994)*

Q: What are the instances when a private lawyer can represent an LGU?

A:

1. When the municipality is an adverse party in a case involving the provincial government or another municipality or city within the province

2. Where original jurisdiction is vested with the SC.

Q: What is the test in determining whether a local government official can secure the services of private counsel?

A: In resolving whether a local government official may secure the services of private counsel in an action filed against him in his official capacity, *the nature of the action and the relief sought are to be considered. (Mancenido v. CA, G.R. No. 118605, Apr. 12, 2000)*

Q: State the rule on prohibition against appointment of elective officials to another office.

A:

1. No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure *(Flores v. Drilon, G.R. 104732, June 22, 1993)*

2. Except for losing candidates in barangay elections, no candidate who lost in any election shall, within one year after such election, be appointed to any office in the government or any GOCC or their subsidiaries. *(Sec.94, LGC)*

Q: Who between the Governor and the Vice-Governor is authorized to approve purchase orders issued in connection with the procurement of supplies, materials, equipment, including fuel, repairs, and maintenance of the Sangguniang Panlalawigan?

A: Vice-Governor. Under R.A. 7160, local legislative power for the province is exercised by the Sangguniang Panlalawigan and the Vice-Governor is its presiding officer. Being vested with legislative powers, the Sangguniang Panlalawigan enacts ordinances, resolutions and appropriates funds for the general welfare of the province in accordance with the provisions of R.A. 7160. The same statute vests upon the Vice-Governor the power to be the presiding officer of the Sangguniang Panlalawigan and sign all warrants drawn on the provincial treasury for all expenditures appropriated for the operation of the Sangguniang Panlalawigan. *(Atienza v. Villarosa G.R. 161081, May 10, 2005)*

Q: May the punong-barangay validly appoint or remove the barangay treasurer, the barangay secretary, and other appointive barangay officials without the concurrence of the majority of all the members of the Sangguniang Barangay?

A: No. The LGC explicitly vests on the Punong barangay, upon approval by a majority of all the members of the Sangguniang Barangay, the power to appoint or replace the barangay treasurer, the barangay secretary, and other appointive barangay officials. Verily, the power of appointment is to be exercised conjointly by the punong barangay and a majority of all the members of the sangguniang barangay. Without such conjoint action, neither appointment nor replacement can be effectual. *(Ramon Alquizoia, Sr. v. Gallardo Ocol, G.R. No. 132413, Aug. 27, 1999)*

4. INTERGOVERNMENTAL RELATIONS

Q: Discuss the inter-local government relations.

A: The governor shall review all executive orders promulgated by the component city or municipal mayor within his jurisdiction within 3 days from their issuance. So do with the city or municipal mayor over the executive orders promulgated by the punong barangay.

If the executive orders concerned are not acted upon by the referred local executives, it shall be deemed consistent with law and therefore valid.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

M. NATIONAL ECONOMY AND PATRIMONY

Q: What are the policies of the national economy?

A:

1. More equitable distribution of wealth
2. Increased wealth for the benefit of the people
3. Increased productivity

Q: What is meant by patrimony?

A: It refers not only to natural resources but also to cultural heritage. *(Manila Prince Hotel v. GSIS, G.R. No. 122156, Feb. 3, 1997)*

a. REGALIAN DOCTRINE

Q: What is the Regalian Doctrine (*jura regalia*)?

A: It is the doctrine which reserves to the State the full ownership of all natural resources or natural wealth that may be found in the bowels of the earth. *(Albano, Political Law Reviewer)*

Note: All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests, or timber, wildlife, flora and fauna, and natural resources belong to the State. With the exception of agricultural lands, all other natural resources shall not be alienated. *(Sec. 2, Art. XII, 1987 Constitution)*

Q: What is the exception to the provision of Sec. 2, Art. XII, 1987 Constitution?

A: Any land in the possession of an occupant and of his predecessors-in-interest since time immemorial. *(Oh Cho v. Director of Land, G.R. No. 48321, Aug. 31, 1946)*

Q: Does R.A. 8371, otherwise known as "the Indigenous People's Rights Act" infringe upon the State's ownership over the natural resources within the ancestral domains?

A: No. Section 3(a) of R.A. 8371 merely defines the coverage of ancestral domains, and describes the extent, limit and composition of ancestral domains by setting forth the standards and guidelines in determining whether a particular area is to be considered as part of and within the ancestral domains. In other words, Section 3(a) serves only as a yardstick which points out what properties are within the ancestral domains. It does not confer or recognize any right of ownership over the natural resources to the indigenous peoples. Its purpose is definitional and not declarative of a right or title.

The specification of what areas belong to the ancestral domains is, to our mind, important to ensure that no unnecessary encroachment on private properties outside the ancestral domains will result during the delineation process. The mere fact that Section 3(a) defines ancestral domains to include the natural resources found therein does not ipso facto convert the character of such natural resources as private property of the indigenous peoples. Similarly, Section 5 in relation to Section 3(a) cannot be construed as a source of ownership rights of indigenous people over the natural resources simply because it recognizes ancestral domains as their "private but community property."

The phrase "private but community property" is merely descriptive of the indigenous peoples' concept of ownership as distinguished from that provided in the Civil Code. In contrast, the indigenous peoples' concept of ownership emphasizes the importance of communal or group ownership. By virtue of the communal character of ownership, the property held in common "cannot be sold, disposed or destroyed" because it was meant to benefit the whole indigenous community and not merely the individual member.

That IPRA is not intended to bestow ownership over natural resources to the indigenous peoples is also clear from the deliberations of the bicameral conference committee on Section 7 which recites the rights of indigenous peoples over their ancestral domains.

Further, Section 7 makes no mention of any right of ownership of the indigenous peoples over the natural resources. In fact, Section 7(a) merely recognizes the "right to claim ownership over lands, bodies of water traditionally and actually occupied by indigenous peoples, sacred places, traditional hunting and fishing grounds, and all improvements made by them at any time within the domains." Neither does Section 7(b), which enumerates certain rights of the indigenous peoples over the natural resources found within their ancestral domains, contain any recognition of ownership vis-à-vis the natural resources. *(Separate Opinion, Kapunan, J., in Cruz v. Secretary of Environment and Natural Resources, G.R. No. 135385, Dec. 6, 2000, En Banc [Per Curiam])*

Q: What does the IPRA protect?

A: What is evident is that the IPRA protects the indigenous peoples' rights and welfare in relation to the natural resources found within their ancestral domains, including the preservation of the ecological balance therein and the need to ensure that the indigenous peoples will not be unduly displaced when the State-approved activities involving the natural resources located therein are undertaken. *(Ibid.)*

Q: What is the consequence of the Regalian Doctrine in Section 2, Art. XII, 1987 Constitution?

A: Any person claiming ownership of a portion of a land of the public domain must be able to show title from the State according to any of the recognized modes of acquisition of title. *(Lee Hong Kok v. David, G.R. No. L-30389, December 27, 1972).*

Q: What are the limits imposed by Section 2 that embodies the *Jura Regalia* of the State?

A:

1. Only agricultural lands of the public domain may be alienated.

2. The exploration, development, and utilization of all natural resources shall be under the full control and supervision of the State either by directly undertaking such exploration, development, and utilization or through co-production, joint venture, or production-sharing agreements with qualified persons or corporations.

3. All agreements with the qualified private sector may be for only a period not exceeding 25 years, renewable for another 25 years. (The 25 year limit is not applicable to "water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power," for which "beneficial use may be the measure and the limit of the grant.")

4. The use and enjoyment of marine wealth of the archipelagic waters, territorial sea, and exclusive economic zone shall be reserved for Filipino citizens. (It would seem therefore that corporations are excluded or at least must be fully owned by Filipinos.)

5. Utilization of natural resources in rivers, lakes, bays, and lagoons may be allowed on a "small scale" Filipino citizens or cooperatives- with priority for subsistence fishermen and fishworkers (The bias here is for the protection of the little people). *(Bernas, The 1987 Philippines Constitution: A Reviewer - Primer, 2006)*

Q: What is the presumption in case of absence of proof of private ownership?

A: The presumption is that the land belongs to the State. Thus, where there is no showing that the land had been classified as alienable before the title was issued, any possession thereof, no matter how lengthy, cannot ripen into ownership. *(Republic v. Sayo, G.R. No. L-60413, October 31, 1990).*

And all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State. *(Seville v. National Development Company, GR no. 129401, February 2, 2001)*

Q: Do the courts have jurisdiction over classification of public lands?

A: In our jurisdiction, the task of administering and disposing lands of the public domain belongs to the Director of Lands and, ultimately, the Secretary of Environment and Natural Resources. The classification of public lands is, thus, an exclusive prerogative of the Executive Department through the Office of the President. *(Republic v. Register of Deeds of Quezon, G.R. No. 73974, 31 May 1995)*

Q: What is the Stewardship Doctrine?

A: Private property is supposed to be held by the individual only as a trustee for the people in general, who are its real owners.

b. NATIONALIST AND CITIZENSHIP REQUIREMENT PROVISIONS

Q: What are the Filipinized activities as provided in Article XII of the Constitution?

A:

1. Co-production, joint venture or production sharing agreement for exploration, development and utilization (EDU) of natural resources:

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

GR: Filipino citizens or entities with 60% capitalization;

XPN: For large-scale EDU of minerals, petroleum and other mineral oils, the President may enter into agreements with foreign-owned corporations involving technical or financial agreements.

Note: These agreements refer to service contracts which involve foreign management and operation provided that the Government shall retain that degree of control sufficient to direct and regulate the affairs of individual enterprises and restrain undesired activities. *(La Bugal-B'laan Tribal Assoc. v. DENR Secretary,G.R. No. 127882, Dec. 1, 2004)*

2. Use and enjoyment of nation's marine wealth within the territory: Exclusively for Filipino citizens.

3. Alienable lands of the public domain:
   a. Only Filipino citizens may acquire not more than 12 hectares by purchase, homestead or grant, or lease not more than 500 hectares.
   b. Private corporations may lease not more than 1000 hectares for 25 years renewable for another 25 years;

4. Certain areas of investment: reserved for Filipino citizens or entities with 60% owned by Filipinos, although Congress may provide for higher percentage;
   In the Grant of rights, privileges and concessions covering the national economy and patrimony, State shall give preference to qualified Filipinos; and

5. Franchise, certificate or any other form of authorization for the operation of a public utility; only to Filipino citizens or entities with 60% owned by Filipinos;

   Note: Such franchise, etc., shall neither be exclusive, nor for a period longer than 50 years and subject to amendment, alteration or repeal by Congress; All executive and managing officers must be Filipino citizens.

c. EXPLORATION, DEVELOPMENT AND UTILIZATION OF NATURAL RESOURCES

Q: What is the State policy regarding exploration, development and utilization of Natural Resources?

A: The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least 60 *per centum* of whose capital is owned by such citizens. *(Sec. 2, Art XII, 1987 Constitution)*

Q: Section 2 speaks of "co-production, joint venture, or production sharing agreements" as modes of exploration, development, and utilization of inalienable lands. Does this effectively exclude the lease system?

A: Yes, with respect to mineral and forest lands (Agricultural lands may be subject of lease). *(Bernas, The 1987 Philippines Constitution: A Reviewer - Primer, 2006)*

Q: Who are qualified to take part in the exploration, development and utilization of natural resources?

A: Filipino citizens and corporations or associations at least sixty percent (60%) of whose capital is owned by Filipino citizens.

Note: However, that as to marine wealth, only Filipino citizens are qualified. This is also true of natural resources in rivers, bays, lakes and lagoons, but with allowance for cooperatives. *(Bernas, The 1987 Philippines Constitution: A Reviewer - Primer, 2006)*

Q: If natural resources, except agricultural land, cannot be alienated, how may they be explored, developed, or utilized?

A:
1. Direct undertaking of activities by the State or
2. Co-production, joint venture, or production sharing agreements with the State and all "under the full control and supervision of the State. *(Miners Association of the Philippines v. Factoran, G.R. No. 98332, January 16, 1995)*

Q: If the State enters into a service contract with BULLET, a foreign owned corporation, is it valid?

A: Yes, but subject to the strict limitations in the last two paragraphs of Section 2. Financial and technical agreements are a form of service contract. Such service contacts may be entered into *only* with respect to minerals, petroleum, and other mineral oils. The grant of such service contracts is subject to several safeguards, among them:
1. That the service contract be crafted in accordance with a general law setting standard of uniform terms, conditions and requirements;
2. The President be the signatory for the government; and
3. The President report the executed agreement to Congress within thirty days. *(La Bugal B'laan Tribal Association v. DENR, G.R. No. 127882, December 1, 2004)*

d. FRANCHISES, AUTHORITY AND CERTIFICATES FOR PUBLIC UTILITIES

Q: Who are qualified to acquire a Franchise, certificate or any other form of authorization for the operation of a public utility?

A: Filipino citizens or corporations at least 60% of whose capital is Filipino owned. *(Art. XII, Section 11, 1987 Constitution)*

Q: Does a public utility franchise have the characteristic of exclusivity?

A: No, A franchise to operate a public utility is not an exclusive private property of the franchisee. No franchisee can demand or acquire exclusivitly in the operation of a public utility. Thus, a franchisee cannot complain of seizure or taking of property because of the issuance of another franchise to a competitor. *(Pilipino Telephone Corporation v. NRC, G.R. No. 138295, 2003)*

Q: Is the power to grant licenses for or to authorize the operation of public utilities solely vested to congress?

A: No, the law has granted certain administrative agencies such power (See E.O. nos. 172& 202), Supreme Court said that Congress does not have the exclusive power to issue such authorization. Administrative bodies, e.g. LTFRB, ERB, etc., may be empowered to do so., Franchises issued by congress are not required before each and every public utility may operate. (*Albano v. Reyes 175 SCRA 264)*

Q: Can the Congress validly delegate its authority to issue franchises and licenses?

A: Yes, Section 10, RA 776 reveals the clear intent of Congress to delegate the authority to regulate the issuance of a license to operate domestic air transport services. *(Philippine Airlines v. Civil Aeronautics Board, G.R. No. 119528, March 26, 1997)*

Also, the Supreme Court acknowledged that there is a trend towards delegating the legislative power to authorize the operation of certain public utilities to administrative agencies and dispensing with the requirement of a congressional franchise. However, in this case, it was held that in view of the clear requirement for a legislative franchise under PD 576-A, the authorization of a certificate of public convenience by the NTC for the petitioner to operate television Channel 25 does not dispense with the need for a franchise. *(Associated Communications and Wireless Services - United Broadcasting Networks v. National Telecommunications Commission, GR No. 144109, February 17, 2003)*

Q: What is a public utiliy?

A: A public utility is a business or service engaged in regularly supplying the public with some commodity or service of public consequence, such as electricity, gas, water, transportation, telephone or telegraph service. To constitute a public utility, the facility must be necessary for the maintenance of life and occupation of the residents. As the name indicates, "public utility" implies public use and service to the public. *(JG. Summit Holdings v. Court of Appeals, G.R. No. 124293, September 24, 2003)*

Q: Is a franchise required before one can own the facilities to operate a public utility?

A: A franchise is not required before one can own the facilities needed to operate a public utility so long as it does not operate them to serve the public. *(Tatad v. Garcia, G.R. No. 114222, April 6, 1995)*

Q: Is a shipyard a public utility?

A: A shipyard is not a public utility. Its nature dictates that it serves but a limited clientele whom it may choose to serve at its discretion. It has no legal obligation to render the services sought by each and every client. *(JG. Summit Holdings v. CA, G.R. No. 124293, September 24, 2003)*

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Q: Can the government amend a radio or television franchise to grant free airtime to COMELEC?

A: Yes**,** all broadcasting, whether by radio or television stations, is licensed by the Government. Radio and television companies do not own the airwaves and frequencies; they are merely given temporary privilege of using them. A franchise is a privilege subject to amendment, and the provision of BP 881 granting free airtime to the COMELEC is an amendment of the franchise of radio and television stations. *(TELEBAP v. COMELEC, G.R. No. 132922, April 21, 1998)*

Q: May a foreigner who owns substantial stockholdings in a corporation engaged in the advertising industry sit as a treasurer of said corporation?

A: No, because a treasurer is an executive or a managing officer. Sec. 11 (2), Art. XVI provides that the participation of the foreign investors in the governing bodies of entities shall be limited to their proportionate share in the capital thereof, and all the managing and executive officers of such entities must be citizens of the Philippines.

Q: What is the ownership requirement imposed by the Constitution upon business entities engaged in advertising?

A: 70% of their equity must be owned by Filipino citizens. *(Sec. 11 (2), Art. XVI, 1987 Constitution)*

Q: What is the ownership requirement imposed by the Constitution upon Mass Media?

A: It must be wholly owned by Filipino citizens. *(Sec. 11 (1), Art. XVI, 1987 Constitution)*

Q: What is the ownership requirement imposed by the Constitution upon educational institutions.

A: 60% of their equity must be owned by Filipino citizens. *(Sec. 4 [2], Art. XIV, 1987 Constitution)*

Q: What are the requisites for the State to temporarily take over a business affected with public interest?

A:

1. There is national emergency;
2. The public interest so requires;
3. During the emergency and under reasonable terms prescribed by it;
4. The State may take over or direct the operation of any privately owned public utility or business affected with public interest. *(Sec. 17, Article XII, 1987 Constitution)*

Q: Who has the prerogative in the Classification of Public Lands?

A: The prerogative of classifying public lands pertains to administrative agencies which have been specially tasked by statutes to do so and the courts will not interfere on matters which are addressed to the sound discretion of government and/or quasi-judicial agencies entrusted with the regulation of activities coming under their special technical knowledge and training. *(Republic v. Mendoza, GR no.153727. March 28, 2007)*

e. Acquisition, Ownership and Transfer of Public and Private Lands

Q: When does land of the public domain become private land?

A: When it is acquired from the government either by purchase of by grant*. (Oh Cho v. Director of Lands, G.R. No. 48321, Aug. 31, 1946)*

Q: What is the requirement for the reclassification or conversion of lands of public domain?

A: There must be a positive act of government; mere issuance of title is not enough. *(Sunbeam Convenience Food v. CA, G.R. No. 50464, Jan. 29, 1990)*

Q: Can public land be transformed into private land thru prescription?

A: Yes, if it is alienable land. OCENCO for more than 30 years must, however, be conclusively established. This quantum of proof is necessary to avoid erroneous validation of actually fictitious claims or possession over the property in dispute. *(San Miguel Corporation v. CA, GR No. 57667, May 28, 1990)*

Q: What is the rule on private lands?

A:

GR: No private land shall be transferred or conveyed except to individuals, corporations or associations qualified to acquire or hold lands of the public land.

XPNs:

1. Foreigners who inherit through intestate succession;
2. Former natural-born citizen may be a transferee of private lands subject to limitations provided by law;
3. Ownership in condominium units;
4. Parity right agreement, under the 1935 Constitution.

Q: Can a natural born citizen of the Philippines who has lost his Philippine citizenship be a transferee of private lands?

A: Yes, subject to the limitations imposed by Law, Thus, even if private respondents were already Canadians when they applied for registration of the properties in question, there could be no legal impediment for the registration thereof, considering that it is undisputed that they were formerly natural-born citizens. *(Republic of the Philippines v. CA, G.R. No. 108998, August 24, 1984)*

Q: Can private corporations and associations acquire public lands?

A: No. They are only allowed to lease public lands. *(Sec. 3, Art. XII)*

Q: Does the constitutional policy of a "self-reliant and independent national economy" rule out foreign competition?

A: No. It contemplates neither "economic seclusion" nor "mendicancy in the international community."

Aside from envisioning a trade policy based on "equality and reciprocity," the fundamental law encourages industries that are "competitive in both domestic and foreign markets," thereby demonstrating a clear policy against a sheltered domestic trade environment, but one in favor of the gradual development of robust industries that can compete with the best in the foreign markets. *(Tañada v. Angara, G.R. No. 118295, May 2, 1997)*

Q: Has the concept of native title to natural resources, like native title to land, been recognized in the Philippines?

A: No. While native title to land or private ownership by Filipinos of land by virtue of time immemorial possession in the concept of an owner was acknowledged and recognized as far back during the Spanish colonization of the Philippines, there was no similar favorable treatment as regards natural resources. The unique value of natural resources has been acknowledged by the State and is the underlying reason for its consistent assertion of ownership and control over said natural resources from the Spanish regime up to the present. *(Noblejas, Philippine Law on Natural Resources, 1961 Revised Ed., p. 6)*

On the other hand, the United States viewed natural resources as a source of wealth for its nationals. As the owner of natural resources over the Philippines after the latter's cession from Spain, the United States saw it fit to allow both Filipino and American citizens to explore and exploit minerals in public lands, and to grant patents to private mineral lands. x x x The framers of the 1935 Constitution found it necessary to maintain the State's ownership over natural resources to insure their conservation for future generations of Filipinos, to prevent foreign control of the country through economic domination; and to avoid situations whereby the Philippines would become a source of international conflicts, thereby posing danger to its internal security and independence.

The declaration of State ownership and control over minerals and other natural resources in the 1935 Constitution was reiterated in both the 1973 and 1987 Constitutions. *(Separate Opinion, Kapunan, J., in Cruz v. Secretary of Environment and Natural Resources, G.R. No. 135385, Dec. 6, 2000, En Banc [Per Curiam])*

Q: Is a religious corporation qualified to have lands in the Philippines on which it may build its church and make other improvements provided these are actually, directly, exclusively used for religious purposes?

A: No. The mere fact that a corporation is religious does not entitle it to own public land. As held in *Register of Deeds v. Ung Siu Si Temple (G.R. No. L-6776),* land tenure is not indispensable to the free exercise and enjoyment of religious profession of worship. The religious corporation can own private land only if it is at least 60% owned by Filipino citizens.

Q: Is a corporation sole qualified to purchase or own lands in the Philippines?

A: Yes. Sec. 113, BP Blg. 68 states that any corporation sole may purchase and hold real estate and personal property for its church, charitable, benevolent or educational purposes, and may receive bequests or gifts for such

TEAM BAROPS

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

purposes. There is no doubt that a corporation sole by the nature of its Incorporation is vested with the right to purchase and hold real estate and personal property. It need not therefore be treated as an ordinary private corporation because whether or not it be so treated as such, the Constitutional provision involved will, nevertheless, be not applicable. *(Republic of the Philippines v. IAC., G.R. No. 75042, Nov. 29, 1988)*

Q: Is a religious corporation allowed to lease private land in the Philippines?

A: Yes. Under Sec. 1 of P.D. 471, corporations and associations owned by aliens are allowed to lease private lands up to 25 years, renewable for a period of 25 years upon the agreement of the lessor and the lessee. Hence, even if the religious corporation is owned by aliens, it may still lease private lands.

Q: Are lands devoted to swine, poultry and livestock raising included in the definition of agricultural land?

A: No. *(Luz Farms v. Secretary of Agrarian Reform, G.R. No. 86889, Dec. 4, 1990)*

Q: Is fishpond considered within the definition of agricultural land?

A: Yes, according to the definition adopted by the Constitutional Commission.

f. PRACTICE OF PROFESSION

Q: What is the State policy with regard to professionals and skilled workers?

A: The sustained development of a reservoir of national talents consisting of Filipino scientists, entrepreneurs, professionals, managers, high-level technical manpower and skilled workers and craftsmen in all fields shall be promoted by the State. *(Par. 1, Sec. 14, Art. XII, 1987 Constitution)*

Q: Who may practice their profession in the Philippines?

A:
GR: The practice of all professions in the Philippines shall be limited to Filipino citizens.

XPN: In cases provided by law. *(Par. 2, Sec. 14, Art. XII, 1987 Constitution)*

Q: What does Section 14, Article XII of the Constitution seek to achieve?

A: Section 14 reflects the desire not only to develop a ready reservoir of Filipino professionals, scientists and skilled workers but also to protect their welfare. *(ibid.)*

g. ORGANIZATION AND REGULATION OF CORPORATIONS, PRIVATE AND PUBLIC

Q: May Congress provide for the organization and regulation of private corporations?

A: The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. *(Sec. 16, Art. XII, 1987 Constitution)*

Q: What is the purpose of this provision?

A: Its purpose is to insulate Congress against pressures from special interests. To permit the law making body by special law to provide for the organization or formation or regulation of private corporations x x x would be in effect to offer to it the temptation in many cases to favor certain groups to the prejudice of others or to the prejudice of the interests of the country. *(Bernas, The 1987 Constitution of the Philippines: A Commentary)*

Q: May Congress enact a law creating Government-Owned and Controlled corporations?

A: Government-owned and controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability. *(Sec. 14, Art. XII, 1987 Constitution)*

Q: What does the phrase 'in the interest of the public good and subject to the test of economic viability' mean?

A: It means that government-owned and controlled corporations must show capacity to function efficiently in business and that they should not go into activities which the private sector can do better. Moreover, economic viability is more than financial viability but also included capability to make profit and generate benefits not quantifiable in financial terms. *(Bernas, The 1987 Constitution of the Philippines: A Commentary)*

h. MONOPOLIES, RESTRAINT OF TRADE AND UNFAIR COMPETITION

Q: What is the State policy regarding monopolies?

A: The State shall regulate or prohibit monopolies when the public interest so requires. No combination in restraint of trade or unfair competition shall be allowed. *(Sec. 19, Art. XII, 1987 Constitution)*

Q: What is meaning of the phrase "*Unfair Foreign Competition And Trade Practices*"?

A: The phrase is not to be understood in a limited legal and technical sense but in the sense of anything that is harmful to Philippine enterprises. At the same time, however, the intention is not to protect local inefficiency. Nor is the intention to protect local industries from foreign competition at the expense of the consuming public. *(Bernas, The 1987 Philippines Constitution: A Reviewer - Primer, 2006)*

Q: What is a monopoly?

A: A monopoly is a privilege or peculiar advantage vested in one or more persons or companies, consisting in the exclusive right (or power) to carry on a particular business or trade, manufacture a particular article, or control the sale of a particular commodity. *(Agan, Jr. v. PIATCO, G.R. No. 155001, May 5, 2003)*

Q: What is the rationale behind the provision?

A: The provision is a statement of public policy on monopolies and on combinations in restraint of trade. Section 19 is anti-trust in history and spirit. It espouses competition. Only competition which is fair can release the creative forces of the market. Competition underlies the provision. The objective of anti-trust law is 'to assure a competitive economy based upon the belief that through competition producers will strive to satisfy consumer wants at the lowest price with the sacrifice of the fewest resources. Competition among producers allows consumers to bid for goods and services, and, thus matches their desires with society's opportunity costs. Additionally, there is a reliance upon "the operation of the 'market' system (free enterprise) to decide what shall be produced, how resources shall be allocated in the production process, and to whom various products will be distributed. The market system relies on the consumer to decide what and how much shall be produced, and on competition, among producers who will manufacture it. *(Energy Regulatory Board v. CA G.R. No. 113079, April 20, 2001)*

Q: Are monopolies prohibited by the Constitution?

A: Monopolies are not per se prohibited by the Constitution but may be permitted to exist to aid the government in carrying on an enterprise or to aid in the interest of the public. However, because monopolies are subject to abuses that can inflict severe prejudice to the public, they are subjected to a higher level of State regulation than an ordinary business undertaking. *(Agan, Jr. v. PIATCO, G.R. No. 155001, May 5, 2003)*

Q: Are contracts requiring exclusivity void?

A: Contracts requiring exclusivity are not *per se* void. Each contract must be viewed *vis-à-vis* all the circumstances surrounding such agreement in deciding whether a restrictive practice should be prohibited as imposing an unreasonable restraint on competition. *(Avon v. Luna, G.R. No. 153674, December 20, 2006)*

Q: What is prohibited by Section 19?

A: Combinations in restraint of trade and unfair competition are prohibited by the Constitution. *(Sec. 19, Art. XII, 1987 Constitution)*

Q: When is a monopoly considered in restraint of trade and thus prohibited by the Constitution?

A: From the wordings of the Constitution, truly then, what is brought about to lay the test on whether a given an unlawful machination or combination in restraint of trade is whether under the particular circumstances of the case and the nature of the particular contract involved, such contract is, or is not, against public policy. *(Avon v. Luna, G.R. No. 153674, December 20, 2006)*

Q: Does the government have the power to intervene whenever necessary for the promotion of the general welfare?

A: Yes, 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. *(Association of Philippine Coconut*

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Desiccators v. Philippine Coconut Authrotiy, G.R. No. 110526, February 10, 1998)

Q: Does the WTO agreement violate Article II Section 19 of the Constitution?

A: No, the WTO agreement does not violate Article II Section 19, nor Sections 19 and 12 of Article XII, because these sections should be read and understood in relation to Sections 1 and 13 of Article XII, which require the pursuit of trade policy that "serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity." *(Tañada v. Angara, G.R. No. 118295, May 2, 1997)*

N. SOCIAL JUSTICE AND HUMAN RIGHTS

Q: What are the goals of social justice under the Constitution?

A:

1. Equitable diffusion of wealth and political power for common good;
2. Regulation of acquisition, ownership, use and disposition of property and its increments; and
3. Creation of economic opportunities based on freedom of initiative and self-reliance. *(Sec. 1 and 2, Art. XIII, 1987 Constitution)*

a. CONCEPT

Q: What is social justice?

A: Social justice is "neither communism, nor despotism, nor atomism, nor anarchy," but the humanization of laws and the equalization of social and economic force by the State so that justice in its rational and objectively secular conception may at least be approximated. Social justice means the promotion of the welfare of all the people, the adoption by the Government of measures calculated to insure economic stability of all competent elements of society, through the maintenance of a proper economic and social equilibrium in the interrelations of the members of the community, constitutionally, through the adoption of measures legally justifiable, or extra-constitutionally, through the exercise of powers underlying the existence of all governments on the time-honored principle of *salus populi est suprema lex*. (*Calalang v. Williams, 70 Phil 726, [1940])*

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. *(Bernas, The 1987 Philippines Constitution: A Reviewer - Primer, 2006)*

Q: What aspects of human life are covered by Art. XIII?

A:

1. Social justice
2. Labor
3. Agrarian and natural resources reform
4. Urban land reform and housing
5. Health
6. Women
7. Role and rights of people's organization
8. Human rights

Q: Are workers in the private sector entitled to the right to strike?

A: Yes, but the same must be exercised in accordance with the law. *(Sec. 3, Art. XII, 1987 Constitution)*

Q: What are the provisions of the Constitution on women?

A:

1. The State shall equally protect the life of the mother and the life of the unborn from conception. *(Sec. 12, Art II, 1987 Constitution)*

2. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men. *(Sec. 14, Art. II, 1987 Constitution)*

3. The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such faculties and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation. *(Sec. 14, Art. XIII, 1987 Constitution)*

Q: Is there a need for consultation before urban and rural dwellers can be relocated?

A: Yes. The urban and rural dwellers and the communities where they are to be relocated must be consulted. Otherwise, there shall be no resettlement. *(Sec. 15 [2], Art. XIII)*

Q: What is meant by people's organization?

A: People's Organizations are *bona fide* associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership and structure. *(Sec. 15 [2], Art. XIII)*

b. COMMISSION ON HUMAN RIGHTS

Q: What is the composition of the Commission on Human Rights?

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

A:

1. Chairman
2. 4 Members

Q: What are the qualifications of members of the CHR?

A:

1. Natural-born citizens
2. Majority must be members of the Bar.

Q: Does the CHR have the power to investigate?

A: Yes. The CHR has the power to investigate all forms of human rights violations involving civil and political rights and monitor the compliance by the government with international treaty obligations on human rights. *(Sec. 18, Art. XIII, 1987 Constitution)*

Q: Does the CHR have the power to issue TRO?

A: No. It also has no power to cite for contempt for violation of the restraining order or a writ of preliminary injunction. *(Simon v. CHR, G.R. No. 100150, Jan. 5, 1994)*

O. EDUCATION, SCIENCE AND TECHNOLOGY, ARTS, CULTURE, AND SPORTS

Q: What are the principal characteristics of education which the State must promote and protect?

A:

1. Quality education
2. Affordable education *(Sec. 1, Art. XIV)*
3. Education that is relevant to the needs of the people. *(Sec. 2 [1], Art. XIV)*

Q: What is *Parens Patriae* with regards to education?

A: 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.

Q: What is the basis for the requirement that a school or educational institution first obtain government authorization before operating?

A: It 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. *(Philippine Merchant Marine School Inc. v. Court of Appeals, G.R. No. 112844, June 2, 1995)*

Q: Can the State regulate the right of a citizen to select a profession or course of study?

A: Yes, 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, GR No. 144681, june 21, 2004)*

Q: Can the State require a citizen to attend only Public School?

A: 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 268 US 510)*

Q: What are the principal characteristics of education which the State must promote and protect?

A:

1. Quality education
2. Affordable education *(Sec. 1, Art. XIV)*
3. Education that is relevant to the needs of the people. *(Sec. 2 [1], Art. XIV)*

Q: What are the nationalized educational activities?

A:

1. Ownership:
   a. Filipino Citizens or
   b. Corporations or associations where at least 60% of the capital is owned by Filipino citizens except those established by religious groups and mission boards;
2. Control and administration; and
3. Student population *(Sec. 4 [2], Art. XIV)*

Note: The Congress may increase Filipino equity participation in all educational institutions.

Q: What language shall be used as official medium of communication and instruction?

A: The official languages are Filipino and, until otherwise provided by law, English. The regional languages are the auxiliary official languages in the regions and shall serve as auxiliary media of instruction therein. Spanish and Arabic shall be promoted on a voluntary and optional basis. *(Sec. 7, Art. XIV, 1987 Constitution)*

a. ACADEMIC FREEDOM

Q: What are the aspects of Academic Freedom?

A: There are 3 views:

1. *From the standpoint of the educational institution* - To provide that atmosphere which is most conducive to speculation, experimentation and creation;

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

2. *From the standpoint of the faculty –*
    a. Freedom in research and in the publication of the results, subject to the adequate performance of his other academic duties

    b. Freedom in the classroom in discussing his subject less controversial matters which bear no relation to the subject

    c. Freedom from institutional censorship or discipline, limited by his special position in the community

3. *From the standpoint of the student* – right to enjoy in school the guarantee of the Bill of Rights. *(Non v. Dames, G.R. No. 89317, May 20, 1990)*

Q: What are the limitations?

A:

1. Dominant police power of the State
2. Social Interest of the community

Q: What are the freedoms afforded to educational institutions relating to its right to determine for itself on academic grounds?

A:

1. Who may teach
2. What may be taught
3. How shall it be taught
4. Who may be admitted to study (*Miriam College Foundation v. CA, G.R. No. 127930, Dec. 15, 2000)*

Q: James Yap *et al.,* students of De La Salle University (DLSU) and College of Saint Benilde are members of the "Domingo Lux Fraternity". They lodged a complaint with the Discipline Board of DLSU charging Alvin Aguilar *et al.* of Tau Gamma Phi Fraternity with "direct assault" because of their involvement in an offensive action causing injuries to the complainants which were result of a fraternity war.

The DLSU-CSB Joint Discipline Board found Aguilar *et al.* guilty and were meted the penalty of automatic expulsion. On a petition for certiorari filed with the RTC, it ordered DLSU to allow them to enroll and complete their degree courses until their graduation. The Commission on Higher Education (CHED) disapproved DLSU's request for the approval of the penalty of automatic expulsion imposed on Aguilar *et al.* and ruled that they be reinstated. Lowering the penalty from expulsion to exclusion.

Was DLSU within its rights in expelling the students?

A: No. The penalty of expulsion imposed by DLSU on private respondents is disproportionate to their deeds. It is true that schools have the power to instil discipline in their students as subsumed in their academic freedom and that "the establishment of rules governing university-student relations particularly those pertaining to student discipline, may be regarded as vital, not merely to the smooth and efficient operation of the institution but to its very survival". This power does not give them the untrammelled discretion to impose a penalty which is not commensurate with the gravity of the misdeed. If the concept of proportionality between the offense committed and the sanction imposed is not followed, an element of arbitrariness intrudes. *(De La Salle University, Inc.v. CA)*

PUBLIC INTERNATIONAL LAW

A. CONCEPTS

Q: What is Public International Law (PIL)?

A: It is a body of legal principles, norms and processes which regulates the relations of States and other international persons and governs their conduct affecting the interest of the international community as a whole.

Q: What is Private International Law (PRIL)?

A: It is that part of the law of each State which determines whether, in dealing with a factual situation, an event or transaction between private individuals or entities involving a foreign element, the law of some other State will be recognized.

Q: Distinguish PIL from PRIL.

A:

PUBLIC	PRIVATE
Nature	
International in nature	National or municipal in character
Dispute resolution	
Through international modes	Through municipal tribunals
Subject	
Relations of States *inter se* and persons with international legal personality	Relations of individuals whether or not of the same nationality
Source	
International conventions, International customs and general principles of law	Lawmaking authority of each state
Responsibility for breach	
Collective because it attaches directly to the state	Entails individual responsibility

Q: What are the grand divisions of PIL?

A:

1. *Laws of Peace* – govern normal relations between States in the absence of war.
2. *Laws of War* – govern relations between hostile or belligerent states during wartime.
3. *Laws of Neutrality* – govern relations between a non-participant State and a participant State during wartime or among non-participating States.

Q: What is *erga omnes*?

A: It is an obligation of every State *towards the international community as a whole*. All states have a legal interest in its compliance, and thus all States are entitled to invoke responsibility for breach of such an obligation. *(Case Concerning The Barcelona Traction, ICJ 1970)*

Q: Give examples of obligations *erga omnes*.

A:

1. Outlawing of acts of aggression
2. Outlawing of genocide
3. Basic human rights, including protection from slavery and racial discrimination

Q: What is *jus cogens* norm?

A: A *jus cogens norm* is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. *(Art. 53, Vienna Convention on the Law of Treaties)*

Q: What norms are considered as *jus cogens* in character?

A:

1. Laws on genocide
2. Principle of self-determination
3. Principle of racial non-discrimination
4. Crimes against humanity
5. Prohibition against slavery and slave trade, and piracy

Q: May a treaty or conventional rule qualifies as a norm of *jus cogens* character?

A: No. Treaty rule binds only States that are parties to it and even in the event that all States are parties to a treaty, they are entitled to terminate or withdraw from the treaty.

Q: What is the concept *ex aequo et bono*?

A: It is a judgment based on considerations of fairness, not on considerations of existing law, that is, to simply decide the case based upon a balancing of the equities. *(Brownlie, 2003)*

Q: Does Article 38 of the Statute of the International Court of Justice which provides the sources of International Law prejudice the

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

power of the Court to decide a case *ex aequo et bono*?

A: No, if the parties agree thereon. The power to decide *ex aequo et bono* involves elements of compromise and conciliation whereas equity is applied as a part of normal judicial function. *(Brownlie, 2003)*

B. INTERNATIONAL AND NATIONAL LAW

Q: What is the theory of Monism?

A: Both international law and municipal law regulate the same subject matter and international law holds supremacy even in the sphere of municipal law.

Q: What is the theory of Dualism?

A: The theory affirms that the international law and municipal law are distinct and separate; each is supreme in its own sphere and level of operation.

Q: What are the well-established differences between international law and municipal law under the theory of Dualism?

A:

INTERNATIONAL LAW	MUNICIPAL LAW
Adopted by states as a common rule of action	Issued by a political superior for observance
Regulates relation of state and other international persons	Regulates relations of individuals among themselves or with their own states
Derived principally from treaties, international customs and general principles of law	Consists mainly of enactments from the lawmaking authority of each state
Resolved thru state-to-state transactions	Redressed thru local administrative and judicial processes
Collective responsibility because it attaches directly to the state and not to its nationals	Breach of which entails individual responsibility

Q: Are municipal laws subject to judicial notice before international tribunals?

A: No. Municipal laws are only evidence of conduct attributable to the State concerned, which create international responsibility, like legislative measures or court decisions. They are not subject to judicial notice and are only treated as mere facts which are required to be proven.

Q: What is the Doctrine of Incorporation?

A: Under this doctrine, rules of international law form part of the law of the land and no further legislative action is needed to make such rules applicable in the domestic sphere. The doctrine decrees that rules of international law are given equal standing with, but are not superior to, national legislative enactments.

Q: What is the Doctrine of Transformation?

A: This doctrine holds that the generally accepted rules of international law are not *per se* binding upon the state but must first be embodied in legislation enacted by the lawmaking body and so transformed into municipal law.

Q: What does *pacta sunt servanda* mean?

A: *Pacta sunt servanda*means that international agreements must be performed in good faith. A treaty engagement is not a mere moral obligation but creates a legally binding obligation on the parties.

Q: What is the principle of Auto-Limitation?

A: Under the principle of auto-limitation, any State may by its consent, express or implied, submit to a restriction of its sovereign rights. There may thus be a curtailment of what otherwise is a plenary power. (*Reagan v. CIR, G.R. No.L-26379, Dec. 27, 1969*)

Q: Correlate Reciprocity and the principle of Auto-Limitation?

A: When the Philippines enter into treaties, necessarily, these international agreements may contain limitations on Philippine sovereignty. The consideration in this partial surrender of sovereignty is the reciprocal commitment of other contracting States in granting the same privilege and immunities to the Philippines.

Note: For example, this kind of reciprocity in relation to the principle of auto-limitation characterizes the Philippine commitments under WTO-GATT. This is based on the Constitutional provision that the Philippines "adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of cooperation and amity with all nations." (*Tanada v. Angara, G.R.No.118295, May 2, 1997*)

C. SOURCES OF PUBLIC INTERNATIONAL LAW

Q: What are the sources of Public International Law?

A:

Primary Sources:

1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting state
2. International custom, as evidence of a general practice accepted as law; and
3. The general principles of law recognized by civilized nations; *(Article 38(1), Statute of the International Court of Justice)*

Note: Sources of law refer to norms derived from international conventions on treaties, customs, and general principles of law. The distinctive character of these norms is that they are created or they acquire binding effect through the methods pointed above.

Secondary Sources:

1. Decisions of international tribunals; and
2. Teachings of the most highly qualified publicists of various nations.

Q: What is the difference between formal sources from material sources of international law?

A: *Formal sources* consist of the methods and procedures by which norms are created while *material sources* are the substantive evidence of the existence of norms.

Note: The material sources supplies the substance of the rule to which the formal sources gives the force and nature of law. Thus, custom as a norm creating process is a formal source of law.

Q: Under international law, what are "hard law" and "soft law"?

A: *Hard law* means binding laws. To constitute law, a rule, instrument or decision must be authoritative and prescriptive. In international law, hard law includes treaties or international agreements, as well as customary laws. These instruments result in legally enforceable commitments for countries (states) and other international subjects.

Soft law means commitments made by negotiating parties that are not legally binding. By implication, those set of international customary rules, laws and customs which do not carry any binding effect whatsoever or impose no obligation at all to states for its compliance.

Q: What are the types of treaties or international conventions?

A:

1. Contract treaties *(Traite contract)*
2. Law making treaty *(Traite loi)*

Q: What are contract treaties?

A: Bilateral arrangements concerning matters of particular or special interest to the contracting parties. They are sources of *particular international law* but may become primary sources of public international law when different contract treaties are of the same nature, containing practically uniform provisions, and are concluded by a substantial number of States.

Q: What are law-making treaties?

A: Treaties which are concluded by a large number of States for purposes of:

1. Declaring, confirming, or defining their understanding of what the law is on a particular subject;
2. Stipulating or laying down new general rules for future international conduct; and
3. Creating new international institutions.

Q: Who are bound by treaties and international conventions?

A:

GR: Only the parties.

XPN: Treaties may be considered a direct source of international law when concluded by a sizable number of States, and is reflective of the will of the family of nations.

Q: What are the elements of international custom?

A:

1. *General practice*, characterized by uniformity and consistency;
2. *Opiniojuris*, or recognition of that practice as a legal norm and therefore obligatory; and
3. *Duration*

Q: Is a particular length of time required for the formation of customary norms?

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

A: No particular length of time is required. What is required is that within the period in question, short though it may be, State practice, including that of States whose interest are specially affected, should have extensive and virtually uniform and in such a way as to show a general recognition that a rule of law or legal obligation is involved.

Q: What are the requisites in order to consider a person to be a highly qualified publicist?

A:

1. His writings must be fair and impartial representation of law;
2. An acknowledged authority in the field.

Q: Are dissenting States bound by international customs?

A:

GR: Yes

XPN: If they had consistently objected to it while the project was merely in the process of formation. Dissent, however protects only the dissenter and does not apply to other States. A State joining the international law system for the first time after a practice has become customary law is bound by such practice.

D. SUBJECTS OF INTERNATIONAL LAW

Q: Define international community.

A: The body of juridical entities which are governed by the law of nations. Under the modern concept, it is composed not only of States but also of such other international persons as the UN, the Vatican City, colonies and dependencies, mandates and trust territories, international administrative bodies, belligerent communities and even individuals.

Q: What is a subject of international law?

A: A subject of international law is an entity with capacity of possessing international rights and duties and of bringing international claims.

Q: What are the subjects of International Law?

A: The subjects are:

1. Direct subjects
   a. States
   b. Colonies and dependencies
   c. mandates and trust territories; belligerent communities;
   d. The Vatican;
   e. The United Nations; international administrative bodies; and
   f. To a certain extent, individuals.

2. Indirect subjects
   a. international organizations;
   b. Individuals; and
   c. Corporations.

3. Incomplete subjects
   a. Protectorates
   b. Federal states
   c. Mandated and trust territories.

Q: What are objects of international law?

A: A person or thing in respect of which rights are held and obligations assumed by the subject.

Q: Distinguish subject from object of international law

A:

SUBJECT	OBJECT
Entity that has rights and responsibilities under that law	Person or thing in respect of which rights are held and obligations assumed by the subject
Has international personality that it can directly assert rights and can be held responsible under the law of nations	Not directly governed by the rules of international law
It can be a proper party in transactions involving the application of the law of nations among members of international communities	Its rights are received and its responsibilities imposed indirectly through the instrumentality of an intermediate agency

Q: What is a State?

A: A State is 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.

Q: What are the elements of a State?

A:

1. *People* – an aggregate of individuals of both sexes, who live together as a community despite racial or cultural

differences.

2. *Territory* – fixed portion of the earth's surface which the inhabitants occupy.

3. *Government* – the agency through which the will of the state is formulated, expressed and realized.

4. *Independence/sovereignty* – the power of a state to manage its external affairs without direction or interference from another state.

Q: What are the other suggested elements of the State?

A:
1. Civilization
2. Recognition

Q: If State sovereignty is said to be absolute, how is it related to the independence of other States and to their equality on the international plane?

A: From the standpoint of the national legal order, State sovereignty is the supreme legal authority in relation to subjects within its territorial domain. This is the traditional context in referring to sovereignty as absolute. However, in international sphere, sovereignty realizes itself in the existence of a large number of sovereignties, such that there prevails in fact co-existence of sovereignties under conditions of independence and equality.

Q: How is State sovereignty defined in international law?

A: The right to exercise in a definite portion of the globe the functions of a State to the exclusion of another State. Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein to the exclusion of any other State, the functions of a State. *(Island of Palmas case: USA v. the Netherlands)*

Q: What are the fundamental rights of a State?

A: It consists of the Right of:
1. Existence and self-preservation
2. Sovereignty and independence
3. Equality
4. Property and jurisdiction
5. Diplomatic intercourse

Q: What is the concept of Association?

A: An association is formed when two states of unequal power voluntarily establish durable links. In the basic model, one state, the associate, delegates certain responsibilities to the other, the principal, while maintaining its international status as a state. Free association represents a middle ground between integration and independence. *(E.g. Republic of the Marshall Islands and the Federated States of Micronesia formerly part of the U.S. Administered Trust Territory of the Pacific Islands.)*

The associated state arrangement has usually been used as a transitional device of former colonies on their way to full independence*. (E.g. Antigua, St. Kitts-Nevis-Anguilla, Dominica, St. Lucia, St. Vincent and Grenada.)*

Q: Formal peace talks between the Philippine Government and MILF resulted to the crafting of the GRP-MILF Tripoli Agreement on Peace (Tripoli Agreement 2001) which consists of three (3) aspects: a.) security aspect; b.) rehabilitation aspect; and c.) ancestral domain aspect.

Various negotiations were held which led to the finalization of the Memorandum of Agreement on the Ancestral Domain (MOA-AD). In its body, it grants "the authority and jurisdiction over the Ancestral Domain and Ancestral Lands of the Bangsamoro" to the Bangsamoro Juridical Entity (BJE). The latter, in addition, has the freedom to enter into any economic cooperation and trade relation with foreign countries.

The MOA-AD further provides for the extent of the territory of the Bangsamoro. With regard to governance, on the other hand, a shared responsibility and authority between the Central Government and BJE was provided. The relationship was described as "associative". Does the MOA-AD violate the Constitution and the laws?

A: Yes. The provisions of the MOA indicate that the Parties aimed to vest in the BJE the status of an associated state or, at any rate, a status closely approximating it.

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

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Philippine State, much less does it provide for a transitory status that aims to prepare any part of Philippine territory for independence.

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. *(Province of North Cotabato v. The Government of the Republic of the Philippines, G.R. No. 183591, Oct. 14, 2008)*

Q: Is the BJE a state?

A: Yes, 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 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. *(Province of North Cotabato v. The Government of the Republic of the Philippines, G.R. No. 183591, Oct. 14, 2008)*

Q: Does the people's right of self-determination extend to a unilateral right of secession?

A: No. A distinction should be made between the right of internal and external self-determination. The recognized sources of international law establish that the right to self-determination of a people is normally fulfilled through *internal self-determination* – a people's pursuit of its political, economic, social and cultural development within the framework of an existing State. A right to *external self-determination* arises in only the most extreme cases and, even then, under carefully defined circumstances.

External self-determination can be defined as the establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people which constitute modes of implementing the right of self-determination by that people.*(Province of North Cotabato v. The Government of the Republic of the Philippines, G.R. No. 183591, Oct. 14, 2008)*

Q: Does the right to self determination extend to the indigenous peoples?

A: Yes. Indigenous peoples situated within States do not have a general right to independence or secession from those states under international law, but they do have the right amounting to the right to internal self-determination. Such right is recognized by the UN General Assembly by adopting the United Nations Declaration on the rights of Indigenous Peoples (UNDRIP). *(Province of North Cotabato v. The Government of the Republic of the Philippines, G.R. No. 183591, Oct. 14, 2008)*

Q: Do the obligations enumerated in the UN DRIP strictly require the Republic of the Philippines to grant the Bangsamoro people, through the BJE, the particular rights and powers provided for in the MOA_AD?

A: No. 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. There is no requirement that States now guarantee indigenous peoples their own police and internal security force, nor is there an acknowledgement of the right of indigenous peoples to the aerial domain and atmospheric space. But what it upholds is the right of indigenous peoples to the lands, territories and resources, which they have traditionally owned, occupied or otherwise used or acquired. *(Province of North Cotabato v. The Government of the Republic of the Philippines, G.R. No. 183591, Oct. 14, 2008)*

Q: In 1947, the United Nations made the border between Israel and Palestine known as the Green Line. Following the Palestinian Arab violence in 2002, Israel began the construction of the barrier that would separate West Bank from Israel. Palestinians insisted that the fence is an "Apartheid fence" designed to de facto annex the West Bank of Israel. The case was submitted to the ICJ for an advisory opinion by the General Assembly of the United Nations under resolution ES-10/14. Does Israel undermine the right of self-determination of the people of Palestine?

A: Construction of the wall severely impedes the exercise by the Palestinian people of its right to self-determination.

The existence of a "Palestinian people" is no longer in issue. Such existence has moreover been recognized by Israel in the exchange of letters.

The Court considers that those rights include the right to self-determination, as the General Assembly has moreover recognized on a number of occasions. The route chosen for the wall gives expression *in loco* to the illegal measures taken by Israel with regard to Jerusalem and the settlements. There is also of further alterations to the demographic composition of the Occupied Palestinian Territory resulting from the construction of the wall as it is contributing to the departure of Palestinian population from certain areas. That construction, along with measures taken previously, thus severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right. (*ICJ Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, July 4, 2004*)

Q: What is the principle of state continuity?

A:It states that the *disappearance* of any of the elements of statehood would cause the extinction of the State, but *mere changes* as to one or more of the elements would not necessarily, as a rule, bring about such extinction. Despite such changes, the State continues to be an international person.

Q: Discuss the rules on succession of States.

A:

1. *As to territory* – The capacities, rights and duties of the Predecessor State with respect to that territory terminate and are assumed by the successor State.

2. *As to State property* – The agreement between the predecessor and the successor State govern; otherwise:
   a. Where a part of the territory of a State becomes part of the territory of another State, property of the predecessor State located in that territory passes to the successor State.
   b. Where a State is absorbed by another State, property of the absorbed State, wherever located, passes to the absorbing State.
   c. Where a part of a State becomes a separate State, property of the predecessor State located in the territory of the new State passes to the new State.

3. *As to public debts* - Agreement between predecessor and successor State govern; otherwise:
   a. Where a part of the territory of a State becomes part of the territory of another State, local public debt and the rights and obligations of the predecessor State under contracts relating to that territory are transferred to the successor State.
   b. Where a State is absorbed by another State, public debt and the rights and obligations under contracts of the absorbed State pass to the absorbing State.
   c. Where a part of a State becomes a separate State, local public debt and the rights and obligations of the predecessor State under contracts relating to that territory are transferred to the successor State.

4. *As to treaties:*
   a. When part of the territory of a State becomes the territory of another State, the international agreements of the predecessor State cease to have effect in respect of the territory and international agreements of the successor State come into force there. ("Moving Treaty or Moving Boundaries" Rule - 3rd State may seek relief from the treaty on ground of *rebus sic stantibus*)
   b. When a State is absorbed by another State, the international agreements of the absorbed State are terminated and the international agreements of the absorbing State become applicable to the territory of the absorbed State. ("Moving Treaty or Moving Boundaries" Rule - 3rd State may seek relief from the treaty on ground of *rebus sic stantibus)*
   c. When a part of a State becomes a new State, the new State does not succeed to the international agreements to which the predecessor State was a party, unless, expressly or by implication, it accepts such agreements and the other party or parties thereto agree or acquiesce.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

d. Pre-existing boundary and other territorial agreements continue to be binding notwithstanding *(utipossidetis rule)*

Q: Give the effects of a change of sovereignty on municipal laws.

A:

1. Laws partaking of a political complexion are abrogated automatically.
2. Laws regulating private and domestic rights continue in force until changed or abrogated.

Q: What is the effect of change of sovereignty when the Spain ceded the Philippines to the U.S.?

A: The effect is that the political laws of the former sovereign are *not merely suspended but abrogated.* As they regulate the relations between the ruler and the ruled, these laws fall to the ground *ipso facto* unless they are retained or re-enacted by positive act of the new sovereign. Non-political laws, by contrast, continue in operation, for the reason also that they regulate private relations only, unless they are changed by the new sovereign or are contrary to its institutions.

Q: What is the effect of Japanese occupation to the sovereignty of the U.S. over the Philippines?

A: Sovereignty is not deemed suspended although acts of sovereignty cannot be exercised by the legitimate authority. Thus, sovereignty over the Philippines remained with the U.S. although the Americans could not exercise any control over the occupied territory at the time. What the belligerent occupant took over was merely the exercise of acts of sovereignty.

Q: Distinguish between Spanish secession to the U.S. and Japanese occupation during WWII regarding the political laws of the Philippines.

A: There being no change of sovereignty during the belligerent occupation of Japan, the political laws of the occupied territory are *merely suspended*, subject to revival under *jus postliminium*upon the end of the occupation. In both cases, however, non-political laws, remains effective.

Q: Was there a case of suspended allegiance during the Japanese occupation?

A: None. Adoption of the theory of suspended allegiance would lead to disastrous consequences for small and weak nations or states, and would be repugnant to the laws of humanity and requirements of public conscience, for it would allow invaders to legally recruit or enlist the quisling inhabitants of the occupied territory to fight against their own government without the latter incurring the risk of being prosecuted for treason. To allow suspension is to commit political suicide.

Q: May an inhabitant of a conquered State be convicted of treason against the legitimate sovereign committed during the existence of belligerency?

A: Yes. Although the penal code is a non-political law, it is applicable to treason committed against the national security of the legitimate government, because the inhabitants of the occupied territory were still bound by their allegiance to the latter during the enemy occupation. Since the preservation of the allegiance or the obligation of fidelity and obedience of a citizen or subject to his government or sovereign does not demand from him a positive action, but only passive attitude or forbearance from adhering to the enemy by giving the latter aid and comfort, the occupant has no power, as a corollary of the preceding consideration, to repeal or suspend the operation of the law of treason.

Q: What is succession of government?

A: In succession of government, the integrity of the original State is not affected as what takes place is only a change in one of its elements, the government.

Q: Give the effects of a change of government.

A:

1. If the change is peaceful the new government assumes the rights and responsibilities of the old government.

2. If the change was effected thru violence, a distinction must be made:
   a. Acts of political complexion may be denounced
   b. Routinary acts of mere governmental administration continue to be effective.

Q: What is recognition?

A: It is an act by which a State acknowledges the existence of another State, government, or a belligerent community and indicates its willingness to deal with the entity as such under international law.

Q: What are the two theories of recognition of State?

A: The theories of recognition of a State are:

1. *Constitutive theory* – recognition is the last indispensable element that converts the state being recognized into an international person.

2. *Declaratory theory* – recognition is merely an acknowledgment of the pre-existing fact that the state being recognized is an international person.

Q: Who has the authority to recognize?

A: It is a matter to be determined according to the municipal law of each State. In the Philippines, it is the President who determines the question of recognition and his decisions on this matter are considered acts of state which are, therefore, not subject to judicial review. His authority in this respect is derived from his treaty-making power, his power to send and receive diplomatic representatives, his military power, and his right in general to act as the foreign policy spokesman of the nation. Being essentially discretionary, the exercise of these powers may not be compelled.

Q: Distinguish recognition of State from recognition of government.

A:

1. *Recognition of State* carries with it the recognition of government since the former implies that a State recognized has all the essential requisites of a State at the time recognition is extended. Once recognition of state is accorded, it is generally irrevocable.

2. *Recognition of government* may be withheld from a succeeding government brought about by violent or unconstitutional means.

Q: What are the requirements for recognition of government?

A:

1. The government is stable and effective, with no substantial resistance to its authority
2. The government must show willingness and ability to discharge its international obligations
3. The government must enjoy popular consent or approval of the people

Q: What is the Tobar or Wilson doctrine?

A: It precludes recognition to any government coming into existence by revolutionary means so long as the freely elected representatives of the people thereof have not constitutionally reorganized the country.

Q: What is the Estrada Doctrine?

A: It involves a policy of never issuing any declaration giving recognition to governments and of accepting whatever government is in effective control without raising the issue of recognition. An inquiry into legitimacy would be an intervention in the internal affairs of another State.

Q: Distinguish *de jure* recognition from *de facto* recognition.

A:

RECOGNITION *DE JURE*	RECOGNITION *DE FACTO*
Relatively permanent	Provisonal (e.g.: duration of armed struggle)
Vests title to properties of government abroad	Does not vest title to properties of government abroad
Brings about full diplomatic relations	Limited to certain juridical relations

Q: What are the effects of recognition?

A: VIP Ces

1. The recognized State acquires **C**apacity to **e**nter into diplomatic relations. Recognized State acquires capacity to **s**ue in courts of recognizing State.
2. **I**mmunity from jurisdiction of courts of law of recognizing State.
3. Entitled to receive and demand possession of **P**roperties situated within the jurisdiction of the recognizing State which are owned by recognized State.
4. **V**alidity of the acts and decrees of recognized state/ government precluding courts of the recognizing

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

state from passing judgment on the legality of the acts or decrees of the recognized state.

Q: What is belligerency?

A: Belligerency exists when the inhabitants of a State rise up in arms for the purpose of overthrowing the legitimate government or when there is a state of war between two states.

Q: What are the requisites in recognizing Belligerency?

A: TWOS

1. There must be an **O**rganized civil government directing the rebel forces.
2. The rebels must occupy a substantial portion of the **T**erritory of the state.
3. The conflict between the legitimate government and the rebels must be **S**erious, making the outcome uncertain.
4. The rebels must be willing and able to observe the laws of **W**ar.

Q: What are the legal consequences of belligerency?

A:

1. Before recognition, it is the legitimate government that is responsible for the acts of the rebels affecting foreign nationals and their properties. Once recognition is given, responsibility is shifted to the rebel government.
2. The legitimate government is bound to observe the laws and customs of war in conducting the hostilities.
3. From the viewpoint of third States, is to put them under obligation to observe strict neutrality and abide by the consequences arising from that position.
4. Recognition puts the rebels under responsibility to third States and to the legitimate government for all their acts which do not conform to the laws and customs of war.

Q: Distinguish insurgency from belligerency.

A:

INSURGENCY	BELLIGERENCY
A mere initial stage of war. It involves a rebel movement, and is usually not recognized.	More serious and widespread and presupposes the existence of war between 2 or more states (1st sense) or actual civil war within a single state (2nd sense).
Sanctions to insurgency are governed by municipal law – Revised Penal Code, *i.e.* rebellion.	Belligerency is governed by the rules on international law as the belligerents may be given international personality.

E. DIPLOMATIC AND CONSULAR LAW

Q: Discuss the right of legation.

A: The exercise of the right of legation is one of the most effective ways of facilitating and promoting intercourse among nations. Through the active right of sending diplomatic representatives and the passive right of receiving them, States are able to deal more directly and closely with each other in the improvement of their mutual intercourse.

Q: Is the State obliged to maintain diplomatic relations with other States?

A: No, as the right of legation is purely consensual. If it wants to, a State may shut itself from the rest of the world, as Japan did until the close of the 19th century. However, a policy of isolation would hinder the progress of a State since it would be denying itself of the many benefits available from the international community.

Q: Who are the agents of diplomatic intercourse?

A:

1. Head of State
2. Foreign secretary or minister
3. Members of diplomatic service
4. Special diplomatic agents appointed by head of the State
5. Envoys ceremonial

Q: What is diplomatic corps?

A: It is a body consisting of the different diplomatic representatives who have been accredited to the same local or receiving State. It is headed by a doyun de corps, who, by tradition, is the oldest member within the highest rank or, in Catholic countries, the papal nuncio.

Q: What are the functions of a diplomatic mission?

A:

1. Represent sending State in receiving State
2. Protect in receiving State interest of sending State and its nationals
3. Negotiate with government of receiving State
4. Promote friendly relations between sending and receiving States and developing their economic, cultural, and scientific relations
5. Ascertain by all lawful means conditions and developments in receiving State and reporting thereon to government of sending State
6. In some cases, represent friendly governments at their request

Q: What are the classes of heads of a diplomatic mission?

A:

1. *Ambassadors* or *nuncios* accredited to Heads of State and other heads of missions of equivalent rank
2. *Envoys ministers* and *internuncios* accredited to heads of State
3. *Charge d' affaires* accredited to ministers of foreign affairs

Q: Is the receiving State obliged to accept a representative from another State?

A: No, the appointment of diplomats is not merely a matter of municipal law for the receiving State is not obliged to accept a representative who is a *persona non grata* to it. Indeed, there have been cases when duly accredited diplomatic representatives have been rejected, resulting in strained relations between the sending and receiving State.

Q: What does *persona non grata* mean?

A: In international law and diplomatic usage, it means a person not acceptable (for reasons peculiar to himself) to the court or government to, which it is proposed to accredit him in the character of an ambassador or minister.

Q: What is agreation?

A:It is a practice of the States before appointing a particular individual to be the chief of their diplomatic mission in order to avoid possible embarrassment.

It consists of two acts:

1. The *inquiry*, usually informal, addressed by the sending State to the receiving State regarding the acceptability of an individual to be its chief of mission; *and*

2. The *agreement*, also informal, by which the receiving State indicates to the sending state that such person, would be acceptable.

Q: What is a letter of credence?

A: This is the document by which the envoy is accredited by the sending State to the foreign State to which he is being sent. It designates his rank and the general object of his mission, and asks that he be received favorably and that full credence be given to what he says on behalf of his State.

Q: What is a letter patent?

A: The appointment of a consul is usually evidenced by a commission, known sometimes as letter patent or *letred'provision,* issued by the appointing authority of the sending State and transmitted to the receiving State through diplomatic channels.

Q: What are the privileges and immunities of diplomatic representatives?
A:

1. *Personal inviolability* – members of diplomatic mission shall not be liable for any form of arrest or imprisonment
2. *Inviolability of premises* – premises, furnishings and means of transport shall be immune from search, seizure, attachment or execution.
3. Archives or documents shall be inviolable
4. Diplomatic agents are immune from criminal, civil or administrative liability.
5. Receiving State shall protect official communication and official correspondence of diplomatic mission.
6. Receiving State shall ensure all members of diplomatic mission freedom of movement and travel.
7. A diplomatic agent is exempted to give evidence as a witness.
8. Exemption from general duties and taxes including custom duties with certain exceptions.
9. Use of flag and emblem of sending State on premises of receiving State.

Q: What are the exceptions to the privileges and

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

immunities of diplomatic representatives?

A:

1. Any real action relating to private immovables situated in the territory receiving State unless the envoy holds the property in behalf of the sending State
2. Actions relating to succession where diplomatic agent is involved as executor, administrator, heirs or legatee as a private person and not on behalf of the sending State
3. An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions

Q: Who may waive diplomatic immunity and privileges?

A: The waiver may be made expressly by the sending State. It may also be done impliedly, as when the person entitled to the immunity from jurisdiction commences litigation in the local courts and thereby opens himself to any counterclaim directly connected with the principal claim.

Note: Waiver of immunity from jurisdiction with regard to civil and administrative proceedings shall not be held to mean implied waiver of the immunity with respect to the execution of judgment, for which a separate waiver shall be necessary.

Q: Is diplomatic immunity a political question?

A: Diplomatic immunity is essentially a political question and the courts should refuse to look beyond the determination by the executive branch.

Q: Who else besides the head of the mission are entitled to diplomatic immunities and privileges?

A: They are also enjoyed by the diplomatic suite or retinue, which consists of the official and non-official staff of the mission. The official staff is made up of the administrative and technical personnel of the mission, including those performing clerical work, and the member of their respective families. The non-official staff is composed of the household help, such as the domestic servants, butlers, and cooks and chauffeurs employed by the mission.

Note: As a rule, however, domestic servants enjoy immunities and privileges only to the extent admitted by the receiving State and insofar as they are connected with the performance of their duties.

Q: What are the grounds for termination of diplomatic relations under municipal law?

A: RADAR

1. **R**esignation
2. **A**ccomplishment of the purpose
3. **D**eath
4. **A**bolition of the office
5. **R**emoval

Q: What are the grounds for termination of diplomatic relation under international law?

A:

1. *War*– outbreak between the sending and the receiving States.
2. *Extinction* of either the sending State or the receiving State.
3. *Recall*– demanded by the receiving State when the foreign diplomat becomes *persona non grata*

Q: Will the termination of diplomatic relations also terminate consular relations between the sending and receiving States?

A: No. Consuls belong to a class of State agents distinct from that of diplomatic officers. They do not represent their State in its relations with foreign States and are not intermediaries through whom matters of State are discussed between governments.

Consuls look mainly after the commercial interest of their own State in the territory of a foreign State. They are not clothed with diplomatic character and are not accredited to the government of the country where they exercised their consular functions; they deal directly with local authorities.

Q: What is the difference between diplomats and consuls?

A: Diplomats are concerned with political relations of States while consuls are not concerned with political matters. The latter attend rather to administrative and economic issues.

Q: What are the two kinds of consul?

A:

1. *Consulesmissi* – Professional or career consuls who are nationals of the sending State and are required to devote their full time to the discharge of their duties.

2. *Consuleselecti* – May or may not be nationals of the sending State and perform their consular functions only in addition to their regular callings.

Note: Examples of regular callings include acting as notary, civil registrar and similar administrative capacities and protecting and assisting the nationals of the sending State.

Q: What are the ranks of consuls?

A:

1. *Consul-general* – Heads several consular districts, or one exceptionally large consular district;

2. *Consul* – Takes charge of a small district or town or port;

3. *Vice-consul* – Assist the consul; and

4. *Consular agent* – Usually entrusted with the performance of certain functions by the consul.

Q: What are the duties of consuls?

A:

1. Protection of the interests of the sending State and its nationals in the receiving State.

2. Promotion of the commercial, economic, cultural, and scientific relations of the sending and receiving States.

3. Observes the conditions and developments in the receiving State and report the same to the sending State.

4. Issuance of passports and other travel documents to nationals of the sending State and visas or appropriate documents to persons wishing to travel to the sending State.

5. Supervision and inspection of vessels and aircraft of the sending State.

Q: Where do consuls derive their authority?

A: Consuls derive their authority from two principal sources, to wit:

1. *Letter patent* or *letter 'de provision* – which is the commission issued by the sending State, and

2. *Exequatur* – which is the permission given them by the receiving State to perform their functions therein.

Q: Do consuls enjoy their own immunities and privileges?

A: Yes, but not to the same extent as those enjoyed by the diplomats. Like diplomats, consuls are entitled to:

1. Inviolability of their correspondence, archives and other documents
2. Freedom of movement and travel
3. Immunity from jurisdiction for acts performed in their official capacity; and
4. Exemption from certain taxes and customs duties

However, consuls are liable to:

1. Arrest and punishment for grave offenses; and
2. May be required to give testimony, subject to certain exceptions.

Note: Members of a consular post are under no obligation to give evidence on the following situations:

a. Concerning matters connected with the exercise of their functions

b.To produce official correspondence and documents

c. To give evidence as expert witness with regard to the law of the sending State

The consular offices are immune only:

1. With respect to that part where the consular work is being performed; and
2. May be expropriated by the receiving state for purposes of national defense or public utility.

With respect to expropriation by the receiving State, steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid by the sending State.

Q: What are the differences between Diplomatic Immunity and Consular Immunity?

A:

DIPLOMATIC	CONSULAR
"Premises of the mission" includes the building or parts of building and the land irrespective of the ownership used for the purpose of the mission including the residence	"Consular premises" includes the buildings or parts of buildings and the land irrespective of ownership used exclusively for the purposes of consular posts

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

of the head of mission	
GR: The agents of the receiving state may not enter the premises of the mission **XPN:** consent of the head of the mission	**GR:** The agents of the receiving state may not enter the consular premises **XPN:** consent of the head of the consular post Consent is assumed in case of fire or other disasters requiring prompt protective action
Personal baggage of a diplomatic agent shall not be opened	Consular bag shall not be opened It may be requested that the bag be opened in their presence by an authorized representative of the receiving state if they have serious reason to believe that the bag contains objects of other articles, documents, correspondence or articles
Not obliged to give evidence as a witness	May be called upon to attend as a witness; if declined, no coercive measure or penalty may be applied

Q: Discuss the differences, if any, in the privileges or immunities of diplomatic envoys and consular officers from the civil and criminal jurisdiction of the receiving State.

A: A *diplomatic agent* shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction except in the case of:

1. A *real action* relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purpose of the mission;

2. An *action relating to succession* in which the diplomatic agent is involved as executor, administrator, heir or legatee as private person and not on behalf of the sending State;

3. An *action relating to any professional or commercial activity* exercised by the diplomatic agent in the receiving State outside of his official functions. (*Article 32, Vienna Convention of Diplomatic Relations*)

A *consular officer* does not enjoy immunity from the criminal jurisdiction of the receiving State and are not amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.

However, this does not apply in respect of a civil action either:

1. Arising out of a contract concluded by a consular officer in which he did not enter expressly or impliedly
2. By a third party for damages arising from an accident in the receiving State caused by a vehicle, vessel or aircraft. (*Article 41 and 43, Vienna Convention on the Consular Relations*)

Q: What are the grounds for termination of consular office?

A:

1. Death
2. Recall
3. Dismissal
4. Notification by the receiving State to the sending State that it has ceased to consider as member of the consular staff
5. Withdrawal of his exequatur by the receiving State.
6. War- outbreak of war between his home State and the receiving State.

f. TREATIES

Q: What is a treaty?

A: It 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 its particular designation.

Q: What are the essential requisites of a valid treaty?

A: VACLA

1. Be entered into by parties with the treaty-making **C**apacity
2. Through their **A**uthorized representatives
3. Without the attendance of duress, fraud, mistake, or other **V**ice of consent
4. On any **L**awful subject-matter
5. In accordance with their respective constitutional process

Q: What are the usual steps in the treaty-making process?

A:

1. *Negotiation*– conducted by the parties to reach an agreement on its terms.
2. *Signature* – the signing of the text of the instrument agreed upon by the parties.
3. *Ratification*– the act by which the provisions of a treaty are formally confirmed and approved by the State.
4. *Accession*– a State can accede to a treaty only if invited or permitted to do so by the contracting parties. Such invitation or permission is usually given in the accession clause of the treaty itself.
5. Exchange of instruments of ratification;
6. Registration with the United Nations.

Q: What is the Doctrine of Unequal Treaties?

A: It posits that treaties which have been imposed through coercion or duress by a State of unequal character are void.

Q: What is a *Protocol de Clôture*?

A: It is a final act and an instrument which records the winding up of the proceedings of a diplomatic conference and usually includes a reproduction of the texts of treaties, conventions, recommendations and other acts agreed upon and signed by the plenipotentiaries attending the conference.

Q: What is ratification?

A: Ratification is the act by which the provisions of a treaty are formally confirmed and approved by a State. By ratifying a treaty signed in its behalf, a State expresses its willingness to be bound by the provisions of such treaty.

Note: A State may ratify a treaty only when it is a signatory to it. There is no moral duty on the part of the States to ratify a treaty notwithstanding that its plenipotentiaries have signed the same. This step, however, should not be taken lightly. A treaty may provide that it shall not be valid even if ratified but shall be valid only after the exchange or deposit of ratification has transpired.

Note: It should be emphasized that under the Constitution the power to ratify is vested in the President subject to the concurrence of the Senate. The President has the discretion even after the signing of the treaty by the Philippine representative whether or not to ratify a treaty. The signature of the representative does not signify final consent, it is ratification that binds the state to the provisions of the treaty and renders it effective.

Senate is limited only to giving or withholding its consent, concurrence to the ratification. It is within the President to refuse to submit a treaty to the Senate or having secured its consent for its ratification, refuse to ratify it. Such decision is within the competence of the President alone, which cannot be encroached by this court via writ of mandamus. *(Pimentel v. Executive Secretary, G.R. No. 158088, July 6, 2005)*

Q: Enumerate instances when a third State who is a non-signatory may be bound by a treaty.

A:

1. When a treaty is a mere formal expression of customary international law, which, as such is enforceable on all civilized states because of their membership in the family of nations.
2. Under Article 2 of its charter, the UN shall ensure that non-member States act in accordance with the principles of the Charter so far as may be necessary for the maintenance of international peace and security. Under Article 103, obligations of member-states shall prevail in case of conflict with any other international agreement including those concluded with non-members.
3. The treaty itself may expressly extend its benefits to non-signatory States.
4. Parties to apparently unrelated treaties may also be linked by the most-favored nation clause.

Q: When does a treaty enter into force?

A: A treaty enters into force in such manner and upon such date as it may provide or as the negotiating States may agree. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.

Q: May a State invoke the fact that its consent to the treaty was obtained in violation of its internal law?

A:

GR: No.

XPN: If the violation was manifest and concerned a rule of its internal law of fundamental importance.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Note: A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

Q: What is a reservation? When can it not be made?

A: A reservation is a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving, or acceding to a treaty, whereby it purports to exclude or modify the legal effect of certain provisions of the treaty in their application to that State.

Reservations cannot be made if the treaty itself provides that no reservation shall be admissible, or the treaty allows only specified reservations which do not include the reservation in question, or the reservation is incompatible with the object and purpose of the treaty.

Q: What are the effects of reservation and of objections to reservations?

A:

1. Modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and
2. Modifies those provisions to the same extent for that other party in its relations with the reserving State.
3. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.
4. When a State objecting to a reservation has not opposed the entry into force of the treaty between itself and the reserving State, the provisions to which the reservation relates do not apply as between the two States to the extent of the reservation.

Q: Are treaties subject to judicial review?

A: Yes**.** Even after ratification, the Supreme Court has the power of judicial review over the constitutionality of any treaty, international or executive agreement and must hear such case *en banc.*

Q: In case of conflict between a treaty and a custom, which would prevail?

A:

1. Treaty prevails if the treaty comes after a particular custom, as between the parties to the treaty,
2. Customs prevails if the custom develops after the treaty, it being an expression of a later will.

Q: Distinguish a treaty from an executive agreement.

A:

1. *Treaties* - need concurrence of the senate and involve basic political issues, changes in national policy and are permanent international agreements.
2. *Executive agreements* - need no concurrence from the senate and are just adjustments of details in carrying out well established national policies and are merely temporary arrangements.

Q: Is VFA a treaty or a mere executive agreement?

A: In the case of *Bayan v. Zamora G.R No. 138570, Oct. 10, 2000*, VFA was considered a treaty because the Senate concurred in via 2/3 votes of all its members. But in the point of view of the US Government, it is merely an executive agreement.

Q: May a treaty be modified without the consent of all the parties?

A:

GR: No

XPN: If allowed by the treaty itself, two states may modify a provision only insofar as theories are concerned.

Q: What are the grounds for invalidating a treaty?

A:

1. Error
2. Fraud
3. Corruption of a representative of a State
4. Coercion of a representative of a State
5. Coercion of a State by threat or use of force
6. Violation of *jus cogens* norm

Q: What are the grounds for termination of a treaty?

A:

1. Termination of the treaty or withdrawal of a party in accordance with the terms of the treaty.
2. Extinction of one of the parties to the treaty.
3. Mutual agreement of all the parties to terminate the treaty.
4. Denunciation of the treaty by one of the parties.
5. Supervening impossibility of performance.
6. Conclusion of a subsequent treaty inconsistent between the same parties.
7. Violation of the treaty by one of the parties.
8. Doctrine of *rebus sic stantibus*
9. Outbreak of war between the parties to the treaty.
10. Severance of diplomatic or consular relations
11. The emergence of new peremptory norm of general international law renders void and terminates any existing treaty in conflict with such norm.

Q: What is the doctrine of *rebus sic stantibus*?

A: It states that a fundamental change of circumstances which determined the parties to accept a treaty, if it has resulted in a radical transformation of the extent of the obligations imposed by it, may under certain conditions, afford the party affected a ground to invoke the termination of the treaty. The change must have increased the burden of the obligations to be executed to the extent of rendering performance essentially different from the original intention.

Q: What are the requisites of *rebus sic stantibus*?

A: PRUTIS

1. The change must not have been caused by the **P**arty invoking the doctrine
2. The doctrine cannot operate **R**etroactively, *i.e.*, it must not adversely affect provisions which have already been complied with prior to the vital change in the situation
3. The change must have been **U**nforeseen or unforeseeable at the time of the perfection of the treaty
4. The doctrine must be invoked within a reasonable **T**ime
5. The duration of the treaty must be **I**ndefinite
6. The change must be so **S**ubstantial that the foundation of the treaty must have altogether disappeared

Q: When can the principle of *rebus sic stantibus* not be invoked as a ground for terminating or withdrawing from a treaty?

A:

1. If the treaty establishes a boundary; or
2. If the fundamental change is the result of a breach by the party invoking it of an obligation under the treaty or of any other obligation owed to any other party to the treaty.

Q: What is the "clean slate" rule?

A: When one State ceases to exist and is succeeded by another on the same territory, the newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to which the succession of States relates.

Q: What are the exceptions to the "clean slate" rule?

A:

1. When the new State agrees to be bound by the treaties made by its predecessor;
2. Treaties affecting boundary regime *(utipossidetis)*

Q: What is the most-favored-nation clause?

A: It may be defined in general, as a pledge by a contracting party to a treaty to grant to the other party treatment not less favorable than that which has been or may be granted to the "most favored" among other countries.

Q: Can the House of Representatives take active part in the conduct of foreign relations, particularly in entering into treaties and international agreements?

A: No. As held in *US v. Curtiss Wright Export Corporation 299 US 304*, it is the President alone who can act as representative of the nation in the conduct of foreign affairs. Although the Senate has the power to concur in treaties, the President alone can negotiate treaties and Congress is powerless to intrude into this. However, if the matter involves a treaty or an executive agreement, the HR may pass a resolution

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

expressing its views on the matter.

Q: If a treaty is not in writing, may it still be considered as such?

A: Yes. Oral agreements between States are recognized as treaties under customary international law.

Q: In case of conflict between a treaty and a statute, which would prevail?

A: In case of conflict, the courts should harmonize both laws first and if there exists an unavoidable contradiction between them, the principle of *lex posterior derogat priori* - a treaty may repeal a statute and a statute may repeal a treaty - will apply. The later one prevails. In our jurisdiction, treaties entered into by the executive are ratified by the Senate and takes the form of a statute.

g. NATIONALITY AND STATELESSNESS

Q: What is nationality?

A: It is membership in a political community with all its concomitant rights and obligations. It is the tie that binds the individual to his State, from which he can claim protection and whose laws he is obliged to obey.

Q: What is citizenship?

A: It has more exclusive meaning in that it applies only to certain members of the State accorded more privileges than the rest of the people who owe it allegiance. Its significance is municipal, not international.

Q: What is multiple nationality?

A:It is the possession by an individual of more than one nationality. It is acquired as the result of the concurrent application to him of the conflicting municipal laws of two or more States claiming him as their national.

Q: What is statelessness? What are the kinds of statelessness?

A: It is the condition or status of an individual who is either:

1. *De Jure Stateless persons* - stripped of their nationality by their former government and without having an opportunity to acquire another
2. *De Facto Stateless persons* - those who possess a nationality whose country does not give them protection outside their own country and who are commonly referred to as refugees. (*Frivaldo v. COMELEC, G.R. No. 123755, June 28, 1996*)

Q: What are the consequences of statelessness?

A:

1. No State can intervene or complain in behalf of the Stateless person for an international delinquency committed by another State in inflicting injury upon him
2. He cannot be expelled by the State if he is lawfully in its territory except on grounds of national security or public order
3. He cannot avail himself of the protection and benefits of citizenship like securing for himself a passport or visa and personal documents

Q: What is the doctrine of indelible allegiance?

A: An individual may be compelled to retain his original nationality nothwithstanding that he has already renounced it under the law of another State whose nationality he has acquired.

Q: What is the Doctrine of Effective Nationality?

A: A person having more than one nationality shall be treated as if he had only one – either the nationality of the country in which he is habitually and principally resident or the nationality of the country with which in the circumstances he appears to be in fact most closely connected.

Q: Is a Stateless person entirely without right, protection or recourse under the Law of Nations?

A: No. Under the Convention in Relation to the Status of Stateless Persons, the contracting States agree to accord the stateless persons within their territories treatment at least as favorable as that accorded their nationals with respect to:

1. Freedom of religion
2. Access to the courts
3. Rationing of products in short supply
4. Elementary education
5. Public relief and assistance
6. Labor legislation
7. Social Security

Note: They also agree to accord them treatment not

less favorable than that accorded to aliens generally in the same circumstances. The Convention also provides for the issuance of identity papers and travel documents to the Stateless persons.

Q: What measures has international law taken to prevent Statelessness?

A: In the Convention on the Conflict of Nationality Laws of 1930, the Contracting States agree to accord nationality to persons born in their territory who would otherwise be stateless. The Convention on the Reduction of Statelessness of 1961 provides that if the law of the contracting States results in the loss of nationality, as a consequence of marriage or termination of marriage, such loss must be conditional upon possession or acquisition of another nationality.

Q: What is the Doctrine of Genuine Link?

A: It states that the bond of nationality must be real and effective in order that a State may claim a person as its national for the purpose of affording him diplomatic protection.

h. TREATMENT OF ALIENS

Q: What is the Doctrine of State Responsibility?

A: A State may be held responsible for an international delinquency directly or indirectly imputable to it which causes injury to the national of another State. Liability will attach to the State where its treatment of the alien falls below the international standard of justice or where it is remiss in according him the protection or redress that is warranted by the circumstances.

Q: What are the requisites for the enforcement of the doctrine of State Responsibility?

A:

1. The injured alien must first exhaust all local remedies; and
2. He must be represented in the international claim for damages by his own State

Q: What are the elements of State Responsibility?

A:

1. Breach of an international obligation
2. Attributability

Q: What are the two kinds of State Responsibility?

A:

1. *Direct State responsibility* – Where the international delinquency was committed by superior government officials or organs like the chief of State or the national legislature, liability will attach immediately as their acts may not be effectively prevented or reversed under the constitution or laws of the State.

2. *Indirect State responsibility* – Where the offense is committed by inferior government officials or by private individuals. The State will be held liable only if, by reason of its indifference in preventing or punishing it, it can be considered to have connived in effecting its commission.

Q: What are the elements of an internationally wrongful act?

A:

1. Act or omission is attributable to the State under international law; and
2. Constitutes a breach of an international obligation of the State

Note: Every internationally wrongful act of a State entails the international responsibility of that State.

Q: What are the acts/situations which are attributable to the State?

A:

1. *Acts of the State organs* – acts of State organs in their capacity provided by law or under instructions of superiors
2. *Acts of other persons* – If the group of persons was in fact exercising elements of the governmental authority in the absence or default of the official authorities and circumstances such as to call for the exercise of those elements of authority.
3. *Acts of revolutionaries* – conduct of an insurrectional movement which becomes the new government of a State or part of a State.

Q: What is the theory of Objective or Strict Liability with respect to state responsibility?

A: It provides that fault is unnecessary for State responsibility to be incurred. Its requisites are:

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

1. Agency
2. Casual connection between the breach and the act or omission imputable to the State.

Q: What are the reliefs available where a State is liable for an internationally wrongful act?

A:

1. *Declaratory relief* – declaration by a court that as to the illegality of an act constitutes a measure of satisfaction or reparation in the broad sense.

   Note: This is available when this is, or the parties deem this, the proper way to deal with a dispute or when the object "is not to give satisfaction for the wrong received."

2. *Satisfaction* – a measure other than restitution or compensation which an offending State is bound to take.

   Its object is often either:

   a. An apology and other acknowledgment of wrongdoing
   b. Punishment of individuals concerned
   c. Taking of measures to prevent a recurrence

3. *Restitution* – involves wiping out all the consequences of the breach and re-establishing the situation which would probably have existed had the act not been committed.

4. *Compensation* – payment of money as a valuation of the wrong done.

   Note: The compensation must correspond to the value which restitution in kind would bear; the award of damages for loss sustained which would not be covered by restitution in kind or payment in place of it.

Q: What is the difference between pecuniary satisfaction and compensation?

A:

PECUNIARY SATISFACTION	COMPENSATION
A token of regret and acknowledgment of wrongdoing ("monetary sorry")	To make up for or repair the damage done.

Q: When may a State exercise diplomatic protection?

A: When a State admits into its territory foreign investments or foreign nationals, whether natural or juristic persons, it is bound to extend to them the protection of the law and assumes obligations concerning the treatment to be afforded to them. These obligations however, are neither absolute nor unqualified. An essential distinction should be drawn between the obligations of the State towards the international community as a whole, and those vis-à-vis another State in the field of their diplomatic protection.

By their very nature the former are the concern of all States. All States can be held to have a legal interest in their protection; they are obligations *erga omnes.* Obligations the performance of which is the subject of diplomatic protection are not of the same category. It cannot be held, when one such obligation in particular is in question, in a specific case, that all States have a legal interest in its observance. *(Case Concerning Barcelona Traction, Light and Power Company, Limited, Feb. 5, 1970)*

Q: How should States treat aliens within their territory?

A: The standards to be used are the following:

1. *National treatment/ equality of treatment* – Aliens are treated in the same manner as nationals of the State where they reside

2. *Minimum international standard* – However harsh the municipal laws might be, against a State's own citizens, aliens should be protected by certain minimum standards of humane protection.

Note: States protect aliens within their jurisdiction in the expectation that their own nationals will be properly treated when residing or sojourning abroad.

Q: Explain the Right of Asylum in international law.

A: The right of asylum is the competence of every State inferred from its territorial supremacy to allow a prosecuted alien to enter and to remain on its territory under its protection and thereby grant asylum to him.

Q: Who is a refugee?

A: Any person who is outside the country of his nationality or the country of his former habitual

residence because he has or had well founded fear of persecution by reason of his race, religion, nationality, membership of a political group or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence.

Q: What are the elements before one may be considered as a refugee?

A:

1. The person is outside the country of his nationality, or in the case of Stateless persons, outside the country of habitual residence;
2. The person lacks national protection;
3. The person fears persecution in his own country.

Note: The second element makes, a refugee a Stateless person. Because a refugee approximates a Stateless person, he can be compared to a vessel on the open sea not sailing under the flag of any State, or be called flo tsam and *res nullius*. Only a person who is granted asylum by another State can apply for refugee status; thus the refugee treaties imply the principle of asylum.

Q: What is the difference between refugees and internally displaced person?

A: *Refugees* are people who have fled their countries while *internally displaced persons* are those who have not left their country's territory

Q: What is the Principle of Non-Refoulment?

A: It posits that a State may not deport or expel refugees to the frontiers of territories where their life or freedom would be put in danger or at risk.

1. Extradition

Q: What is extradition?

A: It is the right of a foreign power, created by treaty, to demand the surrender of one accused or convicted of a crime within its territorial jurisdiction, and the correlative duty of the other State to surrender

Q: Distinguish extradition from deportation.

A:

Extradition	Deportation
Effected at the request of the State of origin	Unilateral act of the local State
Based on offenses committed in the State of origin	Based on causes arising in the local State
Calls of the return of the fugitive to the State or origin	Undesirable alien may be deported to a State other than his own or the State of origin **(1995 Bar Question)**

Q: What is the basis of extradition?

A: The extradition of a person is required only if there is a treaty between the State of refuge and the State of origin. As a gesture of comity, however, a State may extradite anyone. Furthermore, even with a treaty, crimes which are political in character are exempted.

Q: What are the fundamental principles governing extradition?

A:

1. Based on the consent of the State expressed in a treaty
2. Principle of *Specialty* – a fugitive who is extradited may be tried only for the crime specified in the request for extradition and included in the list of offenses in the extradition treaty
3. Any person may be extradited, whether he be a national of the requesting State, of the State of refuge or of another State. He need not be a citizen of the requesting State
4. Political or religious offenders are generally not subject to extradition.

   Note: Attentant clause is a provision in an extradition treaty which states that the murder or assassination of the head of a state or any member of his family will not be considered as a political offense and therefore extraditable.

5. The offense must have been committed within the territory of the requesting State or against its interest
6. *Double Criminality Rule* – The act for which the extradition is sought must be punishable in both States

Q: What does the Principle of Dual Criminality mean in extradition?

A: Under the principle of double or dual criminality, the crime must be punishable in both the requesting and requested States to make it

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

extraditable.

Q: What does the Principle of Specialty mean in extradition?

A: Under the principle of specialty in extradition, a person cannot be tried for an offense not included in the list of extraditable offenses in the extradition treaty between the requesting and the requested States, unless the requested State does not object to the trial of such person for the unlisted offense.

Q: What is the procedure for extradition when a foreign State requests from the Philippines?

A:

1. File/issue request through diplomatic representative with:
   a. Decision of conviction
   b. Criminal charge and warrant of arrest
   c. Recital of facts
   d. Text of applicable law designating the offense
   e. Pertinent papers

2. DFA forwards request to DOJ

3. DOJ files petition for extradition with RTC

4. Upon receipt of a petition for extradition and its supporting documents, the judge must study them and make, as soon as possible, a *prima facie finding* whether (a) they are sufficient in form and substance, (b) they show compliance with the Extradition Treaty and Law, and (c) the person sought is extraditable. At his discretion, the judge may require the submission of further documentation or may personally examine the affiants and witnesses of the petitioner. If, in spite of this study and examination, no *prima facie finding* is possible, the petition may be dismissed at the discretion of the judge.

5. On the other hand, if the presence of a prima facie case is determined, then the magistrate must immediately issue a warrant for the arrest of the extraditee, who is at the same time summoned to answer the petition and to appear at scheduled summary hearings.

6. Hearing (provide counsel de officio if necessary);

7. Appeal to CA within ten days whose decision shall be final and executory;

8. Decision forwarded to DFA through the DOJ;

9. Individual placed at the disposal of the authorities of requesting State – costs and expenses to be shouldered by requesting State.

Q: Should the judge inform the potential extraditee of the pending petition for extradition prior to the issuance of warrant of arrest?

A: No. Prior to the issuance of the warrant, the judge must not inform or notify the potential extraditee of the pendency of the petition, lest the latter be given the opportunity to escape and frustrate the proceedings. The foregoing procedure will "best serve the ends of justice" in extradition cases.

Q: Can a State compel another State to extradite a criminal without going through the legal process?

A: No.

Q: Is an extradition proceeding a criminal proceeding?

A: No. Extradition is not a criminal proceeding which will call into operation all the rights of an accused provided in the bill of rights.

Q: Is a petition for bail valid in extradition cases?

A: Yes. The Philippines, along with other members of the family of nations, committed to uphold the fundamental human rights as well as value the worth and dignity of every person. The commitment is enshrined in Section 11, Article II of our Constitution which provides: *"The State values the dignity of every human person and guaranteed full respect for human rights."* The Philippines, therefore, has the responsibility of protecting and promoting the right of every person to liberty and due process, ensuring that those detained or arrested can participate in the proceedings before a court, to enable it to decide without delay on the legality of the detention and order their release if justified. In other words, the Philippine authorities are under obligation to make available to every person under detention

such remedies which safeguard their fundamental right to liberty. These remedies include the *right to be admitted to bail*. *(Government of Hong Kong Special Administrative Region, represented by the Philippine Department of Justice v. Olalia, Jr., G.R. No. 153675, April 19, 2007)*

Q: What are the rights of a person arrested and detained in another State?

A:

1. Right to have his request complied with by the receiving State to so inform the consular post of his condition

2. Right to have his communication addressed to the consular post forwarded by the receiving State accordingly

3. Right to be informed by the competent authorities of the receiving without delay his rights as mentioned above

Q: Is the retroactive application of the extradition treaty amounting to an ex post facto law?

A: No. In *Wright v. Court of Appeals, G.R. No.113213, August 15,1994,* it was held that the retroactive application of the Treaty of Extradition does not violate the prohibition against ex post facto laws, because the Treaty is neither a piece of criminal legislation nor a criminal procedural statute. It merely provided for the extradition of persons wanted for offenses already committed at the time the treaty was ratified.

i. INTERNATIONAL HUMAN RIGHTS LAW

Q: What are human rights?

A: Those liberties, immunities and benefits, which all human beings should be able to claim "as a right of the society in which they live – Louis Henkin

Q: How are the international human rights divided?

A: The said rights are divided into 3 generations, namely:

1. *First generation*: civil and political rights
2. *Second generation*: economic, social and cultural rights
3. *Third generation*: Right to development, right to peace and right to environment

Q: How are human rights classified?

A:

1. Individual rights
2. Collective rights *(right to self-determination of people; the permanent sovereignty over natural resources)*

Q: What are the three main instruments of human rights?

A:

1. United Declaration of Human Rights
2. The International Covenant on Economic, Social and Cultural Rights
3. International Covenant on Civil and Political Rights

Q: What are the rights guaranteed in the International Covenant on Economic, Social and Cultural Rights?

A: Right to:

1. Self-determination
2. Work and accompanying rights
3. Social Security and other Social rights
4. Adequate Standards of living
5. Physical and Mental Health
6. Education
7. Take part in cultural life
8. Enjoy the benefits of scientific progress and applications

Q: What are the rights guaranteed in the International Covenant on Civil and Political rights?

A:

1. Right to self-determination
2. Right to an effective remedy
3. Equal right of men and women to the enjoyment of all the civil and political rights
4. Right to life
5. Not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, freedom from medical or scientific experimentation except with his consent
6. Freedom from slavery and servitude
7. Right to liberty and security of person
8. Right to be treated with humanity and with respect for the inherent dignity of the human person

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

9. No imprisonment on the ground of inability to fulfill a contractual obligation
10. Right to liberty of movement and freedom to choose his residence
11. Right to a fair and public hearing by a competent, independent and impartial tribunal established by law
12. No one shall be held guilty of an criminal offense on account of any act or omission which did not constitute a criminal office, under national or international law, at the time when it was committed
13. Right to recognition everywhere as a person before the law
14. Right to privacy
15. Right to freedom of thought, conscience and religion
16. Right to freedom of expressions
17. Right of peaceful assembly
18. Right of freedom of association
19. Right to marry and to found a family
20. Right to such measures of protection as are required by his status as a minor, name and nationality
21. Right to participation, suffrage and access to public service
22. Right to equal protection of the law
23. Right of minorities to enjoy their own culture, to profess and practice their religion and to use their own language.

Q: May parties derogate from their obligations?

A:

GR: In times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, parties may take measures to derogate from their obligations to the extent strictly required by the exigencies of the situation.

XPN: There can be no derogation from the following:

1. Right to life
2. Freedom from torture or cruel, inhuman or degrading punishment
3. Freedom from slavery
4. Freedom from imprisonment for failure to fulfill a contractual obligation
5. Freedom from ex post fact laws
6. Right to recognition everywhere as a person before the law
7. Freedom of thought, conscience and religion

Q: What is torture?

A: It is any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. (*United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment/UNCTO* effective June 26, 1987)

Q: What does it not include?

A: It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Q: What are the obligations of the State Parties in the UNCTO?

A:

1. No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency or any order from a superior officer or a public authority may be invoked as a justification of torture.
2. No State party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
3. All acts of torture are offenses under a State Party's criminal law.
4. State Parties shall afford the greatest measure of assistance in connection with civil proceedings brought in respect of any of the offences
5. To ensure that education and information regarding the prohibition against torture are fully included on persons involved in the custody, interrogation or treatment of any individual subject to any form of arrest, detention, or imprisonment.
6. To keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any

form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any case of torture.
7. To ensure a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed
8. To ensure that an individual subjected to torture has the right complain and have his case promptly and impartially examined by competent authorities
9. To ensure that the victim obtains redress and has an enforceable right to fair and adequate compensation
10. To ensure that any statement established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.
11. To prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture when such acts are committed by or at the instigation of or with the consent of acquiescence of a public official or other person acting in an official capacity.

Q: When may a state party establish its jurisdiction over offenses regarding torture?

A:

1. When the offenses are committed in any territory under its jurisdiction or on board a ship or aircraft registered in the State;
2. When the alleged offender is a national of that State;
3. When the victim was a national of that State if that State considers it appropriate;
4. Where the alleged offender is present in any territory under its jurisdiction and it does not extradite him.

Note: Nos. 1 to 3 are considered as extraditable offences. In the absence of an extradition treaty, the UNCTO may be considered as the legal basis for extradition. Such offenses shall be treated, for the purpose of extradition, as if they have been committed not only in the place in which they occurred but also in the territories of the State required to establish their jurisdiction.

j. INTERNATIONAL HUMANITARIAN LAW (IHL) AND NEUTRALITY

Q: What is International Humanitarian Law (IHL)?

A: It is the branch of PIL which governs armed conflicts to the end that the use of violence is limited and that human suffering is mitigated or reduced by regulating or limiting the means of military operations and by protecting persons who do not or no longer participate in hostilities. It is also known as the law of armed conflict or the law of war.

Q: What are the two branches of IHL?

A:

1. *Law of Geneva* – designed to safeguard military personnel who are no longer taking part in the fighting and people not actively.
2. *Law of the Hague* – establishes the rights and obligations of belligerents in the conduct of military operations, and limits the means of harming the enemy.

Q: What is war?

A: It is contention between two States, through their armed forces, for the purpose of overpowering the other and imposing such conditions of peace as the victor pleases.

Q: What are the two categories of the Laws of war?

A: The two categories are:

1. *Jus in bello* – also known as the law of war. The provisions of international humanitarian law apply to the warring parties irrespective of the reasons for the conflict and whether or not the cause upheld by either party is just. It regulates only those aspects of international law, which are of humanitarian concern.
2. *Jus ad bellum or jus contra bellum* - known as the law on the use of force or law on the prevention of war. The application of humanitarian law does not involve the denunciation of guilty parties as that would be bound to arouse controversy and not paralyze

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

implementation of the law, since each adversary would claim to be a victim of aggression. IHL is intended to protect war victims and their fundamental rights, no matter to which party they belong.

Q: Is the UN Charter committed to the outlawing of war?

A: Yes. Under the UN Charter, the use of force is allowed only in two instances, to wit, in the exercise of the inherent right of self-defense and in pursuance of the so-called enforcement action that may be decreed by the Security Council.

Q: How is war commenced?

A: With the:

1. Declaration of war
2. Rejection of an ultimatum
3. Commission of an act of force regarded by at least one of the parties as an act of war.

Q: What is a declaration of war?

A: A communication by one State to another informing the latter that the condition of peace between them has come to an end and a condition of war has taken place.

Q: What is an *ultimatum*?

A: A written communication by one State to another which formulates, finally and categorically, the demands to be fulfilled if forcible measures are to be averted.

Q: What are the effects of the outbreak of war?

A:

1. Laws of peace are superseded by the laws of war.
2. Diplomatic and consular relations between the belligerents are terminated.
3. Treaties of political nature are automatically cancelled, but those which are precisely intended to operate during war such as one regulating the conduct of hostilities, are activated.
4. Enemy public property found in the territory of other belligerent at the outbreak of the hostilities is with certain exceptions, subject to confiscation.

Note: An army of occupation can only take possession of the cash, funds, and property liable to requisition belonging strictly to the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property of the State which may be used for military operations. *(Article 53, Laws and Customs of War on Land (Hague II), July 29, 1899)*

Q: What are the tests in determining the enemy character of individuals?

A:

1. *Nationality test* – If they are nationals of the other belligerent, wherever they may be.
2. *Domiciliary test* – If they are domiciled aliens in the territory of the other belligerent, on the assumption that they contribute to its economic resources.
3. *Activities test* – If, being foreigners, they nevertheless participate in the hostilities in favor of the other belligerent.

Q: What is the Principle of Distinction?

A: Parties to an armed conflict must at all times distinguish between civilian and military targets and that all military operations should only be directed at military targets.

Q: Who are the participants in war?

A:

1. *Combatants* - those who engage directly in the hostilities, and
2. *Non-combatants* - those who do not, such as women and children.

Q: Who are regarded as combatants?

A:

1. Members of the *armed forces* except those not actively engaged in combat
2. The *irregular forces*, such as the guerrillas, provided that:
   a. They are commanded by a person responsible for his subordinates
   b. They wear a fixed distinctive sign
   c. They carry arms openly; and

d. They conduct their operations in accordance with the laws and customs of war.

3. *Levee en Masse* –the inhabitants of unoccupied territory who, on approach or the enemy, spontaneously take arms to resist the invading troops without having had time to organize themselves, provided only that they carry arms openly and observe the laws and customs of war.
4. The officers and crew members of merchant vessels who forcibly resist attack.

Q: What are armed forces as defined under R.A. 9851?

A: These are all organized armed forces, groups and units that belong to a party to an armed conflict which are under a command responsible to that party for the conduct of its subordinates.

Q: What are the basic principles that underlie the rules of warfare?

A:

1. *The principle of military necessity* – The belligerent may employ any amount of force to compel the complete submission of the enemy with the least possible loss of lives, time and money.

   Note: Under R.A. 9851, it is the necessity of employing measures which are indispensible to achieve a legitimate aim of the conflict and not prohibited by IHL

2. *The principle of humanity* – Prohibits the use of any measure that is not absolutely necessary for the purpose of the war, such as the poisoning of wells.

3. *The principle of chivalry* – Prohibits the belligerents from the employment of treacherous methods, such as the illegal use of Red Cross emblems.

Q: How may war be terminated?

A: By:

1. Simple cessation of hostilities, without the conclusion of a formal treaty
2. Treaty of peace
3. Unilateral declaration
4. The complete submission and subjugation of one of the belligerents

Q: What is Postliminium?

A: The revival or reversion to the old laws and sovereignty of territory which has been under belligerent occupation once control of the belligerent occupant is lost over the territory affected.

Q: When is the Principle of Postliminium applied?

A: Where the territory of one belligerent State is occupied by the enemy during war, the legitimate government is ousted from authority. When the belligerent occupation ceases to be effective, the authority of the legitimate government is automatically restored, together with all its laws, by virtue of the jus postliminium. (**1979 Bar Question**)

Q: What is the Principle of *Utipossidetis?*

A: Allows retention of property or territory in the belligerent's actual possession at the time of the cessation of hostilitites.

Q: What is *status quo ante bellum*?

A: Each of the belligerents is entitled to the territory and property which it had possession of at the commencement of the war.

Q: What are the "new" conflicts covered by the IHL?

A:

1. *Anarchic conflicts* – It is a situation where armed groups take advantage of the weakening or breakdown of the State structures in an attempt to grab power.
2. *Those in which group identity becomes a focal point* – These groups exclude the adversary through "ethnic cleansing" which consists in forcibly displacing or even exterminating populations. This strengthens group feeling to the detriment of the existing national

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

identity, ruling out any possibility of coexistence with other groups.

Q: Differentiate (IHL) from Human Rights Law.

A:

INTERNATIONAL HUMANITARIAN LAW	HUMAN RIGHTS LAW
Applies in situations of armed conflict.	Protects the individual at all times in war and peace alike.
No derogations are permitted under IHL because it was conceived for emergency situations, namely armed conflict.	Some human rights treaties permit governments to derogate from certain rights in situations of public emergency.
Aims to protect people who do not or are no longer taking part in hostilities. The rules embodied in IHL impose duties on all parties to a conflict.	Tailored primarily for peacetime, and applies to everyone. Their principal goal is to protect individuals from arbitrary behavior by their own governments. Human rights law does not deal with the conduct of hostilities.
Humanitarian law obliges States to take practical and legal measures, such as enacting penal legislation and disseminating IHL.	States are bound by human rights law to accord national law with international obligations.
Provide for several specific mechanisms that help its implementation. Notably, States are required to ensure respect also by other States. Provision is also made for inquiry procedure, a Protecting Power mechanism, and the International Fact-Finding Commission. In addition, the International Committee of the Red Cross (ICRC) is given a key role in ensuring respect for the humanitarian rules.	Implementing mechanisms are complex and, contrary to IHL include regional systems. Supervisory bodies, e.g. the UN Commission on Human Rights (UNCHR), are either based on the UN Charter or provided for in specific treaties. The UNCHR have developed a mechanism of special rapporteurs and working groups, whose task is to monitor and report on human rights situations either by country or by topic. It's role is to enhance the effectiveness of the UN human rights machinery and to build up national, regional and international capacity to promote and protect human rights and to disseminate human rights texts and information. Human rights treaties also provide for the establishment of committees of independent experts charged with monitoring their implementation. Certain regional treaties (European and American) also establish human rights courts.

Note: IHL and international human rights law (hereafter referred to as human rights) are complementary. Both strive to protect the lives, health and dignity of individuals, albeit from a different angle.

Q: What is R.A. 9851?

A: R.A. 9851 is the Philippine Act on Crimes Against International Humanitarian Law, Genocide and other Crimes Against Humanity. Its State policies include:

1. The renunciation of war and adherence to a policy of peace, equality, justice, freedom, cooperation and amity with all nations.
2. Values the dignity of every human person and guarantees full respect of human rights
3. Promotion of Children as zones of peace
4. Adoption of the generally accepted principles of international law
5. Punishment of the most serious crimes of concern to the international community
6. To ensure persons accused of committing grave crimes under international law all rights for a fair and strict trial in accordance with national and international law as well as

accessible and gender-sensitive avenues of redress for victims of armed conflicts

The application of the provisions of this Act shall not affect the legal status of the parties to a conflict, nor give an implied recognition of the status of belligerency.

Q: What is the effect /relevance of the passage of R.A. 9851?

A: R.A. 9851 mandates both the State and non-state armed groups to observe international humanitarian law standards and gives the victims of war-crimes, genocide and crimes against humanity legal recourse

Q: What is an "attack directed against any civilian population"?

A: It means a course of conduct involving the multiple commission of acts referred to in other crimes against humanity against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.

Q: What is genocide?

A:

1. Any of the following acts with intent to destroy, in whole or in part, a national, ethnic, racial, religious, social or any other similar stable and permanent group such as:
   a. Killing of members of the group
   b. Causing serious bodily or mental harm to members of the group
   c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
   d. Imposing measure intended to prevent births within the group
   e. Forcibly transferring children of the group to another group

2. Directly and publicly inciting others to commit genocide (*R.A. 9851*)

Q: What are war crimes?

A:

1. In case of an *international armed conflict*, grave breaches of the Geneva Conventions of August 12, 1949, namely any of the following acts against persons or property protected:
   a. Willful killing
   b. Torture or inhuman treatment, including biological experiments
   c. Willfully causing great suffering, or serious injury to body or health
   d. Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly
   e. Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial
   f. Arbitrary deportation or forcible transfer of population or unlawful confinement
   g. Taking hostages
   h. Compelling a prisoner of war or other protected person to serve in the forces of a hostile power; and
   i. Unjustifiable delay in the repatriation of prisoners of war or other protected persons.

2. In case of *non-international armed conflict*, serious violation of common Article 3 to the four Geneva Conventions of 12 August 1949, namely any of the following acts committed against persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:
   a. Violence to life and person, in particular, willful killings, mutilation, cruel treatment and torture
   b. Committing outrages upon personal dignity, in particular humiliating and degrading treatment
   c. Taking of hostages; and
   d. The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensible.

3. Other serious violations of the laws and customs applicable in the armed conflict within the established

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

framework of international law, namely:

a. Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities
b. Intentionally directing attacks against civilian objects, that is, objects which are not military objectives
c. Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of Additional Protocol II in conformity with international law
d. Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict
e. Launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread long-term and severe damage to the natural environment which would be excessive in relation to the concrete and direct military advantage anticipated
f. Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, and causing death or serious injury to body or health
g. Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives, or making non-defended localities or demilitarized zones the object of attack
h. Killing or wounding a person in the knowledge that he/she is *hors de combat*, including a combatant who, having laid down his/her arms no longer having means of defense, has surrendered at discretion
i. Making improper use of a flag of truce, of the flag or the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions or other protective signs under the International Humanitarian Law, resulting in death, serious personal injury or capture;
j. Intentionally directing attacks against buildings dedicated to religion, education, art, science, or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided that they are not military objectives.

   Note: In case of doubt, they shall be presumed not to be so used.

k. Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind, or to removal of tissue or organs for transplantation, which are neither justified by the medical, dental or hospital treatment of the person concerned not carried out in his/her interest, and which cause death to or seriously endanger the health of such person or persons
l. Killing wounding or capturing an adversary by resort to perfidy
m. Declaring that no quarter will be given
n. Destroying or seizing the enemy's property unless such destruction or seizure is imperatively demanded by the necessities of war
o. Pillaging a town or place, even when taken by assault
p. Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand
q. Transferring, directly or indirectly, by occupying power of parts of its own civilian population into the territory it occupies, or the

deportation or transfer of all or parts of the population of the occupied territory within or outside this territory

r. Committing outrages upon personal dignity, in particular, humiliating and degrading treatment
s. Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence
t. Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations
u. Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impending relief supplies
v. In an international armed conflict, compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war
w. In an international armed conflict, declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party
x. Committing any of the following acts:
    i. Conscripting, enlisting or recruiting children under the age of 15 years into the national armed forces
    ii. Conscripting, enlisting, or recruiting children under the age of 18 years into an armed force or group other than the national armed forces; and
    iii. Using children under the age of 18 years to participate actively in hostilities
y. Employing means of warfare which are prohibited under international law, such as:
    i. Poison or poisoned weapons
    ii. Asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
    iii. Bullets which expand or flatten easily in the human body, such as bullets with hard envelopes which do not entirely cover the core or are pierced with incisions
    iv. Weapons, projectiles and material and methods of warfare which are of the nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict (*R.A. 9851*)

Q: What are included in the term "other crimes against humanity" aside from war crimes and genocide under R.A. 9851?

A: "Other crimes against humanity" includes any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

1. *Willful killing*
2. *Extermination* – the intentional infliction of conditions of life, *inter alia,* the deprivation of access to food and medicine, calculated to bring about the destruction of a part of a population.
3. *Enslavement* – the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.
4. *Arbitrary deportation or forcible transfer of population* – forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under domestic or international law
5. *Imprisonment* or other severe deprivation of physical liberty in violation of fundamental rules of international law
6. *Torture* – the intentional infliction of severe pain or suffering, whether physical, mental, or psychological, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

7. *Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity*

   Note: Forced pregnancy means the unlawful confinement of a woman to be forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.

8. *Persecution* against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, sexual orientation other grounds that are universally recognized as impermissible under international law

   Note: Persecution means the intentional and severe deprivation of fundamental rights contrary to international law by reason of identity of the group or collectively

9. *Enforced or involuntary disappearance of persons* – the arrest detention or abduction of persons by, or with the authorization, support, or acquiescence of, a State or a political organization followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time
10. *Apartheid* – Inhumane acts committed in the context of an institutionalized regime of systematic oppression and domination by one racial group/s and committed with the intention of maintaining that regime.
11. Other inhumane acts of similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. *(R.A. 9851)*

1. Categories of Armed Conflicts

Q: What are the kinds/types of conflict as contemplated in R.A. 9851?

A:

1. *International Armed Conflict* – between 2 or more States including belligerent occupation
2. *Non-International Armed Conflict* – between governmental authorities and organized armed groups or between such groups within a State.
3. *War of National Liberation* - an armed struggle waged by a people through its liberation movement against the established government to reach self-determination. *(Ronzitti, Cassese, 1975)*

1.a. International Armed Conflicts

Q: Differentiate between an armed conflict contemplated under the IHL and under R.A. 9851?

A:

1. "All cases of declared war or any other armed conflict which may arise between two or more of the Highest contracting parties, even if the State of war is not recognized by one of them" (*Article 2, Geneva convention of 1949*). It also applies to armed conflict between the government and a rebel or insurgent movement (*Article 3, Geneva convention of 1949*).
2. Under R.A. 9851, it is any use of force or armed violence between States or a protracted armed violence between governmental authorities and organized groups or between such groups within a State *provided* that it gives rise or may give rise to a situation to which the Geneva Conventions of 12 August 1949 including their common Article 3, apply

Q: What are the instances that are not covered by an armed conflict?

A: It does not include internal disturbances or tensions such as:

1. Riots
2. Isolated and sporadic acts of violence
3. Other acts of a similar nature

Q: When is a person considered a *hors de combat?*

A: It is any person who:

1. Is in the power of an adverse party
2. Has clearly expressed an intention to surrender
3. Has been rendered unconscious or otherwise incapacitated by wounds or sickness and therefore is incapable of defending himself (*R.A. 9851*)

Note: In these cases the person abstains from any hostile act and does not attempt to escape.

Q: Who are "Protected persons" in an armed conflict?

A:

1. A person wounded, sick or shipwrecked, whether civilian or military
2. A prisoner of war or any person deprived of liberty for reasons related to an armed conflict
3. A civilian or any person not taking a direct part or having ceased to take part in the hostilities in the power of the adverse party
4. A person who, before the beginning of hostilities, was considered a stateless person or refugee under the relevant international instrument accepted by the parties to the conflict concerned or under the national legislation of the state of refuge or state of residence
5. A member of the medical personnel assigned exclusively to medical purposes or to the administration of medical units or to the operation of an administration of medical transports; or
6. A member of the religious personnel who is exclusively engaged in the work of their ministry and attached to the armed forces of a party to the conflict, its medical units or medical transports or non-denominational, non-combatant military personnel carrying out functions similar to religious personnel.

Note: In such situations the Geneva Conventions and Additional Protocol I apply.

Q: What is suspension of arms?

A: It is a temporary cessation of hostilities by agreement of the local commanders for such purposes as the gathering of the wounded and the burial of the dead.

Q: What is armistice?

A: Suspension of hostilities within a certain area or in the entire region of the war, agreed upon by the belligerents, usually for the purpose of arranging the terms of the peace.

Q: Distinguish armistice from suspension of arms.

A:

ARMISTICE	SUSPENSION OF ARMS
As to the purpose	
Political	Military
As to form	
Usually in writing	May be oral
As to who may conclude	
Only by the commanders-in-chief of the belligerent governments	May be concluded by the local commanders

Q: What is a cease-fire?

A: Unconditional stoppage of all hostilities usually ordered by an international body like the United Nations Security Council.

Q: What is a truce?

A: A conditional ceasefire for political purposes.

Q: What is a capitulation?

A: Surrender of military forces, places or districts, in accordance with the rules of military honor.

1.b. Internal or non-international Armed Conflict

Q: What law applies to internal disturbances and other situations of internal violence?

A: These are governed by the provisions of human rights law and such measures of domestic legislation as may be invoked. IHL does not apply to situations of violence not amounting in intensity to an armed conflict.

Q: When does IHL apply in terms of non-international armed conflicts?

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

A: Humanitarian law is intended for the armed forces, whether regular or not, taking part in the conflict, and protects every individual or category of individuals not or no longer actively involved in the hostilities. E.g.: wounded or sick fighters; people deprived of their freedom as a result of the conflict; civilian population; medical and religious personnel.

Each Party to a conflict shall be bound to apply to the following provisions:

1. Persons taking no active part in the hostilities, including armed forces who have laid down their arms and those placed *hors de combat* be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. To these end, the following acts are and shall remain prohibited at any time and any place whatsoever with respect to the abovementioned persons:

    a. Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture
    b. Taking of hostages
    c. Outrages against personal dignity, in particular humiliating and degrading treatment
    d. The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2. The wounded and sick shall be collected and cared for.

Note: An impartial humanitarian body, such as the international committee of Red Cross, may offer its services to the parties to the conflict.

1.c. War of National Liberation

Q: What are wars of national liberation?

A: These are armed conflicts in which people are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self determination. *[Article 1(4), Protocol I]* These are sometimes called insurgencies, rebellions or wars of independence.

Q: What is its basis?

A: Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

Q: What are the categories on the wars for national liberation?

A: Its categories are:

1. Colonial domination
2. Alien occupation; and
3. Racist regimes when the 'people's oppressed by these regimes are fighting for self-determination.

    Note: The wars of national liberation are restrictive in the sense that they only fall under the following situations.

Q: What is the effect of the said Protocol?

A: Armed conflicts that fall under the categories will now be regarded as international armed conflicts and thus fall under the International Humanitarian Law.

2. Core International Obligations of States in IHL

Q: What are the essential rules of IHL?

A:

1. The parties to a conflict must at all times distinguish between the civilian population and combatants

2. Neither the civilian population as a whole nor individual civilians may be attacked

3. Attacks may be made sole against military objectives

4. People who do not or can no longer take part in the hostilities are entitled to respect for their lives and for their physical and mental integrity and must

be treated with humanity, without any unfavorable distinction whatever.

5. It is forbidden to kill or wound an adversary who surrenders or who can no longer take part in the fighting

6. Neither the parties to the conflict nor members of their armed forces have an unlimited right to choose methods and means of warfare

7. It is forbidden to use weapons or methods of warfare that are likely to cause unnecessary losses and excessive suffering.

8. The wounded and sick must be collected and cared for by the party to the conflict which has them in its power.

9. Medical personnel and medical establishments, transports and equipment must be spared. The red cross or red crescent is the distinctive sign indicating that such persons and objects must be respected

10. Captured combatants and civilians who find themselves under the authority of the adverse party are entitled to respect for their lives, their dignity, their personal rights and their political, religious and other convictions and must be protected against all acts of violence or reprisals; entitled to exchange of news with their families and receive aid and enjoy basic judicial guarantees.

3. Principles of IHL

Q: What are the fundamental principles of the IHL?

A:

1. Parties to armed conflict are prohibited from employing weapons or means of warfare that cause unnecessary damage or excessive suffering.*(Principle of prohibition of use of weapons of a nature to cause superfluous injury or unnecessary suffering)*
2. Parties to armed conflict shall distinguish between civilian populace from combatants and spare the former from military attacks.*(Principle of distinction between civilians and combatants)*
3. Persons *hors de combat* and those who do not take part in hostilities shall be protected and treated humanely without any adverse distinction.
4. It is prohibited to kill or injure an enemy who surrenders or who is a hors de combat.
5. The wounded and the sick shall be protected and cared for by the party who is in custody of them.
6. Parties who captured civilians and combatants shall respect their rights to life, dignity, and other personal rights.

3.a. Treatment of Civilians

Q: What is the Martens clause/Principle of humanity?

A: In cases not covered by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.

3.b. Prisoners of War

Q: What are the rights and privileges of prisoners of war?

A:

1. They must be treated humanely, shall not be subjected to physical or mental torture, shall be allowed to communicate with their families, and may receive food, clothing, educational and religious articles.
2. They may not be forced to reveal military data except the name, rank, serial number, army and regimental number and date of birth; they may not be compelled to work for military services
3. All their personal belonging except their arms and military papers remain their property.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

4. They must be interned in a healthful and hygienic place.
5. After the conclusion of peace, their speedy repatriation must be accomplished as soon as is practicable.

4. Law of Neutrality

Q: What is neutrality?

A: It is non-participation, directly or indirectly, in a war between contending belligerents. This exists only during war time and is governed by the law of nations. Examples of these states are Switzerland, Sweden, The Vatican City, Costa Rica.

Q: What is non-alignment (Neutralism)?

A: This refers to peacetime foreign policies of nations desiring to remain detached from conflicting interests of other nations or power groups.

Q: What is a neutralist policy?

A: It is the policy of the state to remain neutral in future wars. Non-alignment is the implementation of neutralism.

Q: How is non-alignment different from neutrality?

A:

NEUTRALITY	NON-ALIGNMENT
Presupposes the existence of war or conflict	Exists during peace time
Avoids involvement in a war	Rejects imperialism and colonialism by the world powers
Pre-determined position	Evaluates the world political events based on case-to-case merits

Q: When is a State considered as a neutralized State?

A: Where its independence and integrity are guaranteed by an international convention on the condition that such State obligates itself to never take up arms against any other State, except for self-defense, or enter into such international obligations as would indirectly involve a war.

Note: A State seeks neutralization where it is weak and does not wish to take active part in international politics. The power that guarantees its neutralization may be motivated either by balance of power considerations or by desire to make the State a buffer between the territories of the great powers.

Q: What are the rights and duties of a neutral State?

A:

1. Abstain from taking part in the hostilities and from giving assistance to either belligerent;
2. Prevent its territory and other resources from being used in the conduct of hostilities*(Right of territorial Integrity)*; and
3. Acquiesce in certain restrictions and limitations the belligerents may find necessary to impose.
4. To continue diplomatic relations with other neutral states and with the belligerents *(Right of diplomatic communications)*.

Q: What are the obligations of belligerents?

A:

1. Respect the status of the neutral State;
2. Avoid any act that will directly or indirectly involve it in their conflict and to submit to any lawful measure it may take to maintain or protect its neutrality.

Q: What are some restraints on neutral States?

A: The following are some restraints:

1. Blockade
2. Contraband of war
3. Free ships make free goods

Q: What is a blockade?

A: It is a hostile operation by means of which vessels and aircraft of one belligerent prevent all other vessels, including those of neutral States, from entering or leaving the ports or coasts of the other belligerent, the purpose being to shut off

the place from international commerce and communications with other States.

Q: What is contraband?

A: It refers to goods which, although neutral property, may be seized by a belligerent because they are useful for war and are bound for a hostile destination.

They may be *absolute*, such as guns or ammunition, which are useful for war under all circumstances; *conditional*, such as food and clothing, which have both civilian and military utility; or under the *free list*, such as medicines, which are exempt from the law on contraband for humanitarian reasons.

Q: What is the doctrine of Infection?

A: Innocent goods shipped with contraband may also be seized.

Q: What is the doctrine of Ultimate Consumption?

A: Goods intended for civilian use which may ultimately find their way to and be consumed by belligerent forces may be seized on the way.

Q: What is the doctrine of Ultimate Destination?

A: The liability of the contraband from being captured is determined not by their ostensible but by their real destination.

Q: What is the doctrine of "Free ships make free goods"?

A: A ship's nationality determines the status of its cargo. Thus, enemy goods on a neutral ship, excepting contraband, would not be subject to capture on the high seas.

Q: What is the concept of Visit and Search?

A: Belligerent warships and aircraft have the right to visit and search neutral merchant vessels on the high seas to determine whether they are in any way connected with the hostilities.

Q: What is unneutral service?

A: It consists of acts, of a more hostile character than carriage of contraband or breach of blockade, which are undertaken by merchant vessels of a neutral State in aid of any of the belligerents.

Q: What is the Right of Angary?

A: By the right of angary, a belligerent may, upon payment of just compensation, seize, use or destroy, in case of urgent necessity for purposes of offenses or defense, neutral property found in enemy territory, or on the high seas.

Q: What are the requisites before Right of Angary may be exercised?

A:

1. That the property is in the territory under the control or jurisdiction of the belligerent;
2. That there is urgent necessity for the taking; and
3. That just compensation is paid to the owner.

Q: When is neutrality terminated?

A: When the neutral State itself joins the war or upon the conclusion of peace.

k. LAW OF THE SEA

Q: What is the International Law of the Sea (ILS)?

A: A body of treaty rules and customary norms governing the uses of the sea, the exploitation of its resources, and the exercise of jurisdiction over maritime regimes.

Q: What is the United Nations Convention on the Law of the Sea (UNCLOS)?

A: It defines the rights and obligations of nations in their use of the world's oceans, establishing rules for business, the environment and the management of marine natural resources.

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

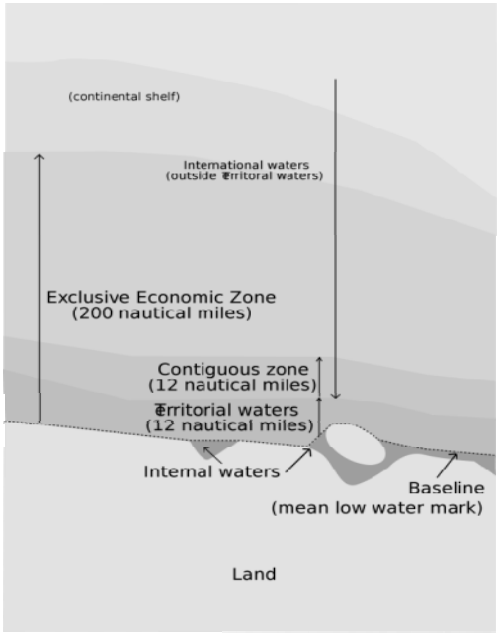
Q: What is the *mare liberum* principle or the Free Sea or Freedom of the Sea?

A: It means international waters are free to all nations and belongs to none of them.

1. Baselines

Q: What is a baseline?

A: It is a line from which the breadth of the territorial sea, the contiguous zone and the exclusive economic zone is measured in order to determine the maritime boundary of the coastal State.



Q: How is a baseline formed in the following?

A:

1. *Mouths of Rivers* – If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-water line of its banks. *(Article 9, UNLOS)*
2. *Bays* – Where the distance between the low-water marks of the natural entrance points:
   a. *Does not exceed 24 nautical miles* – closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters. *(Article 10 [4], UNCLOS)*
   b. *Exceeds 24 nautical miles*–straight baseline of 24 nautical miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length. *(Article 10 [5], UNCLOS)*

Note: This relates only to bays the coasts of which belong to a single State and does not apply to "historic" bays *(Article 10 (1), UNCLOS)*

Q: What is a bay?

A: It is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. *(Article 10 (2), UNCLOS)*

Note: The indentation shall not be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation. *(Ibid)*

2. Archipelagic States

Q: What is an archipelago?

A: It means a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such *(Article 46, UNCLOS)*

Q: What is an Archipelagic State?

A: A state constituted wholly by one or more archipelagos and may include other islands. *(Article 46, UNCLOS)*

Q: What is the effect of R.A. 9522 or An Act to Amend Certain Provisions of Republic Act No. 3046, As Amended by Republic Act 5446, To Define the Archipelagic Baseline of the Philippines and For Other Purposes?

A. R.A. 9522 (approved: March 10, 2009) amends R.A. 3046, which defines the baselines of the territorial sea of the Philippines. The Kalayaan Island Group as constituted under P.D. No. 1596 and Bajo de Masinloc, also known as Sacrborough Shoal is determined as "Regime of Islands" under the Republic of the Philippines consistent with Article 121 of the United Convention on the Law of the Sea which states:

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.
2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
3. Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

Note: In a petition filed by Prof. Merlin Magallona, it states that RA 9522 violates the 1987 Constitution as it declares the Philippines as an "archipelagic state" under the UNCLOS and uses the straight baselines method that effectively changed the shape of Philippine territory as defined in the Treaty of Paris. In addition, it was also claimed that the law converts the country's territorial waters into archipelagic waters under the UNCLOS, thus violating the 1987 Constitution, which stipulates that the waters connecting the country's islands are internal waters. The effect of such is that the law allows foreign ships, including nuclear-powered ships or vessels carrying weapons-grade nuclear substances to pass through archipelagic waters in a continuous manner. This is because under the UNCLOS, States can exercise the right of innocent passage and archipelagic sea lanes passage over archipelagic waters.

2.a. Straight Archipelagic Baselines

Q: How may an archipelagic State draw straight archipelagic Baselines?

A: By joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ration of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1. *(Article 47, UNCLOS)*

Q: What are the some of the guidelines in drawing archipelagic baselines?

A:

1. The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles. *(Article 47 [2], UNCLOS)*
2. The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago. *(Article 47[3], UNCLOS)*
3. Such baselines shall not be drawn to and from low tide elevations *(Article 47[4], UNCLOS)*

Note: Unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distances not exceeding the breath of the territorial sea from the nearest island. *(Ibid)*

4. It shall not be applied in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State. *(Article 47[5], UNCLOS)*
5. If a part of the archipelagic water of an archipelagic State lies between two parts of an immediately adjacent neighboring State, existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated by agreement between those States shall continue and be respected. *(Article 47[6], UNCLOS)*

Q: How is the breadth of the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf measured?

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

A: They are measured from the archipelagic baselines drawn. *(Article 48, UNCLOS)*

Q: How does the sovereignty of the archipelagic state extends?

A: It extends to the waters enclosed by the archipelagic baselines (archipelagic waters, regardless of their depth or distance from the coast, to the air space over the archipelagic waters, as well as to their bed and subsoil and the resources contained therein. *(Article 49[1], UNCLOS)*

Note: The regime of archipelagic sea lanes passage shall not in other respects affect the status of the archipelagic waters, including the sea lanes, or the exercise by the archipelagic State of its sovereignty over such waters and their air space, bed and subsoil and the resources contained therein. *(Article 49[4], UNCLOS)*

2.b. Archipelagic Waters

Q: What are archipelagic waters?

A: These are waters enclosed by the archipelagic baselines, regardless of their depth or distance from the coast. *(Article 49[1], UNCLOS)*

Q: Does sovereignty of the archipelagic state extend to the archipelagic waters?

A: Yes, but is subject to the right of innocent passage which is the same nature as the right of innocent passage in the territorial sea. *(Article 49[1] in relation to Article 52[1], UNCLOS)*

Q: What are the other rights by which they are subject to?

A:

1. Rights under existing agreement on the part of the third states should be respected; *(Article 51[1], UNCLOS)*
2. The traditional fishing rights and other legitimate activities of the immediately adjacent neighboring States *(Ibid)*
3. Existing submarine cables laid by other States and "passing though its waters without making a windfall" as well as the maintenance and replacement of such cables upon being notified of their location and the intention to repair or replace them. *(Article 51[2], UNCLOS)*

Q: Does the right of innocent passage exist in archipelagic waters?

A: Yes. As a rule, ships of all States enjoy the right of innocent passage through archipelagic waters. *(Article 52[1}, UNCLOS)*

Q: May the right of innocent passage be suspended in some areas of its archipelagic waters?

A: Yes. But such suspension must be:

1. Without discrimination in form or in fact among foreign ships;
2. Essential for the protection of its security; and
3. Shall take effect only after having been duly published. *(Article 52[2], UNCLOS)*

2.c. Archipelagic Sea Lanes Passage

Q: What is the right of archipelagic sea lanes passage?

A: It is the right of foreign ships and aircraft to have continuous, expeditious and unobstructed passage in sea lanes and air routes through or over the archipelagic waters and the adjacent territorial sea of the archipelagic state, "in transit between one part of the high seas or an exclusive economic zone." All ships and aircraft are entitled to the right of archipelagic sea lanes passage. *(Magallona, 2005; Article 53[1] in relation with Article 53[3], UNCLOS)*

Q: What are included in the sea lanes and air routes?

A: It shall traverse the archipelagic waters and the adjacent territorial sea and shall include all normal passage routes used as routes for international navigation or overflight through or over archipelagic waters and, within such routes, so far as ships are concerned, all navigational channels, provided that duplication of routes of similar convenience between the same entry and exit points shall not be necessary.*(Article 53[4], UNCLOS)*

Q: How are sea lanes designated or substituted for the purpose of archipelagic sea lanes passages?

A: The archipelagic State shall refer proposals to the competent international organization (International Maritime Organization). The IMO may adopt only such sea lanes as may be agreed with the archipelagic State, after which the archipelagic State may designate, prescribe or substitute them. *(Magallona, 2005; Article 53[9], UNCLOS)*

Q: How will the archipelagic sea lanes passage be designated should the archipelagic State not designate sea lanes?

A: The right of archipelagic sea lanes passage may be exercised through the routes normally used for international navigation. *(Article 53[12], UNCLOS)*

Q: Are warships, including submarines, entitled to the right of archipelagic sea lanes passage?

A: Yes. All ships are entitled to the right. Submarines are not required to surface in the course of his passage unlike the exercise of right of innocent passage in the territorial sea. *(Magallona, 2005; Article 20 in relation to Article 53[3], UNCLOS)*

3. Internal Waters

Q: What are internal waters?

A: These are waters of lakes, rivers and bays landward of the baseline of the territorial sea. Waters on the landward side of the baseline of the territorial sea also form part of the internal waters of the coastal state. However, in the case of archipelagic states, waters landward of the baseline other than those of rivers, bays, and lakes, are archipelagic waters. *(Magallona, 2005; Article 8 [1], UNCLOS)*

Q: How is the delimitation of internal waters?

A: Within the archipelagic waters, the Archipelagic State may draw closing lines for the delimitation of internal waters *(Article 50, in relation with 9, 10, 11, UNCLOS)*

Q: Does the coastal state have the sovereignty over its internal waters?

A: Yes, as if internal waters were part of its land territory. *(Magallona, 2005; Article 50, UNCLOS)*

Q: Is there a right of innocent passage through internal waters?

A:

GR: No, it applies only to territorial sea and the archipelagic waters *(Magallona, 2005; Article8[2], UNCLOS)*

XPN: A coastal state may extend its internal waters by applying the straight baseline method in such a way as to enclose as its internal waters areas which are previously part of the territorial sea. It also applies to straits used for international navigation converted into internal waters by applying the straight baselines method. Thus, the right of innocent passage continues to exist in the "extended" internal waters. *(Magallona, 2005; Article 8[2], UNCLOS)*

4. Territorial Sea

Q: What is the breadth of the territorial sea?

A: Every State has the right to establish the breadth of the territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines. *(Article 3, UNCLOS)*

Q: What is the outer limit of the territorial sea?

A: It is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea. *(Article 4, UNCLOS)*

Q: Distinguish briefly but clearly between the territorial sea and the internal waters of the Philippines.

A: *Territorial water* is defined by historic right or treaty limits while internal water is defined by the

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

archipelago doctrine. The territorial waters, as defined in the Convention on the Law of the Sea, has a uniform breadth of 12 miles measured from the lower water mark of the coast; while the outermost points of our archipelago which are connected with baselines and all waters comprised therein are regarded as *internal waters*. **(2004 Bar Question)**

Q: Give the importance of the distinction between internal waters and territorial sea.

A: In the territorial sea, a foreign State can claim for its ships the right of *innocent passage*, whereas in the internal waters of a State no such right exists. *(Salonga & Yap, 1992)*

Q: What are the methods used in defining territorial sea?

A:

1. *Normal baseline method* – the territorial sea is simply drawn from the low-water mark of the coast, to the breadth claimed, following its sinuousness and curvatures but excluding the internal waters in the bays and gulfs. *(Article 5, UNCLOS)*
2. *Straight baseline method* – where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measure. *(Article. 7, UNCLOS)*

   Note: The Philippines uses this method in drawing baselines

Q: Explain the right of innocent passage.

A: It means navigation through the territorial sea of a State for the purpose of traversing the sea without entering internal waters, or of proceeding to internal waters, or making for the high seas from internal waters, as long as it is not prejudicial to the peace, good order or security of the coastal State. *(Articles 18 [1][2], 19[1], UNCLOS)*

Q: When is the right of innocent passage considered prejudicial?

A: If the foreign ship engages in the following activities:

1. Any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations
2. Any exercise or practice with weapons of any kind
3. Any act aimed at collecting information to the prejudice of the defense or security of the coastal State
4. Any act aimed at collecting information to the prejudice of the defense or security of the coastal State
5. Any act of propaganda aimed at affecting the defense or security of the coastal State
6. The launching, landing or taking on board of any aircraft
7. The launching, landing or taking on board of any military device
8. The loading or unloading of any commodity, currency or person contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State
9. Any act of willful and serious pollution contrary the Convention
10. Any fishering activities
11. The carrying out of research or survey activities
12. Any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State
13. Any other activity not having a direct bearing on passage. *(Article 19 [2], UNCLOS)*

Q: What are the laws and regulations of the coastal State relating to innocent passage that it may adopt?

A: It may adopt laws and regulations in respect of all or any of the following:

1. Safety of navigation and the regulation of maritime traffic
2. Protection of navigational aids and facilities and other facilities or installations
3. Protection of cables and pipelines
4. Conservation of the living resources of the sea

5. Prevention of infringement of the fisheries laws and regulations of the coastal State
6. Preservation of the environment of the coastal State and the prevention, reduction and control of pollution thereof
7. Marine Scientific research and hydrographic surveys
8. Prevention of infringement of the customs, fiscal, immigration or sanitary laws and regulations of the coastal State. *(Article 21[1], UNCLOS)*

   Note: it shall not however, apply to the design, construction, manning or equipment of foreign ships unless they are giving effect to generally accepted international rules or standards. *(Article 21[2], UNCLOS)*

Q: What are the rules for the following vehicles when traversing the territorial sea through the right of innocent passage?

A:

1. *Submarines and other underwater vehicles* - They are required to navigate on the surface and to show their flag. *(Article 20, UNCLOS)*
2. *Foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances* – They must carry documents and observe special precautionary measures established for such ships by international agreements. They may be required to confine their passage on sea lanes prescribed by the coastal State. *(Article 23, UNCLOS)*
3. *Warships* **–**
   a. Coastal State may require that it leave the territorial sea immediately when it does not comply with the laws and regulations of the coastal State and disregards compliance *(Article 30, UNCLOS)*
   b. Flag State shall bear international responsibility for any loss or damage to the coastal State resulting from non-compliance with the laws and regulations of the coastal State concerning passage. *(Article 31, UNCLOS)*

   Note: This will not affect the immunities of warships and other government ships operated for non-commercial purpose. *(Article 32, UNCLOS)*

Q: What is a warship?

A: It is a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline. *(Article 29, UNCLOS)*

Q: What are the duties of the coastal State with regard to innocent passage of foreign ships?

A: The Coastal State shall:

1. Not hamper the innocent passage of the foreign ships through its territorial sea;
2. Not impose requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage;
3. Not discriminate in form or in fact against the ships of any State or against ships carrying cargoes to, from or on behalf of any State; and
4. Give appropriate publicity to any danger to navigation, of which it has knowledge, within its territorial sea. *(Article 24, UNCLOS)*

Q: What are the rights of protection of the coastal State?

A: Coastal State may:

1. Take the necessary steps in its territorial sea to prevent passage which is not innocent; *(Article 24[1], UNCLOS)*
2. Take the necessary steps to prevent any breach of the conditions to which admission of ships to internal waters or such a call is subject; *(Article 24[2], UNCLOS)*
3. Without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security, including weapon exercises. *(Article 24[3], UNCLOS)*

Q: May charges be levied upon foreign ships?

A: No charge may be levied upon foreign ships by reason only of their passage through the territorial sea. *(Article 26[1], UNCLOS)*

Note: Charges may be levied only as payment for specific services rendered to the ship which shall be levied without discrimination. *(Article 26[2], UNCLOS)*

Q: May criminal jurisdiction be exercised by the coastal State?

A:

GR: Criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage.

XPNs:

1. Consequence of the crime extend to the coastal State;
2. Crime is of a kind to disturb the peace of the country or the good order of the territorial sea
3. Assistance of local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State; or
4. Measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances *(Article 27[1], UNCLOS)*

Note: Such does not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters. *(Article 27[2], UNCLOS)*

Q: May civil jurisdiction be exercised by the Coastal State?

A: Yes it may. Subject to the following exceptions:

1. It should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship *(Article 28[1], UNCLOS)*
2. It may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State. *(Article 28[2], UNCLOS)*

Note: It is without prejudice to the right of the Coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters. *(Article 28[3], UNCLOS)*

Q: What is the contiguous zone?

A: The contiguous zone is the zone adjacent to the territorial sea, which the coastal State may exercise such control as is necessary to (1) prevent infringement of its customs, fiscal, immigration, or sanitary laws within its territory or its territorial sea or (2) to punish such infringement. The contiguous zone may not extend more than 24 nautical miles beyond the baseline from which the breadth of the territorial sea is measured (twelve nautical miles from the territorial sea *[Article 33, UNCLOS*).

Q: What is transit passage?

A: It is the right to exercise freedom of navigation and overflight solely for the purpose of continuous and expeditious transit through the straits used for international navigation, i.e., between two areas of the high seas or between two exclusive economic zones. All ships and aircraft enjoy the right of transit passage. The requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State. *(Magalona, 2005; Article 38[2], UNCLOS)*

Q: When does Right of transit passage not applicable?

A: If there exists seaward of the island a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydroghraphical characteristics. *(Article 38[1], UNCLOS)*

Q: Distinguish the right of innocent from transit passage.

A:

Innocent Passage	Transit Passage
Pertains only to navigation of ships	Includes right of overflight
Requires submarine and other underwater vehicles to navigate on the surface and to show their flag	No requirement specially applicable to submarines
Can be suspended	Cannot be suspended
In designation of sea lanes and traffic separation schemes, the coastal State shall only take account of the recommendations of the competent international organization	Designation of sea lanes and traffic separation schemes is subject to adoption by competent international organization upon proposal and agreement of States bordering the straits.

Note: The coastal State may, without discrimination in form or in fact among foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security, including weapons exercises. Such suspension shall take effect only after having been duly published (*Part II Territorial Sea and Contiguous Zone, Art. 25(3) UNCLOS*)

Q: What is the Thalweg doctrine?

A: It provides that for boundary rivers, in the absence of an agreement between the riparian States, the boundary line is laid in the middle of the main navigable channel.

5. Exclusive Economic Zone

Q: What is the exclusive economic zone?

A: It gives the coastal State sovereign rights over all economic resources of the sea, sea-bed and subsoil in an area extending not more than 200 nautical miles beyond the baseline from which the territorial sea is measured. *(Magallona, 2005; Articles 55 & 57, UNCLOS))*

Q: What are the rights of the coastal state in the Exclusive Economic Zone?

A:

1. *Sovereign rights*:
   a. For the purpose of exploring and exploiting, conserving and managing the living and non-living resources in the super adjacent waters of the sea-bed and the resources of the sea-bed and subsoil;
   b. With respect to the other activities for the economic exploitation and exploration of the EEZ, such as production of energy from water, currents and winds;
2. *Jurisdictional right:*
   a. With respect to establishment and use of artificial islands;
   b. As to protection and preservation of the marine environment; and
   c. Over marine scientific research
3. Other rights and duties provided for in the Law of the Sea Convention.

Q: What are the two primary obligations of coastal states over the exclusive economic zone?

A:

1. Proper conservation and management measures that the living resources of the EEZ are not subjected to overexploitation;
2. Promote the objective of "optimum utilization" of the living resources. *(Magallona, 2005, (Article 61[2], 62[1] UNCLOS)*

Q: May the coastal State inspect and arrest a ship's crew in its EEZ?

A: Yes. The coastal State may board, and inspect a ship, arrest a ship and its crew and institute

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

judicial proceedings against them. Arrested vessels and their crews may be required to post reasonable bond or any other form of security. However, they must be promptly released upon posting of bond.

In the absence of agreement to the contrary by the States concerned, the United Nations Convention on the Laws Of Sea (UNCLOS) does not allow imprisonment or any other form of corporal punishment. However, in cases of arrest and detention of foreign vessels, it shall promptly notify the flag state of the action taken.

Q: What are land-locked States?

A: These are states which do not border the seas and do not have EEZ. *(Magallona, 2005)*

Q: What are geographically disadvantaged states?

A: These are:

1. Coastal states which can claim no EEZ of their own; and
2. Coastal states, including states bordering closed or semi-closed states, whose geographical situations make them dependent on the exploitation of the living resources of the EEZ of other coastal states in the region. *(Magallona, 2005, Article 70[2], UNCLOS)*

Q: What are the rights of land-locked states and geographically disadvantaged states?

A:

1. Land-locked States shall have the right to participate, on an equitable basis, the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States of the same subregion or region, taking into account the relevant economic and geographical circumstances of all States concerned. *(Article 69[1], UNCLOS)*

2. Developed land-locked States shall be entitled to participate in the exploitation of living resources only in the exlusive economic zones of developed coastal States of the same subregion or region having regard to the extent to which the coastal State, in giving access to other States to the living resources of its exclusive economic zone, has taken into account the need to minimize detrimental effects on fishing communities and economic dislocation in States whose nationals have habitually fished in the zone. *(Article 70[1], UNCLOS)*

Note: This is without prejudice to arrangements agreed upon in subregions or regions where the coastal State may grant to land-locked States of the same subregion or region equal or preferential rights for the exploitation of the living resources in the EEZ. *(Article 70[4], UNCLOS)*

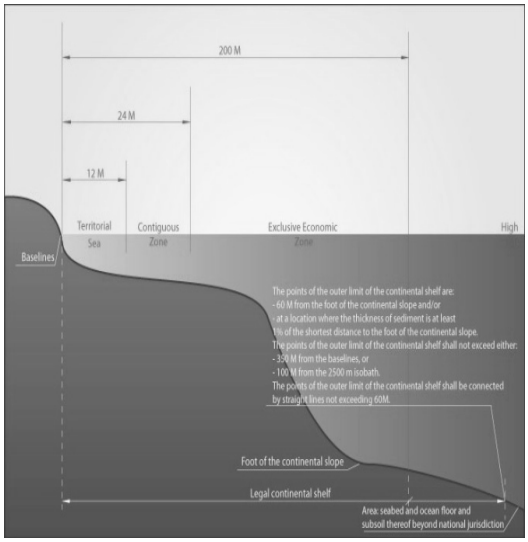
This however shall not apply in case of a coastal State whose economy is overwhelmingly dependent on the exploitation of the living resources of its EEZ. *(Article 71, UNCLOS)*

6. Continental Shelf

Q: What are the two categories of continental shelf?

A: The two categories are:

1. Continental shelf
   a. Geological continental shelf
   b. Juridical/Legal Continental Shelf
2. Extended Continental Shelf



Q: What is the geological continental shelf?

A: It comprises the entire prolongation of the coastal state's land mass and extends up to the outer edge of the continental margin. It starts from the baseline from which the territorial sea is measured and has its outer limit at the outer edge of the continental margin which may extend beyond the 200 nautical miles from the baseline, or may fall short of that distance. *(Magallona,2005)*

Q: What is the continental shelf (Juridical/Legal Continental Shelf)?

A: It comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles beyond the baselines from which the breadth of the territorial sea is measured if the edge of the continental margin does not extend up to that distance. *(Article 76[1], UNCLOS)*

Note: The rights of the Coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation. *(Article 77[3], UNCLOS)*

Q: How are the two shelves unified?

A: The UNCLOS unifies the two shelves into one by providing that the continental shelf extends to the breadth of either shelf, whichever is the farthest. *(Magallona, 2005; Article 76[1][4], UNCLOS)*

Q: What is the continental margin?

A: It is the submerged prolongation of the land mass of the coastal state, consisting of the continental shelf proper, the continental slope and the continental rise. It does not include the deep ocean floor with its ocean ridges or the subsoil. *(Article 76[3] , UNCLOS)*

Q: May the Continental Shelf extend farther that the continental margin?

A: Yes, wherever the margin does not extend beyond the 200 nautical miles from the baseline. *(Magallona, 2005, Article 76[1], UNCLOS)*

Q: May the Continental Margin extend beyond the 200 nautical mile?

A: Yes, the coastal State shall establish the outer edge of the continental margin wherever the margin extends beyond the 200 nautical miles from the baselines. In establishing the Continental Margin it shall either use:

1. A line drawn by reference to points no more than 60 nautical miles form the foot of the continental slope, or
2. A line drawn by reference to points at which the thickness of sediments is less than one percent of the distance to the base of the continental slope. *(Article 76[4], UNCLOS)*

Q: What is the permissible breadth of the continental shelf?

A: Under the said UN Convention, it extends to a distance not extending 200 nautical miles from the baselines. However, if the coastal State succeeds in its application for an extended continental shelf, it may extend to not more than 350 nautical miles. *(Article 76[1][5], UNCLOS)*

Note: Under Presidential Proclamation No. 370, the continental shelf has no such legal limit. It extends outside the area of the territorial sea "to where the depth of the superjacent waters admits of the exploitation of such natural resources." In this case, exploitation of resources may go beyond the 200 nautical miles.

6.a. Extended Continental Shelf

Q: What is the Extended Continental Shelf?

A: It is that portion of the continental shelf that lies beyond the 200 nautical miles limit in the juridical/legal continental Shelf. *(Ibid)*

Q: What is the Commission on the Limits of the Continental Shelf (CLSC)?

A: It is that facilitates the implementation of the UNCLOS in respect of the establishment of the

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

outer limits of the continental shelf beyond 200 nautical miles (M) from the baselines from which the breadth of the territorial sea is measured.

Q: What is the Benham Plateau?

A: Also known as the Benham Rise, it is an area currently claimed, as part of its continental shelf, by the Republic of the Philippines. It has lodged its claim on the area with the United Nations Commission on the Limits of the Continental Shelf on April 8, 2009. *(A Partial Submission of Data and Information on the Outer Limits of the Continental Shelf of the Republic of the Philippines pursuant to Article 76(8) of the UNCLOS)*

Q: What are the sovereign rights of a coastal State over the continental shelf?

A: The sovereign rights include:

1. Right to explore and exploit its natural resources; *(Article 77[1], UNCLOS)*

   Note: This right is exclusive. Should the Coastal State not explore or exploit the natural resources, no one may undertake these activities without the express consent of the coastal State. *(Article 77[2], UNCLOS)* Natural resources includes mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species. *(Article 77[4], UNCLOS)*

   Exploitation of the non-living resources of the continental shelf beyond 200 nautical miles would entail the Coastal State to make payments or contributions in kind which shall be made annually with respect to all production at site after the first five years of production and 1% of the value or volume of production at the site at the sixth year. It shall increase by 1% for each subsequent year until the 12th year where it shall remain at 7%. *(Article 82[1][2], UNCLOS)*

   XPN: Developing State which is a net importer of a mineral resource produced from its continental shelf. *(Article 82[3], UNCLOS)*

2. To lay submarine cables and pipelines on the continental shelf; *(Article 79[1], UNCLOS)*

   Note: State may make reasonable measures for the prevention, reduction and control of pollution from pipelines. The laying of cables is limited by the right of the coastal state to take measures in exploring its continental shelf, exploiting the natural resources, and the protection of the marine environment from pollution. *(Article 79, UNCLOS)*

3. Artificial islands, installations and structures on the continental shelf; *(Article 80, UNCLOS)*

   Note: Exclusive right to construct, to authorize the construction, operation and use of artificial islands and installations. Jurisdiction is also exclusive. *(Article 80, UNCLOS)*

4. Marine scientific research *(Article 246[1] , UNCLOS)*

   Note: May be conducted only with consent. Beyond the 200 nautical mile, the costal State cannot withhold consent to allow research on the ground that the proposed research project has direct significance to exploration or exploitation of natural resources. *(Article 246[2][6], UNCLOS)*

5. Right to authorize and regulate drilling on the continental shelf for all purposes *(Article 81, UNCLOS)*

   Note: This right is an exclusive.

Q: What is the effect of the rights of the coastal State over the continental shelf on the superjacent waters and airspace?

A: It does not affect the legal status of the superjacent waters or of the air space above those waters and such exercise of right must not infringe or result in unjustifiable interference with navigation and other rights and freedoms of other States. *(Article 78[1][2], UNCLOS)*

Q: What is an island?

A: It is a naturally formed area of land, surrounded by water, which is above water at high tide.

Q: Is the continental shelf of an island recognized?

A: Yes. However, rocks which cannot sustain human habitation or economic life shall have no continental shelf or EEZ.

Q: What are high or open seas?

A: The waters which do not constitute the internal waters, archipelagic waters, territorial sea and exclusive of the economic zone of a state. They are beyond the jurisdiction and sovereign rights of states. *(Article 86, UNCLOS)*

It is treated as *res communes or res nullius*, and thus, are not part of the territory of a particular State. *(Article 89, UNCLOS)*

Q: What are the freedoms of the high seas?

A: These are the freedom of:

1. Navigation
2. Overflight
3. To lay submarine cables and pipelines
4. To construct artificial islands and other installations permitted under international law
5. Fishing
6. Scientific research *(Article 87[1] in relation to Article 90, UNCLOS)*

Note: This are open to all States and shall be exercised with due regard for the interests of other States in their exercise of the freedom of the high seas. *(Article 87[2], UNCLOS)*

Q: What is flag State?

A: It refers to the State whose nationality the ship possesses; for it is nationality which gives the right to fly a country's flag. *(Salonga & Yap, 1992)* In the high seas, a state has exclusive jurisdiction over ships sailing under its flag. It is required however, that there exists a genuine link between the State and the ship. *(Article 91[1], 92[2 , UNCLOS)*

Q: What laws apply to vessels sailing in the high seas?

A:

GR: Vessels sailing on the high seas are subject only to international law and to the laws of the flag State.

XPN: However, the arrest or boarding of a vessel sailing in the high seas may be made by a State, other than the flag-State of such vessel, in the following instances:

1. A foreign merchant ship by the coastal State in its internal waters, the territorial sea and the contiguous zones for any violation of its laws.
2. A foreign merchant ship for piracy.
3. Any ship engaged in the slave trade.
4. Any ship engaged in unauthorized broadcasting.
5. A ship without nationality, or flying a false flag or refusing to show its flag. *(Salonga & Yap, 1992)*

Q: What is flag of convenience?

A: It refers to foreign flag under which a merchant vessel is registered for purposes of reducing operating costs or avoiding government regulations.

Q: A crime was committed in a private vessel registered in Japan by a Filipino against an Englishman while the vessel is anchored in a port of State A. Where can he be tried?

A: Under both the English and French rules, the crime will be tried by the local State A, if serious enough as to compromise the peace of its port; otherwise by the flag State, Japan if it involves only the members of the crew and is of such a petty nature as not to disturb the peace of the local State.

Note: In the *French rule*, it recognizes the jurisdiction of the flag country over crimes committed on board the vessel except if the crime disturbs the peace, order and security of the host country. In *English rule*, the host country has jurisdiction over the crimes committed on board the vessel unless they involve the internal management of the vessel.

Q: When may a State exercise jurisdiction on open seas?

A:

1. Slave trade
2. Hot pursuit
3. Right of approach
4. Piracy

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Q: What is the duty of every State in the transportation of slaves?

A: Every state shall take effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag and to prevent the unlawful use of the flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall ipso facto be free. *(Article 99, UNCLOS)*

Q: What is the doctrine of hot pursuit?

A: It provides that the pursuit of a vessel maybe undertaken by the coastal State which has "good reason to believe that the ship has violated the laws and regulations of that State".

Q: What is the doctrine of hot pursuit?

A: It provides that the pursuit of a vessel maybe undertaken by the coastal State which has "good reason to believe that the ship has violated the laws and regulations of that State".

Q: What are the elements of the doctrine of hot pursuit?

A: Its elements are the following:

1. The pursuit must be commenced when the ship is within the internal waters, territorial sea or the contiguous zone of the pursuing State, and may only be continued outside if the pursuit has not been interrupted
2. It is continuous and unabated
3. Pursuit conducted by a warship, military aircraft, or government ships authorized to that effect.

Q: What is arrival under stress?

A: It refers to involuntary entrance of a foreign vessel on another state's territory which may be due to lack of provisions, unseaworthiness of the vessel, inclement weather, or other case of force majeure, such as pursuit of pirates.

Q: What is piracy under the UNCLOS?

A: Piracy consists of any of the following acts:

1. Illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft and directed:
    a. On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft
    b. Against a ship, aircraft, persons or property in a place outside the jurisdiction of any State
2. Act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
3. Act of inciting or of intentionally facilitating an act described above. *(Article 101, UNCLOS)*

Note: If committed by a warship, government ship or governmental aircraft whose crew mutinied and taken control of the ship or aircraft, it is assimilated to acts committed by a private ship or aircraft. *(Article 102, UNCLOS)*

Q: A Filipino owned construction company with principal office in Manila leased an aircraft registered in England to ferry construction workers to the Middle East. While on a flight to Saudi Arabia with Filipino crew provided by the lessee, the aircraft was highjacked by drug traffickers. The hijackers were captured in Damaseus and sent to the Philippines for trial. Do courts of Manila have jurisdiction over the case?

A: Yes. Hijacking is actually piracy, defined in *People v. Lol-lo (G.R. No. 17958 Feb. 27, 1922)* as robbery or forcible depredation in the high seas without lawful authority and done *animo furandi* and in the spirit and intention of universal hostility. Piracy is a crime against all mankind. Accordingly, it may be punished in the competent tribunal if any country where the offender may be found or into which he may be carried. The jurisdiction on piracy unlike all other crimes has no territorial limits. As it is against all, all so may punish it. Nor does it matter that the crime was committed within the jurisdictional 3-mile limit of a foreign State for those limits, though neutral to war, are not neutral to crimes.

7. Tribunal of the Law of the Sea

Q: What is the International Tribunal of the Law of the Sea (ITLoS)?

A: It is an independent judicial body established by the Third United Nations Convention on the Law of the Seato adjudicate disputes arising out of the interpretation and application of the Convention. It was established after Ambassador Arvido Pardo Malta addressed the General Assembly of the United Nations and called for "an effective international regime over the seabed and ocean floor beyond a clearly defined national jurisdiction". Its seat is in Hamburg, Germany.

Q: What is the jurisdiction of the Tribunal?

A: Its jurisdiction comprises all disputes and all applications submitted to it and all matters specifically provided for in any other agreement which confers jurisdiction to the Tribunal.

Q: What is the structure of the ITOLS?

A: It is made up of:

1. Judges Chamber
    a. Main Tribunal;
    b. Seabed Disputes; and
    c. Special chambers
2. Registry

Q: What is the composition of the tribunal?

A: It is composed of 21 independent members, elected from persons enjoying the highest reputation for fairness and integrity and of recognized competence in the field of the law of the sea. *(Article 2[1], UNCLOS)* They serve for nine years and may be re-elected; provided however, that of the members elected at the first election, the terms of seven members shall expire at the end of three years and the terms of seven more members shall expire at the end of six years. *(Article 5, UNCLOS)*

Q: Who are the officers of the Tribunal?

A: The officers of the Tribunal to be elected includes:

1. President
2. Vice-President
3. Registrar *(Article 12, UNCLOS)*

Q: What are the rules with regard to membership of the Tribunal?

A:

1. No two members of the Tribunal may be nationals of the same State. *(Article 3[1], UNCLOS)*

    Note: Otherwise, the person shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights. *(Ibid)*

2. There should be not fewer than three members from each geographical group to be established by the GA. *(Article 3[2] , UNCLOS)*
3. No member of the Tribunal may exercise any political or administrative function, or associate actively with or be financially interested in any of the operations of any enterprise concerned with the exploration for or exploitation of the resources of the sea or the seabed or other commercial use of the sea or the seabed. *(Article 7[1], UNCLOS)*
4. No member of the Tribunal may act as agent, counsel or advocate in any case. *(Article 7[2], UNCLOS)*
5. No member of the Tribunal may participate in the decision of any case in which he has previously taken part as agent, counsel or advocate for one of the parties, or as a member of a national or international court or tribunal, or in any other capacity. *(Article 8[1], UNCLOS)*
6. If for some special reason a member of the Tribunal should not sit in a particular case:
    a. Member should inform the President of the Tribunal; *(Article 8[2], UNCLOS)* or
    b. President should give the member notice accordingly. *(Article 8[3], UNCLOS)*

    Note: Any doubt shall be resolved by decision of the majority of other members of the Tribunal present. *(Article 7, 8, UNCLOS)*

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

Q: How are nominations and elections conducted?

A:

1. Each State may nominate not more than two persons.
2. Members are elected by secret Ballot.
3. The persons elected to the Tribunal shall be those nominees who obtain the largest number of votes and a two-thirds majority of the States Parties present and voting, provided that such majority includes a majority of the States Parties. *(Article 4, UNCLOS)*

Q: Do members enjoy any privileges and immunities?

A: Yes, they enjoy diplomatic privileges and immunities. *(Article 10, UNCLOS)*

Q: What quorum required to constitute the Tribunal?

A:

GR: The quorum required is 11 elected members. *(Article 13[1], UNCLOS)*

XPN:

1. Article 14 – Seabed Disputes Chamber (SDC)
2. Article 15 – Special Chambers (SpecC)

Note: Question shall be decided by majority. In case of an equality of votes, the President or the member of the Tribunal who acts in his place shall have a casting vote. *(Article 29, UNCLOS)*

Q: What is the composition of the SDC?

A: It shall be composed of 11 members, selected by a majority of the elected members of the Tribunal from among them. *(Article 35[1], UNCLOS)*

Q: What is the required quorum for the SDC?

A: The required quorum is 7 of the members. *(Article 35[7], UNCLOS)*

Q: May an ad hoc chamber be formed by the SDC?

A: Yes, an ad hoc chamber may be formed composed of three of its members *(Article 36[1], UNCLOS)*

Q: What is the jurisdiction of the SDC?

A: The categories of its jurisdiction are the following:

1. Disputes between State Parties concerning the interpretation or application.
2. Disputes between a State Party and the Authority concerning:
    a. Acts or omissions of the Authority or of a State Party alleged to be violations of the convention;
    b. Acts of the Authority alleged to be in excess of jurisdiction of a misuse of power
3. Disputes between parties to a contract, being States Parties, the Authority or the Enterprise, state enterprises and natural or juridical persons concerning:
    a. Interpretation or application of a relevant contract or a plan of work;
    b. Acts or omissions of a party to the contract relating to activities in the Area and directed to the other party or directly affecting its legitimate interest.
4. Disputes between the Authority and a prospective contractor who has been sponsored by a State
5. Disputes between the Authority and a State Party, a state enterprise or a natural or juridical person sponsored by a State Party
6. Any other disputes for which the jurisdiction of the Chamber is specifically provided for in the Convention. *(Annex VI, Subsection 2, UNCLOS)*

Q: What are the other means established by the Convention as alternative means for the settlement of disputes?

A: Aside from the ITLOS, it also established the International Court of Justice, an arbitral tribunal constituted in accordance with Annex VII to the Convention and a special arbitral tribunal constituted in accordance with Annex VIII of the Convention.

I. INTERNATIONAL ENVIRONMENTAL LAW

Q: What is International Environmental Law (IEL)?

A: It is the branch of public international law comprising "those substantive, procedural and institutional rules which have as their primary objective the protection of the environment," the term environment being understood as encompassing "both the features and the products of the natural world and those of human civilization. (*Philippe Sands, Principles of International Environmental Law, 2003*)

1. Principle 21 of the Stockholm Declaration

Q: What is the Stockholm Declaration?

A: The Stockholm Declaration, or the Declaration of the United Nations Conference on the Human Environment, was adopted on June 16, 1972 in Stockholm, Sweden. It contains 26 principles and 109 recommendations regarding the preservation and enhancement of the right to a healthy environment.

Q: What does Principle 21 of the Stockholm Declaration provide?

A: This declares that States have

1. The sovereign right to exploit their own resources pursuant to their own environmental policies, and
2. The responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Q: Is Principle 21 of the Stockholm Declaration a part of customary law?

A: Yes. The Court recognizes that the environment is daily under threat and that the use of nuclear weapons could constitute a catastrophe for the environment. The court also recognizes that the environment is not an abstraction but represents the living space, the quality of life and the very human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment. *(Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, July 8, 1996)*. The Court has also no difficulty in acknowledging that the concerns expressed by Hungaray for its natural environment in the region affected by the Gabcikovo-Nagyamaros Project related to an “essential interes” of the State, within the meaning given to that expression in Article 33 of the Draft of the International Law Commission. *(Case Concerning the Gabcikovo-Nagyamaros Project, September 25, 1997)*

Q: What is the principle of common but differentiated responsibility?

A: This principle requires the protection of specified environmental resource or area as common responsibility but takes into account the differing circumstances of certain States in the discharge of such responsibilities. *(Article 3[1], Framework Convention on Climate Chage)*

Q: What is precautionary principle?

A: Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. *(Principle 15, Rio Declaration on Environment and Development [Rio Declaration])*

Q: What is Polluter Pays Principle?

A: It means that the party responsible for producing the pollutants must bear responsibility for shouldering the costs of the damage done to the environment. It is expressly stated in Principle 16 of the Rio Declaration on Environment and Development: “National authorities should endeavor to promote the internalization of environment costs and the use of economic instruments, taking into account the approach

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment." *(Principle 16, Rio Declaration)*

Q: What are the other principles of IEL set forth in the Rio Declaration?

A:

1. States have the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction (*Principle 2*)
2. Right to development must be fulfilled so as to equitably meet development needs of present and future generations (*Principle 3*)
3. In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it. (*Principle 4*)

Q: What is sustainable development?

A: It is a development that meets the needs of the present without compromising the ability of future generations to meet their own needs. *Brundtland Report, 1987, "Our Common Future", World Commission on Environment and Development)*

Q: What are the principles that embody Sustainable Development?

A.:

1. *Principle of intergenerational equity* – the need to preserve natural resources for the benefit of future generations.
2. *Principle of sustainable use* – the aim of exploiting natural resources in a manner which is "sustainable," or "prudent," or "rational," or "wise," or "appropriate."
3. *Principle of equitable use or intragenerational equity* – the equitable use of natural resources, which implies that use by one state must take into account the needs of other states.
4. *Principle of integration* – the need to ensure that environmental considerations are integrated into economic and other developmental plans, programs and projects, and that development needs are taken into account in applying environmental objectives. *(Magallona, citing Philippe Sands, Principle of International Environmental Law, 2003)*

Q: What rules have been developed for the protection of the environment in armed conflict?

A:

1. Each State Party undertakes not to engage in military or other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other Party State (*Article 1 of the Convention on the Prohibition of Military or other Hostile Use of Environmental Modification Techniques or the Environmental Modification Convention [ENMOD]*)

Note: Environmental Modification Techniques refers to any technique for the changing through the deliberate manipulation of natural processes the dynamics, composition or structure of the earth including its biota lithosphere, hydrosphere and atmosphere or outer space. *(Article II, ENMOD)*

2. Prohibition of the employment of methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment. (*Article 35 (3) of Protocol I Additional to the Geneva Convention of 1949*)

Q: What does pollution mean?

A: It means any introduction by man, directly or indirectly, of substance or energy into the environment resulting in deleterious effects of such nature as to endanger human health, harm living resources, ecosystem, and material property and impair amenities or interfere with other legitimate uses of the environment. *(Magallona, citing ILA Reports, Vol. 60, 1982)*

m. INTERNATIONAL COURT OF JUSTICE (ICJ)

Q: What is the ICJ? Who are the parties to the statute of the ICJ?

A: The ICJ is the judicial organ of the United Nations.

All members of the United Nations are *ipso facto* parties to the Statute of the ICJ. A non-member may become a party on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

Q: What is the composition of the ICJ?

A: The ICJ is composed of 15 members who are elected by the absolute majority vote in the General Assembly and the Security Council.

Q: What are the requirements for being a judge in the ICJ?

A: The Judges must be of high moral character and possess the qualifications required in their respective countries for appointment to their highest judicial offices or are *jurisconsults* of recognized competence in international law. No two of them may be nationals of the same State. In the event that more than one national of the same State obtain the required majority, the eldest shall be considered elected.

Q: What are the principal functions of the ICJ?

A:

1. To render *advisory opinions*; and
2. To decide *contentious cases* which includes:
   a. The interpretation of any treaty, any question of international law,
   b. The existence of any fact which if established would constitute a breach of international obligation; and
   c. The nature and extent of reparation to be made for the breach of international obligation.

Q: When may advisory opinions be given by the ICJ?

A: Advisory opinions may be given by the ICJ upon request of the Gen Assembly or the Security Council, as well as other organs of the United Nations, when authorized by the General Assembly, on legal questions arising within the scope of their activities.

Q: May the ICJ give advisory opinion regarding the wall separating Israel and Palestine in ES-10/14?

A: The Court has jurisdiction to give the advisory opinion requested by resolution ES-10/14 of the General Assembly.

When seized of a request for an advisory opinion, the Court must first consider whether it has jurisdiction to give opinion requested and whether, should the answer be in the affirmative, there is any reason why it should decline to answer such jurisdiction. The competence of the Court in this regard is based on Article 65, par. 1, of its Statute, according to which the Court "may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such request. It is a precondition of the Court's competence that the advisory opinion be requested by an organ duly authorized to seek it under the Charter, that it be requested on a legal question, and that, except in the case of the General Assembly or the Security Council, that question should be one arising within the scope of the activities of the requesting organ.

It is for the Court to satisfy itself that the request for an advisory opinion comes from an organ or agency having competence to make it. In the present instance, the Court notes that the General Assembly which seeks the advisory opinion is authorized to do so by Article 96, par. 1, of the Charter, which provides: "The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question."

Q: Is it permissible for the ICJ to decide a case without the application of the sources of law provided in Article 38(1) of its Statute?

TEAM BAROPS

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.

A: Yes, with agreement of the parties to the dispute and by the power of the ICJ to decide the case *ex aequo et bono*.

By this power the ICJ may decide the case without the benefit of applying conventional rules, customary norms or general principles of international law. Instead it would apply equitable considerations in the endeavor to achieve a balance of interests of the parties, on grounds of fairness and justice.

Q: Does the principle of *stare decisis* apply to the ICJ?

A: No. Under Article 59, previous decisions have no binding force except between the parties and in respect to that particular case.

n. INTERNATIONAL CRIMINAL COURT (ICC)

Q: What is the ICC?

A: The ICC is an independent judicial institution created by the treaty known as Rome Statute with the power to try and punish individuals for the most serious crimes of international concern:

1. Genocide
2. Crimes against humanity
3. Crimes of aggression, and
4. War crimes.

Q: What is the jurisdiction of the ICC?

A: The Rome Statute gives the ICC jurisdiction over the most serious crimes of international concern if they are committed after July 1, 2002, either by:

1. By a citizen of a State that accepts the statute or
2. By a person of any nationality on the territory of a State that accepts the statute.

The court may hold accountable any person aged 18 or older at the time of the crime without regard to the individual's official duties or functions. Therefore, heads of State, legislators, and other high-ranking government officials are not exempt from criminal responsibility.

Q: What is the Principle of Complementarity?

A: This principle would not replace national courts in criminal jurisdiction. If the national court is able or willing to take cognizance of crimes that are also cognizable by the ICC, the latter would not take cognizance of the case. Only when the national court creates an unjustified delay or when its proceedings are meant to shield an individual from criminal liability may the ICC take cognizance of the case.

Q: When may a State exercise jurisdiction over persons, whether military or civilian, suspected or accused of a crime regardless of where the crime is committed?

A: The State shall exercise jurisdiction provided any one of the following conditions are met:

1. The accused is a Filipino citizen
2. The accused regardless of citizen or residence, is present in the Philippines; or
3. The accused has committed the said crime against a Filipino citizen.

Investigation or prosecution may be dispensed with if another court or international tribunal is already conducting the investigation or undertaking the prosecution of such crime. Instead, the suspected or accused person will be surrendered or extradited to the appropriate international court, if any, or to another State.

No criminal proceedings shall be initiated against foreign nationals suspected or accused of having committed the crimes defined and penalized under R.A. 9851 if they have been tried by a competent court outside the Philippines in respect to the same offense and acquitted, or having been convicted, already served their sentence

Q: What are the jurisdictional rules governing ICC?

A:

1. ICC jurisdiction is only limited to those crimes under its jurisdiction (*Rationale materiae*)
2. ICC has jurisdiction only with crimes committed after the entry into force of

its statute (July 1, 2002) (*Jurisdiction rationale temporis*)

3. ICC has jurisdiction over crimes committed in the territory of the States Parties, without regard to the nationality of the offender (Territorial jurisdiction - *Rationale locus*)
4. ICC has jurisdiction over the nationals of a State party as to crimes within the ICC's jurisdiction (Personal jurisdiction – *Rationale personae*)

Q: Is trial in absentia allowed?

A: No.

Q: Distinguish ICC from ICJ.

A:

International Criminal Court	International Court of Justice
As to what created each	
Rome Statute	US Charter
As to jurisdiction	
Has criminal jurisdiction to prosecute individuals	Does not have criminal jurisdiction to prosecute individuals
As to parties	
Individuals	States
As to independence	
The ICC is independent of the UN	The ICJ is the principal judicial organ of the UN

POLITICAL LAW TEAM:
ADVISER: ATTY. EDWIN REY SANDOVAL; SUBJECT HEAD: RACHEL MARIE L. FELICES; ASST. SUBJECT HEADS: WIVINO E. BRACERO II & HERAZEUS CHRISTINE Y. UY; MEMBERS: LAWRENCE PAULO H. AQUINO, LEANDRO RODEL V. ATIENZA, MARINETH EASTER AN D. AYOS, CARLO R. BALA, WILFREDO T. BONILLA, JR., KEEL ACHERNAR R. DINOY, APRIL V. ENRILE, KENNETH JAMES CARLO C. HIZON, JOSE MARIA G. MENDOZA, ROGER CHRISTOPHER R. REYES, ROMILINDA C. SIBAL, JASMIN M. SISON, ZARAH PATRICIA T. SUAREZ, RALPH JULIOUS L. VILLAMOR.