**University of Santo Tomas**
**Faculty of Civil Law**

# Political Law

## Questions Asked More Than Once (QuAMTO 2016)

*QUAMTO is a compilation of past bar questions with answers as suggested by UPLC and other distinct luminaries in the academe, and updated by the UST Academics Committee to fit for the 2016 Bar Exams.

*Bar questions are arranged per topic and were selected based on their occurrence on past bar examinations from 1990 to 2015.

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## THE PHILIPPINE CONSTITUTION

### Constitution: definition, nature and concepts

*Amendments and revisions*

**Q: State the various modes of and steps in revising or amending the Philippine Constitution. (1997)**

**A:** There are three modes of amending the Constitution.

1. Under Section 1. Article XVIII of the Constitution. Congress may by three-fourths vote of all its Members propose any amendment to or revision of the Constitution.

2. Under the same provision, a constitutional convention may propose any amendment to or revision of the Constitution. According to Section 3 Article XVII of the Constitution, Congress may, by a two-thirds vote of all its Members, call a constitutional convention or by a majority vote of all its members submit the question of calling such a convention to the electorate.

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

According to Section 4 Article XVII of the Constitution, to be valid any amendment to or revision of the Constitution, must be ratified by a majority of the votes cast in a plebiscite.

**Q: An amendment to or a revision of the present Constitution maybe proposed by a Constitutional Convention or by the Congress upon a vote of three-fourths of all its members.**
**Is there a third way of proposing revisions of or amendments to the Constitution? If so, how? (2004)**

**A:** There is no third way of proposing revisions to the Constitution; however, the people through initiative upon petition of at least twelve per cent of the total number of registered voters, of which every legislative district must be represented by at least three per cent of the registered voters in it, may directly propose amendments to the Constitution. This right is not operative without an implementing law (Section 2, Article XVI of the 1987 Constitution).

## GENERAL CONSIDERATIONS

### National territory

**Q: William, a private American citizen, a university graduate and frequent visitor to the Philippines, was inside the U.S. embassy when he got into a heated argument with a private Filipino citizen. Then, in front of many shocked witnesses, he killed the person he was arguing with. The police came, and brought him to the nearest police station. Upon reaching the station, the police investigator, in halting English, informed William of his Miranda rights, and assigned him an independent local counsel. William refused the services of the lawyer, and insisted that he be assisted by a Filipino lawyer currently based in the U.S. The request was denied, and the counsel assigned by the police stayed for the duration of the investigation. William protested his arrest.**

**He argued that since the incident took place inside the U.S. embassy, Philippine courts have no jurisdiction because the U.S. embassy grounds are not part of Philippine territory; thus, technically, no crime under Philippine law was committed. Is William correct? Explain your answer. (2009)**

**A:** William is not correct. The premises occupied by the United States Embassy do not constitute territory of the United States but of the Philippines. Crimes committed within them are subject to the territorial jurisdiction of the Philippines. Since William has no diplomatic immunity, the Philippines can prosecute him if it acquires custody over him *(Reagan v. Commissioner of Internal Revenue, 30 SCRA 968).*

*Archipelagic doctrine*

**Q: What do you understand by the archipelagic doctrine? Is this reflected in the 1987 Constitution? (1989)**

**A:** The archipelagic doctrine emphasizes the unity of land and waters by defining an archipelago either as a group of islands surrounded by waters or a body of waters studded with islands. For this purpose, it requires that baselines be drawn by connecting the appropriate points of the outermost islands to encircle the islands within the archipelago. The waters on the landward side of the baselines regardless of breadth or dimensions are merely internal waters.

Yes, the archipelagic doctrine is reflected in the 1987 Constitution. Article I, Section 1 provides that the national territory of the Philippines includes the Philippine archipelago, with all the islands and waters embraced therein; and the waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.

**Q: TRUE or FALSE. Explain your answer in not more than two (2) sentences: Under the archipelago doctrine, the waters around, between, and connecting the islands of the archipelago form part of the territorial sea of the archipelagic state. (2009)**

**A***:* False. Under Article I of the Constitution, the water around, between and connecting the islands of the Philippines form part of its internal waters. Under Article 49 (1) of the U.N. Convention on the Law of the Sea, these waters do not form part of the territorial sea but are described as archipelagic waters.

**Q: What is the basis of the Philippines' claim to a part of the Spratly Islands? (2000)**

**A:** The basis of the Philippine claim is effective occupation of a territory not subject to the sovereignty of another state. The Japanese forces occupied the Spratly Island group during the Second World War. However, under the San Francisco Peace Treaty of 1951 Japan formally renounced all right and claim to the Spratlys. The San Francisco Treaty or any other international agreement, however, did not designate any

beneficiary state following the Japanese renunciation of right. Subsequently, the Spratlys became terra nullius and was occupied by the Philippines in the title of sovereignty. Philippine sovereignty was displayed by open and public occupation of a number of islands by stationing of military forces. By organizing a local government unit, and by awarding petroleum drilling rights, among other political and administrative acts. In 1978, it confirmed its sovereign title by the promulgation of Presidential Decree No. 1596, which declared the Kalayaan Island Group part of Philippine territory.

**Q. Congress passed Republic Act No. 7711 to comply with the United Nations Convention on the Law of the Sea. In a petition filed with the Supreme Court, Anak Ti Ilocos, an association of Ilocano professionals, argued that Republic Act No. 7711 discarded the definition of the Philippine territory under the Treaty of Paris and in related treaties; excluded the Kalayaan Islands and the Scarborough Shoals from the Philippine Archipelagic baselines; and converted internal waters into archipelagic waters. Is the petition meritorious? (2013)**

**A:** No, the petition is not meritorious. The United Nations Convention on the law of the Sea has nothing to do with the acquisition or loss of territory. It merely regulates sea-use rights over maritime zones, contiguous zones, exclusive economic zones, and continental shelves which it delimits. The Kalayaan Islands and the Scarborough Shoals are located at an appreciable distance from the nearest shoreline of the Philippine Archipelago. A straight baseline loped around them from the nearest baseline will violate Article 47(3) and Article 47(2) of the United Nations Convention on the law of the Sea III. Whether the bodies of water lying landward of the baselines of the Philippines are internal waters or archipelagic waters, the Philippines retains jurisdiction over them (*Magallona v. Ermita, 655 SCRA 476*).

**Q: A bill was introduced in the House of Representatives in order to implement faithfully the provisions of the United Nations Convention on the Law of the Sea (UNCLOS) to which the Philippines is a signatory. Congressman Pat Rio Tek questioned the constitutionality of the bill on the ground that the provisions of UNCLOS are violative of the provisions of the Constitution defining the Philippine internal waters and territorial sea. Do you agree or not with the said objection?**
**Explain. (2015)**

**A:** I do not agree. Whether referred to as Philippine "internal waters" under the Constitution or as "archipelagic waters" under the UNCLOS III, the Philippines exercises sovereignty over the body of water lying landward of the baselines, including the airspace over it and the submarine areas underneath as affirmed by the provisions of UNCLOS III. The fact of sovereignty, however, does not preclude the operation of municipal and international law with respect to the principle of freedom of navigation and thus, the Philippine government may pass legislation in order to regulate the right to innocent and sea lanes passage (*Magallona v. Ermita, 655 SCRA 476*).

*State immunity*

**Q: It is said that "waiver of immunity by the State does not mean a concession of its liability". What are the implications of this phrase? (1997)**

**A:** The phrase that waiver of immunity by the State does not mean a concession of liability means that by consenting to be sued, the State does not necessarily admit it is liable. As stated in *Philippine Rock Industries, Inc. v. Board of Liquidators, 180 SCRA 171*, 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.

**Q:**
**a. What do you understand by state immunity from suit? Explain.**
**b. How may consent of the state to be sued be given? Explain. (1999)**

**A:**
a. STATE IMMUNITY FROM SUIT means that the State cannot be sued without its consent. A corollary of such principle is that properties used by the State in the performance of its governmental functions cannot be subject to judicial execution.

b. Consent of the State to be sued may be made expressly as in the case of a specific, express provision of law as waiver of State immunity from suit is not inferred lightly (e.g. C.A. 327 as amended by PD 1445) or impliedly as when the State engages in proprietary functions (*U.S. v. Ruiz, U.S. v. Guinto*) or when it files a suit in which case the adverse party may file a counterclaim *(Froilan v. Pan Oriental Shipping*) or when the doctrine would in effect be used to perpetuate an injustice *(Amigable v. Cuenca, 43 SCRA 360*).

**Q: The employees of the Philippine Tobacco Administration (PTA) sued to recover overtime pay. In resisting such claim, the PTA theorized that it is performing governmental functions. Decide and explain. (1999)**

**A:** As held in *Philippine Virginia Tobacco Administration v. Court of Industrial Relations, 65 SCRA 416,* the Philippine Tobacco Administration is not liable for overtime pay, since it is performing governmental functions. Among its purposes are to promote the effective merchandising of tobacco so that those engaged in the tobacco industry will have economic security, to stabilize the price of tobacco, and to improve the living and economic conditions of those engaged in the tobacco industry.

**Q: The Republic of the Philippines, through the Department of Public Works and Highways (DPWH), constructed a new highway linking Metro Manila and Quezon province, and which major thoroughfare traversed the land owned by Mang Pandoy. The government neither filed**
**any expropriation proceedings nor paid any compensation to Mang Pandoy for the land thus taken and used as a public road.**

**Mang Pandoy filed a suit against the government to compel payment for the value of his land. The DPWH filed a motion to dismiss the case on the ground that**

**the State is immune from suit. Mang Pandoy filed an opposition. Resolve the motion. (2001)**

**A:** The motion to dismiss should be denied. As held in *Amigable v. Cuenca, 43 SCRA 300 (1972)*, when the Government expropriates private property without paying compensation, it is deemed to have waived its immunity from suit. Otherwise, the constitutional guarantee that private property shall not be taken for public use without payment of just compensation will be rendered nugatory.

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

**Assailing the court's jurisdiction, YZ now moves to dismiss the complaint, on the ground that (1) he is an embassy officer entitled to diplomatic immunity; and that (2) the suit is really a suit against his home state without its consent. He presents diplomatic notes from XX Embassy certifying that he is an accredited embassy officer recognized by the Philippine government. He performs official duties, he says, on a mission to conduct surveillance of drug experts and then inform local police officers who make the actual arrest of suspects. Are the two grounds cited by YZ to dismiss the suit tenable? (2004)**

**A:** The claim of diplomatic immunity of YZ is not tenable, because he does not possess an acknowledged diplomatic title and is not performing duties of a diplomatic nature.

However, the suit against him is a suit against XX without its consent. YZ was acting as an agent of XX and was performing his official functions when he conducted surveillance on drug exporters and informed the local police officers who arrested MBC. He was performing such duties with the consent of the Philippine government, therefore, the suit against YZ is a suit against XX without its consent *(Minucher v. CA, 397 SCRA 244 [1992]).*

**Q: Adams and Baker are American citizens residing in the Philippines. Adams befriended Baker and became a frequent visitor at his house. One day, Adams arrived with 30 members of the Philippine National Police, armed with a Search Warrant authorizing the search of Baker's house and its premises for dangerous drugs being trafficked to the United States of America.**

**The search purportedly yielded positive results, and Baker was charged with Violation of the Dangerous Drugs Act. Adams was the prosecution's principal witness. However, for failure to prove his guilt beyond reasonable doubt, Baker was acquitted.**

**Baker then sued Adams for damages for filing trumped- up charges against him. Among the defenses raised by Adams is that he has diplomatic immunity, conformably with the Vienna Convention on Diplomatic Relations. He presented Diplomatic Notes from the American Embassy stating that he is an agent of the United States Drug Enforcement Agency tasked with "conducting surveillance operations" on suspected drug dealers in the Philippines believed to be the source of prohibited drugs being shipped to the U.S. It was also stated that after having ascertained the target, Adams would then inform the Philippine narcotic agents to make the actual arrest.**

**a. As counsel of plaintiff Baker, argue why his complaint should not be dismissed on the ground of defendant Adams' diplomatic immunity from suit.**
**b. As counsel of defendant Adams, argue for the dismissal of the complaint. (2005)**

**A:**

a. As counsel of Baker, I shall argue that Baker has no diplomatic immunity, because he is not performing diplomatic functions.

   **ALTERNATIVE ANSWER:** As counsel for Baker, I will argue that Adam's diplomatic immunity cannot be accepted as the sole basis for dismissal of the damage suit, by mere presentation of Diplomatic Notes stating that he is an agent of the US Drug Enforcement Agency. His diplomatic status was a matter of serious doubt on account of his failure to disclose it when he appeared as principal witness in the earlier criminal (drug) case against Baker, considering that as a matter of diplomatic practice a diplomatic agent may be allowed or authorized to give evidence as a witness by the sending state. Thus, his diplomatic status was not sufficiently established.

b. As counsel of Adams, I shall argue that since he was acting within his assigned functions with the consent of the Philippines, the suit against him is a suit against the United States without its consent and is barred by state immunity from suit *[Minucher v. CA, 397 SCRA244 (2003)].*

**Q: Italy, through its Ambassador, entered into a contract with Abad for the maintenance and repair of specified equipment at its Embassy and Ambassador's Residence, such as air conditioning units, generator sets, electrical facilities, water heaters, and water motor pumps. It was stipulated that the agreement shall be effective for a period of four years and automatically renewed unless cancelled. Further, it provided that any suit arising from the contract shall be filed with the proper courts in the City of Manila.**

**Claiming that the Maintenance Contract was unilaterally, baselessly and arbitrarily terminated, Abad sued the State of Italy and its Ambassador before a court in the City of Manila. Among the defenses they raised were "sovereign immunity" and "diplomatic immunity".**

**As counsel of Abad, refute the defenses of "sovereign immunity" and "diplomatic immunity" raised by the**

**State of Italy and its Ambassador. At any rate, what should be the court's ruling on the said defenses? (2005)**

**A:** As counsel of Abad, I shall argue that the contract is not a sovereign function and that the stipulation that any suit arising under the contract shall be filed with the proper courts of the City of Manila is a waiver of the sovereign immunity from suit of Italy. I shall also argue that the ambassador does not enjoy diplomatic immunity, because the suit relates to a commercial activity.

The court should reject the defenses. Since the establishment of a diplomatic mission requires the maintenance and upkeep of the embassy and the residence of the ambassador, Italy was acting in pursuit of a sovereign activity when it entered into the contract. The provision in the contract regarding the venue of lawsuits is not necessarily a waiver of sovereign immunity from suit. It should be interpreted to apply only where Italy elects to sue in the Philippine courts or waives its immunity by a subsequent act. The contract does not involve a commercial activity of the ambassador, because it is connected with his official functions *[Republic of Indonesia v. Vinzon, 405 SCRA 126 (2003)].*

**Q: The Ambassador of the Republic of Kafirista referred to you for handling, the case of the Embassy's Maintenance Agreement with CBM, a private domestic company engaged in maintenance work. The Agreement binds CBM, for a defined fee, to maintain the Embassy's elevators, air-conditioning units and electrical facilities. Section 10 of the Agreement provides that the Agreement shall be governed by Philippine laws and that any legal action shall be brought before the proper court of Makati. Kafiristan terminated the Agreement because CBM allegedly did not comply with their agreed maintenance standards.**

**CBM contested the termination and filed a complaint against Kafiristan before the Regional Trial Court of Makati. The Ambassador wants you to file a motion to dismiss on the ground of state immunity from suit and to oppose the position that under Section 10 of the Agreement, Kafiristan expressly waives its immunity from suit. Under these facts, can the Embassy successfully invoke immunity from suit? (2013)**

**A:** Yes, the Embassy can invoke immunity from suit. Section 10 of the Maintenance Agreement is not necessarily a waiver of sovereign immunity from suit. It was meant to apply in case the Republic of Kafiristan elects to sue in the local courts or waives its immunity by a subsequent act. The establishment of a diplomatic mission is a sovereign function. This encompasses its maintenance and upkeep. The Maintenance Agreement was in pursuit of a sovereign activity *(Republic of the Indonesia v. Vinzon, G.R. No. 154705, June 26, 2003, 405 SCRA 126).*

**Q: In the last quarter of 2012, about 5,000 container vans of imported goods intended for the Christmas Season were seized by agents of the Bureau of Customs. The imported goods were released only on January 10, 2013. A group of importers got together and filed an action for damages before the Regional Trial Court of Manila against the Department of Finance and Bureau of Customs.**

**The Bureau of Customs raised the defense of immunity from suit and, alternatively, that liability should lie with XYZ Corp. which the Bureau had contracted for the lease of 10 high powered van cranes but delivered only 5 of these cranes, thus causing the delay in its cargo-handling operations. It appears that the Bureau, despite demand, did not pay XYZ Corp the P 1 Million deposit and advance rental required under their contract. (2013)**

**a. Will the action by the group of importers prosper?**

**A:** No. The action by the group of importers will not prosper. The primary function of the Bureau of Customs is governmental, that of assessing and collecting lawful revenues from imported articles and all other tariff and customs duties, fees, charges, fines and penalties *(Mobil Philippines Exploration, Inc. v. Customs Arrastre Service, 18 SCRA 120).*

**b. Can XYZ Corp. sue the Bureau of Customs to collect rentals for the delivered cranes?**

**A:** No. XYZ Corporation cannot sue the Bureau of Customs to collect rentals for the delivered cranes. The contract was a necessary incident to the performance of its governmental function. To property collect the revenues and customs duties, the Bureau of Customs must check to determine if the declaration of the importers tallies with the landed merchandise. The cranes are needed to haul the landed merchandise to a suitable place for inspection *(Mobil Philippines Exploration v. Customs Arrastre Service, supra).*

**ALTERNATIVE ANSWER:** No, XYZ Corporation cannot sue the Bureau of Customs because it has no juridical personality separate from that of the Republic of the Philippines *(Mobil Philippines Exploration v. Customs Arrastre Service, supra).*

**ANOTHER ALTERNATIVE ANSWER:** Yes, XYZ Corporation may sue the Bureau of Customs because the contact is connected with a propriety function, the operation of the arrastre service *(Philippine Refining Company v. CA, 256 SCRA 667).* Besides, XYZ Corporation leased its van cranes, because the Bureau of Customs undertook to pay its rentals. Justice and equity demand that the bureau of Customs should not be allowed to invoke state immunity from suit *(Republic v. Unimex-Micro Electonics GmBH, 518 SCRA 19).*

*General principles and state policies*

**Q: The Philippines has become a member of the World Trade Organization (WTO) and resultantly agreed that it "shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements." This is assailed as unconstitutional because this undertaking unduly limits, restricts and impairs Philippine sovereignty and means among others that Congress could not pass legislation that will be good for our national interest and general welfare if such legislation will not conform with the WTO Agreements. Refute this argument. (2000)**

**A:** According to *Tanada v. Angara*, the sovereignty of the Philippines is subject to restriction by its membership in the family of nations and the limitations imposed of treaty limitations. Section 2, Article II of the Constitution adopts the generally accepted principles of international law as part of the law of the land. One of such principles is *pacta sunt servanda*. The Constitution did not envision a hermit-like isolation of the country from the rest of the world.

**Q: Under the executive agreement entered into between the Philippines and the other members of the ASEAN, the other members will each send a battalion-size unit of their respective armed forces to conduct a combined military exercise in the Subic Bay area. A group of concerned citizens sought to enjoin the entry of foreign troops as violative of the 1987 Constitution that prohibited the stationing of foreign troops and the use by them, of local facilities. As the Judge, decide the case. Explain. (1996)**

**A:** I will rule in favor of the concerned citizens. Section 25, Article XVII of the Constitution prohibits in the absence of a treaty the stationing of troops and facilities of foreign countries in the Philippines. The Supreme Court has already ruled that the provision in Article XVIII, Section 25 of the Constitution requires a treaty even for the mere temporary presence of foreign troops in the Philippines *(Bayan v. Zamora,* G.R. No. 138570, October 10, 2000, 342 SCRA 499).

**Q: The Philippines and the Republic of Kroi Sha established diplomatic relations and immediately their respective Presidents signed the following: (1) Executive Agreement allowing the Republic of Kroi Sha to establish its embassy and consular offices within Metro Manila; and (2) Executive Agreement allowing the Republic of Kroi Sha to bring to the Philippines its military complement, warships, and armaments from time to time for a period not exceeding one month for the purpose of training exercises with the Philippine military forces and exempting from Philippine criminal jurisdiction acts committed in the line of duty by foreign military personnel, and from paying custom duties on all the goods brought by said foreign forces into Philippine territory in connection with the holding of the activities authorized under the said Executive Agreement. Senator Maagap questioned the constitutionality of the said Executive Agreements and demanded that the Executive Agreements be submitted to the Senate for ratification pursuant to the Philippine Constitution. Is Senator Maagap correct? Explain. (2015)**

**A:** Senator Maagap is partly correct. The Executive Agreement allowing the Republic of Kroi Sha to establish its embassy and consular offices within Metro Manila is valid without the need of submitting it to the Senate for ratification as differed from a treaty. However, The second Executive Agreement which allows the Republic of Kroi Sha to bring to the Philippines its military complement, warships, and armaments for a certain period is subject to the provisions of Section 25 of Article XVIII of the Constitution, which provides that "foreign bases, troops or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the of the contracting state." Under the same provision, a treaty duly concurred in by the Senate is required even for the temporary presence of foreign troops.

***D. Separation of powers***

**Q: The "Poverty Alleviation and Assistance Act "was passed to enhance the capacity of the most marginalized families nationwide. A financial assistance scheme called "conditional cash transfers" was initially funded 500 million pesos by Congress. One of the provisions of the law gave the Joint-Congressional Oversight Committee authority to screen the list of beneficiary families initially determined by the Secretary of Department of Social Welfare and Development pursuant to the Department implementing rules.**

**Mang Pandoy, a resident of Smokey Mountain in Tondo, questioned the authority of the Committee. Is the grant of authority to the Oversight Committee to screen beneficiaries constitutional? (2009)**

**A:** The grant of authority to the Oversight Committee to screen beneficiaries is unconstitutional. It violates the principle of separation of powers. By being involved in the implementation of the law, the Oversight Committee will be exercising executive power *(Abakada Guro Party List v. Purisima, 562 SCRA 251 [2008].)*

**Q: Senator Fleur De Lis is charged with plunder before the Sandiganbayan. After finding the existence of probable cause, the court issues a warrant for the Senator's arrest. The prosecution files a motion to suspend the Senator relying on Section 5 of the Plunder Law. According to the prosecution, the suspension should last until the termination of the case. Senator Lis vigorously opposes the motion contending that only the Senate can discipline its members; and that to allow his suspension by the Court would violate the principle of separation of powers. Is Senator Lis's contention tenable? Explain. (2015)**

**A:** The contention of the Senator is not tenable. The power of each House of Congress to "punish its Members for disorderly behavior," and "suspend or expel a Member" by a vote of two-thirds of all its Members subject to the qualification that the penalty of suspension, when imposed, should not exceed sixty days" under Section 6 (3), Article VI of the Constitution is "distinct" from the suspension under the Plunder Law" which is not a penalty but a preliminary, preventive measure, prescinding from the fact that the latter is not being imposed on petitioner for misbehavior as a Member of the House of Representatives." The doctrine of separation of powers cannot be deemed to have excluded Members of Congress from the application of the Plunder Law. The law itself does not exclude Members of Congress from its coverage. The Sandiganbayan did not err in issuing the preventive suspension order *(Ceferino Paredes, Jr. v. Sandiganbayan, G.R. No. 118364, 08 August 1995, cited in Santiago v. Sandiganbayan, G.R. No. 128055, April 18, 2001)*

*Delegation of powers*

**Q: Suppose that Congress passed a law creating a Department of Human Habitat and authorizing the Department Secretary to promulgate implementing rules and regulations. Suppose further that the law declared that violation of the implementing rules and regulations so issued would be punishable as a crime and authorized the Department Secretary to prescribe the penalty for such violation. If the law defines certain acts as violations of the law and makes them punishable, for example, with imprisonment of three (3) years or a fine in the amount of P10,000.00 or both such imprisonment and fine, in the discretion of the court, can it be provided in the implementing rules and regulations promulgated by the Department Secretary that their violation will also be subject to the same penalties as those provided in the law itself? Explain your answer fully. (2002)**

**A:** The rules and regulations promulgated by the Secretary of Human Habitat cannot provide that the penalties for their violation will be the same as the penalties for the violation of the law. As held in *United States v. Barrias, 11 Phil. 327*, the fixing of the penalty for criminal offenses involves the exercise of legislative power and cannot be delegated. The law itself must prescribe the penalty.

**Q: Section 32 of Republic Act No. 4670 (The Magna Carta for Public School Teachers) reads: Sec. 32. Penal Provision — A person who shall willfully interfere with, restrain or coerce any teacher in the exercise of his rights guaranteed by this Act or who shall in any other manner commit any act to defeat any of the provisions of this Act shall, upon conviction, be punished by a fine of not less than one hundred pesos nor more than one thousand pesos, or by imprisonment, in the discretion of the court. Is the proviso granting the court the authority to impose a penalty or imprisonment in its discretion constitutional? Explain briefly. (2005)**

**A:** The proviso is unconstitutional. Section 32 of R.A. No. 4670 provides for an indeterminable period of imprisonment, with neither a minimum nor a maximum duration having been set by the legislative authority. The courts are thus given wide latitude of discretion to fix the term of imprisonment, without even the benefit of any sufficient standard, such that the duration thereof may range, in the words of respondent judge, from one minute to the life span of the accused. This cannot be allowed. It vests in the courts a power and a duty essentially legislative in nature and which, as applied to this case, does violence to the rules on separation of powers as well as the non-delegability of legislative powers (*People v. Judge Dacuycuy, G.R. No. L-45127, May 5, 1989).*

**Q: The two accepted tests to determine whether or not there is a valid delegation of legislative power are the Completeness Test and the Sufficient Standard Test. Explain each. (2005)**

**A:** Under the COMPLETENESS TEST, a law must be complete in all its terms and provisions when it leaves the legislature that nothing is left to the judgment of the delegate. The legislature does not abdicate its functions when it describes what job must be done, who is to do it, and what is the scope of his authority. However, a delegation of power to make the laws which necessarily involves a discretion as to what it shall be may not constitutionally be done *(Edu v. Ericta, G.R. No. L-32096, October 24, 1970).*

Under the SUFFICIENCY OF STANDARDS TEST, the statute must not only define a fundamental legislative policy, mark its limits and boundaries, and specify the public agency to exercise the legislative power. It must also indicate the circumstances under which the legislative command is to be effected. To avoid the taint of unlawful delegation, there must be a standard, which implies at the very least that the legislature itself determines matters of principle and lays down fundamental policy *(Free Telephone Workers Union v. Minister of Labor, G.R. No. L-58184, October 30, 1981).*

## III. LEGISLATIVE DEPARTMENT

*Who may exercise legislative power*

**Q: Are the following bills filed in Congress constitutional?**

1. **A bill originating from the Senate, which provides for the creation of the Public Utility Commission to regulate public service companies and appropriating the initial funds needed to establish the same. Explain.**
2. **A bill creating a joint legislative-executive commission to give, on behalf of the Senate, its advice, consent and concurrence to treaties entered into by the President. The bill contains the guidelines to be followed by the commission in the discharge of its functions. Explain. (1996)**

**A:**

1. A bill providing for the creation of the Public Utility Commission to regulate public service companies and appropriating funds needed to establish it may originate from the Senate. It is not an appropriation bill, because the appropriation of public funds is not the principal purpose of the bill. In *Association of Small Landowners of the Philippines, Inc. v. Secretary of Agrarian Reform 175 SCRA 343*, it was held that a law is not an appropriate measure if the appropriation of public funds is not its principal purpose and the appropriation is only incidental to some other objective.
2. A bill creating a joint legislative-executive commission to give, on behalf of the Senate, its advice, consent and concurrence to treaties entered into by the President. The Senate cannot delegate this function to such a commission, because under Section 21, Article VII of the Constitution, the concurrence of at least two-thirds of the Senate itself is required for the ratification of treaties.

**Initiative and referendum**

**Q: The present Constitution introduced the concepts and processes of Initiative and Referendum. Compare and differentiate one from the other. (2005)**

**A:** Initiative is the power of the people to propose amendments to the Constitution or to propose and enact legislations through an election called for the purpose (Section 3(a), R.A. No. 6735). Referendum is the

power of the electorate to approve or reject a legislation through an election called for the purpose (Section 3(c), R.A. No. 6735).

**Q: What are the essential elements of a valid petition for a people's initiative to amend the 1987 Constitution? Discuss. (2010)**

**A:** The elements of a valid petition for a people's initiative are the following:

1. At least twelve per cent (12%) of the registered voters, of which every legislative district must be represented by at least three per cent (3%) of the registered voters in it, should directly sign the entire proposal; and
2. The draft of the proposed amendment must be embodied in the petition *(Lambino v. COMELEC, 505 SCRA 160 [2006]).*

**Q: Several citizens, unhappy with the proliferation of families dominating the political landscape, decided to take matters into their own hands. They proposed to come up with a people's initiative defining political dynasties. They started a signature campaign for the purpose of coming up with a petition for that purpose. Some others expressed misgivings about a people's initiative for the purpose of proposing amendments to the Constitution, however. They cited the Court's decision in Santiago v. Commission on Elections, 270 SCRA 106 (1997), as authority for their position that there is yet no enabling law for such purpose. On the other hand, there are also those who claim that the individual votes of the justices in Lambino v. Commission on Elections, 505 SCRA 160 (2006), mean that Santiago's pronouncement has effectively been abandoned. If you were consulted by those behind the new attempt at a people's initiative, how would you advise them? (2014)**

**A:** I shall advise those starting a people's initiative that initiative to pass a law defining political dynasties may proceed as their proposal is to enact a law only and not to amend the constitution. The decision in *Santiago v. COMELEC, 270 SCRA 106 [1997]*, which has not been reversed, upheld the adequacy of the provisions in Republic Act 6735 on initiative to enact a law.

**ALTERNATIVE ANSWER**: I shall advise those starting a people's initiative that the ruling in Santiago vs. Commission on Election that there is as yet no enabling law for an initiative has not been reversed. According to Section 4(3), Article VIII of the Constitution, a doctrine of law laid down in a decision rendered by the Supreme Court en banc may not be reversed except if it is acting en banc. The majority opinion in *Lambino v. COMELEC (505 SCRA 160 [2006],* refused to re-examine the ruling in *Santiago v. COMELEC (270 SCRA 106 [1997*], because it was not necessary for deciding the case. The Justices who voted to reverse the ruling constituted the minority.

**Senate**

**Q: A few months before the end of the present Congress, Strongwill was invited by the Senate to shed light in an inquiry relative to the alleged siphoning and diverting of the pork barrel of members of Congress to non-existent or fictitious projects. Strongwill has been identified in the news as the principal actor responsible for the scandal, the leader of a non- governmental organization which ostensibly funnelled the funds to certain local government projects which existed only on paper. At the start of the hearings before the Senate, Strongwill refused at once to cooperate. The Senate cited him in contempt and sent him to jail until he would have seen the light. The Congress, thereafter, adjourned sine die preparatory to theassumption to office of the newly-elected members. In the meantime, Strongwill languished behind bars and the remaining senators refused to have him released, claiming that the Senate is a continuing body and, therefore, he can be detained indefinitely. Are the senators right? (2014)**

**A:** The Senators are right. The Senate is to be considered as a continuing body of purposes of its exercise of its power punish for contempt. Accordingly, the continuing validity of its orders punishing for contempt should not be affected by its sine die adjournment *(Arnault v. Nazareno, 87 Phil. 29 (1950).*

**ALTERNATIVE ANSWER:** The Senators are right. While the Senate as an institution is continuing in the conduct of its day to day business, the Senate of each Congress acts separately from the Senate of the Congress before it. All pending matters terminate upon expiration of each Congress *(Neri v. Senate Committee on Accountability of Public Officers and Investigation, 564 SCRA 152 (2008).*

**House of Representatives**

*District representatives and questions of apportionment*

**Q: With the passage of time, the members of the House of Representatives increased with the creation of new legislative districts and the corresponding adjustments in the number of partylist representatives. At a time when the House membership was already 290, a great number of the members decided that it was time to propose amendments to the Constitution. The Senators, however, were cool to the idea. But the members of the House insisted. They accordingly convened Congress into a constituent assembly in spite of the opposition of the majority of the members of the Senate. When the votes were counted, 275 members of the House of Representatives approved the proposed amendments. Only 10 Senators supported such proposals. The proponents now claim that the proposals were validly made, since more than the required three-fourths vote of Congress has been obtained. The 14 Senators who voted against the proposals claim that the proposals needed not three-fourths vote of the entire Congress but each house. Since the required number of votes in the Senate was not obtained, then there could be no valid proposals, so argued the Senators. Were the proposals validly adopted by Congress? (2014)**

**A:** The proposal were not validly adopted, because the ten (10) Senators who voted in favor of the proposed amendments constituted less than three-fourths of all the Members of the Senate. Although Section 1, Article XVII of the Constitution did not expressly provide that the Senate and the House of Representatives must vote separately, when the Legislature consist of two (2) houses, the determination of one house is to be

submitted to the separate determination of the other house *(Miller v. Mardo, 2 SCRA 898 [1961]).*

**On August 15, 2015, Congresswoman Dina Tatalo filed and sponsored House Bill No. 5432, entitled "An Act Providing for the Apportionment of the Lone District of the City of Pangarap." The bill eventually became a law, R.A. No. 1234. It mandated that the lone legislative district of the City of Pangarap would now consist of two (2) districts. For the 2016 elections, the voters of the City of Pangarap would be classified as belonging to either the first or second district, depending on their place of residence. The constituents of each district would elect their own representative to Congress as well as eight (8) members of the Sangguniang Panglungsod. R.A. No. 1234 apportioned the City's barangays. The COMELEC thereafter promulgated Resolution No. 2170 implementing R.A. No. 1234. Piolo Cruz assails the COMELEC Resolution as unconstitutional. According to him, R.A. No. 1234 cannot be implemented without conducting a plebiscite because the apportionment under the law falls within the meaning of creation, division, merger, abolition or substantial alteration of boundaries of cities under Section 10, Article X of the 1987 Constitution. Is the claim correct? Explain. (2015)**

**A:** The claim is not correct. The constitution does not require a plebiscite for the creation of a new legislative district by a legislative reapportionment. It is required only for the creation of new local government units *(Bagabuyo v. COMELEC, 2008).*

*Party-list system (R.A. No. 7941)*

**Q: The Supreme Court has provided a formula for allocating seats for party-list representatives.**

**a. The twenty percent allocation - the combined number of all party-list congressmen shall not exceed twenty percent of the total membership of the House of Representatives, including those elected under the party list;**
**b. The two percent threshold - only those parties garnering a minimum of two percent of the total valid votes cast for the party-list system are "qualified" to have a seat in the House of Representatives;**
**c. The three-seat limit - each qualified party, regardless of the number of votes it actually obtained, is entitled to a maximum of three seats; that is, one 'qualifying' and two additional seats;**

**For each of these rules, state the constitutional or legal basis, if any, and the purpose.**
**(2007)**

**A:**

*a.* The party-list congressmen should not exceed twenty per cent of the total membership of the House of Representatives, because this is the maximum number of party-list congressmen (1987 Const., Art. VI, sec 5[3]; *Veterans Foundation Party v. COMELEC, 342 SCRA 244 [2000]).*
*b.* Under Section 11 (b) of Republic Act 7941, only the parties which received at least two per cent of the total votes cast for the party-list are entitled to have a seat in the House of Representatives. To have meaningful representation, the elected party-list representative must have the mandate of a sufficient number of people *(Veterans Federation Party v. COMELEC, supra.).*
c. Section 11(b) of Republic Act 7941 allows qualified parties to have a maximum of three (3) seats in the House of Representatives so that no single group will dominate the party-list seats *(Veterans Federation Party v. COMELEC, supra.).*
d. Additional seats to which a qualified party is entitled are determined by the proportion of the total number of votes it obtained in relation to the total number of votes obtained by the party with the highest number of votes, to maintain proportional representation. This is because while representation in the party-list system is proportional, a party is entitled to a maximum of three seats regardless of the number of votes it actually obtained *(Veterans Federation Party v. COMELEC, supra.).*

**Q: Greenpeas is an ideology-based political party fighting for environmental causes. It decided to participate under the party-list system. When the election results came in, it only obtained 1.99 percent of the votes cast under the party-list system. Bluebean, a political observer, claimed that Greenpeas is not entitled to any seat since it failed to obtain at least 2% of the votes. Moreover, since it does not represent any of the marginalized and underrepresented sectors of society, Greenpeas is not entitled to participate under the party-list system. How valid are the observations of Bluebean? (2014)**

**A:** The claim of Bluebean that Greenpeas is not entitled to a seal under the party-list-system because it obtained only 1.99 percent of the votes cast under the party-list-system is not correct. The provision in Section 5(2) Article VI of the Constitution provides that the party-list representatives shall constitute twenty percent (20%) of the total number of the members of the House of Representatives is mandatory, after the parties receiving at least two percent (2%) of the total votes case for the party-list system have been allocated one seat, the remaining seats should be allocated among the parties by the proportional percentage of the votes received by each party as against the total party-list votes *(Barangay Association for National Advancement and Transparency v. COMELEC, 586 SCRA 211 (2009).*

The claim of Bluebean that Greenpeas is not entitled to participate in the party-list elections because it does not represent any marginalized and underrepresented sectors of society is not correct. It is enough that its principal advocacy pertains to the special interest of its sector *(Atong Panglaum, Inc. v. COMELEC, 694 SCRA 477, 2013)*

**Q: The Partido ng Mapagkakatiwalaang Pilipino (PMP) is a major political party which has participated in every election since the enactment of the 1987 Constitution. It has fielded candidates mostly for legislative district elections. In fact, a number of its members were elected, and are actually serving, in the House of Representatives. In the coming 2016 elections, the PMP leadership intends to join the party-list system. Can PMP join the party-list system without violating the Constitution and Republic Act (R.A.) No. 7941? (2015)**

**A:** Yes. As for political parties, they may participate in the party-list race by registering under the party-list system and no longer field congressional candidates. These parties, if they field congressional candidates, however, are not barred from participating in the party-list elections; what they need to do is register their sectoral wing or party under the party-list system.
This sectoral wing shall be considered an "independent sectoral party" linked to a political party through a coalition *(Atong Paglaum vs COMELEC, April 2, 2013).*

*Legislative privileges, inhibitions and disqualifications*

**Q: State he rule making it incompatible for members of Congress to hold offices or employment in the government. (1998)**

**A:** Section 13, Article VII of the Constitution, which prohibits Members of Congress from holding any other office during their term without forfeiting their seat, does not distinguish between government corporations with original charters and their subsidiaries, because the prohibition applies to both.

**Q: Victor Ahmad was born on December 16, 1972 of a Filipino mother and an alien father. Under the law of his father's country, his mother did not acquire his father's citizenship.**

**Victor consults you on December 21, 1993 and informs you of his intention to run for Congress in the 1995 elections. Is he qualified to run? What advice would you give him? Would your answer be the same if he had seen and consulted you on December 16, 1991 and informed you of his desire to run for Congress in the 1992 elections? Discuss your answer. (1999)**

**A:** No, Victor Ahmad is not qualified to run for Congress in the 1995 elections. Under Section 6, Article VI of the Constitution, a member of the House of Representatives must be at least twenty-five (25) years of age on the day of the election. Since he will be less than twenty-five (25) years of age in 1995, Victor Ahmad is not qualified to run.

Under Section 2, Article IV of the Constitution, to be deemed a natural-born citizen, Victor Ahmad must elect Philippine citizenship upon reaching the age of majority. I shall advise him to elect Philippine citizenship, if he has not yet done so, and to wait until the 1998 elections. My answer will be the same if he consulted me in 1991 and informed me of his desire to run in the 1992 elections.

**ALTERNATIVE ANSWER:** Under Section 2, Article IV of the Constitution, Victor Ahmad must have elected Philippine citizenship upon reaching the age of majority to be considered a natural born citizen and qualified to run for Congress. Republic Act No. 6809 reduced the majority age to eighteen (18) years. *Cuenco v. Secretary of Justice, 5 SCRA 108* recognized three (3) years from reaching the age of majority as the reasonable period for electing Philippine citizenship. Since Republic Act No. 6809 took effect in 1989 and there is no showing that Victor Ahmad elected Philippine citizenship within three (3) years from the time he reached the age of majority on December 16, 199C, he is not qualified to run for Congress.
If he consulted me on December 16, 1991, I would inform him that he should elect Philippine citizenship so that he can be considered a natural born citizen.

**Q: During his third term, "A", a Member of the House of Representatives, was suspended from office for a period of 60 days by his colleagues upon a vote of two-thirds of all the Members of the House. In the next succeeding election, he filed his certificate of candidacy for the same position. "B", the opposing candidate, filed an action for disqualification of "A" on the ground that the latter's, candidacy violated Section 7. Article VI of the Constitution which provides that no Member of the House of Representatives shall serve for more than three consecutive terms. "A" answered that he was not barred from running again for that position because his service was interrupted by his 60-day suspension which was involuntary. Can 'A', legally continue with his candidacy or is he already barred? Why? (2001)**

**A:** "A" cannot legally continue with his candidacy. He was elected as Member of the House of Representatives for a third term. This term should be included in the computation of the term limits, even if "A" did not serve for a full term. (*Record of the Constitutional Commission, Vol. n, p. 592.)* He remained a Member of the House of Representatives even if he was suspended.

**Q: JAR faces a dilemma: should he accept a Cabinet appointment now or run later for Senator? Having succeeded in law practice as well as prospered in private business where he and his wife have substantial investments, he now contemplates public service but without losing the flexibility to engage in corporate affairs or participate in professional activities within ethical bounds. Taking into account the prohibitions and inhibitions of public office whether as Senator or Secretary, he turns to you for advice to resolve his dilemma. What is your advice? Explain briefly. (2004)**

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

As a member of the Cabinet, JAR cannot directly or indirectly practice law or participate in any business. He will have to divest himself of his investments in his business (Section 13, Article VII of the 1987 Constitution). In fact, the Constitutional prohibition imposed on members of the Cabinet covers both public and private office or employment *(Civil Liberties Union v. Executive Secretary, 194 SCRA 317 [199I]).*

**Q: Congresswoman A is a co-owner of an industrial estate in Sta. Rosa, Laguna which she had declared in her Statement of Assets and Liabilities. A member of her political party authored a bill which would provide a 5-year development plan for all industrial estates in the Southern Tagalog Region to attract investors. The plan included an appropriation of 2**

**billion pesos for construction of roads around the estates. When the bill finally became law, a civil society watchdog questioned the constitutionality of the law as it obviously benefitted Congresswoman A's industrial estate. Decide' with reasons. (2009)**

**A:** The law is constitutional. Sec. 12, Article VI of the Constitution does not prohibit the enactment of a law which will benefit the business interests of a member of the Senate or the House of Representatives. It only requires that if the member of Congress whose business interests will be benefited by the law is the one who will file the bill, he should notify the House concerned of the potential conflict of interest.

**Q: In the May 2013 elections, the Allied Workers' Group of the Philippines (AWGP), representing land-based and sea-based workers in the Philippines and overseas, won in the party list congressional elections. Atty. Abling, a labor lawyer, is its nominee.**

**As part of the party's advocacy and services, Congressman Abling engages in labor counseling, particularly for local workers with claims against their employers and for those who need representation in collective bargaining negotiations with employers. When labor cases arise, AWGP enters its appearance in representation of the workers and the Congressman makes it a point to be there to accompany the workers, although a retained counsel also formally enters his appearance and is invariably there. Congressman Abling largely takes a passive role in the proceedings although he occasionally speaks to supplement the retained counsel's statements. It is otherwise in CBA negotiations where he actively participates.**

**Management lawyers, feeling aggrieved that a congressman should not actively participate before labor tribunals and before employers because of the influence a congressman can wield, filed a disbarment case against the Congressman before the Supreme Court for his violation of the Code of Professional Responsibility and for breach of trust, in relation particularly with the prohibitions on legislators under the Constitution. Is the cited ground for disbarment meritorious? (2013)**

**A:** Being a congressman, Atty. Abling is disqualified under Article Vi, Section 14 of the 1987 Constitution from personally appearing as counsel before quasi-judicial and other administrative bodies handling labor cases constitutes personal appearance before them *(Puyat v. De Guzman, G.R. No. L-5122, 1982, 1135 SCRA 33).* His involvement in collective bargaining, negotiations also involves practice of law, because he is making use of his legal knowledge for the benefit of others *(Cayetano v. Monsod, G.R. No. 100113, September 3, 1991, 201 SCRA 210).* The Bureau of Labor Relations is involved in collective bargaining negotiations (Article 250 of Labor Code).

Atty. Abling should not be disbarred but should be merely suspended from the practice of law. Suspension is the appropriate penalty for involvement in the unlawful practice of law *(Tapay v. Bancolo, A.C. No. 9604, March 20, 2013, 694 SCRA 1).*

**ALTERNATIVE ANSWER:** No, Congressman Abling cannot be disbarred. A retained counsel formally appears for AWGP. His role is largely passive and cannot be considered as personal appearance. His participation in the collective brgaining negotiations does not entail personal appearance before an administrative bode (Article VI, Section 13 of the 1987 Constitution)

*Discipline of members*

**Q: Simeon Valera was formerly a Provincial Governor who ran and won as a Member of the House of Representatives for the Second Congressional District of lloilo. For violation of Section 3 of the Anti-Graft and Corrupt Practices Act (R.A. No.3019), as amended, allegedly committed when he was still a Provincial Governor, a criminal complaint was filed against him before the Office of the Ombudsman for which, upon a finding of probable cause, a criminal case was filed with the Sandiganbayan. During the course of trial, the Sandiganbayan issued an order of preventive suspension for 90 days against him.**

**Representative Valera questioned the validity of the Sandiganbayan order on the ground that, under Article VI, Section 16(3) of the Constitution, he can be suspended only by the House of Representatives and that the criminal case against him did not arise from his actuations as a member of the House of Representatives. Is Representative Valera's contention correct? Why? (2002)**

**A:** The contention of Representative Valera is not correct As held in *Santiago v. Sandiganbayan, 356 SCRA 636*, the suspension contemplated in Article VI, Section 16(3) of the Constitution is a punishment that is imposed by the Senate or House of Representatives upon an erring member, it is distinct from the suspension under Section 13 of the Anti-Graft and Corrupt Practices Act, which is not a penalty but a preventive measure. Since Section 13 of the Anti-Graft and Corruption Practices Act does not state that the public officer must be suspended only in the office where he is alleged to have committed the acts which he has been charged, it applies to any office which he may be holding.

**Q: In an election case, the House of Representatives Electoral Tribunal rendered a decision upholding the election protest of protestant A, a member of the Freedom Party, against protestee B, a member of the Federal Party. The deciding vote in favor of A was cast by Representative X, a member of the Federal Party.**

**For having voted against his party mate, Representative X was removed by Resolution of the House of Representatives, at the instance of his party (the Federal Party), from membership in the HRET. Representative X protested his removal on the ground that he voted on the basis of the evidence presented and contended that he had security of tenure as a HRET Member and that he cannot be removed except for a valid cause. With whose contention do you agree, that of the Federal Party or that of Representative X? Why? (2002)**

**A:** I agree with the contention of Representative X. As held in *Bondoc v. Pineda, 201 SCRA 792,* the members of the House of Representatives Electoral Tribunal are

entitled to security of tenure like members of the judiciary. Membership in it may not be terminated except for a just cause. Disloyalty to party is not a valid ground for the expulsion of a member of the House of Representatives Electoral Tribunal. Its members must discharge their functions with impartiality and independence from the political party to which they belong.

**Q: AVE ran for Congressman of QU province. However, his opponent, BART, was the one proclaimed and seated as the winner of the election by the COMELEC. AVE filed seasonably a protest before HRET (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. Can AVE collect salaries and allowances from the government for the first two years of his term as Congressman? Should BART refund to the government the salaries and allowances he had received as Congressman? 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. (2004)**

**A:** 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*). 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 *(Rodriguez v. Tan, 91 Phil. 724).* 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, 313 SCRA 279).*

**Electoral tribunals and the Commission on Appointments**

**Q: Suppose there, are 202 members in the House of Representatives. Of this number, 185 belong to the Progressive Party of the Philippines or PPP, while 17 belong to the Citizens Party or CP. How would you answer the following questions regarding the representation of the House in the Commission on Appointments?**

**A. How many seats would the PPP be entitled to have in the Commission on Appointments? Explain your answer fully.**

**B. Suppose 15 of the CP representatives, while maintaining their party affiliation, entered into a political alliance with the PPP in order to form the "Rainbow Coalition" in the House. What effect, if any, would this have on the right of the CP to have a seat or seats in the Commission on Appointments? Explain your answer fully. (2002)**

**A:**

A. The 185 members of the Progressive Party of the Philippines represent 91.58 per cent
of the 202 members of the House of Representatives, in accordance with Article VI, Section 18 of the Constitution, it is entitled to have ten of the twelve seats in the Commission on Appointments. Although the 185 members of Progressive Party of the Philippines represent 10.98 seats in the Commission on Appointments, under the ruling in *Guingona v. Gonzales, 214 SCRA 789 (1992),* a fractional membership cannot be rounded off to full membership because it will result in overrepresentation of that political party and under-representation of the other political parties.

B. The political alliance formed by the 15 members of the Citizens Party with the Progressive Party of the Philippines will not result in the diminution of the number of seats in the Commission on Appointments to which the Citizens Party is entitled. As held in *Cunanan v. Tan, 5SCRA 1 (1962)*, a temporary alliance between the members of one political party and another political party does not authorize a change in the membership of the Commission on Appointments. Otherwise, the Commission on Appointments will have to be reorganized as often as votes shift from one side to another in the House of Representatives.

*Powers*

**Q: Y was elected Senator in the May 1987 national elections. He was born out of wedlock in 1949 of an American father and a naturalized Filipina mother. Y never elected Philippine citizenship upon reaching the age of majority. Before what body should T, the losing candidate, question the election of Y? State the reasons for your answer.**

**A:** T, the losing candidate, should question the election of Y before the Senate Electoral Tribunal, because the issue involved is the qualification of Y to be a Senator. Section 17, Article VI of the 1987 Constitution provides that. The Senate and the House of Representatives shall each-have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members."

**Q: What is the function of the Senate Electoral Tribunal and the House of Representatives Electoral Tribunal? (2006)**

**A:** The function of the Senate Electoral Tribunal and the House of Representatives Electoral Tribunal is to be the sole judge of all contests relating to the election, returns and qualifications of Senators and Congressmen, respectively (Section 17, Article VI of the Constitution).

**Q: What is the composition of each? (2006)**

***A:*** The Senate Electoral Tribunal and the House of Representatives Electoral Tribunal are composed of nine members, three of whom are Justices of the Supreme Court designated by the Chief Justice, and the remaining six members are Senators and Congressmen, respectively, chosen on the basis of proportional representation from the political parties as well as the parties registered under the party-list system represented in the House of Representatives, in the case of the latter (Section 17, Article VI of the Constitution).

**Q: Beauty was proclaimed as the winning candidate for the position of Representative in the House of Representatives three (3) days after the elections in May. She then immediately took her oath of office. However, there was a pending disqualification case against her, which case was eventually decided by the COMELEC against her 10 days after the election. Since she has already been proclaimed, she ignored that decision and did not bother appealing it. The COMELEC then declared in the first week of June that its decision holding that Beauty was not validly elected had become final. Beauty then went to the Supreme Court questioning the jurisdiction of the COMELEC claiming that since she had already been proclaimed and had taken her oath of office, such election body had no more right to come up with a decision – that the jurisdiction had already been transferred to the House of Representatives Electoral Tribunal. How defensible is the argument of Beauty? (2014)**

**A:** The House of Representatives Electoral Tribunal has acquired exclusive jurisdiction over the case of Beauty, since she has already been proclaimed. The proclamation of the winning candidate is the operative fact that triggers the exclusive jurisdiction of the House of Representatives Electoral Tribunal over election contests relating to the election, returns and qualifications of the winning candidate,. The proclamation divests the Commission on Elections of jurisdiction over the question of disqualifications pending before it at the time of the proclamation. Any case pertaining to questions over the qualifications of a winning candidate should be raised before the House of Representative Electoral Tribunal (*Limkaichong v. COMELEC*, 583 SCRA 1; *Jalosjos, Jr. v. COMELEC*, 674 SCRA 530).

**ALTERNATIVE ANSWER:** The argument of Beauty is untenable. For the House of Representatives Electoral Tribunal to acquire jurisdiction over the disqualification case, she must be a Member of the House of Representatives. Although she had been proclaimed and had taken her oath of office, she had not yet assumed office. The term of office of the Members of the House of Representatives begins at noon of the thirtieth day of June next following their election (*Reyes v. COMLELEC,* 699 SCRA *522*).

*Legislative inquiries and the oversight functions*

**Q: Congressman Nonoy delivered a privilege speech charging the Intercontinental Universal Bank (IUB) with the sale of unregistered foreign securities, in violation of R.A. 8799. He then filed, and the House of Representatives unanimously approved, a Resolution directing the House Committee on Good Government (HCGG) to conduct an inquiry on the matter, in aid of legislation, in order to prevent the recurrence of any similar fraudulent activity.**

**The HCGG immediately scheduled a hearing and invited the responsible officials of IUB, the Chairman and Commissioners of the Securities and Exchange Commission (SEC), and the Governor of the Bangko Sentral ng Pilipinas (BSP). On the date set for the hearing, only the SEC Commissioners appeared, prompting Congressman Nonoy to move for the issuance of the appropriate *subpoena ad testificandum* to compel the attendance of the invited resource persons. (2009)**

**The IUB officials filed suit to prohibit HCGG from proceeding with the inquiry and to quash the *subpoena*, raising the following arguments:**

**a. The subject of the legislative investigation is also the subject of criminal and civil actions pending before the courts and the prosecutor's office; thus, the legislative inquiry would preempt judicial action; and**

**A:** The argument is not tenable; since this is an essential component of legislative power, it cannot be made subordinate to criminal and civil actions. Otherwise, it would be very easy to subvert any investigation in aid of legislation through convenient ploy of instituting criminal and civil actions *(Standard Chartered Bank [Philippine Branch] v. Senate Committee in Banks, Financial Institutions and Currencies, 541 SCRA 456).*

**b. Compelling the IUB officials, who are also respondents in the criminal and civil cases in court, to testify at the inquiry would violate their constitutional right against self-incrimination. Are the foregoing arguments tenable? Reasons.**

**A:** The argument is untenable. Since the IUB officials were not being subjected to a criminal penalty, they cannot invoke their right against self-incrimination unless a question calling for an incriminating answer is propounded *(Standard Chartered Bank [Philippine Branch] v. Senate Committee in Banks, Financial Institutions and Currencies, 541 SCRA 456).*

**c. May the Governor of the BSP validly invoke executive privilege and, thus, refuse to attend the legislative inquiry? Why or why not?**

**A:** No, because the power to invoke executive privilege is limited to the President *(Senate v. Ermita 488 SCRA 1).*

**Q: The House Committee on Appropriations conducted an inquiry in aid of legislation into alleged irregular and anomalous disbursements of the Countrywide Development Fund (CDF) and Congressional Initiative Allocation (CIA) of Congressmen as exposed by X, a Division Chief of the Department of Budget and Management (DBM). Implicated in the questionable disbursements are high officials of the Palace. The House Committee summoned X and the DBM Secretary to appear and testify. X refused to appear, while the Secretary appeared but refused to testify invoking executive privilege. (2010)**

**a. May X be compelled to appear and testify? If yes, what sanction may be imposed on him?**

**A:** X may be compelled to appear and testify. Only the President or the Executive Secretary by the order of the President can invoke executive privilege *(Senate v. Ermita, 488 SCRA 13).* He can be cited for contempt and ordered to be arrested *(De la Paz v. Senate Committee on Foreign Relations, 579 SCRA 521).*

**b. Is the Budget Secretary shielded by executive privilege from responding to the inquiries of the House Committee? Explain briefly. If the answer**

**is no, is there any sanction that may be imposed upon him?**

**A:** The Secretary of Budget and Management is not shielded by executive privilege from responding to the inquiries of the House Committee on Appropriations, because the inquiry is in aid of legislation and neither the President nor the Executive Secretary by the order of the President invoked executive privilege (Senate v. Ermita, *supra.*). For refusing to testify, he may be cited for contempt and ordered to be arrested *(De la Paz v. Senate Committee on Foreign Relations, supra.).*

**Q: Several senior officers of the Armed Forces of the Philippines received invitations from the Chairperson of the Senate Committees on National Defense and Security for them to appear as resource persons in scheduled public hearings regarding a wide range of subjects. The invitations state that these public hearings were triggered by the privilege speeches of the Senators that there was massive electoral fraud during the last national elections. The invitees Brigadier General Matapang and Lieutenant Coronel Makatuwiran, who were among those tasked to maintain peace and order during the last election, refused to attend because of an Executive Order banning all public officials enumerated in paragraph 3 thereof from appearing before either house of Congress without prior approval of the President to ensure adherence to the rule of executive privilege. Among those included in the enumeration are "senior officials of executive departments who, in the judgment of the department heads, are covered by executive privilege." Several individuals and groups challenge the constitutionality of the subject executive order because it frustrates the power of the Congress to conduct inquiries in aid of legislation under Section 21, Article VI of the 1987 Constitution. Decide the case. (2015)**

**A:** Under Section 5, Article XVI of the Constitution, the President is the Commander-in-Chief of the Armed Forces of the Philippines. By virtue of this power, the President can prevent the Brigadier General Matapang and Liutenant Colonel Makatwiran from appearing before the Senate to testify before a legislative investigation *(Guidani v. Senga, 2006)*.

The provision in the Executive Order which authorized Department Secretaries to invoke executive privilege in case senior officials in their departments are asked to appear in a legislative investigation is unconstitutional. It is upon the President that executive power is vested. Only the President can make use of Executive Privilege *(Senate v. Ermita, 2006).*

*Limitations on legislative power*

**Q: In 1963, congress passed a law creating a government-owned corporation named Manila War Memorial Commission (MWMC), with the primary function of overseeing the construction of a massive memorial in the heart of Manila to commemorate victim of the 1945 Battle of Manila. The MWMC charter provided an initial appropriation of P1,000,000, empowered the corporation to raise funds in its own name, and set aside a parcel of land in Malate for the memorial site. The charter set the corporate life of MWMC at 50 years with a proviso that Congress may not abolish MWMC until after the completion of the memorial. Forty-five (45) years later, the memorial was only 1/3 complete and the memorial site itself had long been overrun by squatters. Congress enacted a law abolishing the MWMC and requiring that the funds raised by it be remitted to the National Treasury. The MWMC challenged the validity of the law, arguing that under its charter its mandate is to complete the memorial no matter how long it takes. Decide with reason. (2008)**

**A:** The contention of MWMC is untenable. An implied limitation on legislative power is the prohibition against the passage of irrepealable laws. Such laws deprive succeeding legislatures of the authority to craft laws appropriate to the milieu *(City of Davao v. Regional Trial Court 467 SCRA 280).*

*Limitations on revenue, appropriations and tariff measures*

**Q: Suppose the President submits a budget which does not contain provisions for CDF (Countrywide Development Funds), popularly known as the pork barrel, and because of this Congress does not pass the budget.**

**a. Will that mean paralization of government operations in the next fiscal year for lack of an appropriation law?**
**b. Suppose in the same budget, there is a special provision in the appropriations for the Armed Forces authorizing the Chief of Staff, AFP, subject to the approval of the Secretary of National Defense, to use savings in the appropriations provided thereto to cover up whatever financial losses suffered by the AFP Retirement and Separation Benefits System (RSBS) in the last five (5) years due to alleged bad business judgment. Would you question the constitutionality validity of the special provision? (1998)**

**A:**

a. No, the failure of Congress to pass the budget will not paralyze the operations of the Government. Section 25(7), Article VI of the Constitution provides: "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.
b. Yes, the provision authorizing the Chief of Staff, with the approval of the Secretary of National Defense, to use savings to cover the losses suffered by the AFP Retirement and Separation Benefits System is unconstitutional. Section 25(5], Article VI of the Constitution provides: "No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriation law for their respective offices from savings in other Items of their respective appropriations."

In *Philippine Constitution v. Enriquez, 235 SCRA 506, 544,* the Supreme Court held that a provision in the General Appropriation Act authorizing the Chief of Staff to use savings to augment the funds of the AFP Retirement and Separation Benefits Systems was unconstitutional. "While Section 25(5) allows as an exception the realignment of savings to augment items in the general appropriations law for the executive branch, such right must and can be exercised only by the President pursuant to a specific law."

**Q: What are the limitations/restrictions provided by the Constitution on the power of Congress to authorize the President to fix tariff rates, import and export quotas, tonnage and wharfage dues. Explain. (1999)**

**A:** According to Section 28(2), Article VI of the Constitution, Congress may, by law, authorize the President to fix within specified limits, and subject to such limitations and restrictions it may impose, tariff rates, import and export quotas, tonnage and wharfage dues and other duties or imposts within
the framework of the national development program of the Government.

**Q: Suppose that the forthcoming General Appropriations Law for Year 2002, in the portion pertaining to the Department of Education, Culture and Sports, will contain a provision to the effect that the Reserve Officers Training Course (ROTC) in all colleges and universities is hereby abolished, and in lieu thereof all male college students shall be required to plant ten (10) trees every year for two (2) years in areas to be designated by the Department of Environment and Natural Resources in coordination with the Department of Education, Culture and Sports and the local government unit concerned. It further provides that the same provision shall be incorporated in future General Appropriations Acts. There is no specific item of appropriation of funds for the purpose. Comment on the constitutionality of said provision. (2001)**

**A:** The provision is unconstitutional, because it is a rider. Section 25(2), Article VI of the Constitution provides, "No provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein." The abolition of the Reserve Officers Training Course involves a policy matter. As held in *Philippine Constitution Association v. Enriquez, 235 SCRA 506,* this cannot be incorporated in the General Appropriations Act but must be embodied in a separate law.

*Presidential veto and Congressional override*

**Q: The President signs into law the Appropriations Act passed by Congress but she vetoes separate items therein, among which is a provision stating that the President may not increase an item of appropriation by transfer of savings from other items.**

**The House of Representatives chooses not to override this veto. The Senate, however, proceeds to consider two options: (1) to override the veto and (2) to challenge the constitutionality of the veto before the Supreme Court.**

**(1) Is option (1) viable? If so, what is the vote required to override the veto?**
**(2) Is option (2) viable? If not. why not? If viable, how should the Court decide the case? (1991)**

**A:**

(1) Option 1 is not viable in as much as the House of Representatives, from which the Appropriations Act originated and to which the President must have returned the law, is unwilling to override the presidential veto. There is, therefore, no basis for the Senate to even consider the possibility of overriding the President's veto. Under the Constitution the vote of two-third of all the members of the House of Representatives and the Senate, voting separately, will be needed to override the presidential veto.

(2) It is not feasible to question the constitutionality of the veto before the Supreme Court. In *Gonzales v. Macaraig, 191 SCRA 152*, the Supreme Court upheld the constitutionality of a similar veto. Under Article VI, Sec. 27(2) of the Constitution, a distinct and severable part of the General Appropriations act may be the subject of a separate veto. Moreover, the vetoed provision does not relate to any particular appropriation and is more an expression of a congressional policy in respect of augmentation from savings than a budgetary provision. It is therefore an inappropriate provision and it should be treated as an item for purposes of the veto power of the President. The Supreme Court should uphold the validity of the veto in the event the question is brought before it.

**Q: Ernest Cheng, a businessman, has no knowledge of legislative procedure. Cheng retains you as his legal adviser and asks enlightenment on the following matters:**

**a. When does a bill become a law even without the signature of the President?**
**b. When does the law take effect? (1993)**

**A:**

a. Under Section 27(1), Article VI of the Constitution, a bill becomes a law even without the signature of the President if he vetoed it but his veto was overridden by two-thirds vote of all the members of both the Senate and the House of Representatives and If the President failed to communicate his veto to the House from which the bill originated, within thirty days after the date of receipt of the bill by the President.
b. As held in *Tanada v. Tuvera, 146 SCRA 446,* 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. (Executive Order No. 292, Revised Administrative Code of 1989)

*Power of impeachment*

**Q: What are the grounds for impeachment? Explain. (1999)**

**A:** Under Section 2, Article XI of the Constitution, the grounds for impeachment are culpable violation of the

Constitution, treason, bribery, graft and corruption, other high crimes, and betrayal of public trust.

**Q: Is cronyism a legal ground for the impeachment of the President? Explain. (2000)**

**A:** Yes, cronyism is a legal ground for the impeachment of the President. Under Section 2, Article XI of the Constitution, betrayal of public trust is one of the grounds for Impeachment. This refers to violation of the oath of office and includes cronyism which involves unduly favoring a crony to the prejudice of public interest (Record of the Constitutional Commission, Vol. II, p. 272).

**Q: As a leading member of the Lapiang Mandirigma in the House of Representatives, you were tasked by the party to initiate the moves to impeach the President because he entered into an executive agreement with the US Ambassador for the use of the former Subic Naval Base by the US Navy, for free, i.e., without need to pay rent nor any kind of fees as a show of goodwill to the U.S. because of the continuing harmonious RPUS relations. Cite at least two (2) grounds for impeachment and explain why you chose them. (2013)**

**A:** The President can be impeached for culpable violation of the Constitution and betrayal of public trust. The Supreme Court has already ruled that the provision in Article XVIII, Section 25 of the Constitution requires a treaty even for the mere temporary presence of foreign troops in the Philippines *(Bayan v. Zamora,* G.R. No. 138570, October 10, 2000, 342 SCRA 499). The President cannot claim, therefore, that he acted in good faith. *(Report of the Special Committee in the Impeachment of President Quirino, Congressional Record of the House of President Quirino, Congressional Record of the House of Representatives, Vol. IV, p. 1553)*. Betrayal of public trust includes violation of the oath of the office of the President (Record of the Constitutional Commission, Vol. II, p. 272). In his oath of office, the President swore to preserve and defend the Constitution (Article VII, Section 5 of the 1987 Constitution).

## EXECUTIVE DEPARTMENT

### Privileges, inhibitions and disqualifications

*Presidential immunity*

**Q: Upon complaint of the incumbent President of the Republic, "A" was charged with libel before the Regional Trial Court. "A" moved to dismiss the information on the ground that the Court had no jurisdiction over the offense charged because the President, being immune from suit, should also be disqualified from filing a case against "A" in court. Resolve the motion. (2010)**

**A:** The motion should be denied according to *Soliven vs. Makasiar, 167 SCRA 393*, the immunity of the President from suit is personal to the President. It may be invoked by the President only and not by any other person.

*Presidential privilege*

**Q: Distinguish "presidential communications privilege" from "deliberative process privilege." (2010)**

**A:** Presidential communications privilege applies to decision-making of the President. The deliberative process privilege applies to decision-making of executive officials. Unlike the "deliberative process privilege," "the presidential communications privilege" applies to documents in their entirety and covers final and post decisional matters, as well as pre-deliberative ones. The deliberative process privilege includes advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated. *(Neri v. Senate Committee on Accountability of Public Officers and Investigations, 549 SCRA77 [2008].)*

### Powers

*Executive and administrative powers in general*

**Q: The President abolished the Office of the Presidential Spokesman in Malacañang Palace and a long-standing Bureau under the Department of Interior and Local Governments. The employees of both offices assailed the action of the President for being an encroachment of legislative powers and thereby void. Was the contention of the employees correct? Explain. (2003)**

**A:** The contention of the employees is not correct. As held in *Buklod nq Kawaninq EIIB v. Zamora, 360 SCRA 718 [2001]*, Section 31, Book III of the Administrative Code of 1987 has delegated to the President continuing authority to reorganize the administrative structure of the Office of the President to achieve simplicity, economy and efficiency. Since this includes the power to abolish offices, the President can abolish the Office of the Presidential Spokesman, provided it is done in good faith. The President can also abolish the Bureau in the Department of Interior and Local Governments, provided it is done in good faith because the President has been granted continuing authority to reorganize the administrative structure of the National Government to effect economy and promote efficiency, and the powers include the abolition of government offices. *(Presidential Decree No. 1416, as amended by Presidential Decree No. 1772; Larin v. The Executive Secretary. 280 SCRA 713 [I997]).*

**Q: To give the much needed help to the Province of Aurora which was devastated by typhoons and torrential rains, the President declared it in a "state of calamity." Give at least four (4) legal effects of such declaration. (2005)**

**A:** Declaration of a state of calamity produces, inter alia, these legal effects within the Province of Aurora:

1. Automatic Price Control — under R.A. No. 7581, The Price Act;
2. Authorization for the importation of rice under R.A. No. 8178, The Agricultural Tarrification Act;
3. Automatic appropriation under R.A. No. 7160 is available for unforeseen expenditures arising from the occurrence of calamities in areas declared to be in a state of calamity;
4. Local government units may enact a supplemental budget for supplies and materials or payment of services to prevent danger to or loss of life or property, under R.A. No. 7160;

5. Entitlement to hazard allowance for Public Health Workers (under R.A. No. 7305, Magna Carta for Public Health Workers), who shall be compensated hazard allowances equivalent to at least twenty-five percent (25%) of the monthly basic salary of health workers receiving salary grade 19 and below, and five percent (5%) for health workers with salary grade 20 and above;
6. Entitlement to hazard allowance for science and technological personnel of the government under R.A. No. 8439; and 7. A crime committed during the state of calamity will be considered aggravated under Art. 14, par. 7 of the Revised Penal Code.

**Q: On February 24, 2006, President Gloria Macapagal-Arroyo issued Proclamation No. 1017 declaring a state of national emergency. Is this Proclamation constitutional? Explain. (2006)**

**A:** The proclamation is constitutional insofar as it constitutes a call by the President for the AFP to prevent or suppress lawless violence as this is sustained by Section 18, Article VII of the Constitution.

However, PP 1017's provisions giving the President express or implied power (1) to issue decrees; (2) to direct the AFP to enforce obedience to all laws even those not related to lawless violence as well as decrees promulgated by the President; and (3) to impose standards on media or any form of prior restraint on the press, are ultra vires and unconstitutional. Likewise, under Section 17, Article XII of the Constitution, the President, in the absence of legislation, cannot take over privately-owned public utilities and businesses affected with the public interest (*David v. Arroyo, G.R. No. 171396, May 3, 2006).*

**Q: The President, concerned about persistent reports of widespread irregularities and shenanigans related to the alleged ghost projects with which the pork barrel funds of members of Congress had been associated, decided not to release the funds authorized under a Special Appropriations Act for the construction of a new bridge. The Chief Executive explained that, to properly conserve and preserve the limited funds of the government, as well as to avoid further mistrust by the people, such a project – which he considered unnecessary since there was an old bridge near the proposed bridge which was still functional – should be scrapped. Does the President have such authority? (2014)**

**A:** The President has the authority to withhold the release of the funds under a Special Appropriation Act for a project which he considered unnecessary. The faithful execution of the laws requires the President to desist from implementing a law if by doing so will prejudice public interest. It is folly to require the President to spend the entire amounts appropriated in the law in such a case (*Philippine Constitution Association v. Enriquez*, *235 SCRA 506*).

**ALTERNATIVE ANSWER:** The President does not possess the authority to scrap the Special Appropriations Act for the construction of the new bridge. His refusal to spend the funds appropriated for the purpose is unlawful. The President is expected to faithfully implement the purpose for which Congress appropriated funds. Generally, he cannot replace legislative discretion with his own personal judgment as to the wisdom of a law (Araullo v. Aquino, G.R. No. *209287, July 1, 2014*).

*Power of appointment*

**Q: When is an appointment in the civil service permanent? Distinguish between an "appointment in an acting capacity" extended by a Department Secretary from an *ad interim* appointment extended by the President. Distinguish between a provisional and a temporary appointment. (1994)**

**A:**

1. 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.
2. 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. Qzaeta, 81 Phil. 754*, an ad interim appointment is permanent.
3. In Section 24 (d) of the Civil Service Act of 1959, a TEMPORARY APPOINTMENT is one issued to a person to a position needed only for a limited period not exceeding six months. Under Section 25(b) of the Civil Service Decree, a temporary appointment is one issued to a person who meets all the requirements for the position to which he is being appointed except the appropriate civil service eligibility because of the absence of appropriate eligibles and it is necessary in the public Interest to fill the vacancy. On the other hand. Section 24(e) of the Civil Service Act of 1959 defined a PROVISIONAL APPOINTMENT as one issued upon the prior authorization of the Civil Service Commission in accordance with its provisions and the rules and standards promulgated in pursuance thereto 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 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. Provisional appointments in general have already been abolished by Republic Act 6040. However, it still applies with regard to teachers under the Magna Carta for Public School Teachers.

**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. (2003)**

**A:** According to *Sevilla v. Court of Appeals. 209 SCRA 637*, an acting appointment is merely temporary. As held in *Marohombsar v. Alonto, 194 SCRA 390,* 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: In March 2001, while Congress was adjourned, the President appointed Santos as Chairman of the Commission on Elections. Santos immediately took his oath and assumed office. While his appointment was promptly submitted to the Commission on Appointments for confirmation, it was not acted upon and Congress again adjourned. In June 2001, the President extended a second ad interim appointment to Santos for the same position with the same term, and this appointment was again submitted to the Commission on Appointments for confirmation. Santos took his oath anew and performed the functions of his office.**

**Reyes, a political rival, filed a suit assailing certain orders issued by Santos. He also questioned the validity of Santos' appointment. Resolve the following issues:**

**a. Does Santos' assumption of office on the basis of the ad interim appointments issued by the President amount to a temporary appointment which is prohibited by Section 1 (2), Article IX-C of the Constitution?**
**b. Assuming the legality of the first ad interim appointment and assumption of office by Santos, were his second ad interim appointment and subsequent assumption of office to the same position violations of the prohibition on reappointment under Section 1 (2), Article IX-C of the Constitution? (2005)**

**A:**

***a.*** The assumption of office by Santos on the basis of the ad interim appointment issued by the President does not amount to a temporary appointment. An ad interim appointment is a permanent appointment, because it takes effect immediately and can no longer be withdrawn by the President once the appointee has qualified into office [Art. VII. Sec. 16, second paragraph of the Constitution; *Matibag v. Benipayo, 380 SCRA 49 (2002)*].

b. The second ad interim appointment of Santos does not violate the prohibition against reappointment under Section 1(2) Article IX-C of the Constitution. The prohibition does not apply to a by-passed ad interim appointment, because it has not been finally disapproved by the Commission on Appointments *[Matibag v. Benipayo, 380 SCRA 49 (2002)]*. The prohibition against reappointment in the Constitution presupposes the end of the term. After the end of the term, he cannot be reappointed.

**Q: While Congress was in session, the President appointed eight acting Secretaries. A group of Senators from the minority bloc questioned the validity of the appointments in a petition before the Supreme Court on the ground that while Congress is in session, no appointment that requires confirmation by the Commission on Appointments, can be made without the latter's consent, and that an undersecretary should instead be designated as Acting Secretary. Should the petition be granted? (2013)**

**A:** No, the petition should not be granted. The Department Head is an *alter ego* of the President and must enjoy his confidence even if the appointment will be merely temporary. The Senators cannot require the President to designate an Undersecretary to be the temporary *alter ego* of the President (*Pimentel v. Ermita, 472 SCRA 587*).

**Q: A was a career Ambassador when he accepted an ad interim appointment as cabinet Member. The Commission on Appointment bypassed his ad interim appointment, however, and he was not re-appointed. Can he re-assume his position as career Ambassador? (2010)**

**A:** The career Ambassador cannot re-assume his position as career Ambassador. His ad interim appointment as Cabinet Member was a permanent appointment *(Summers v. Ozaeta, 81 Phil. 754 [1948].* He abandoned his position as Ambassador when he accepted his appointment as Cabinet Member because as Cabinet Member, he could not hold any other office during his tenure (Section 13, Article VII, Constitution).

**Q: The President appointed Dexter I. Ty as Chairperson of the COMELEC on June 14, 2011 for a term of seven (7) years pursuant to the 1987 Constitution. His term of office started on June 2, 2011 to end on June 2, 2018. Subsequently, the President appointed Ms. Marikit as the third member of the COMELEC for a term of seven (7) years starting June 2, 2014 until June 2, 2021. On June 2, 2015, Chairperson Ty retired optionally after having served the government for thirty (30) years. The President then appointed Commissioner Marikit as COMELEC Chairperson. The Commission on Appointments confirmed her appointment. The appointment papers expressly indicate that Marikit will serve as COMELEC Chairperson "until the expiration of the original term of her office as COMELEC Commissioner or on June 2, 2021." Matalino, a tax payer, files a petition for certiorari before the Supreme Court asserting that the appointment of Marikit as COMELEC Chairperson is unconstitutional for the following reasons: (1) The appointment of Marikit as COMELEC Chairperson constituted a reappointment which is proscribed by Section 1 (2), Article IX of the 1987 Constitution; and (2) the term of office expressly stated in the appointment papers of Marikit likewise contravenes the aforementioned constitutional provision. Will the constitutional challenge succeed? Explain. (2015)**

**A:** The first argument is untenable since Commissioner Marikit was not reappointed but actually was a promotional appointment as she had not yet fully served her term. What the Constitution prohibits is a reappointment of a COMELEC Commissioner after serving the seven-year term. On the second argument, the limitation of the term of Commissioner Marikit as chairman until expiration of her original term on June 2, 2021 is valid only until June 8, 2018, that is, the unexpired portion of the last chairman's term but invalid if until 2021 as it exceeds the limitation. A promotional apportionment is allowed provided that the aggregate period of the term of the appointee will not exceed seven years and that the rotational scheme of staggering terms of the commission membership is maintained *(Funa v. Ermita, 2012).*

*Commission on Appointments confirmation*

**Q:**

1. **What are the six categories of officials who are subject to the appointing power of the President?**
2. **Name the category or categories of officials whose appointments need confirmation by the Commission on Appointments? (1999)**

**A:**

1. Under Section 16, Article VII of the Constitution, the six categories of officials who are subject to the appointing power of the President are the following:
   a. Head of executive departments;
   b. Ambassadors, other public ministers and consuls;
   c. Officers of the armed forces from the rank of colonel or naval captain
   d. Other officers whose appointments are vested in him by the Constitution;
   e. All other officers of the government whose appointments are not otherwise provided by law; and
   f. Those whom he may be authorized by law to appoint *(Cruz, Philippine Political Law, 1998 ed., pp. 204-205).*

2. According to *Sarmiento v. Mison, 156 SCRA 549*, the only officers whose appointments need confirmation by the Commission on Appointments are the head of executive departments, ambassadors, other public ministers and consuls, officers of the armed forces from the rank of colonel or naval captain, and other officials whose appointments are vested in the President by the Constitution.

**Q: In December 1988, while Congress was in recess, A was extended an ad interim appointment as Brigadier General of the Philippine Army, in February 1989. When Congress was in session, B was nominated as Brigadier General of the Philippine Army. B's nomination was confirmed on August 5, 1989 while A's appointment was confirmed on September 5, 1989. Who is deemed more senior of the two, A or B? Suppose Congress adjourned without the Commission on Appointments acting on both appointments, can A and B retain their original ranks of colonel? (1994, 2010)**

**A:**

1. A is senior to B. In accordance with the ruling in *Summers v. Ozaeta. 81 Phil. 754*, the ad interim appointment extended to A is permanent and is effective upon his acceptance although it is subject to confirmation by the Commission on Appointments.
2. If Congress adjourned without the appointments of A and B having been confirmed by the Commission on Appointments, A cannot return to his old position. As held *in Summers v. Qzaeta, 81 Phil. 754*, by accepting an *ad interim* appointment to a new position, A waived his right to hold his old position. On the other hand, since B did not assume the new position, he retained his old position.

**Q: On December 13, 1990, the President signed into law Republic Act No. 6975 (subsequently amended by RA No. 8551) creating the Department of Interior and Local Government. Sections 26 and 31 of the law provide that senior officers of the Philippine National Police (PNP), from Senior Superintendent, Chief Superintendent, Deputy Director General to Director General or Chief of PNP shall, among others, be appointed by the President subject to confirmation by the Commission on Appointments.**

**In 1991 the President promoted Chief Superintendent Roberto Matapang and Senior Superintendent Conrado Mahigpit to the positions of Director and Chief Superintendent of the PNP, respectively. Their appointments were in a permanent capacity. Without undergoing confirmation by the Commission on Appointments, Matapang and Mahigpit took their oath of office and assumed their respective positions. Thereafter, the Department of Budget and Management authorized disbursements for their salaries and other emoluments. Juan Bantay filed a taxpayer's suit questioning the legality of the appointments and disbursements made. Bantay argues that the appointments are invalid inasmuch as the same have not been confirmed by the Commission on Appointments, as required under Sections 26 and 31 of R.A. No. 6975.**

**Determine with reasons the legality of the appointments and the disbursements for salaries by discussing the constitutional validity of Sections 26 and 31 of R.A. No. 6975. (2002)**

**A:** The appointments of Matapang and Mahigpit are valid even if they were not confirmed by the Commission on Appointments, because they are not among the public officials whose appointments are required to be confirmed by the first sentence of Article VII, Section 16 of the Constitution. According *to Manalo v. Sistoza, 312 SCRA 239*, Sections 26 and 31 of Republic Act 6975 are unconstitutional, because Congress cannot by law expand the list of public officials required to be confirmed by the Commission on Appointments. Since the appointments of Matapang and Mahigpit are valid, the disbursements of their salaries and emoluments are valid.

*Doctrine of qualified political agency*

**Q: A law provides that the Secretaries of the Departments of Finance and Trade and Industry, the Governor of the Central Bank, the Director General of the National Economic Development Authority, and the Chairperson of the Philippine Overseas Construction Board shall sit as ex- officio members of the Board of Directors (BOD) of a government owned and controlled corporation (GOCC). The other four (4) members shall come from the private sector. The BOD issues a resolution to implement a new organizational structure, staffing pattern, a position classification system, and a new set of qualification standards. After the implementation of the Resolution, Atty. Dipasupil questioned the legality of the Resolution alleging that the BOD has no authority to do so. The BOD claims otherwise arguing that the doctrine of qualified political agency applies to the case. It contends that since its agency is attached to the Department of Finance, whose head, the Secretary of Finance, is an alter ego of the President, the BOD's acts were also the acts of**

**the President. Is the invocation of the doctrine by the BOD proper? Explain. (2015)**

**A:** The invocation by the Board of directors of the doctrine of qualified political agency is not proper.
"The doctrine of qualified political agency essentially postulates that the heads of the various executive departments are the alter egos of the President, and, thus, the actions taken by such heads in the performance of their official duties are deemed the acts of the President unless the President himself should disapprove such acts. This doctrine is in recognition of the fact that in our presidential form of government, all executive organizations are adjuncts of a single Chief executive; that the heads of the executive Departments are assistants and agents of the Chief Executive; and that the multiple executive functions of the president as the Chief Executive are performed through the Executive Departments. The doctrine has been adopted here out of practical necessity, considering that the President cannot be expected to personally perform the multifarious functions of the executive office.

The Cabinet Members sat on the Board of Directors ex officio , or by reason of their office or function, "not because of their direct appointment to the Board by the president. Evidently, it was the law, not the President, that sat them in the Board."
"Under the circumstances, when the members of the Board of Directors effected the assailed... reorganization, thet were acting as the responsible members of the Board of Directors" constituted pursuant to the law," not as the alter egos of the President." *(Trade and Investment Development Corporation of the Philippines v. Manalang-Demigillo, G.R. No. 185571, March 5, 2013; Manalang-Demigillo v. Trade and Investment Development Corporation of the Philippines, G.R. No. 168613, March 5, 2013).*

*Military powers*

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

**a. To quell this, can the President place under martial law the islands of Sulu and Basilan? Give your reasons?**
**b. What are the constitutional safeguards on the exercise of the President's power to proclaim martial law? (2000)**

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

b. The following are the constitutional safeguards on the exercise of the power of the President to proclaim martial law:
   a. There must be actual invasion or rebellion;
   b. The duration of the proclamation shall not exceed sixty days;
   c. Within forty-eight hours, the President shall report his action to Congress. If Congress is not in session, it must convene within twenty-four hours;
   d. Congress may by majority vote of all its members voting Jointly revoke the proclamation, and the President cannot set aside the revocation;
   e. By the same vote and in the same manner, upon Initiative of the President, Congress may extend the proclamation If the invasion or rebellion continues and public safety requires the extension;
   f. The Supreme Court may review the factual sufficiency of the proclamation, and the Supreme Court must decide the case within thirty days from the time it was filed;
   g. Martial law does not automatically suspend the privilege of the writ of habeas corpus or the operation of the Constitution.
   h. It does not supplant the functioning of the civil courts and of Congress. Military courts have no Jurisdiction over civilians where civil courts are able to function (*Cruz, Philippine Political Law, 1995 ed., pp. 213- 214).*

**Q: What do you mean by the "Calling-out Power" of the President under Section 18, Article VII of the Constitution? (2006)**

**A:** The calling-out power of the President refers to the power of the President to order the armed forces, whenever it becomes necessary, to suppress lawless violence, invasion or rebellion *(David v Macapagal-Arroyo, G.R. No. 171396, May 3, 2006).*

**Q: The President issued a Proclamation No. 1018 placing the Philippines under Martial Law on the ground that a rebellion staged by lawless elements is endangering the public safety. Pursuant to the Proclamation, suspected rebels were arrested and detained and military tribunals were set up to try them. Robert dela Cruz, a citizen, filed with the Supreme Court a petition questioning the validity of Proclamation No. 1018.**

**a. Does Robert have a standing to challenge Proclamation No. 1018? Explain.**
**b. In the same suit, the Solicitor General contends that under the Constitution, the President as Commander-in-Chief, determines whether the exigency has arisen requiring the exercise of his power to declare Martial Law and that his determination is conclusive upon the courts. How should the Supreme Court rule?**
**c. The Solicitor General argues that, in any event, the determination of whether the rebellion poses danger to public safety involves a question of fact and the Supreme Court is not a trier of facts. What should be the ruling of the Court?**
**d. Finally, the Solicitor General maintains that the President reported to Congress such proclamation of Martial Law, but Congress did not revoke the proclamation. What is the effect of the inaction of Congress on the suit brought by Robert to the Supreme Court? (2006)**

**A**:
a. Yes, Robert has standing. Under Article VIII, Section 17 of the 1987 Constitution, the Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law. As citizen therefore,

Robert may file the petition questioning Proclamation No. 1018.

b. The Supreme Court should rule that his determination is not conclusive upon the courts. The 1987 Constitution allows a citizen, in an appropriate proceeding, to file a petition questioning the sufficiency of the factual basis of said proclamation. Moreover, the power to suspend the privilege of the writ of habeas corpus and the power to impose martial law involve the curtailment and suppression of certain basic civil rights and individual freedoms, and thus necessitate safeguards by Congress and review by the Supreme Court (*IBP v. Zamora, G.R. No. 141284, August 15, 2000*).

c. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government (Art. Vin, Sec. 1, par. 2,1987 Constitution). 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. Article VII, Section 18 of the 1987 Constitution specifically grants the Supreme Court the power to review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law. Thus, in the matter of such declaration, two conditions must concur: (1) there must be an actual invasion or rebellion; and (2) public safety must require it. The Supreme Court cannot renege on its constitutional duty to determine whether or not the said factual conditions exist (*IBP v. Zamora, supra.*).

d. The inaction of Congress has no effect on the suit brought by Robert to the Supreme Court as Article VIII, Section 18 provides for checks on the President's power to declare martial law to be exercised separately by Congress and the Supreme Court. Under said provision, the duration of martial law shall not exceed sixty days but Congress has the power to revoke the proclamation or extend the period. On the other hand, the Supreme Court has the power to review the said proclamation and promulgate its decision thereon within thirty days from its filing (Article VIII, Section 18).

**Q: Distinguish the President's authority to declare a state of rebellion from the authority to proclaim a state of national emergency. (2015)**

**A:** The power of the President to declare a state of rebellion is based on the power of the President as chief executive and commander-in-chief of the Armed Forces of the Philippines to suppress it. It is not necessary for the President to declare a state of rebellion before calling out the Armed forces of the Philippines to suppress it. The proclamation only gives notice to the nation that such a state exists and that the Armed Forces of the Philippines may be called upon to suppress it *(Sanlakas v. Executive Secretary, 421 SCRA 656 [2004])*. On the other hand, a proclamation of a state of national emergency, the President is already calling out the Armed Forces of the Philippines to suppress not only rebellion but also lawless violence *(David v. Arroyo, 489 SCRA 162[2006]).*

**Q: Typhoon Bangis devastated the Province of Sinagtala. Roads and bridges were destroyed which impeded the entry of vehicles into the area. This caused food shortage resulting in massive looting of grocery stores and malls. There is power outage also in the area. For these reasons, the governor of the province declares a state of emergency in their province through Proclamation No. 1. He also invoked Section 465 of the Local Government Code of 1991 (R.A. No. 7160) which vests on the provincial governor the power to carryout emergency measures during man-made and natural disasters and calamities, and to call upon the appropriate national law enforcement agencies to suppress disorder and lawless violence. In the same proclamation, the governor called upon the members of the Philippine National Police, with the assistance of the Armed Forces of the Philippines, to set up checkpoints and chokepoints, conduct general searches and seizures including arrests, and other actions necessary to ensure public safety. Was the action of the provincial governor proper? Explain. (2015)**

**A:** No, the provincial governor is not endowed with the power to call upon the armed forces at his own bidding. In issuing the assailed proclamation, Governor Tan exceeded his authority when he declared a state of emergency and called upon the Armed Forces and the police. The calling-out powers contemplated under the Constitution is exclusive to the President. An exercise by another official, even if he is the local chief executive, is ultra vires, and may not be justified by the invocation of Section 465 of the Local Government Code since said provision only refers to calamities and disasters only and not of looting as in the instant case *(Kulayan vs Tan, July 3, 2012).*

*Pardoning power*

**Q: A while serving imprisonment for estafa upon recommendation of the Board of Pardons and Parole, was granted pardon by the President on condition that he should not again violate any penal law of the land. Later, the Board of Pardons and Parole recommended to the President the cancellation of the pardon granted him because A had been charged with estafa on 20 counts and was convicted of the offense charged although he took an appeal therefrom which was still pending. As recommended, the President canceled the pardon he had granted to A. A was thus arrested and imprisoned to serve the balance of his sentence in the first case. A claimed in his petition for habeas corpus filed in court that his detention was illegal because he had not yet been convicted by final judgment and was not given a chance to be heard before he was recommitted to prison. Is A's argument valid? (1997)**

**A:** The argument of A is not valid. As held in *Torres v. Gonzales, 152 SCRA 272,* 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 his pardon. Moreover, a hearing is not necessary before A can be recommitted to prison.

By accepting the conditional pardon, A, agreed that the determination by the President that he violated the condition of his pardon shall be conclusive upon him and an order for his arrest should at once issue.

**Q: Governor A was charged administratively with oppression and was placed under preventive suspension from office during the pendency of his case. Found guilty of the charge, the President suspended him from office for ninety days. Later, the President granted him clemency by reducing the period of his suspension to the period he has already served. The Vice Governor questioned the validity of the exercise of executive clemency on the ground that it could be granted only in criminal, not administrative, cases. How should the question be resolved? (1997)**

**A:** The argument of the Vice Governor should be rejected. As held in *Llamas v. Orbos, 202 SCRA 844,* the power of executive clemency extends to administrative cases. In granting the power of executive clemency upon the President, Section 19, Article VII of the Constitution does not distinguish between criminal and administrative cases. Section 19, Article VII of the Constitution excludes impeachment cases, which are not criminal cases, from the scope of the power of executive clemency. If this power may be exercised only in criminal cases, it would have been unnecessary to exclude impeachment cases from this scope. If the President can grant pardons in criminal cases, with more reason he can grant executive clemency in administrative cases, which are less serious.

**Q:**

1. **What are the constitutional limitations on the pardoning power of the President? (1999, 2015)**
2. **Distinguish between pardon and amnesty. (1999)**

**A:**

1. The following are the limitations on the pardoning power of the President:
   a. It cannot be granted in cases of impeachment;
   b. Reprieves, commutations, pardon, and remission of fines and forfeitures can be granted only after conviction by final judgment.
   c. Amnesty requires the concurrence of the majority of all members of Congress
   d. The favorable recommendation of the COMELEC is required for violation of election laws, rules and regulations.
   e. The President cannot pardon members and employees of the Judiciary found guilty by the Supreme Court in administrative cases

2. According to *Barrioquinto v. Fernandez, 82 Phil. 642*, the following are the distinctions between pardon and amnesty:
   a. Pardon is a private act and must be pleaded and proved by the person pardoned; while amnesty is a public act of which courts take judicial notice;
   b. Pardon does not require the concurrence of Congress, while amnesty requires the concurrence of Congress;
   c. Pardon is granted to individuals, while amnesty is granted to classes of persons or communities;
   d. Pardon may be granted for any offense, while amnesty is granted for political offenses;
   e. Pardon is granted after final conviction, while amnesty may be granted at any time; and
   f. Pardon looks forward and relieves the offender from the consequences of his offense, while amnesty looks backward and the person granted it stands before the law as though he had committed no offense.

**Q: Bruno still had several years to serve on his sentence when he was conditionally pardoned by the President. Among the conditions imposed was that he would "not again violate any of the penal laws of the Philippines." Bruno accepted all of the conditions and was released. Shortly thereafter, Bruno was charged with 2 counts of estafa. He was then incarcerated to serve the expired portion of his sentence following the revocation by the President of the pardon.**

**Bruno's family filed a petition for habeas corpus, alleging that it was error to have him recommitted as the charges were false, in fact, half of them were already dismissed. Resolve the petition with reasons. (2005)**

**A:** The petition should not be given due course. The grant of pardon and the determination of the terms and conditions of a conditional pardon are PURELY EXECUTIVE ACTS which are not subject to judicial scrutiny. The acceptance thereof by the convict or prisoner carried with it the authority or power of the Executive to determine whether a condition or conditions of the pardon has or have been violated. Where the President opts to revoke the conditional pardon given, no judicial pronouncement of guilt of a subsequent crime is necessary, much less conviction therefor by final judgment of a court, in order that a convict may be recommended for the violation of his conditional pardon. The determination of the occurrence of a breach of a condition of a pardon, and the proper consequences of such breach, is a purely executive act, not subject to judicial scrutiny (*Torres v. Gonzales, G.R. No. 76872, July 23, 1987).*

**Q: ST, a Regional Trial Court judge who falsified his Certificate of Service, was found liable by the Supreme Court for serious misconduct and inefficiency, and meted the penalty of suspension form office for 6 months. Subsequently, ST filed a petition for executive clemency with the Office of the President. The Executive Secretary, acting on said petition issued a resolution granting ST executive clemency. Is the grant of executive clemency valid? Why or why not? (2008)**

**A:** The grant of executive clemency is not valid. First, in this case, the power of executive clemency cannot be delegated for it was not signed by the President himself but by the Executive Secretary and second, the power of executive clemency cannot extend to administrative cases in the Judiciary, because it will violate the principle of separation of powers and impair the power of the Supreme Court under Section 6, Article VIII of the Constitution of administrative supervision over all courts (*Petition for Judicial Clemency of Romillo, G.R. No. 97091, December 9, 1997*)

*Forms of executive clemency*

**Q: The first paragraph of Section 19 of Article VII of the Constitution providing for the pardoning power of the President, mentions reprieve, commutation, and pardon. Please define the three of them, and differentiate one from the others. (1988)**

**A:** The terms were defined and distinguished from one another in *People v. Vera, 65 Phil. 56, 111-112*, as follows:

a. REPRIEVE is a postponement of the execution of a sentence to a day certain,
b. COMMUTATION is a remission of a part of the punishment, a substitution of less penalty for the one originally imposed.
c. A PARDON, on the other hand, is an act of grace, proceeding from the power entrusted with the execution of the laws which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed.

*Diplomatic power*

**Q: Can the House of Representatives take active part in the conduct of foreign relations, particularly in entering into treaties and international agreements? Explain. (1996)**

**A:** No, the House of Representatives cannot take active part in the conduct of foreign relations, particularly in entering into treaties and international agreements. As held in *United States v. Curtiss-Wright Export Corporation, 299 U.S. 304*, the President alone is the representative of the nation in the conduct of foreign affairs. Although the Senate has the power to concur in treaties, the President alone negotiates treaties and Congress is powerless to intrude into this. However, if the matter involves a treaty or an executive agreement, the House of Representatives may pass a resolution expressing its views on the matter.

**Q: What are the restrictions prescribed by the Constitution on the power of the President to contract or guarantee foreign loans on behalf of the Republic of the Philippines? Explain. (1999)**

**A:** Under Section 20, Article VII of the Constitution, the power of the President to contract or guarantee loans on behalf of the Republic of the Philippines is subject to the prior concurrence of the Monetary Board and subject to such limitations as may be prescribed by law.

**Q: The Philippine Government is negotiating a new security treaty with the United States which could involve engagement in joint military operations of the two countries' armed forces. A loose organization of Filipinos, the Kabataan at Matatandang Makabansa (KMM) wrote the Department of Foreign Affairs (DFA) and the Department of National Defense (DND) demanding disclosure of the details of the negotiations, as well as copies of the minutes of the meetings. The DFA and the DND refused, contending that premature disclosure of the offers and counter-offers between the parties could jeopardize on-going negotiations with another country. KMM filed suit to compel disclosure of the negotiation details, and be granted access to the records of the meetings, invoking the constitutional right of the people to information on matters of public concern. (2009)**

**a. Decide with reasons.**

**A:** The petition of KMM must be denied. Diplomatic negotiations are privileged in order to encourage a frank exchange of exploratory ideas between the parties by shielding the negotiations from the public view (*Akbayan Citizens Action Party v. Aquino 558 SCRA 468*).

**b. Will your answer be the same if the information sought by KMM pertains to contracts entered into by the Government in its proprietary or commercial capacity? Why or why not?**

**A:** KMM is entitled to have access to information pertaining to government contracts entered into by the Government in the exercise of its proprietary or commercial capacity, the right to information under the Constitution does not exclude contracts of public interest and are not privileged (Section 7, Article III of the Constitution; *Valmonte v. Belmonte, 179 SCRA 256*).

*Delegated powers*

**Q: What are the limitations/restrictions provided by the Constitution on the power of Congress to authorize the President to fix tariff rates, import and export quotas, tonnage and wharfage dues. Explain. (1999)**

**A:** According to Section 28(2), Article VI of the Constitution, Congress may, by law, authorize the President to fix within specified limits, and subject to such limitations and restrictions it may impose, tariff rates, import and export quotas, tonnage and wharfage dues and other duties or imposts within the framework of the national development program of the Government.

*Veto powers*

**Q; Distinguish between "pocket veto" and "item veto." (2009)**

**A:** A pocket veto is when the President is considered to have rejected a bill submitted to him for his approval when Congress adjourns during the period given to the President to approve or reject a bill.

On the other hand, an item veto, or partial veto, is the power of a President to nullify or cancel specific provisions of a bill, usually a budget appropriations bill, without vetoing the entire legislative package.

## JUDICIAL DEPARTMENT

### Judicial power

**Q: Andres Ang was born of a Chinese father and a Filipino mother in Sorsogon, Sorsogon on January 20, 1973. In 1988, his father was naturalized as a Filipino citizen. On May 11, 1998, Andres Ang was elected Representative of the First District of Sorsogon. Juan Bonto who received the second highest number of votes, filed a petition for Quo Warranto against Ang. The petition was filed with the House of Representative Electoral Tribunal (HRET). Bonto contends that Ang is not a natural born citizen of the Philippines and therefore is disqualified to be a member of the House.**

**The HRET ruled in favor of Ang. Bonto filed a petition for certiorari in the Supreme Court. The following issues are raised: Whether the case is justiciable considering that Article VI, Section 17 of the Constitution declares the HRET to be the "sole Judge" of all contests relating to the election returns and disqualifications of members of the House of Representatives. How should this case be decided? (1998)**

**A:** The case is justiciable. As stated in *Lazatin v. House of Electoral Tribunal, 168 SCRA 391, 404,* since judicial power includes the duty to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government, the Supreme Court has the power to review the decisions of the House of Representatives Electoral Tribunal in case of grave abuse of discretion on its part.

**Q: What is the difference, if any, between the scope of judicial power under the 1987 Constitution on one hand, and the 1935 and the 1973 Constitutions on the other? (1994)**

**A:** The scope of judicial power under the 1987 Constitution is broader than its scope under the 1935 and 1973 Constitution because of the second paragraph of Section 1, Article VIII of the 1987 Constitution, which states that it includes the duty to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. As held in *Marcos v. Manglapus, 177 SCRA 668,* this provision limits resort to the political question doctrine and broadens the scope of juridical inquiry into areas which the courts under the 1935 and the 1973 Constitutions would normally have left to the political departments to decide.

**ALTERNATIVE ANSWER:** Under the 1935 and the 1973 Constitutions, there was no provision defining the scope of judicial power as vested in the judiciary. While these Constitutions, both provided for vesture of judicial power "in one Supreme Court and in such inferior courts as may be established by law," they were silent as to the scope of such power.

The 1987 Constitution on the other hand, re-wrote the provisions on the vesture of judicial powers originally appearing in the 1935 and 1973 Constitutions, as follows:

> "The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> "Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." (*Section 1, Article VIII*)

The second paragraph of the cited provision was not found in the 1935 and 1973 Constitution. It contains a new definition of judicial power particularly the scope thereof. The first portion thereof represents the traditional concept of judicial power, involving the settlement of conflicting rights as by law, which presumably was implicit in the 1935 and 1973 Constitutions. The second (latter) portion of the definition represents a broadening of the scope of the judicial power or, in the language of the Supreme Court, conferment of "expanded jurisdiction" on the judiciary (*Daza v. Singson. 180 SCRA 496*) to enable the courts to review the exercise of discretion by the political departments of government. This new prerogative of the judiciary as now recognized under the 1987 Constitution was not constitutionally permissible under the 1935 and 1973 Charters.

**Q: SDO was elected Congressman. Before the end of his first year in office, he inflicted physical injuries on a colleague, ETI. In the course of a heated debate, charges were filed in court against him as well as in the House Ethics Committee. Later, the House of Representatives, dividing along party lines, voted to expel him. Claiming that his expulsion was railroaded and tainted by bribery, he filed a petition seeking a declaration by the Supreme Court that the House gravely abused its discretion and violated the Constitution. He prayed that his expulsion be annulled and that he should be restored by the Speaker to his position as Congressman. Is SDO's petition before the Supreme Court justiciable? (2004)**

**A:** While under Section 1, Article VIII of the 1987 Constitution the Supreme Court may inquire whether or not the decision to expel SDO is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, the petition should be dismissed. In *Alejandrino v. Quezon (46 Phil. 83 [1924])*, the Supreme Court held that it could not compel the Senate to reinstate a Senator who assaulted another Senator and was suspended for disorderly behavior, because it could not compel a separate and coequal department to take any particular action. In *Osmena v. Pendatun (109Phil. 863 [1960])*, it was held that the Supreme Court could not interfere with the suspension of a Congressman for disorderly behavior, because the House of Representatives is the judge of what constitutes disorderly behavior. The assault of a fellow Senator constitutes disorderly behavior.

**Q: The President alone without the concurrence of the Senate abrogated a treaty. Assume that the other country-party to the treaty is agreeable to the abrogation provided it complies with the Philippine Constitution. If a case involving the validity of the treaty abrogation is brought to the Supreme Court, how should it be resolved? (2008)**

**A:** The Supreme Court should dismiss the case. The jurisdiction of the Supreme Court over a treaty is only with respect to questions of its constitutionality or validity. In other words, the question should involve the constitutionality of a treaty or its validity in relation to a statute (*Gonzales v. Hechanova, 9 SCRA 230*). It does not pertain to the termination of a treaty.

The authority of the Senate over treaties is limited to concurrence (Art. VIII, Sec. 21 of the 1987 Constitution). There being no express constitutional provision regulating the termination of treaties, it is presumed that the power of the President over treaty agreements and over foreign relations includes the authority to

"abrogate" treaties. The termination of the treaty by the President without the concurrence of the Senate is not subject to constitutional attack, there being no Senate authority to that effect.

The Philippines is a party to the Vienna Convention on the Law of Treaties. Hence, the said Convention this becoming part of Philippine Law governs the act of the President in terminating the treaty. Article 54 of this Convention provides that a treaty may be terminated "At any time by consent of all the parties". Apparently, the treaty in question is a bilateral treaty in which the other state is agreeable to its termination. Article 67 of the Convention adds the formal requirement that the termination must be in an instrument communicated to the other party signed by the Head of State or of Government or by the Minister of Foreign Affairs.

**Q: Mr. Yellow and Mr. Orange were the leading candidates in the vice-presidential elections. After elections, Yellow emerged as the winner by a slim margin of 100,000 votes. Undaunted, Orange filed a protest with the Presidential Electoral Tribunal (PET). After due consideration of the facts and the issues, the PET ruled that Orange was the real winner of the elections and ordered his immediate proclamation. (2012)**

**a. Aggrieved, Yellow filed with the Supreme Court a Petition for Certiorari challenging the decision of the PET alleging grave abuse of discretion. Does the Supreme Court have jurisdiction? Explain.**
**b. Would the answer in (a.) be the same if Yellow and Orange were contending for a senatorial slot and it was the Senate Electoral Tribunal (SET) who issued the challenged ruling?**
**c. What is the composition of the PET?**
**d. What is judicial power? Explain Briefly.**

**A:**

a. The Supreme Court has no jurisdiction over the petition. The Presidential Electoral Tribunal is not simply an agency to which the Members of the Senate Court were assigned. It is not separate from the Supreme Court (*Macalintal v. Presidential Tribunal Electoral Tribunal, 631 SCRA 239*).
b. The Supreme Court would have jurisdiction if it were the Senate Electoral Tribunal who issued the challenged ruling. The Supreme Court can review its decision if it acted with grave abuse of discretion (*Lerias v. HRET, 202 SCRA 808*).
c. The presidential Electoral Tribunal is composed of the Chief Justice and the Associate Justices of the Supreme Court *en banc*. (Section 4, Article VII of the Constitution).
d. Judicial power - Section 1(1) Art. 8 is the authority to settle justifiable controversies or dispute involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violation of such rights (*Lopez v. Roxas, 17 SCRA 756*). It includes the duty of the courts to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government (Section 1, Article VIII of the Constitution).

**Q: In keeping with the modern age of instant and incessant information and transformation, Congress passed Cybercrime Prevention Act to regulate access and use of the amenities of the cyberspace. While ostensibly the law is intended to protect the interests of society, some if its provisions were also seen as impermissibly invading and impairing widely cherished liberties of the people particularly the freedom of expression. Before the law could even be implemented, petitions were filed in the Supreme Court questioning said provisions by people who felt threatened, for themselves, as well as for the benefit of others who may be similarly affected nut not minded enough to challenge the law. The Solicitor General countered that there is no basis for the exercise of the power of judicial review since there has yet been no violation of the law, and that the petitioners have no *locus standi* since they do not claim to be in imminent danger of being prosecuted under the law. Can the Court proceed to decide the case even if the law has not yet become effective? (2014)**

**A:** The Supreme Court can proceed to decide the case even if the law has not yet become effective. Since the petitions filed sought to nullify the Cybercrime Prevention Act, because it violated several provisions of the Bill of Rights, the Supreme Court became duty-bound to settle the dispute (*Tañada v. Angara, 272 SCRA 18*). Since it is alleged that the Cybercrime Prevention Act violates various provisions of the Bill of Rights, including freedom of speech, freedom of the press, and the right against unreasonable searches and seizures, the issues raised are of paramount public interest, of transcendental importance and with far-reaching constitutional implications, that justify dispensation with *locus standi* and exercise of the power of judicial review by the Supreme Court (*Chavez v. Gonzales, 545 SCRA 441*). Jurisprudence provides that *locus standi* is not required when the ction was filed to prevent a chilling effect on the exercise of the right to freedom of expression and overbreadth.

*Judicial review*

**Q: What is the concept of expanded judicial review under the 1987 Constitution? (2015)**

**A:** The concept of expanded judicial review of the Supreme Court, the facial challenge to the constitutionality laws is no longer limited to laws which violate the freedom of speech but applies to all violations of fundamental rights under the Bill of Rights *(Imbong vs. Ochoa, 2014).*

In addition, the remedies of certiorari and prohibition in the Supreme Court are broader in scope and may be issued to correct errors of jurisdiction of judicial, quasi-judicial, or ministerial actions and may be invoked to restrain any act of grave abuse of discretion of any branch of government *(Araullo vs, Aquino, 2014).*

*Operative fact doctrine*

**Q: Define/explain: Doctrine of operative facts (2009)**

**A:** The doctrine of operative facts means that before a law was declared unconstitutional, its actual existence must be taken into account and whatever was done

while the law was in operation should be recognized as valid *(Rieta v. People, 436 SCRA 273 [2004]).*

*Political question doctrine*

**Q: Judicial power as defined in Sec. 1, 2nd par., Art. VIII, 1987 Constitution, now "included 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. This definition is said to have expanded the power of the judiciary to in include political questions formerly beyond its jurisdiction.**

**a. Do you agree with such as interpretation of the constitutional definition of judicial power that would authorize the courts to review and, if warranted, reverse the exercise of discretion by the political departments (executive and legislative) of the government including the Constitutional Commissions? Discuss fully.**
**b. In your opinion, how should such definition be construed so as not to erode considerably or disregard entirely the existing "political question" doctrine? Discuss fully. (1995)**

**A:**
a. Yes, the second paragraph of Section 1, Article VIII of the 1987 Constitution has expanded the power of the Judiciary to include political questions. This was not found in the 1935 and the 1973 Constitution. Precisely, the framers of the 1987 Constitution intended to widen the scope of judicial review.
b. As pointed out in *Marcos v. Manglapus, 177 SCRA 668,* so as not to disregard entirely the political question doctrine, the extent of judicial review when political questions are involved should be limited to a determination of 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 act is being questioned. If grave abuse of discretion is not shown, the courts should not substitute their questioned for that of the official; concerned and decide a matter which by its nature or by law is for the latter alone to decide.

**Q: To what extent, if at all, has the 1987 Constitution affected the "political question doctrine"? (1997)**

**A:** Section 1, Article VIII of the Constitution has expanded the scope of judicial power by including 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. In *Marcos vs. Manglapus, 177 SCRA 668*, the Supreme Court stated that because of this courts of justice may decide political questions if there was grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the official whose action is being questioned.

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

**What is the effect of the addition in the 1987 Constitution of the following provision: "Judicial power includes the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government"? Discuss briefly, citing at least one illustrative case. (2004)**

**A:** The effect of the second paragraph of Section 1, Article VIII of the 1987 Constitution is to limit resort to the political question doctrine and to broaden the scope of judicial inquiry into areas which the Judiciary, under the previous Constitutions, would have left to the political departments to decide. If a political question is involved, the Judiciary can determine whether or not the official whose action is being questioned acted with grave abuse of discretion amounting to lack or excess of jurisdiction *(Marcos v. Manglapus, 177 SCRA 668; Daza v. Singson, 180 SCRA 496).* Thus, although the House of Representatives Electoral Tribunal has exclusive jurisdiction to decide election contests involving members of the House of Representatives, the Supreme Court nullified the removal of one of its members for voting in favor of the protestant, who belonged to a different party *(Bondoc v. Pineda, 201 SCRA 792).*

**Safeguards of Judicial independence**

**Q: Name at least three constitutional safeguards to maintain judicial independence. (2000)**

**A:** The following are the constitutional safeguards to maintain judicial independence:
1. The Supreme Court is a constitutional body and cannot be abolished by mere legislation.
2. The members of the Supreme Court cannot be removed except by Impeachment.
3. The Supreme Court cannot be deprived of its minimum Jurisdiction prescribed in Section 5, Article X of the Constitution.
4. The appellate jurisdiction of the Supreme Court cannot be increased by law without its advice and concurrence.
5. Appointees to the Judiciary are nominated by the Judicial and Bar Council and are not subject to confirmation by the Commission on Appointments.
6. The Supreme Court has administrative supervision over all lower courts and their personnel.
7. The Supreme Court has exclusive power to discipline judges of lower courts.
8. The Members of the Judiciary have security of tenure, which cannot be undermined by a law reorganizing the Judiciary.
9. Members of the Judiciary cannot be designated to any agency performing quasijudicial or administrative functions.
10. The salaries of Members of the Judiciary cannot be decreased during their continuance in office.
11. The Judiciary has fiscal autonomy.
12. The Supreme Court has exclusive power to promulgate rules of pleading, practice and procedure.
13. Only the Supreme Court can temporarily assign judges to other stations.
14. It is the Supreme Court who appoints all officials and employees of the Judiciary *(Cruz, Philippine Political Law, 1995 ed., pp. 229-31).*

**Appointments to the Judiciary**

**Q: What is the composition of the Judicial and Bar Council and the term of office of its regular members? (1988, 1999)**

**A:** The Judicial and Bar Council is composed of the following:

a. The Chief Justice as ex officio chairman;
b. The Secretary of Justice as ex officio member;
c. A representative of Congress as ex officio member;
d. A representative of the Integrated Bar;
e. A professor of law;
f. A retired Justice of the Supreme Court; and
g. A representative of the private sector. (Section 8(1), Article VIII of the Constitution)

The term of office of the regular members is 4 years. (Section 8(2), Article VIII of the Constitution)

**Supreme Court**

**Q: Enumerate the cases required by the Constitution to be heard en banc by the Supreme Court? (1999)**

**A:** The following are the cases required by the Constitution to be heard en banc by the Supreme Court:
1. Cases involving the constitutionality of a treaty, international or executive agreement, or law;
2. Cases which under the Rules of Court are required to be heard en banc
3. 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 is not obtained;
5. Cases where a doctrine or principle of law previously laid down will be modified or reversed;
6. Administrative cases against judges when the penalty is dismissal;
7. Election contests for president or vice-president.

**Q: The Court had adopted the practice of announcing its decision in important, controversial or interesting cases the moment the votes had been taken among the justices, even as the final printed decision and separate opinions are not yet available to the public. In a greatly anticipated decision in a case of wide-ranging ramifications, the voting was close – 8 for the majority, while 7 were for the other side. After the Court had thus voted, it issued a press release announcing the result, with the advice that the printed copy of the decision, together with the separate opinions, were to be issued subsequently. The following day, however, one of the members of the Court died. The Court then announced that it would deliberate anew on the case since apparently the one who died belonged to the majority. Citizens for Transparency, a group of civic- spirited professionals and ordinary citizens dedicated to transparency and accountability in the government, questioned the act of the Court. The petitioners claimed the decision had already been validly adopted and promulgated. Therefore, it could no longer be recalled by the Court. At the same time, the group also asked the Court to disclose to the public the original decision and the separate opinions of the magistrates, together with what they had deliberated on just before they came up with the press release about the 8-7 decision. (2014)**

**a. Was the announced 8-7 decision already validly promulgated and thus not subject to recall?**
**b. If the decision was not yet finalized at the time when the justice died, could it still be promulgated?**
**c. If the decision was still being finalized, should the Court release to the public the majority decision and the separate opinions as originally announced, together with their deliberations on the issues?**

**A:**

a. The decision cannot be deemed to have been promulgated simply because of the announcement of the voting in a press release, because the decision has not yet been issued and filled with the Clerk of Court. Until the decision is filed with the Clerk of Court, the Justices still have control over the decision and they can still change their votes *(Limkaichong v. COMELEC, 594 SCRA 434 (2009).*

b. The decision can no longer be promulgated if the Justice who belonged to the majority died, for lack of majority vote. The vote he cast is no longer valid, as he was no longer an incumbent member of the Supreme Court *(Lao v. To-Chip, 158 SCRA 243 (1988)).*

   **ALTERNATIVE ANSWER:** The decision can be promulgated even if the Supreme Court en banc is equally divided, if after the case was again deliberated upon, no majority decision was reached. If the case is an original action, it should be dismissed. If it is an appealed case, the decision appealed from should be affirmed if it is a civil case. If it is a criminal case, the accused should be acquitted (Section 7, Rule 56 of the Rules of Court; Section 3, Rule 125 Revised Rules on Criminal Procedure)

c. The Supreme Court should not release to the public the majority opinion and the separate opinions, as well as its deliberations. They are part of its confidential internal deliberations *(Limkaichong v. COMELEC, supra.).*

*Procedural rule-making*

**Q: Congress enacted a law providing for trial by jury for those charged with crimes or offenses punishable by reclusion perpetua or life imprisonment. The law provides for the qualifications of members of the jury, the guidelines for the bar and bench for their selection, the manner a trial by jury shall operate, and the procedures to be followed. Is the law constitutional? (2008 & 2013)**

**A:** The law providing for trial by jury is unconstitutional, because of the omission in Article VIII, Section 5(5) of the 1987 Constitution and Article X, Section 5(5) 1973 Constitution, which authorizes the Legislature to repeal, alter or supplement the rules of procedure promulgated by the Supreme Court. Congress can no longer enact a law governing rules of procedure for the courts (*Echegaray v. Secretary of Justice, 301 SCRA 96*).

**Q: TRUE or FALSE. A law fixing the passing grade in the Bar examinations at 70%, with no grade lower than 40% in any subject, is constitutional. (2009)**

**A:** False. Such a law entails amendment of the Rules of Court promulgated by the Supreme Court. The present Constitution has taken away the power of Congress to alter the Rules of Court *(Echegaray v. Secretary of Justice, 301 SCRA 96 [1999]).* The law will violate the principle of separation of powers.

**ALTERNATIVE ANSWER:** True. Deliberations in the ConCon reveal that Congress retains the power to amend or alter the rules because the power to promulgate rules is essentially legislative even though the power has been deleted in the 1987 Constitution. If the law, however, is retroactive, it is unconstitutional because it is prejudicial.

**Q: Congress enacted a law exempting certain government institutions providing social services from the payment of court fees. Atty. Kristopher Timoteo challenged the constitutionality of the said law on the ground that only the Supreme Court has the power to fix and exempt said entities from the payment of court fees.**

**Congress, on the other hand, argues that the law is constitutional as it has the power to enact said law for it was through legislative fiat that the Judiciary Development Fund (JDF) and the Special Allowance for Judges and Justices (SAJJ), the funding of which are sourced from the fees collected by the courts, were created. Thus, Congress further argues that if it can enact a law utilizing court fees to fund the JDF and SAJJ, a fortiori it can enact a law exempting the payment of court fees.**

**Discuss the constitutionality of the said law, taking into account the arguments of both parties? (2014)**

**A:** The law is constitutional. The Constitution has taken away the power of Congress to repeal, alter or supplement the Rules of Court. The fiscal autonomy guaranteed the Judiciary by Section 3, Article VIII of the Constitution recognized the authority of the Supreme Court to levy, assess and collect fees. Congress cannot amend the rules promulgated by the Supreme Court for the payment of legal fees by granting exemptions *(In re: Petition for Recognition of Exemption of the Government Service Insurance System from Payment of Legal Fees, 612 SCRA 193); In re: Exemption of National Power Corporation from Payment of Filling/Docket Fees, 615 SCRA 1]; In re Exemption from Payment of Court and Sheriff's Fees of Duly Registered Cooperatives, 668, SCRA 1).*

**Q: Congress passed a law, R.A. No. 15005, creating an administrative Board principally tasked with the supervision and regulation of legal education. The Board was attached to the Department of Education. It was empowered, among others, to prescribe minimum standards for law admission and minimum qualifications of faculty members, the basic curricula for the course of study aligned to the requirements for admission to the Bar, law practice and social consciousness, as well as to establish a law practice internship as a requirement for taking the Bar which a law student shall undergo anytime during the law course, and to adopt a system of continuing legal education. *Professor Boombastick*, a long-time law practitioner and lecturer in several prestigious law schools, assails the constitutionality of the law arguing that it encroached on the prerogatives of the Supreme Court to promulgate rules relative to admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. If you were *Professor Boombastick's* understudy, how may you help him develop clear, concise and cogent arguments in support of his position based on the present Constitution and the decisions of the Supreme Court on judicial independence and fiscal autonomy? (2014)**

**A:** The statutory authority granted to the administrative Board to promulgate rules and regulations cannot encroach upon the exclusive authority of the Supreme Court to regulate the admission to the practice of law (Section 5(5), Article VIII of the Constitution).
Thus, The Administrative Board cannot prescribe additional standards for admission to the practice of law, adopt a course study which is inconsistent with the requirements to take the bar examinations *(Philippine Lawyer's Association v. Agrava, 105 Phil. 173).* Since Congress has no power to repeal, alter or supplement the Rules of Court, it cannot delegate such power to the Administrative Board.

## CONSTITUTIONAL COMMISSIONS

### Powers and functions of each commission

**Q: What is the meaning and guarantee of security of tenure? (1999)**

**A:** According to *Palmera v. Civil Service Commission, 235 SCRA 87,* 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.

**Q: Ricardo was elected Dean of the College of Education in a State University for a term of five years unless sooner terminated. Many were not pleased with his performance. To appease those critical of him, the President created a new position that of Special Assistant to the President with the rank of Dean, without reduction in salary, and appointed Ricardo to said position in the interest of the service. Contemporaneously, the University President appointed Santos as Acting Dean in place of Ricardo.**

**a. Does the phrase "unless sooner terminated" mean that the position of Ricardo is terminable at will?**
**b. Was Ricardo removed from his position as Dean of the College of Education or merely transferred to the position of Special Assistant to the President? Explain. (2005)**

**A:**

a. No, the term "unless sooner terminated" could not mean that his position is terminable at will. Security of tenure means that dismissal should only be for a cause, provided by law and not otherwise *(Palmera v. CSC, G.R. No. 11018, August 4, 1994).*

**ALTERNATIVE ANSWER:** No, his position is not terminable at will. Ricardo's contract of employment has a fixed term of five years. It is not an appointment in an acting capacity or as officer-in-charge. A college dean appointed with a term cannot be separated without cause. Ricardo, with a definite term of employment, may not thus be removed except for a cause *(Sta. Maria v. Lopez, G.R. No. L-30773, February 18, 1970).*

b. Ricardo was removed from his position as dean. Having an appointment with a fixed term, he cannot, without his consent, be transferred before the end of his term. He cannot be asked to give up his post nor appointed as dean of another college, much less transferred to another position even if it be dignified with a dean's rank. More than this, the transfer was a demotion because deanship in a university, being an academic position which requires learning, ability and scholarship, is more exalted than that of a special assistant who merely assists the President, as the title indicates. The special assistant does not make authoritative decisions unlike the dean who does so in his own name and responsibility. The position of dean is created by law, while the special assistant is not so provided by law; it was a creation of the university president *(Sta. Maria v. Lopez, G.R. No. L-30773, February 18, 1970).*

**Prohibited offices and interests**

**Q: Professor Masipag who holds a plantilla or regular item in the University of the Philippines (UP) is appointed as an Executive Assistant in the Court of Appeals (CA). The professor is considered only on leave of absence in UP while he reports for work at the CA which shall pay him the salary of the Executive Assistant. The appointment to the CA position was questioned, but Professor Masipag countered that he will not collect the salary for both positions; hence, he can not be accused of receiving double compensation. Is the argument of the professor valid? Explain. (2015)**

**A:** Although Professor Masipag is correct in saying that "he cannot be accused of receiving double compensation" as he would not actually be receiving additional or double compensation, it is submitted that he may nevertheless not be allowed to accept the position of Executive Assistant of the Court of Appeals during his incumbency as a regular employee of the University of the Philippines, as the former would be an incompatible office not allowed to be concurrently held by him under the provisions of Article IX-B, Section 7 of the Constitution, the second paragraph of which species that "unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office in the Government."

**Jurisdiction of Civil Service Commission**

**Q: Luzviminda Marfel, joined by eleven other retrenched employees, filed a complaint with the Department of Labor and Employment (DOLE) for unpaid retrenchment or separation pay, underpayment of wages and non-payment of emergency cost of living allowance. The complaint was filed against Food Terminal, Inc. Food Terminal Inc. moved to dismiss on the ground of lack of jurisdiction, theorizing that it is a government-owned and controlled corporation and its employees are governed by the Civil Service Law and not by the Labor Code. Marfel opposed the motion to dismiss, contending that although Food Terminal, Inc. is a corporation owned and controlled by the government earlier created and organized under the general corporation law as "The Greater Manila Food Terminal, Inc.", it has still the marks of a private corporation: it directly hires its employees without seeking approval from the Civil Service Commission and its personnel are covered by the Social Security System and not the Government Service Insurance System. The question posed in the petition for certiorari at bar whether or not a labor law claim against a government-owned or controlled corporation like the Food Terminal, Inc. falls within the jurisdiction of the Department of Labor and Employment or the Civil Service Commission? Decide and ratiocinate. (1999)**

**A:** The claim of the retrenched employees falls under the jurisdiction of the National Labor Relations Commission and not under the jurisdiction of the Civil Service Commission. As held in *Lumanta v. National Labor Relations Commission, 170 SCRA 790,* since Food Terminal, Inc., was organized under the Corporation Law and was not created by a special law in accordance with Section 2(1), Article IX-B of the Constitution, it is not covered by the civil service.

**Q: A corporation, a holder of a certificate of registration issued by the Securities and Exchange Commission, is owned and controlled by the Republic of the Philippines. The Civil Service Commission (CSC), in a memorandum-order, directs the corporation to comply with the Civil Service Rules in the appointment of all its officers and employees. The memorandum-order of the CSC is assailed by the corporation, as well as by its officers and employees, before the court. How should the case be resolved? (2003)**

**A:** The memorandum-order of the Civil Service Commission should be declared void. As held in *Gamogamo v. PNOC Shipping and Transit Corporation, 381 SCRA 742,* under Article IX-B, Section 2(1) of the 1987 Constitution government-owned or controlled corporations organized under the Corporation Code are not covered by the Civil Service Law but by the Labor Code, because only government-owned or controlled corporations with original charters are covered by the Civil Service.

**Jurisdiction of COMELEC**

**Q: As counsel for the protestant, where will you file an election protest involving a contested elective position in:**

**(a) the barangay?**
**(b) the municipality?**
**(c) the province?**
**(d) the city?**
**(e) the House of Representatives? (1996, 2009)**

**A:** In accordance with Section 2(2), Article IX-C of the Constitution an election protest involving the elective position enumerated below should be filed in the following courts or tribunals:

(a) Barangay - Metropolitan Trial Court, Municipal Circuit Trial Court, or Municipal Trial Court
(b) Municipality - Regional Trial Court
(c) Province – COMELEC
(d) City – COMELEC
(e) Under Section 17. Article VI of the Constitution, an election protest involving the position of Member of the House of Representatives shall be filed in the House of Representatives Electoral Tribunal.

**Q: In an election protest involving the position of Governor of the Province of Laguna between "A", the protestee, and "B" the protestant, the First Division of the Commission on Elections rendered a decision upholding B's protest. Can "A" file a petition for certiorari with the Supreme Court under Rule 65 of the Rules of Court, from the decision of the COMELEC First Division? If yes, Why? If not what procedural step must he undertake first? (2001)**

**A:** "A" cannot file a petition for certiorari with the Supreme Court. As held in *Mastura vs. Commission on Elections, 285 SCRA 493 (1998),* the Supreme Court cannot review the decisions or resolutions of a division of the Commission on Elections. "A" should first file a motion for reconsideration with the Commission on Elections en banc.

**Jurisdiction of Commission on Audit**

**Q: The Department of National Defense entered into a contract with Raintree Corporation for the supply of ponchos to the Armed Forces of the Philippines (AFP), stipulating that, in the event of breach, action may be filed in the proper courts in Manila. Suppose the AFP fails to pay for delivered ponchos, where must Raintree Corporation file its claim? Why? (1998)**

**A:** Raintree Corporation must file its claim with the Commission on Audit, Under Section 2(1) IX-D of the Constitution, the Commission on Audit has the authority to settle all accounts pertaining to expenditure of public funds.

Raintree Corporation cannot file a case in court. The Republic of the Philippines did not waive its immunity from suit when it entered into the contract with Raintree Corporation for the supply of ponchos for the use of the Armed Forces of the Philippines. The contract involves the defense of the Philippines and therefore relates to a sovereign function.

In *United States v. Ruiz, 136 SCRA 487, 492*, the Supreme Court held: "The restrictive application of State immunity is proper only when the proceedings arise out of commercial transactions of the foreign sovereign. Stated differently, a State may be said to have descended to the level of an individual and can thus be deemed to have tacitly given its consent to be sued only when it enters into business contracts. It does not apply where the contract relates to the exercise of its sovereign functions. In this case the projects are an integral part of the naval base which is devoted to the defense of both the United States and the Philippines, indisputably a function of the government of the highest order; they are not utilized for nor dedicated to commercial or business purposes."

The provision for venue in the contract does not constitute a waiver of the State Immunity from suit, because the express waiver of this immunity can only be made by a statute.
In *Republic v. Purisima 78 SCRA 470, 474,* the Supreme Court ruled: "Apparently respondent Judge was misled by the terms of the contract between the private respondent, plaintiff in his sala and defendant Rice and Corn Administration which, according to him, anticipated the case of a breach of contract between the parties and the suits that may thereafter arise. The consent, to be effective though, must come from the State acting through a duly enacted statute as pointed out by Justice Bengzon in Mobil."

**ALTERNATIVE ANSWER:** In accordance with the doctrine of exhaustion of administrative remedies, Raintree Corporation should first file a claim with the Commission on Audit. If the claim is denied, it should file a petition for certiorari with the Supreme Court.

**Q: The Philippine National Bank was then one of the leading government-owned banks and it was under the audit jurisdiction of the Commission on Audit (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? (2001)**

**A:** In accordance with the ruling in *Philippine Airlines v. COA, 245 SCRA 39*, since the Philippine National Bank is no longer owned by the Government, the Commission on Audit no longer has jurisdiction to audit it as an institution. Under Section 2(2), Article IX-D of the Constitution, it is government-owned or controlled corporations and their subsidiaries which are subject to audit by the Commission on Audit. However, in accordance with Section 2(1), Article IX-D of the Constitution, the Commission on Audit can audit the Philippine National Bank with respect to its accounts because the Government still has equity in it.

**Q: Towards the end of the year, the Commission on Audit (COA) sought the remainder of its appropriation from the Department of Budget and Management (DBM). However, the DBM refused because the COA had not yet submitted a report on the expenditures relative to the earlier amount released to it. And, pursuant to the "no report, no release" policy of the DBM, COA is not entitled to any further releases in the meantime. COA counters that such a policy contravenes the guaranty of fiscal autonomy granted by the Constitution. Is COA entitled to receive the rest of its appropriations even without complying with the DBM policy? (2014)**

**A**: Yes. COA is entitled to the rest of its appropriations even without complying with the DBM policy. That the no report, no release policy may not be validly enforced against offices vested with fiscal autonomy is not disputed. Indeed, such policy cannot be enforced against offices possessing fiscal autonomy without violating Article IX (A), Section 5 of the Constitution which provides: "Sec. 5. The Commission shall enjoy fiscal autonomy. Their approved appropriations shall be automatically and regularly released." *(CSC v. Department of Budget and Management, July 22, 2005).*

## BILL OF RIGHTS

**Q:**

1. **Distinguish civil rights from political rights and give an example of each right.**
2. **What are the relations of civil and political rights to human rights? Explain. (1996)**

**A:**

1. CIVIL RIGHTS refer to the rights secured by the constitution of any state or country to all its inhabitants and not connected with the organization or administration of government. POLITICAL RIGHTS consist in the power to participate, directly or indirectly, in the management of the government. CIVIL RIGHTS define the relations of individual amongst themselves while POLITICAL RIGHTS defines the relations of individuals vis-a-vis the state. CIVIL RIGHTS extend protection to all inhabitants of a state, while POLITICAL RIGHTS protect merely its citizens.

   Examples of civil rights are the rights against involuntary servitude, religious freedom, the guarantee against unreasonable searches and seizures, liberty of abode, the prohibition against imprisonment for debt, the right to travel, equal protection, due process, the right to marry, right to return to this country and right to education.

   Examples of political rights are the right of suffrage, the right of assembly, and the right to petition for redress of grievances.

2. Human rights are broader in scope than civil and political rights including social, economic, and cultural rights, and are inherent in persons from the fact of their humanity. On the other hand, some civil and political rights are not natural rights. They exist because they are protected by a constitution or granted by law. For example, the liberty to enter into contracts is not a human right but is a civil right.

### POLICE POWER

**Q: Pedro bought a parcel of land from Smart Corporation, a realty firm engaged in developing and selling lots to the public. One of the restrictions in the deed of sale which was annotated in the title is that the lot shall be used by the buyer exclusively for residential purposes.**

**A main highway having been constructed across the subdivision, the area became commercial in nature. The municipality later passed a zoning ordinance declaring the area as a commercial bank building on his lot. Smart Corporation went to court to stop the construction as violative of the building restrictions imposed by it. The corporation contends that the zoning ordinance cannot nullify the contractual obligation assumed by the buyer. Decide the case. (1989, 2001)**

**A:** The case must be dismissed. As held in *Ortigas and Company, Limited Partnership v. FEATI Bank and Trust Company, 94 SCRA 533*, such a restriction in the contract cannot prevail over the zoning ordinance, because the enactment of the ordinance is a valid exercise of police power. It is hazardous to health and comfort to use the lot for residential purposes, since a highway crosses the subdivision and the area has become commercial.

**Q: In the deeds of sale to, and in the land titles of homeowners of a residential subdivision in Pasig City, there are restrictions annotated therein to the effect that only residential houses or structures may be built or constructed on the lots. However, the City Council of Pasig enacted an ordinance amending the existing zoning ordinance by changing the zone classification in that place from purely residential to commercial.**

**"A", a lot owner, sold his lot to a banking firm and the latter started constructing a commercial building on the lot to house a bank inside the subdivision. The subdivision owner and the homeowners' association filed a case in court to stop the construction of the building for banking business purposes and to respect the restrictions embodied in the deed of sale by the subdivision developer to the lot owners, as well as the annotation in the titles. If you were the Judge, how would you resolve the case? (2001)**

**A:** If I were the judge, I would dismiss the case. As held in *Ortigas and Company Limited Partnership v. FEATI Bank and Trust Company, 94 SCRA 633*, the zoning ordinance is a valid exercise of police power and prevails over the contractual stipulation restricting the use of the lot to residential purposes.

**Q: As a reaction to the rice shortage and the dearth of mining engineers, Congress passed a law requiring graduates of public science high school henceforth to take up agriculture or mining engineering as their college course. Several students protested, invoking their freedom to choose their profession. Is the law constitutional? (2008)**

**A:** Yes, the law is constitutional, it is valid exercise of the State's police power. Police power concerns government enactments which precisely interfere with personal liberty or property in order to promote the general welfare or the common good and that the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.

It cannot be denied that a rice shortage and a dearth of mining engineers are valid concerns that affect the common good and must be addressed by the State. Since the law is limited to public science high schools, it is within the police power of the State to require the graduates whose education it has subsidized to take up agriculture or mining engineering. The law provides for a lawful method geared toward a lawful objective, and as such may be considered to be a reasonable exercise of the State's police power.

**Q: The National Building Code and its implementing rules provide, *inter alia*, that operators of shopping centers and malls should provide parking and loading spaces, in accordance with a prescribed ratio. The Solicitor General, heeding the call of the public for the provision of free parking spaces in malls, filed a case to compel said business concerns to discontinue their practice of collecting parking fees. The mall owners and operators oppose, saying**

**that this is an invalid taking of their property, thus a violation of due process. The Solicitor General justifies it, however, claiming that it is a valid exercise of police power. Could the mall owners and operators be validly compelled to provide free parking to their customers? (2014)**

**A:** No, the mall owners and operators cannot be validly compelled to provide free parking to their customers, because requiring them to provide free parking space to their customers is beyond the scope of police powers. It unreasonably restricts the right to use property for business purposes and amounts to confiscation of property *(Office of the Solicitor General v. Ayala Land, Inc., 600 SCRA 617).*

*Similarities and differences*

**Q: The City of San Rafael passed an ordinance authorizing the City Mayor, assisted by the police, to remove all advertising signs displayed or exposed to public view in the main city street, for being offensive to sight or otherwise a nuisance. AM, whose advertising agency owns and rents out many of the billboards ordered removed by the City Mayor, claims that the City should pay for the destroyed billboards at their current market value since the City has appropriated them for the public purpose of city beautification. The Mayor refuses to pay, so AM is suing the City and the Mayor for damages arising from the taking of his property without due process nor just compensation. Will AM prosper? Reason briefly. (2004)**

**A:** The suit of AM will not prosper. The removal of the billboards is not an exercise of the power of eminent domain but of police power *(Churchill v. Rafferty, 32 Phil. 580*). The abatement of a nuisance in the exercise of police power does not constitute taking of property and does not entitle the owner of the property involved to compensation (*Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, 175 SCRA 343*).

**ALTERNATIVE ANSWER:** The removal of the billboards for the purpose of beautification permanently deprived AM of the right to use his property and amounts to its taking. Consequently, he should be paid just compensation *(People v. Fajardo, 104 Phil. 443).*

*Delegation*

**Private acts and the Bill of Rights**

**Q: Emilio had long suspected that Alvin, his employee, had been passing trade secrets to his competitor, Randy, but he had no proof. One day, Emilio broke open the desk of Alvin and discovered a letter wherein Randy thanked Alvin for having passed on to him vital trade secrets of Emilio. Enclosed in the letter was a check for P50,000.00 drawn against the account of Randy and payable to Alvin. Emilio then dismissed Alvin from his employment. Emilio's proof of Alvin's perfidy are the said letter and check which are objected to as inadmissible for having been obtained through an illegal search. Alvin filed a suit assailing his dismissal. Rule on the admissibility of the letter and check. (2005)**

**A:** As held in *People v. Marti (G.R. No. 81561, January 18, 1991*), the constitution, in laying down the principles of the government and fundamental liberties of the people, does not govern relationships between individuals. Thus, if the search is made at the behest or initiative of the proprietor of a private establishment for its own and private purposes and without the intervention of police authorities, the right against unreasonable search and seizure cannot be invoked for only the act of private individuals, not the law enforcers, is involved. In sum, the protection against unreasonable searches and seizures cannot be extended to acts committed by PRIVATE INDIVIDUALS so as to bring it within the ambit of alleged unlawful intrusion by the government. Accordingly, the letter and check are admissible in evidence (*Waterous Drug Corp. v. NLRC, G.R. No. 113271, October 16, 1997*).

**ALTERNATIVE ANSWER:** The letter is inadmissible in evidence. The constitutional injunction declaring the privacy of communication and correspondence to be inviolable is no less applicable simply because it is the employer who is the party against whom the constitutional provision is to be enforced. The only exception to the prohibition in the Constitution is if there is a lawful order from the court or when public safety or order requires otherwise, as prescribed by law. Any violation of this provision renders the evidence obtained inadmissible for any purpose in any proceeding (*Zulueta v. CA, G.R. No. 107383, February 20, 1996*).

**Q: The Destilleria Felipe Segundo is famous for its 15-year old rum, which it has produced and marketed successfully for the past 70 years. Its latest commercial advertisement uses the line: "Nakalikim ka na ba ng kinse anyos?" Very soon, activist groups promoting women's and children's rights were up in arms against the advertisement. (1992, 2007)**

**a. All advertising companies in the Philippines have formed an association, the Philippine Advertising Council, and have agreed to abide by all the ethical guidelines and decisions by the Council. In response to the protests, the Council orders the pull-out of the "kinse anyos" advertising campaign. Can Destilleria Felipe Segundo claim that its constitutional rights are thus infringed?**

**A:** Destilleria Felipe Segundo cannot claim that its constitutional rights were infringed. In this case, a private association formed by advertising companies for self-regulation was the one who ordered that the advertisement be pulled out, because Destilleria did not comply with the association's ethical guidelines. The guarantee of freedom of speech is a limitation on state action and not on the action of private parties (*Lloyd Corporation v. Tanner, 407 US 551*). The mass media are private enterprises, and their refusal to accept any advertisement does not violate freedom of speech (*Times-Picayune Publishing Company v. United States, 345 US 594*; *Columbia Broadcasting System, Inc. v. Democrat Control Committee, 412 US 94*).

**b. One of the militant groups, the Amazing Amazonas, call on all government-owned and controlled corporations (GOCC) to boycott any newspaper, radio or TV station that carries the**

**"kinse anyos" advertisements. They call on all government nominees in sequestered corporations to block any advertising funds allocated for any such newspaper, radio or TV station. Can the GOCCs and sequestered corporations validly comply?**

**A:** The government-owned and controlled corporations and the government nominees in sequestered corporation cannot block any advertising funds allocated for any newspaper, radio or television station which carries the advertisements of Destilleria Felipe Segundo. Since they are government entities and officers, they are bound by the guarantee of freedom of speech. Freedom of speech extends to commercial advertisements (*Metromedia, Inc. v. San Diego, 453 US 400*). The mere fact that an advertisement is offensive cannot justify its suppression (*Carey v. Population Services International, 431 US 678*). The blocking of advertising funds is a threat intended to prevent the exercise of the freedom of speech of Destilleria Felipe Segundo through the fear of consequences. Such a threat qualifies as prior restraint (*Rosden, The Law of Advertising, Vol I, pp. 5-13*)

**Due process – the rights to life, liberty & property**

**Q: Give examples of acts of the state which infringe the due process clause:**

1. **in its substantive aspect and**
2. **in its procedural aspect? (1999)**

**A:**

1. Substantive due process requires that the law itself, not merely the procedures by which the law would be enforced, is fair, reasonable, and just. It is violated when it is unreasonable or unduly oppressive. For example, Presidential Decree No. 1717, which cancelled all the mortgages and liens of a debtor, was considered unconstitutional for being oppressive. Likewise, as stated in *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila, 20 SCRA 849*, a law which is vague so that men of common intelligence must guess at its meaning and differ as to its application violates substantive due process.
2. Procedural due process refers to the method or manner by which the law is enforced. In *State Prosecutors v. Muro, 236 SCRA 505*, it was held that the dismissal of a case without the benefit of a hearing and without any notice to the prosecution violated due process. Likewise, as held in *People v. Court of Appeals, 262 SCRA 452*, the lack of impartiality of the judge who will decide a case violates procedural due process.

**Q: On April 6, 1963, Police Officer Mario Gatdula was charged by the Mayor with Grave Misconduct and Violation of Law before the Municipal Board. The Board investigated Gatdula but before the case could be decided, the City charter was approved. The City Fiscal, citing Section 30 of the city charter, asserted that he was authorized there under to investigate city officers and employees. The case against Gatdula was then forwarded to him, and a re-investigation was conducted. The office of the Fiscal subsequently recommended dismissal. On January 11, 1966, the City Mayor returned the records of the case to the City Fiscal for the submission of an appropriate resolution but no resolution was submitted. On March 3, 1968, the City Fiscal transmitted the records to the City Mayor recommending that final action thereon be made by the City Board of Investigators (CBI). Although the CBI did not conduct an investigation, the records show that both the Municipal Board and the Fiscal's Office exhaustively heard the case with both parties afforded ample opportunity to adduce their evidence and argue their cause. The Police Commission found Gatdula guilty on the basis of the records forwarded by the CBI. Gatdula challenged the adverse decision of the Police Commission theorizing that he was deprived of due process. Questions: Is the Police Commission bound by the findings of the City Fiscal? Is Gatdula's protestation of lack or non-observance of due process well-grounded? Explain your Answers. (1999)**

**A:** The Police Commission is not bound by the findings of the City Fiscal. In *Mangubat v. de Castro, 163 SCRA 608*, it was held that the Police Commission is not prohibited from making its own findings on the basis of its own evaluation of the records. Likewise, the protestation of lack of due process is not well grounded, since the hearings before the Municipal Board and the City Fiscal offered Gatdula the chance to be heard. There is no denial of due process if the decision was rendered on the basis of evidence contained in the record and disclosed to the parties affected.

**Q: On November 7, 1990, nine lawyers of the Legal Department of Y Bank who were all under Fred Torre, sent a complaint to management accusing Torre of abusive conduct and mismanagement. Furnished with a copy of the complaint, Torre denied the charges. Two days later, the lawyers and Torre were called to a conference in the office of the Board Chairman to give their respective sides of the controversy. However, no agreement was reached thereat. Bank Director Romulo Moret was tasked to look further into the matter. He met with the lawyers together with Torre several times but to no avail. Moret then submitted a report sustaining the charges of the lawyers. The Board Chairman wrote Torre to inform him that the bank had chosen the compassionate option of "waiting" for Torre's resignation. Torre was asked, without being dismissed, to turn over the documents of all cases handled by him to another official of the bank but Torre refused to resign and requested for a "full hearing". Days later, he reiterated his request for a "full hearing", claiming that he had been "constructively dismissed". Moret assured Torre that he is "free to remain in the employ of the bank" even if he has no particular work assignment. After another request for a "full hearing" was ignored, Torre filed a complaint with the arbitration branch of NLRC for illegal dismissal. Reacting thereto, the bank terminated the services of Torre.**

**a. Was Torre "constructively dismissed" before he filed his complaint?**
**b. Given the multiple meetings held among the bank officials, the lawyers and Torre, is it correct for him to say that he was not given an opportunity to be heard? Explain. (1999)**

**A:**

a. Torre was constructively dismissed, as held in *Equitable Banking Corporation v. National Labor Relations Commission, 273 SCRA 352*. Allowing an employee to report for work without being assigned any work constitutes constructive dismissal.
b. Torre is correct in saying that he was not given the chance to be heard. The meetings in the nature of consultations and conferences cannot be considered as valid substitutes for the proper observance of notice and hearing.

**Q: The Philippine Ports Authority (PPA) General Manager issued an administrative order to the effect that all existing regular appointments to harbor pilot positions shall remain valid only up to December 31 of the current year and that henceforth all appointments to harbor pilot positions shall be only for a term of one year from date of effectivity, subject to yearly renewal or cancellation by the PPA after conduct of a rigid evaluation of performance. Pilotage as a profession may be practiced only by duly licensed individuals, who have to pass five government professional examinations. The Harbor Pilot Association challenged the validity of said administrative order arguing that it violated the harbor pilots' right to exercise their profession and their right to due process of law and that the said administrative order was issued without prior notice and hearing. The PPA countered that the administrative order was valid as it was issued in the exercise of its administrative control and supervision over harbor pilots under PPA's legislative charter, and that in issuing the order as a rule or regulation, it was performing its executive or legislative, and not a quasi-Judicial function. Due process of law is classified into two kinds, namely, procedural due process and substantive due process of law. Was there, or, was there no violation of the harbor pilots' right to exercise their profession and their right to due process of law? (2001)**

**A:** The right of the harbor pilots to due process was violated. As held in *Corona v. United Harbor Pilots Association of the Philippines, 283 SCRA 31* pilotage as a profession is a property right protected by the guarantee of due process. The pre-evaluation cancellation of the licenses of the harbor pilots every year is unreasonable and violated their right to substantive due process. The renewal is dependent on the evaluation after the licenses have been cancelled. The issuance of the administrative order also violated procedural due process, since no prior public hearing was conducted. As held in *CIR v. CA, 261 SCRA 237*, 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.

**Q: Ten public school teachers of Caloocan City left their classrooms to join a strike, which lasted for one month, to ask for teachers' benefits. The Department of Education, Culture and Sports charged them administratively, for which reason they were required to A and formally investigated by a committee composed of the Division Superintendent of Schools as Chairman, the Division Supervisor as member and a teacher, as another member. On the basis of the evidence adduced at the formal investigation which amply established their guilt, the Director rendered a decision meting out to them the penalty of removal from office. The decision was affirmed by the DECS Secretary and the Civil Service Commission. On appeal, they reiterated the arguments they raised before the administrative bodies, namely: They were deprived of due process of law as the Investigating Committee was improperly constituted because it did not include a teacher in representation of the teachers' organization as required by the Magna Carta for Public School Teachers (R.A. No. 4670, Sec. 9). (2002)**

**A:** The teachers were deprived of due process of law. Under *Section 9 of the Magna Carta for Public School Teachers*, one of the members of the committee must be a teacher who is a representative of the local, or in its absence, any existing provincial or national organization of teachers. According to *Fabella v. CA, 283 SCRA 256*, to be considered the authorized representative of such organization, the teacher must be chosen by the organization itself and not by the Secretary of Education, Culture and Sports. Since in administrative proceedings, due process requires that the tribunal be vested with jurisdiction and be so constituted as to afford a person charged administratively a reasonable guarantee of impartiality, if the teacher who is a member of the committee was not appointed in accordance with the law, any proceeding before it is tainted with deprivation of procedural due process.

**Q: The municipal council of the municipality of Guagua, Pampanga, passed an ordinance penalizing any person or entity engaged in the business of selling tickets to movies or other public exhibitions, games or performances which would charge children between 7 and 12 years of age the full price of admission tickets instead of only one-half of the amount thereof. Would you hold the ordinance a valid exercise of legislative power by the municipality? Why? (2003)**

**A:** The ordinance is void. As held *in Balacuit v. CFI of Agusan del Norte, 163 SCRA 182*, the ordinance is unreasonable. It deprives the sellers of the tickets of their property without due process. A ticket is a property right and may be sold for such price as the owner of it can obtain. There is nothing pernicious in charging children the same price as adults.

**Q: The City Mayor issues an Executive Order declaring that the city promotes responsible parenthood and upholds natural family planning. He prohibits all hospitals operated by the city from prescribing the use of artificial methods of contraception, including condoms, pills, intrauterine devices and surgical sterilization. As a result, poor women in his city lost their access to affordable family planning programs. Private clinics however, continue to render family planning counsel and devices to paying clients.**

**a. Is the Executive Order in any way constitutionally infirm? Explain.**
**b. Is the Philippines in breach of any obligation under international law? Explain.**
**c. May the Commission on Human Rights order the Mayor to stop the implementation of the Executive Order? Explain. (2007)**

**A:**

a. The Executive Order is constitutionally infirm. It violates the guarantee of due process and equal protection. Due process includes the right to decisional privacy, which refers to the ability to make one's own decisions and to act on those decisions, free from governmental or other unwanted interference. Forbidding the use of artificial methods of contraception infringes on the freedom of choice in matters of marriage and family life *(Griswold v. Connecticut, 381 US 415).* Moreover, the Executive Order violates equal protection as it discriminates against poor women in the city who cannot afford to pay private clinics.
b. The acts of the City Mayor may be attributed to the Philippines under the principle of state responsibility. *Article 26 of the International Covenant on Civil and Political rights* requires that Philippine law shall prohibit any discrimination and shall guarantee to all persons equal and effective protection against discrimination on any ground such as social origin, birth or other status. The Executive Order of the City Mayor discriminates against poor women.
*c.* The Commission on Human Rights cannot order the City Mayor to stop the implementation of his Executive Order, because it has no power to issue writs of injunction *(Export Processing Zone Authority v. Commission on Human Rights, 208 SCRA 125).*

**Q: The Philippine National Police (PNP) issued a circular to all its members directed at the style and length of male police officers' hair, sideburns and moustaches, as well as the size of their waistlines. It prohibits beards, goatees and waistlines over 38 inches, except for medical reason. Some police officers questioned the validity of the circular, claiming that it violated their right to liberty under the Constitution. Resolve the controversy. (2008)**

**A:** The circular is valid. The circular is based on a desire to make police officers easily recognizable to the members of the public or to inculcate *spirit de corps* which such similarity is felt to inculcate within the police force. Either one is a sufficient rational justification for the circular (*Kelley v. Johnson 425 US 238*).

*Constitutional and statutory due process*

**Q: Does a Permit to Carry Firearm Outside Residence (PTCFOR) constitute a property right protected by the Constitution? (2006)**

**A:** No, it is not a property right under the due process clause of the Constitution. Just like ordinary licenses in other regulated fields, it may be revoked any time. It does not confer an absolute right, but only a personal privilege, subject to restrictions. A licensee takes his license subject to such conditions as the Legislature sees fit to impose, and may be revoked at its pleasure without depriving the licensee of any property (*Chavez v. Romulo, G.R. No. 157036, June 9, 2004).*

*Hierarchy of rights*

**Q: What do you understand by the term "hierarchy of civil liberties"? Explain. (2012)**
**A:** The hierarchy of civil liberties means that freedom of expression and the rights of peaceful assembly are superior to property rights *(Philippine Blooming Mills v. Philippine Blooming Mills, 51 SCRA 189).*

*Void-for-vagueness doctrine*

**Q: What is the doctrine of "void for vagueness"? In what context can it be correctly applied? Not correctly applied? Explain (2010)**

**A:** A statute is vague when it lacks comprehensible standards that men of common intelligence guess as to its meaning and differ as to its application. It applies to both free speech cases and penal statutes. However, a facial challenge on the ground of vagueness can be made only in free speech cases. It does not apply to penal statutes (*Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, 632 SCRA 146*).

**Q: Compare and contrast "overbreadth doctrine" from "void-for-vagueness" doctrine. (2010)**

**A:** While the overbreadth doctrine decrees that a governmental purpose may not be achieved by means in a statute which sweep unnecessary broadly and thereby invades the area of protected freedom. A statute is void for vagueness when it forbids or requires the doing of an act in terms so vague that men of common intelligence cannot necessarily guess at its meaning and differ as to its application *(Estrada v. Sandiganbayan, 369 SCRA 394 [2001]).*

**Equal protection**

**Q: The Department of Education, Culture and Sports Issued a circular disqualifying anyone who fails for the fourth time in the National Entrance Tests from admission to a College of Dentistry. X who was thus disqualified, questions the constitutionality of the circular. Did the circular violate the equal protection clause of the Constitution? (1994)**

**A:** No, the circular did not violate the equal protection clause of the Constitution. There is a substantial distinction between dentistry students and other students. The dental profession directly affects the lives and health of people. Other professions do not involve the same delicate responsibility and need not be similarly treated.

**Q: Undaunted by his three failures in the National Medical Admission Test (NMAT), Cruz applied to take it again but he was refused because of an order of the Department of Education, Culture and Sports (DECS) disallowing flunkers from taking the test a fourth time. Cruz filed suit assailing this rule raising the constitutional grounds of accessible quality education, academic freedom and equal protection. The government opposes this, upholding the constitutionality of the rule on the ground of exercise of police power. Decide the case discussing the grounds raised. (1994, 2000)**

**A:** As held in *Department of Education, Culture and Sports v. San Diego, 180 SCRA 533,* the rule is a valid exercise of police power to ensure that those admitted to the medical profession are qualified. The arguments of Cruz are not meritorious. The right to quality education and academic freedom are not absolute. Under Section 5(3), Article XIV of the Constitution, the right to choose a profession is subject to fair, reasonable

and equitable admission and academic requirements. The rule does not violate equal protection. There is a substantial distinction between medical students and other students. Unlike other professions, the medical profession directly affects the lives of the people.

**Q: The Gay, Bisexual and Transgender Youth Association (GBTYA), an organization of gay, bisexual, and transgender persons, filed for accreditation with the COMELEC to join the forthcoming party-list elections. The COMELEC denied the application for accreditation on the ground that GBTY A espouses immorality which offends religious dogmas. GBTY A challenges the denial of its application based on moral grounds because it violates its right to equal protection of the law.**

**a. What are the three (3) levels of test that are applied in equal protection cases? Explain.**
**b. Which of the three (3) levels of test should be applied to the present case? Explain. (2015)**

**A:**

a. The three levels of test applied in equal protection cases are as follow:

First, the STRICT SCRUTINY TEST which is applied when the legislative classification disadvantages a subject class or impinges upon a fundamental right, the statute must fall unless the government can show that the classification serves a compelling governmental interest.

Second, the INTERMEDIATE SCRUTINY TEST, when the classification, while not facially invidious, gives rise to recurring constitutional difficulties or disadvantages a quasi-suspect class. The law must not only further an important government interest and be related to that interest. The justification must be genuine and must not depend on broad generalizations.

Lastly, the RATIONALITY TEST, if neither the strict nor the intermediate scrutiny is appropriate, the statute will be tested for mere rationality. The presumption is in favor of the classification, the reasonableness and fairness of state action and of legitimate grounds of distinction.

b. Classification on the basis of sexual orientation is a quasi-subject classification that prompts intermediate review. Sexual orientation has no relation to a person's ability to contribute to society. The discrimination that distinguishes the gays and lesbian persons are beyond their control. The group lacks sufficient political strength to bring an end to discrimination through political mean *(Ang Ladlad v. COMELEC, 618 SCRA 32 [2010]).*

**ALTERNATIVE ANSWER:** (1) The three levels of tests that may be applied in equal protection cases may be classified as follow: the STRICT SCRUTINY TEST, for laws dealing with freedom of the mind or restricting the political processes; the RATIONAL BASIS STANDARD for the review of economic legislation; and HEIGHTENED or INTERMEDIATE SCRUTINY for evaluating classifications based on gender and legitimacy.

(2) It is submitted that the strict scrutiny test should be applied in this case because the challenged classification restricts the political process.

**Searches and seizures**

**Q: A is an alien. State whether, in the Philippines, he: Is entitled to the right against illegal searches and seizures and against illegal arrests. (2001)**

**A:** Aliens are entitled to the right against illegal searches and seizures and illegal arrests. As applied in *People v. Chua Ho San, 307 SCRA 432*, these rights are available to all persons, including aliens.

**Q: One day a passenger bus conductor found a man's handbag left in the bus. When the conductor opened the bag, he found inside a calling card with the owner's name (Dante Galang) and address, a few hundred peso bills, and a small plastic bag containing a white powdery substance. He brought the powdery substance to the National Bureau of Investigation for laboratory examination and it was determined to be methamphetamine hydrochloride or shabu, a prohibited drug. Dante Galang was subsequently traced and found and brought to the NBI Office where he admitted ownership of the handbag and its contents. In the course of the interrogation by NBI agents, and without the presence and assistance of counsel, Galang was made to sign a receipt for the plastic bag and its shabu contents. Galang was charged with illegal possession of prohibited drugs and was convicted. On appeal he contends that - The plastic bag and its contents are inadmissible in evidence being the product of an illegal search and seizure. Decide the case with reasons. (2002)**

**A:** The plastic bag and its contents are admissible in evidence, since it was not the National Bureau of Investigation but the bus conductor who opened the bag and brought it to the National Bureau of Investigation. As held in *People v. Marti, 193 SCRA 57 (1991),* the constitutional right against unreasonable search and seizure is a restraint upon the government. It does not apply so as to require exclusion of evidence which came into the possession of the Government through a search made by a private citizen.

*Warrant requirement*

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

**Then, acting on a hunch, the policemen proceeded to a smaller house inside the same compound with address at No. 17-A Speaker Perez St., entered it, and conducted a search therein over the objection of Mr. Pelets who happened to be the same owner of the first house. There, the police found the unlicensed firearms and ammunition they were looking for. As a result. Mr. Ernani Pelets was criminally charged in court with Illegal possession of firearms and ammunition as penalized under P.D. 1866, as**

**amended by RA. 8294. At the trial, he vehemently objected to the presentation of the evidence against him for being inadmissible. Is Mr. Emani Pelet's contention valid or not? Why? (2001)**

**A:** The contention of Ernani Pelet is valid. As held in *People v. CA, 291 SCRA 400*, if the place searched is different from that stated in the search warrant, the evidence seized is inadmissible. The policeman cannot modify the place to be searched as set out in the search warrant.

*Warrantless searches*

**Q:**

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

**b. What are the instances when warrantless searches may be effected? (2000, 2009)**

**A:**

a. The objection is not tenable. In accordance with *Manalili v. CA, 280 SCRA 400,* since the accused had red eyes and was walking unsteadily and the place is a known hang-out of drug addicts, the police officers had sufficient reason to stop the accused and to frisk him. Since shabu was actually found during the investigation, it could be seized without the need for a search warrant.

b. A warrantless search may be effected in the following cases:
   1. Searches incidental to a lawful arrest;
   2. Searches of moving vehicles;
   3. Searches of prohibited articles in plain view;
   4. Enforcement of customs law;
   5. Consented searches;
   6. Stop and frisk (*People v. Monaco, 285 SCRA 703*);
   7. Routine searches at borders and ports of entry (*US v. Ramsey, 431 U.S. 606 [1977]*); and
   8. Searches of businesses in the exercise of visitorial powers to enforce police regulations (*New York v. Burger, 482 U.S. 691 (1987]*).

**Q: A witnessed two hooded men with baseball bats enter the house of their next door neighbor B. After a few seconds, he heard B shouting, "Huwag Pilo babayaran kita agad. Then A saw the two hooded men hitting B until the latter fell lifeless. The assailants escaped using a yellow motorcycle with a fireball sticker on it toward the direction of an exclusive village nearby. A reported the incident to POI Nuval. The following day, POI Nuval saw the motorcycle parked in the garage of a house at Sta. Ines Street inside the exclusive village. He inquired with the caretaker as to who owned the motorcycle. The caretaker named the brothers Pilo and Ramon Maradona who were then outside the country. POI Nuval insisted on getting inside the garage. Out of fear, the caretaker allowed him. POI Nuval took 2 ski masks and 2 bats beside the motorcycle. Was the search valid? What about the seizure? Decide with reasons. (2009)**

**A:** The warrantless search and the seizure was not valid. It was not made as an incident to a lawful warrantles arrest. *(People v. Baula, 344 SCRA 663 [2000])* The caretaker had no authority to waive the right of the brothers Pilo and Ramon Maradona to waive their right against an unreasonable search and seizure. *(People v. Damaso, 212 SCRA547 [1992])* The warrantless seizure of the ski masks and bats cannot be justified under the plain view doctrine, because they were seized after an invalid intrusion into the house. *(People v. Bolasa, 321 SCRA 459 [1999])*

**Q: When can evidence "in plain view" be seized without need of a search warrant? Explain. (2012)**

**A:** Evidence in plain view can be seized without need of a search warrant if the following elements are present.

1. There was a prior valid intrusion based on the valid warrantless arrest in which the police were legally present pursuant of their duties;
2. The evidence was inadvertently discovered by the police who had the right to be where they were:
3. The evidence must be immediately apparent; and
4. Plain view justified seizure of the evidence without further search. *(Del Rosario vs. People, 358 scra 372)*

**Q: Around 12:00 midnight, a team of police officers was on routine patrol in Barangay Makatarungan when it noticed an open delivery van neatly covered with banana leaves. Believing that the van was loaded with contraband, the team leader flagged down the vehicle which was driven by Hades. He inquired from Hades what was loaded on the van. Hades just gave the police officer a blank stare and started to perspire profusely. The police officers then told Hades that they will look inside the vehicle. Hades did not make any reply. The police officers then lifted the banana leaves and saw several boxes. They opened the boxes and discovered several kilos of shabu inside. Hades was charged with illegal possession of illegal drugs.After due proceedings, he was convicted by the trial court. On appeal, the Court of Appeals affirmed his conviction.**

**In his final bid for exoneration, Hades went to the Supreme Court claiming that his constitutional right against unreasonable searches and seizures was violated when the police officers searched his vehicle without a warrant; that the shabu confiscated from him is thus inadmissible in evidence; and that there being no evidence against him, he is entitled to an acquittal. For its part, the People of the Philippines maintains that the case of Hades involved a consented warrantless search which is legally recognized. The People adverts to the fact that Hades did not offer any protest when the police officers asked him if they could look inside the vehicle. Thus, any evidence obtained in the course thereof is admissible in evidence. Whose claim is correct? Explain. (2015)**

**A:** The warrantless search was illegal. There was no probable cause to search the van. The shabu was not immediately apparent. It was discovered only after they opened the boxes. The mere passive silence of Hades did not constitute consent to the warrantless search *(Caballes v. CA, 373 SCRA 221 [2002])*.

*Warrantless arrests*

**Q: Johann learned that the police were looking for him in connection with the rape of an 18-year old girl, a neighbor. He went to the police station a week later and presented himself to the desk sergeant. Coincidentally, the rape victim was in the premises executing an extrajudicial statement. Johann, along with six (6) other suspects, was placed in a police lineup and the girl pointed to him as the rapist.**

**Johann was arrested and locked up in a cell. Johann was charged with rape in court but prior to arraignment invoked his right to preliminary investigation. This was denied by the judge, and thus, trial proceeded. After the prosecution presented several witnesses, Johann through counsel, invoked the right to bail and filed a motion therefor, which was denied outright by the Judge. Johann now files a petition for certiorari before the Court of Appeals arguing that: His arrest was not in accordance with law. Decide. (1993)**

**A:** Yes, the warrantless arrest of Johann was not in accordance with law. As held in *Go v. Court of Appeals, 206 SCRA 138*, his case does not fall under the Instances in Rule 113, sec. 5 (a) of the 1997 Rules of Criminal Procedure authorizing warrantless arrests. It cannot be considered a valid warrantless arrest because Johann did not commit a crime in the presence of the police officers, since they were not present when Johann had allegedly raped his neighbor. Neither can It be considered an arrest under Rule 113 sec. 5 (b) which allows an arrest without a warrant to be made when a crime has in fact just been committed and the person making the arrest has personal knowledge offsets indicating that the person to be arrested committed it. Since Johann was arrested a week after the alleged rape, it cannot be deemed to be a crime which "has just been committed". Nor did the police officers who arrested him have personal knowledge of facts indicating that Johann raped his neighbor.

**Privacy of communications and correspondence**

**Q: In a criminal prosecution for murder, the prosecution presented, as witness, an employee of the Manila Hotel who produced in court a videotape recording showing the heated exchange between the accused and the victim that took place at the lobby of the hotel barely 30 minutes before the killing. The accused objects to the admission of the videotape recording on the ground that it was taken without his knowledge or consent, in violation of his right to privacy and the Anti-Wire Tapping law. Resolve the objection with reasons. (2009)**

**A:** The objection should be overruled. What the law prohibits is the overhearing, intercepting, and recording of private communications. Since the exchange of heated words was not private, its videotape recording is not prohibited (*Navarro v. CA, 313 SCRA 153*).

*2. Intrusion, when allowed*
*3. Writ of habeas data*

***G. Freedom of expression***
*1. Concept and scope*

**Q:May the COMELEC (COMELEC) prohibit the posting of decals and stickers on "mobile" places, public or private, such as on a private vehicle, and limit their location only to the authorized posting areas that the COMELEC itself fixes? Explain. (2003)**

**A:** According to the case of *Adiong v. COMELEC. 207 SCRA 712*, the prohibition is null and void on constitutional grounds. The regulation strikes at the freedom of an individual to express his preference and, by displaying it on his car, to convince others to agree with him. A sticker may be furnished by a candidate but once the car owner agrees to have it placed on his private vehicle, the expression becomes a statement by the owner, primarily his own and not of anybody else.

Moreover, the restriction as to where the decals and stickers should be posted is so broad that it encompasses even the citizen's private property, which in this case is a privately-owned vehicle. It deprived an individual to his right to property without due process of law.

**Q: The STAR, a national daily newspaper, carried an exclusive report stating that Senator XX received a house and lot located at YY Street, Makati, in consideration for his vote cutting cigarette taxes by 50%. The Senator sued the STAR, its reporter, editor and publisher for libel, claiming the report was completely false and malicious. According to the Senator, there is no YY Street in Makati, and the tax cut was only 20%. He claimed one million 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 STAR said it would publish the correction promptly. Is there "actual malice" in STAR'S reportage? How is "actual malice" defined? Are the defendants liable for damages? (2004)**

**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 (*Borjal v. CA, 301 SCRA 1).* 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.

**Q: Nationwide protest have erupted over rising gas prices, including disruptive demonstrations in many universities throughout the country. The Metro Manila State University, a public university, adopted a university-wide circular prohibiting public mass demonstrations and rallies within the campus. Offended by the circular, militant students spread word that on the following Friday, all students were to wear black T-shirt as a symbols of their protest both against high gas prices and the university ban on demonstrations. The effort was only moderately successful, with around 30% of the students heeding the call. Nonetheless, university officials were**

**outraged and compelled the students leaders to explain why they should not be expelled for violating the circular against demonstrations.**

**The student leaders approached you for legal advice. They contended that they should not be expelled since they did not violate the circular, their protest action being neither a demonstrator nor a rally since all they did was wear black T-shirts. What would you advise the students? (2008)**

**A:** I shall advise the students that the circular is void. The constitutional guarantee of freedom of speech and peaceful assembly extends to students within the premises of the Metro Manila State University (*Malabanan v. Ramente 129 SCRA 359*).

I shall also advise the students that their wearing of black T-shirts as a sign of protest is covered by their freedom of speech, because it is closely akin to free speech (*Tinker v. Des Moines Community School District, 393 US 503*).

**Q: *Surveys Galore* is an outfit involved in conducting nationwide surveys. In one such survey, it asked the people about the degree of trust and confidence they had in several institutions of the government. When the results came in, the judiciary was shown to be less trusted than most of the government offices. The results were then published by the mass media. *Assension*, a trial court judge, felt particularly offended by the news. He then issued a show-cause order against *Surveys Galore* directing the survey entity to explain why it should not be cited in contempt for coming up with such a survey and publishing the results which were so unflattering and degrading to the dignity of the judiciary. *Surveys Galore* immediately assailed the show-cause order of *Judge Assension*, arguing that it is violative of the constitutional guaranty of freedom of expression. Is *Surveys Galore's* petition meritorious? (2014)**

**A:** The petition of Surveys Galore is meritorious. Freedom of speech and freedom of the press may be identified with the liberty to discuss publicly and truthfully any matter of public interest without censorship and punishment. There should be no previous restraint on the communication of views or subsequent liability whether in libel suits, prosecution for sedition, or action for damages, or contempt proceedings unless there is a clear and present danger of substantive evil that Congress has a right to prevent *(Chavez v. Gonzales, 545 SCRA 441).* Freedom of speech should not be impaired through the exercise of the power to punish for contempt of court unless the statement in question is a serious and imminent threat to the administration of justice. Here, the publication of the result of the survey was not intended to degrade the judiciary *(Cabansag v. Fernandez, 102 Phil. 152).*

**Q: Public school teachers staged for days mass actions at the Department of Education, Culture and Sports to press for the immediate grant of their demand for additional pay. The DECS Secretary issued to them a notice of the illegality of their unauthorized action, ordered them to immediately return to work, and warned them of imposable sanctions. They ignored this and continued with their mass action. The DECS Secretary issued orders for their preventive suspension without pay and charged the teachers with gross misconduct and gross neglect of duty for unauthorized abandonment of teaching posts and absences without leave.**

**a. Are employees in the public sector allowed to form unions? To strike? Why?**
**b. The teachers claim that their right to peaceably assemble and petition the government for redress of grievances has been curtailed. Are they correct? Why? (2000)**

**A:**

a. Section 8, Article III of the Constitution allows employees in the public sector to form unions. However, they cannot go on strike. As explained in *Social Security System Employees Association v. CA, 175 SCRA 686*, the terms and conditions of their employment are fixed by law. Employees in the public sector cannot strike to secure concessions from their employer.
b. The teachers cannot claim that their right to peaceably assemble and petition for the redress of grievances has been curtailed. According to *Bangalisan v. CA, 276 SCRA 619*, they can exercise this right without stoppage of classes.

**Q: Ten public school teachers of Caloocan City left their classrooms to join a strike, which lasted for one month, to ask for teachers' benefits.**

**The Department of Education, Culture and Sports charged them administratively, for which reason they were required to answer and formally investigated by a committee composed of the Division Superintendent of Schools as Chairman, the Division Supervisor as member and a teacher, as another member. On the basis of the evidence adduced at the formal investigation which amply established their guilt, the Director rendered a decision meting out to them the penalty of removal from office. The decision was affirmed by the DECS Secretary and the Civil Service Commission.**

**On appeal, they reiterated the arguments they raised before the administrative bodies: their strike was an exercise of their constitutional right to peaceful assembly and to petition the government for redress of grievances. (2002)**

**A:** According to *De la Cruz v. CA, 305 SCRA 303*, the argument of the teachers that they were merely exercising their constitutional right to peaceful assembly and to petition the government for redress of grievance cannot be sustained, because such rights must be exercised within reasonable limits. When such rights were exercised on regular school days instead of during the free time of the teachers, the teachers committed acts prejudicial to the best interests of the service.

**Q: The Samahan ng mga Mahihirap (SM) filed with the Office of the City Mayor of Manila an application for permit to hold a rally on Mendiola Street on September 5, 2006 from 10:00a.m. to 3:00 p.m. to protest the political killings of journalists. However, the City Mayor denied their application on the ground that a rally at the time and place applied for will block the traffic in the San Miguel and Quiapo Districts. He suggested the Liwasang Bonifacio, which has been designated a Freedom**

**Park, as venue for the rally.**

1. **Does the SM have a remedy to contest the denial of its application for a permit?**
2. **Does the availability of a Freedom Park justify the denial of SM's application for a permit?**
3. **Is the requirement to apply for a permit to hold a rally a prior restraint on freedom of speech and assembly?**
4. **Assuming that despite the denial of SM's application for a permit, its members hold a rally, prompting the police to arrest them. Are the arrests without judicial warrants lawful? (2006)**

**A:**

1. Yes, SM has a remedy. Under B.P. Blg. 880 *(The Public Assembly Act of 1985)*, in the event of denial of the application for a permit, the applicant may contest the decision in an appropriate court of law. The court must decide within twenty-four (24) hours from the date of filing of the case. Said decision may be appealed to the appropriate court within forty- eight (48) hours after receipt of the same. In all cases, any decision may be appealed to the Supreme Court (*Bayan Muna v. Ermita, G.R. No.169838, April 25, 2006*).
2. No, the availability of a freedom park does not justify the denial of the permit. It does imply that no permits are required for activities in freedom parks. Under B.P. Big. 880, the denial may be justified only if there is clear and convincing evidence that the public assembly will create a clear and present danger to public order, public safety, public convenience, public morals or public health (*Bayan Muna v. Ermita, supra.).*
3. No, the requirement for a permit to hold a rally is not a prior restraint on freedom of speech and assembly. The Supreme Court has held that the permit requirement is valid, referring to it as regulation of the time, place, and manner of holding public assemblies, but not the content of the speech itself. Thus, there is no prior restraint, since the content of the speech is not relevant to the regulation (*Bayan Muna v. Ermita, supra.).*
4. The arrests are unlawful. What is prohibited and penalized under Sec.13(a) and 14(a) of B.P. Big 880 is "the holding of any public assembly as defined in this Act by any leader or organizer without having first secured that written permit where a permit is required from the office concerned x x x Provided, however, that no person can be punished or held criminally liable for participating in or attending an otherwise peaceful assembly."

   Thus, only the leader or organizer of the rally without a permit may be arrested without a warrant while the members may not be arrested, as they cannot be punished or held criminally liable for attending the rally. However, under Section 12 thereof, when the public assembly is held without a permit where a permit is required, the said public assembly may be peacefully dispersed.

**Q: Batas Pambansa 880, the Public Assembly Law of 1985, regulates the conduct of all protest rallies in the Philippines. Salakay, Bayan! held a protest rally and planned to march from Quezon City to Luneta in Manila. They received a permit from the Mayor of Quezon City, but not from the Mayor of Manila. They were able to march in Quezon City and up to the boundary separating it from the City of Manila. Three meters after crossing the boundary, the Manila Police stopped them for posing a danger to public safety. Was this a valid exercise of police power? (2007)**

**A:** Since the protesters merely reached three meters beyond the boundary of Quezon City, the police authorities in Manila should not have stopped them, as there was no clear and present danger to public order. In accordance with the policy of maximum tolerance, the police authorities should have asked the protesters to disperse and if they refused, the public assembly may be dispersed peacefully.

**ALTERNATIVE ANSWER:** The police officers may disperse the rally peacefully, because the permit from the Mayor of Quezon City is limited to Quezon City only and does not extend to the City of Manila and no permit was obtained from the Mayor of Manila (B.P. Blg. 880, Sec. 13[a]).

**Q: The security police of the Southern Luzon Expressway spotted a caravan of 20 vehicles, with paper banners taped on their sides and protesting graft and corruption in government. They were driving at 50 kilometers per hour in a 40-90 kilometers per hour zone. Some banners had been blown off by the wind, and posed a hazard to other motorists. They were stopped by the security police. The protesters then proceeded to march instead, sandwiched between the caravan vehicles. They were also stopped by the security force. May the security police validly stop the vehicles and the marchers? (2007)**

**A:** In accordance with the policy of maximum tolerance, the security policy should not have stopped the protesters. They should have simply asked the protesters to take adequate steps to prevent their banners from being blown off, such as rolling them up while they were in the expressway and requires the protesters to board their vehicle and proceed on their way.

**ALTERNATIVE ANSWER:** The security police may stop the protesters to prevent public inconvenience, because they were using the expressway for an appreciable length of time by marching while sandwiched between the caravan vehicles *(BP Blg. 880, sec. 7)*.

*Prior restraint (censorship)*

**Q: In the morning of August 28, 1987, during the height of the fighting at Channel 4 and Camelot Hotel, the military closed Radio Station XX, which was excitedly reporting the successes of the rebels and movements towards Manila and troops friendly to the rebels. The reports were correct and factual. On October 6, 1987, after normalcy had returned and the Government had full control of the situation, the National Telecommunications Commission, without notice and hearing, but merely on the basis of the report of the military, cancelled the franchise of station XX. Discuss the legality of:**

1. **The action taken against the station on August 28, 1987;**
2. **The cancellation of the franchise of the station on October 6, 1987. (1987)**

**A:**

1. The closing down of Radio Station XX during the fighting is permissible. With respect to news media, wartime censorship has been upheld on the ground that "when a nation is at war many things that might be said in time of peace are such a hindrance to its efforts 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." The security of community life may be protected against incitements to acts of violence and the overthrow by force of orderly government *(Near v. Minnesota, 283 U.S. 697 (1931), Justice Holme's opinion in Schenck v. United States, 249 U.S. 47 (1919); New York Times v. United States, 403 U.S. 713 (1971)).* With greater reason then may censorship in times of emergency be justified in the case of broadcast media since their freedom is somewhat lesser in scope. The impact of the vibrant speech, as Justice Gutierrez said, is forceful and immediate. Unlike readers of the printed work, a radio audience has lesser opportunity to cogitate, analyze and reject the utterance *(Eastern Broadcasting Corp (DYRE) v. Dans, 137 SCRA 647 (1985)).*
2. But the cancellation of the franchise of the station on October 6, 1987, without prior notice and hearing, is void. As held in 137 SCRA 647 (1985), the cardinal primary requirements in administrative proceedings (one of which is that the parties must first be heard) as laid down in *Ang Tibay v. CIR, 69 Phil. 635 (1940)* must be observed in closing a radio station because radio broadcasts are a form of constitutionally-protected expression.

**Q: The Secretary of Transportation and Communications has warned radio station operators against selling blocked time, on the claim that the time covered thereby are often used by those buying them to attack the present administration. Assume that the department implements this warning and orders owners and operators of radio stations not to sell blocked time to interested parties without prior clearance from the Department of Transportation and Communications.**

**You are approached by an interested party affected adversely by that order of the Secretary of Transportation and Communications. What would you do regarding that ban on the sale of blocked time? Explain your answer. (1988)**

**A:** I would challenge its validity in court on the ground that it constitutes a prior restraint on freedom of expression. Such a limitation is valid only in exceptional cases, such as where the purpose is to prevent actual obstruction to recruitment of service or the sailing dates of transports or the number and location of troops, or for the purpose of enforcing the primary requirements of decency or the security of community life *(Near v. Minnesota, 283 U.S. 697 (1931))*. Attacks on the government, on the other hand, cannot justify prior restraints. For as has been pointed out, "the interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech *(United States v. Bustos, 37 Phil. 741 (1918)).*

The parties adversely affected may also disregard the regulation as being on its face void. As has been held, "any system of prior restraints of expression comes to the court bearing a heavy presumption against its constitutional validity," and the government "thus carries a heavy burden of showing justification for the imposition of such a restraint" *(New York Times Co. v. United States, 403 U.S. 713 (1971))*. The usual presumption of validity that inheres in legislation is reversed in the case of laws imposing prior restraint on freedom of expression.

**Q: The KKK Television Network (KKK-TV) aired the documentary, "Case Law: How the Supreme Court Decides," without obtaining the necessary permit required by P.D. 1986. Consequently, the Movie and Television Review and Classification Board (MTRCB) suspended the airing of KKK- TV programs. MTRCB declared that under P.D. 1986, it has the power of prior review over all television programs, except "newsreels" and programs "by the Government", and the subject documentary does not fall under either of these two classes. The suspension order was ostensibly based on Memorandum Circular No. 98-17 which grants MTRCB the authority to issue such an order.**

**KKK-TV filed a certiorari petition in court, raising the following issues: The act of MTRCB constitutes "prior restraint" and violates the constitutionally guaranteed freedom of expression. (2009)**

**A:** The contention of KKK-TV is not tenable. The prior restraint is a valid exercise of police power. Television is a medium which reaches even the eyes and ears of children *(Iglesia ni Cristo v. CA, 259 SCRA 529 [1996]).*

**ALTERNATIVE ANSWER:** The memo circular is unconstitutional. The act of the Movie and Television Review and Classification Board constitutes prior restraint and violates freedom of expression. Any system of prior restraint has against it a heavy presumption against its validity. Prior restraint is an abridgment of the freedom of expression. There is no showing that the airing of the programs would constitute a clear and present danger *(403 U.S. 713 [1971])*.

*Facial challenges and the overbreadth doctrine*

**Q: What is the doctrine of "overbreadth"? In what context can it be correctly applied? Not correctly applied? Explain. (2010)**

**A:** A statute is overbroad when a governmental purpose to control or prevent activities constitutionally subject to state regulations is sought to be achieved by means which sweep unnecessarily broadly and invade the area of protected freedom. It applies both to free speech cases and penal statues. However, a facial challenge on the ground of overbreadth can only be made in free speech cases because of its chilling effect upon protected speech. A facial challenge on the ground of overbreadth is not applicable to penal statutes, because in general they have an *in terrorem* effect (*Southern Hemisphere Engagement Network, Inc. v. Anti-terrorism Council, 632 SCRA 146*).

**Q: In a protest rally' along Padre Faura Street, Manila, Pedrong Pula took up the stage and began shouting "kayong mga kurakot kayo! Magsi-resign na kayo! Kung hindi, manggugulo kami dito!" ("you corrupt officials, you better resign now, or else we will cause trouble here!") simultaneously, he brought out a rock the size of a· fist and pretended to hurl it at the flagpole area of a government building. He did not actually throw the rock.**

**a. Police officers who were monitoring the situation immediately approached Pedrong Pula and arrested him. He was prosecuted for seditious speech and was convicted. On appeal, Pedrong Pula argued he was merely exercising his freedom of speech and freedom of expression guaranteed by the Bill of Rights. Decide with reasons.**
**b. What are the two (2) basic prohibitions of the freedom of speech and of the press clause? Explain. (2012)**

**A:**

a. Pedrong Pula should be acquitted. His freedom of speech should not be limited in the absence of a clear and present danger of a substantive evil that the state had the right to prevent. He pretended to hurl a rock but did not actually throw it. He did not commit any act of lawless violence (*David v. Macapagal-Arroyo, 489 SCRA 160*).
b. The two basic prohibitions on freedom of speech and freedom of the press are prior restraint and subsequent punishment (*Chavez v. Gonzales, 545 SCRA 441*).

**Q: When is a facial challenge to the constitutionality of a law on the ground of violation of the Bill of Rights traditionally allowed? Explain your answer. (2015)**

**A:** A facial challenge is one that is launched to assail the validity of statues concerning not only protected speech, but also all other rights (in the First Amendement *[U.S.]*) including religious freedom, freedom of the press, and the rights of the people to peaceably assemble, and to petition the Government for a redress of grievances.

While the Court has withheld the application of facial challenges to strictly penal statues, it has expanded its scope to cover statues not only regulating free speech, but also those involving religious freedom, and other fundamentals rights. For unlike its counterpart in the U.S., the Court, under its expanded jurisdiction, is mandated by the Fundamental Law not only to settle actual controversies involving rights which are legally demandable and enforceable, but also 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." *(Imbong v. Ochoa, G.R. No. 204819, April 8, 2014, 721 SCRA 146)*

*Tests*

**Q: *Allmighty Apostles* is a relatively new religious group and movement with fast-growing membership. One time, *DeepThroat,* an investigative reporter, made a research and study as to what the group's leader, *Maskeraid,* was actually doing. *DeepThroat* eventually came up with the conclusion that *Maskeraid* was a phony who is just fooling the simple-minded people to part with their money in exchange for the promise of eternal happiness in some far-away heaven. This was published in a newspaper which caused much agitation among the followers of *Maskeraid.* Some threatened violence against *DeepThroat,* while some others already started destroying properties while hurting those selling the newspaper. The local authorities, afraid of the public disorder that such followers might do, decided to ban the distribution of the newspaper containing the article. *DeepThroat* went to court complaining about the prohibition placed on the dissemination of his article. He claims that the act of the authorities partakes of the nature of heckler's veto, thus a violation of press freedom. On the other hand, the authorities counter that the act was necessary to protect the public order and the greater interest of the community. If you were the judge, how would you resolve the issue? (2014)**

**A:** If I were the judge, I would rule that the distribution of the newspaper cannot be banned. Freedom of the news should be allowed although it induces a condition of unrest and stirs people to anger. Freedom of the press includes freedom of circulation (*Chavez v. Gonzales, 545 SCRA 441*). When governmental action that restricts freedom of the press is based on content, it is given the strictest scrutiny and the government must show that there is a clear and present danger of the substantive evil which the government has the right to prevent. The threats of violence and even the destruction of properties while hurting hose selling the newspaper do not constitute a clear and present danger as to warrant curtailment of the right of DeepThroat to distribute the newspaper (*Chavez v. Gonzales, 545 SCRA 441*).

*Commercial speech*

**Q: What is "commercial speech"? Is it entitled to constitutional protection? What must be shown in order for government to curtail "commercial speech"? Explain. (2012)**

**A:** Commercial speech is communication which involves only the commercial interests of the speaker and the audience, such as advertisements.

Commercial speech is entitled to constitutional protection (*Ayer Productions Pty., Ltd. v. Capulong 160 SCRA 861*).

Commercial speech may be required to be submitted to a governmental agency for review to protest public interests by preventing false or deceptive claims (*Pharmaceutical and Health Care Association of the Philippines v. Duque, 535 SCRA 265*).

**Freedom of religion**

**Q: Distinguish fully between the "free exercise of religion clause" and the "non-establishment of religion clause". (2012)**

**A:** The freedom of exercise of religion entails the right to believe, which is absolute, and the right to act on one's belief, which is subject to regulation. As a rule, the freedom of exercise of religion can be restricted only if there is a clear and present danger of a substantive evil

which the state has the right to prevent. *(Iglesia ni cristo v. CA, 259 SCRA 529.)*

The non-establishment clause implements the principle of separation of church and state. The state cannot set up a church, pass laws that aid one religion, and all religions, prefer one religion over another force or influence a person to go to or remain away from church against his will, of force him to profess a belief or disbelief in any religion *(Everson v. Board of Education, 330 US 1).*

*Non-establishment clause*

**Q: Recognizing the value of education in making the Philippine labor market attractive to foreign investment, the Department of Education, Culture and Sports offers subsidies to accredited colleges and universities in order to promote quality tertiary education. The DECS grants a subsidy to a Catholic school which requires its students to take at least 3 hours a week of religious instruction.**

**a. Is the subsidy permissible? Explain**
**b. Presuming that you answer in the negative, would it make a difference if the subsidy were given solely in the form of laboratory equipment in chemistry and physics?**
**c. Presume, on the other hand, that the subsidy is given in the form of scholarship vouchers given directly to the student and which the student can use for paying tuition in any accredited school of his choice, whether religious or non-sectarian. Will your answer be different? (1992)**

**A:**

a. No, the subsidy is not permissible. Such will foster religion, since the school give religious instructions to students. Besides, it will violate the prohibition in Section 29[2], Article VI of the Constitution against the use of public funds to aid religion. In *Lemon v. Kurtzman, 403 U.S. 602*, it was held that financial assistance to a sectarian school violates the prohibition against the establishment of religion if it fosters an excessive government entanglement with religion. Since the school requires its students to take at least three hours a week of religious instructions, to ensure that the financial assistance will not be used for religious purposes, the government will have to conduct a continuing surveillance. This involves excessive entanglement with religion.
b. If the assistance would be in the form of laboratory equipment in chemistry and physics, it will be valid. The purpose of the assistance is secular, i.e., the improvement of the quality of tertiary education. Any benefit to religion is merely incidental. Since the equipment can only be used for a secular purpose, it is religiously neutral. As held in *Tilton v. Richardson, 403 U.S. 672*, it will not involve excessive government entanglement with religion, for the use of the equipment will not require surveillance.
c. In general, the giving of scholarship vouchers to students is valid. Section 2(3), Article XIV of the Constitution requires the State to establish a system of subsidies to deserving students in both public and private schools. However, the law is vague and over-broad. Under it, a student who wants to study for the priesthood can apply for the subsidy and use it for his studies. This will involve using public funds to aid religion.

**Q: The principal of Jaena High School, a public school wrote a letter to the parents and guardians of all the school's pupils, informing them that the school was willing to provide religious instruction to its Catholic students during class hours, through a Catholic priest. However, students who wished to avail of such religious instruction needed to secure the consent of their parents and guardians in writing. (2007)**

**a. Does the offer violate the constitutional prohibition against the establishment of religion?**

**A:** The offer does not violate the Constitutional prohibition against the establishment of religion. Section 3(3), Article XIV of the Constitution provides that at the option expressed in writing by their parents or guardians, religion shall be taught to students in public elementary and high schools within regular class hours by instructors designated or approved by the religious authorities of their religion

**b. The parents of evangelical Christian students, upon learning of the offer, demanded that they too be entitled to have their children instructed in their own religious faith during class hours. The principal, a devout Catholic, rejected the request. As counsel for the parents of the evangelical students, how would you argue in support of their position?**

**A:** As counsel for the parents of the evangelical students, I shall argue that the rejection of their request violates the guarantee of the free exercise and enjoyment of religious profession and worship, without discrimination or preference. The exercise of religious freedom includes the right to disseminate religious information (*Iglesia ni Cristo v. CA, 259 SCRA 529*).

**Q: To instill religious awareness in the students of Doña Trinidad High School, a public school in Bulacan, the Parent- Teacher's Association of the school contributed funds for the construction of a grotto and a chapel where ecumenical religious services and seminars are being held after school hours. The use of the school grounds for these purposes was questioned by a parent who does not belong to any religious group. As his complaint was not addressed by the school officials, he filed an administrative complaint against the principal before the DECS. Is the principal liable? Explain briefly. (2010)**

**A:** The principal is liable. Although the grotto and the chapel can be used by different religious sects without discrimination, the land occupied by the grotto and the chapel will be permanently devoted to religious use without being required to pay rent. This violates the prohibition against establishment of religion enshrined in Section 5 of the Bill of Rights *(Opinion 12 of the Secretary of Justice dated February 2, 1979)*. Although religion is allowed to be taught in public elementary and high schools, it should be without additional cost to the government (Section 3(3), Article XIV of the Constitution.)

**Q: Upon request of a group of overseas contract workers in Brunei, Rev. Father Juan de la Cruz, a Roman Catholic priest, was sent to that country by the President of the Philippines to minister to their spiritual needs. The travel expenses, per diems, clothing allowance and monthly stipend of P5,000 were ordered charged against the President's discretionary fund. Upon post audit of the vouchers therefor, the Commission on Audit refused approval thereof claiming that the expenditures were in violation of the Constitution. Was the Commission on Audit correct in disallowing the vouchers in question? (1997)**

**A:** Yes, the Commission on Audit was correct in disallowing the expenditures. Section 29(2), Article VI of the Constitution prohibits the expenditure of public funds for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or *of any priest*, preacher, minister, other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.

The sending of a priest to minister to the spiritual needs of overseas contract workers does not fall within the scope of any of the exceptions.

*Free exercise clause*

**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 Movie and Television Review and Classification Board (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. (1998, 2009)**

**A:** The religious organization must submit the tapes to the MTRCB. Freedom of speech and freedom of religion does not shield any religious organization against the regulation of the government on its program over the television. 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.

However, the Movie and Television Review and Classification Board cannot ban the tapes on the ground that they attacked other religions. In *Iglesia ni Cristo v. CA, 259 SCRA 529, 547*, the Supreme Court held: "The respondent Board may disagree with the criticisms of other religions by petitioner but that gives it no excuse to interdict such criticisms, however, unclean they may be. Under our constitutional scheme, it is not the task of the State to favor any religion by protecting it against an attack by another religion."

Moreover, the broadcasts do not give rise to a clear and present danger of a substantive evil. In the case of *Iglesia ni Cristo v. CA, 259 SCRA 529, 549*: "Prior restraint on speech, including the religious speech, cannot be justified by hypothetical fears but only by the showing of a substantive and imminent evil which has taken the reality already on the ground."

**Q: Section 28. Title VI, Chapter 9, of the Administrative Code of 1987 requires all educational institutions to observe a simple and dignified flag ceremony, including the playing or singing of the Philippine National Anthem, pursuant to rules to be promulgated by the Secretary of Education, Culture and Sports, The refusal of a teacher, student or pupil to attend or participate in the flag ceremony is a ground for dismissal after due investigation.**

**The Secretary of Education Culture and Sports issued a memorandum implementing said provision of law. As ordered, the flag ceremony would be held on Mondays at 7:30 a.m. during class days. A group of teachers, students and pupils requested the Secretary that they be exempted from attending the flag ceremony on the ground that attendance thereto was against their religious belief. The Secretary denied the request. The teachers, students and pupils concerned went to Court to have the memorandum circular declared null and void. Decide the case. (1997, 2009)**

**A:** The teachers and the students should be exempted from the flag ceremony. As held in *Ebralinag vs. Division Superintendent of Schools of Cebu*, to compel them to participate in the flag ceremony will violate their freedom of religion. Freedom of religion cannot be impaired except upon the showing of a clear and present danger of a substantive evil which the State has a right to prevent. The refusal of the teachers and the students to participate in the flag ceremony does not pose a clear and present danger. To compel them to participate in the flag ceremony will violate their freedom of religion.

**Q: Children who are members of a religious sect have been expelled from their respective public schools for refusing, on account of their religious beliefs, to take part in the flag ceremony which includes playing by a band or singing the national anthem, saluting the Philippine flag and reciting the patriotic pledge. The students and their parents assail the expulsion on the ground that the school authorities have acted in violation of their right to free public education, freedom of speech, and religious freedom and worship. Decide the case. (2003)**

**A:** The students cannot be expelled from school. As held in *Ebralinaq v. Division Superintendent of Schools of Cebu 219 SCRA 256 [1993]*, to compel students to take part in the flag ceremony when it is against their religious beliefs will violate their religious freedom. Their expulsion also violates the duty of the State under Article XIV, Section 1 of the Constitution to protect and promote the right of all citizens to quality education and make such education accessible to all.

**Liberty of abode and freedom of movement**

*Limitations*

**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? Explain. (1996)**

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

**Q: Juan Casanova contracted Hansen's disease (leprosy) with open lesions. A law requires that lepers be isolated upon petition of the City Health Officer. The wife of Juan Casanova wrote a letter to the City Health Officer to have her formerly philandering husband confined in some isolated leprosarium. Juan Casanova challenged the constitutionality of the law as violating his liberty of abode. Will the suit prosper? (1998)**

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

The liberty of abode is subject to the police power of the State. Requiring the segregation of lepers is a valid exercise of police power. *In Lorenzo v. Director of Health, 50 Phil. 595*, the Supreme Court held: "Judicial notice will be taken of the fact that leprosy is commonly believed to be an infectious disease tending to cause one afflicted with it to be shunned and excluded from society, and that compulsory segregation of lepers as a means of preventing the spread of the disease is supported by high scientific authority."

**Q: Mr. Violet was convicted by the RTC of Estafa. On appeal, he filed with the Court of Appeals a Motion to Fix Bail for Provisional Liberty Pending Appeal. The Court of Appeals granted the motion and set a bail amount in the sum of Five (5) Million Pesos, subject to the conditions that he secure "a certification/guaranty from the Mayor of the place of his residence that he is a resident of the area and that he will remain to be a resident therein until final judgment is rendered or in case he transfers residence, it must be with prior notice to the court". Further, he was ordered to surrender his passport to the Division Clerk of Court for safekeeping until the court orders its return.**

**a. Mr. Violet challenges the conditions imposed by the Court of Appeals as violative of his liberty of abode and right to travel. Decide with reasons.**
**b. Are "liberty of abode" and "the right to travel" absolute rights? Explain. What are the respective exception/s to each right if any? (2012)**

**A:**

a. The right to change abode and the right to travel are not absolute. The liberty of changing abode may be unpaired upon order of the court. The order of the Court of Appeals is lawful, because the purpose is to ensure that the accused will be available whenever his presence is required. He is not being prevented from changing his abode. He is merely being required to inform the Court of Appeals if he does (*Yap v. CA, 358 SCRA 564*).
b. The liberty of abode and the right to travel are not absolute. The liberty of abode and of changing it can be imposed within the limits prescribed by law upon lawful order of the court. The right to travel may be unpaired in the interest of national security, public safety, or public health as may be provided by law (Section 6, Article III of the Constitution).

In addition, the court has the inherent power to restrict the right of an accused who has pending criminal case to travel abroad to maintain its jurisdiction over him (*Santiago v. Vasquez, 217 SCRA 633*).

**Eminent domain**

**Q: The Republic of the Philippines, through the Department of Public Works and Highways (DPWH), constructed a new highway linking Metro Manila and Quezon Province, and which major thoroughfare traversed the land owned by Mang Pandoy. The government neither filed any expropriation proceedings nor paid any compensation to Mang Pandoy for the land thus taken and used as a public road.**

**Mang Pandoy filed a suit against the government to compel payment for the value of his land. The DPWH filed a motion to dismiss the case on the ground that the State is immune from suit. Mang Pandoy filed an opposition. Resolve the motion. (2001, similar question in 1989, 1993)**

**A:** The motion to dismiss should be denied. As held in *Amigable v. Cuenca, 43 SCRA 300*, when the Government expropriates private property without paying compensation, it is deemed to have waived its immunity from suit. Otherwise, the constitutional guarantee that private property shall not be taken for compensation will be rendered nugatory.

**Q: Filipinas Computer Corporation (FCC), a local manufacturer of computers and computer parts, owns a sprawling plant in a 5,000-square meter lot in Pasig City. To remedy the city's acute housing shortage, compounded by a burgeoning population, the Sangguniang Panglungsod authorized the City Mayor to negotiate for the purchase of the lot. The Sanggunian intends to subdivide the property into small residential lots to be distributed at cost to qualified city residents. But FCC refused to sell the lot. Hard-pressed to find a suitable property to house its homeless residents, the City filed a complaint for eminent domain against FCC. (2005)**

**a. If FCC hires you as lawyer, what defense or defenses would you set up in order to resist the expropriation of the property? Explain.**

**A:** I will raise the defense that the selection of the lot to be expropriated violates due process, because it is arbitrary. Since it is devoted to commercial use, the beneficiaries of the expropriation will not settle there and will instead merely lease out or resell the lot for a profit *(Manotok v. National Housing Authority, 150 SCRA 89 [1987]).*

**b. If the Court grants the City's prayer for expropriation, but the City delays payment of the amount determined by the court as just compensation, can FCC recover the property from Pasig City? Explain.**

**A:** The mere delay in the payment of the just compensation will not entitle the Filipinas Computer Corporation to recover the property. Instead, legal interest on the just compensation should be paid *(NPC v. Henson, 300 SCRA 751 [1998]).* However, if the payment was not made within five (5) years from the finality of judgment in the expropriation case, Filipinas Computer Corporation can recover the property. To be just, the compensation must be paid within a reasonable time. *(NPC v. Henson, 462 SCRA 265 [2005]).*

**c. Suppose the expropriation succeeds, but the City decides to abandon its plan to subdivide the property for residential purposes having found a much bigger lot, can FCC legally demand that it be allowed to repurchase the property from the City of Pasig? Why or why not?**

**A:** If the lot was expropriated with the condition it can be used only for low-cost housing, it should be returned to Filipinas Computer Corporation upon abandonment of the purpose *(Heirs of Timoteo Moreno v. Mactan-Cebu International Airport Authority, 413 SCRA 502 [2003]).*

**Q: Congress passed a law authorizing the National Housing Authority (NHA) to expropriate or acquire private property for the redevelopment of slum areas, as well as to lease or resell the property to private developers to carry out the redevelopment plan. Pursuant to the law, the NHA acquired all properties within a targeted badly blighted area in San Nicolas, Manila except a well-maintained drug and convenience store that poses no blight or health problem itself. Thereafter, NHA sold all the properties it has thus far acquired to a private realty company for redevelopment. Thus, the NHA initiated expropriation proceedings against the store owner who protested that his property could not be taken because it is not residential or slum housing. He also contended that his property is being condemned for a private purpose, not a public one, noting the NHA`s sale of the entire area except his property to a private party. If you were the judge, how would you decide the case? (2008)**

**A:** If I were the judge, I would order the expropriation of the property is valid being a lawful exercise of the State's power of eminent domain, exercised through the NHA by Congressional Fiat. The expropriation of the private land for slum clearance urban development is for a public purpose even if the developed area is later sold to private homeowners, commercial firms, and other private parties (*Heirs of Juancho Ardona v. Reyes, 125 SCRA 220*). It is the function of the Congress to decide which type of taking is for public use and that the agency authorized to do the taking may do so to the full extent of its statutory authority. It is not the immediate effects, but rather the ultimate results which determine whether a particular act is for public good.

*Expansive concept of "public use"*

**Q: The City of Pasig initiated expropriation proceedings on a one-hectare lot which is part of a 10-hectare parcel of land devoted to the growing of vegetables. The purpose of the expropriation is to use the land as a relocation site for 200 families squatting along the Pasig river.**

**a. Can the owner of the property oppose the expropriation on the ground that only 200 out of the more than 10,000 squatter families in Pasig City will benefit from the expropriation? Explain.**
**b. Can the Department of Agrarian Reform require the City of Pasig to first secure authority from said Department before converting the use of the land from agricultural to housing? Explain. (1996)**

**A:**

a. No, the owner of the property cannot oppose the expropriation on the ground that only 200 out of more than 10,000 squatter families in Pasig City will benefit from the expropriation. As held in *Philippine Columbian Association v. Panis, 228 SCRA 668,* the acquisition of private property for socialized housing is for public use and the fact that only a few and not everyone will benefit from the expropriation does not detract from the nature of the public use.
b. No, the Department of Agrarian Reform cannot require Pasig City to first secure authority from it before converting the use of the land from agricultural to residential. According to *Province of Camarines Sur v. CA, 222 SCRA 173,* there is no provision in the Comprehensive Agrarian Reform Law which subjects the expropriation of agricultural lands by local government units to the control of the Department of Agrarian Reform and to require approval from the Department of Agrarian Reform will mean that it is not the local government unit but the Department of Agrarian Reform who will determine whether or not the expropriation is for a public use.

**Q: Madlangbayan is the owner of a 500 square meter lot which was the birthplace of the founder of a religious sect who admittedly played an important role in Philippine history and culture. The National Historical Commission (NHC) passed a resolution declaring it a national landmark and on its recommendation the lot was subjected to expropriation proceedings. This was opposed by Madlangbayan on the following grounds: a) that the lot is not a vast tract; b) that those to be benefited by the expropriation would only be the members of the religious sect of its founder, and c) that the NHC has not initiated the expropriation of birthplaces of other more deserving historical personalities. Resolve the opposition raised by Madlangbayan. (2000)**

**A:** The arguments of Madlangbayan are not meritorious. According to *Manresa v. Court of Appeals, 252 SCRA 412*, the power of eminent domain is not confined to expropriation of vast tracts of the land. The expropriation of the lot to preserve it as the birthplace of the founder of the religious sect because of his role in the Philippine history and culture is for a public purpose, because public use is no longer restricted to the traditional concept. The fact that the expropriation will benefit the member of the religious sect is merely incidental. The fact that other birthplaces have not been

expropriated is likewise not a valid basis for opposing the expropriation. As held in *J.M. Tuason and Company, Inc. v. Land Tenure Administration, 31 SCRA 413*, the expropriating authority is not required to adhere to the policy of "all or none."

*Just compensation*

**Q: The Municipality of Antipolo, Rizal expropriated the property of Juan Reyes for use as a public market. The Municipal Council appropriated P1,000,000 for the purchase of the lot but the Regional Trial Court, on the basis of the evidence, fixed the value at P2,000,000. (1994)**

**a. What legal action can Juan Reyes take to collect the balance? (similar question in 1998)**
**b. Can Juan Reyes ask the Regional Trial Court to garnish the Municipality's account with the Land Bank? (similar question in 1989)**

**A:**

a. To collect the balance of Judgment, as stated in *Tan Toco v. Municipal Council of Iloilo, 49 Phil. 52*, Juan Reyes may levy on patrimonial properties of the Municipality of Antipolo. If it has no patrimonial properties in accordance with the *Municipality of Makati v. Court of Appeals, 190 SCRA 206,* the remedy of Juan Reyes is to file a petition for mandamus to compel the Municipality of Antipolo to appropriate the necessary funds to satisfy the judgment.
b. Pursuant to the ruling in *Pasay Government v. Court of First Instance of Manila, 132 SCRA 156,* since the Municipality of Antipolo has appropriated P1,000,000 to pay for the lot, its bank account may be garnished but up to this amount only.

**Q: In expropriation proceedings, what legal interest should be used in the computation of interest on just compensation? (1993)**

**A:** As held in *National Power Corporation v. Angas, 208 SCRA 542*, in accordance with Article 2209 of the Civil Code, the legal interest should be 6% a year. Central Bank Circular No. 416, which increased the legal interest to 12% a year is not applicable to the expropriation of property and is limited to loans, since its issuance is based on Presidential Decree No. 116, which amended the Usury Law.

**Q: In expropriation proceedings: Can the judge validly withhold issuance of the writ of possession until full payment of the final value of the expropriated property? (1993)**

**A:** No, the judge cannot validly withhold the issuance of the writ of possession until full payment of the final value of the expropriated property. As held in *National Power Corporation v. Jocson, 206 SCRA 520,* it is the ministerial duty of the judge to issue the writ of possession upon deposit of the provisional value of the expropriated property with the National or Provincial treasurer.

**Q: The National Power and Grid Corporation (NPGC), a government entity involved in power generation distribution, had its transmission lines traverse some fields belonging to *Farmerjoe*. NPGC did so without instituting any expropriation proceedings. *Farmerjoe*, not knowing any better, did not immediately press his claim for payment until after ten years later when a son of his took up Law and told him that he had a right to claim compensation. That was then the only time that *Farmerjoe* earnestly demanded payment. When the NPGC ignored him, he instituted a case for payment of just compensation. In defense, NPGC pointed out that the claim had already prescribed since under its Charter it is clearly provided that "actions for damages must be filed within five years after the rights of way, transmission lines, substations, plants or other facilities shall have been established and that after said period, no suit shall be brought to question the said rights of way, transmission lines, substations, plants or other facilities." If you were the lawyer of *Farmerjoe*, how would you protect and vindicate the rights of your client? (2014)**

**A:** Farmerjoe's demand for payment is justified and cannot be considered as prescribed. His demand for payment is an action for the payment of just compensation and not an action for damages as provided in the Charter of the National Power and Grid Corporation. It partakes of the nature of a reverse eminent domain proceeding (or inverse condemnation proceeding) wherein claims for just compensation for property taken can be made and pursued *(NPC v. Vda. De Capin, 569 SCRA 648; NPC v. Heirs of Sangkay, 656 SCRA 60).*

**ALTERNATIVE ANSWER:** As held in *NPC v. Sps. Saludares, G. R. No. 189127, April 25, 2012*; the right to recover just compensation is enshrined in no less than our Bill of Rights, which states in clear and categorical language that private property shall not be taken for public use without just compensation. This constitutional mandate cannot be defeated by statutory prescription. Thus, It would be a confiscatory act on the part of the government to take the property of respondent spouses for a public purpose and deprive them of their right to just compensation, solely because they failed to institute inverse condemnation proceedings within five years from the time the transmission lines were constructed.

**Rights of suspects**

**Q: An information for parricide was filed against Danny. After the NBI found an eyewitness to the commission of the crime, Danny was placed in a police line-up where he was identified as the one who shot the victim. After the line-up, Danny made a confession to a newspaper reporter who interviewed him. (1994)**

**a. Can Danny claim that his identification by the eyewitness be excluded on the ground that the line-up was made without benefit of his counsel? (similar question in 1993, 1997)**
**b. Can Danny claim that his confession be excluded on the ground that he was not afforded his "Miranda" rights?**

**A:**

a. No, the identification of Danny, a private person, by an eyewitness during the line-up cannot be excluded in evidence. In accordance with the ruling in *People v. Hatton, 210 SCRA 1*, the accused is not entitled to be assisted by counsel during a police

line-up, because it is not part of custodial investigation since he was not being questioned but was merely being asked to exhibit his body for identification by a witness.

**ALTERNATIVE ANSWER:** Yes, in *United States v. Wade, 338 U.S. 218 (1967)* and *Gilbert v. California, 338 U.S. 263 (1967)*, it was held that on the basis of the Sixth, rather than the Fifth Amendment (equivalent to Art. III, Sec. 14 (2) rather than Sec. 12(1)), the police line-up is such a critical stage that it carries "potential substantial prejudice" for which reason the accused is entitled to the assistance of Counsel.

b. No. Danny cannot ask that his confession to a newspaper reporter should be excluded in evidence. As held in *People v. Bernardo, 220 SCRA 31*, such an admission was not made during a custodial interrogation but a voluntary statement made to the media.

**Q: William, a private American citizen, a university graduate and frequent visitor to the Philippines, was inside the U.S. embassy when he got into a heated argument with a private Filipino citizen. Then, in front of many shocked witnesses, he killed the person he was arguing with. The police came, and brought him to the nearest police station. Upon reaching the station, the police investigator, in halting English, informed William of his Miranda rights, and assigned him an independent local counsel. William refused the services of the lawyer, and insisted that he be assisted by a Filipino lawyer currently based in the U.S. The request was denied, and the counsel assigned by the police stayed for the duration of the investigation. William protested his arrest. (2009)**

**He also claimed that his Miranda rights were violated because he was not given the lawyer of his choice; that being an American, he should have been informed of his rights in proper English; and that he should have been informed of his rights as soon as he was taken into custody, not when he was already at the police station. Was William denied his Miranda rights? Why or why not?**

**A:** The fact that the police officer gave him the Miranda warning in halting English does not detract from its validity. Under Section 2(b) of RA 7438, it is sufficient that the language used was known to and understood by him. William need not be given the Miranda warning before the investigation started. William was not denied his Miranda rights. It is not practical to require the police officer to provide a lawyer of his own choice from the United States *(Gamboa v. Cruz, 162 SCRA 642).*

**If William applies for bail, claiming that he is entitled thereto under the "international standard of justice" and that he comes from a U.S. State that has outlawed capital punishment, should William be granted bail as a matter of right? Reasons.**

**A:** William should not be granted bail as a matter of right. He is subject to Philippine criminal jurisdiction, therefore, his right to bail must be determined on the basis of Section 13, Article III of the Constitution.

**Q: Mr. Brown, a cigarette vendor, was invited by PO1 White to a nearby police station. Upon arriving at the police station, Brown was asked to stand side-by-side with five (5) other cigarette vendors in a police line-up. PO1 White informed them that they were looking for a certain cigarette vendor who snatched the purse of a passer-by and the line-up was to allow the victim to point at the vendor who snatched her purse. No questions were to be asked from the vendors.**

**a. Brown, afraid of a "set up" against him, demanded that he be allowed to secure his lawyer and for him to be present during the police line-up. Is Brown entitled to counsel? Explain.**
**b. Would the answer in (a) be the same if Brown was specifically invited by White because an eyewitness to the crime identified him as the perpetrator? Explain.**
**c. Briefly enumerate the so-called "Miranda Rights". (2012)**

**A:**

a. Brown is not entitled to counsel during the police line-up. He was not yet being asked to answer for a criminal offense. *(Garaboa v. Cruz, 162 SCRA 642.)*
b. Brown would be entitled to the assistance of a lawyer. He was already considered as a suspect and was therefore entitled to the right under custodial investigation. *(People v. Legaspi, 331 SCRA 95.)*
c. The Miranda warning means that a person in custody who will be interrogated must be informed of the following:
    1. He has right to remain silent;
    2. Anything said can be used as evidence against him;
    3. He has the right to have counsel during the investigation; and
    4. He must be informed that if he is indigent, a lawyer will be appointed to represent him. *(Miranda v. Arizona, 384 U.S 436)*

**Q: As he was entering a bar, Arnold — who was holding an unlit cigarette in this right hand — was handed a match box by someone standing near the doorway. Arnold unthinkingly opened the matchbox to light his cigarette and as he did so, a sprinkle of dried leaves fell out, which the guard noticed. The guard immediately frisked Arnold, grabbed the matchbox, and sniffed its contents. After confirming that the matchbox contained marijuana, he immediately arrested Arnold and called in the police.**

**At the police station, the guard narrated to the police that he personally caught Arnold in possession of dried marijuana leaves. Arnold did not contest the guard's statement; he steadfastly remained silent and refused to give any written statement. Later in court, the guard testified and narrated the statements he gave the police over Arnold's counsel's objections. While Arnold presented his own witnesses to prove that his possession and apprehension had been set-up, he himself did not testify. The court convicted Arnold, relying largely on his admission of the charge by silence at the police investigation and during trial. From the constitutional law perspective, was the court correct in its ruling? (2013)**

**A:** The court was wrong in relying on the silence of Arnold during the police investigation and during the trial. Under Article III, Section 12 of the 1987 Constitution, he had the right to remain silent. His silence cannot be taken as a tacit admission; otherwise, his right to remain silent would be rendered nugatory. Considering that his right against self-incrimination protects his right to remain silent, he cannot be penalized for exercising it *(People v. Galvez, G.R. No. 157221, March 30, 2007, 519 SCRA 521).*

**ALTERNATIVE ANSWER:** The court correctly convicted Arnold. There is no showing that the evidence for the prosecution was insufficient. When Arnold remained silent, he runs the risk of an interference of guilt from non-production of evidence in his behalf *(People v. Solis G.R. No. 124127, June 29, 1998, 128 SCRA 217).*

**Q: The police got a report about a shooting incident during a town fiesta. One person was killed. The police immediately went to the scene and started asking the people about what they witnessed. In due time, they were pointed to Edward Gunman, a security guard, as the possible malefactor. Edward was then having refreshment in one of the eateries when the police approached him. They asked him if he had a gun to which question he answered yes. Then they asked if he had seen anybody shot in the vicinity just a few minutes earlier and this time he said he did not know about it. After a few more questions, one of the policemen asked Edward if he was the shooter. He said no, but then the policeman who asked him told him that several witnesses pointed to him as the shooter. Whereupon Edward broke down and started explaining that it was a matter of self-defense. Edward was eventually charged with murder. During his trial, the statements he made to the police were introduced as evidence against him. He objected claiming that they were inadmissible since he was not given his Miranda rights. On the other hand, the prosecution countered that there was no need for such rights to be given since he was not yet arrested at the time of the questioning. If you were the judge, how would you rule on the issue? (2014)**

**A:** If I were the judge, I would rule that the confession is inadmissible. First, the rights under investigation in Section 12, Article III of the Constitution are applicable to any person under investigation for the commission of an offense. The investigation began when a policeman told Edward that several witnesses pointed to him as the shooter, because it started to focus on him as a suspect *(People v. Labtan, 320 SCRA 140).*

*Requisites*

**Q: In his extrajudicial confession executed before the police authorities, Jose Walangtakot admitted killing his girlfriend in a fit of jealousy. This admission was made after the following A and question to wit:**

**T - Ikaw ay may karapatan pa rin kumuha ng serbisyo ng isang abogado para makatulong mo sa imbestigasyong ito at kung wala kang makuha, ikaw ay aming bibigyan ng libreng abogado, ano ngayon ang iyong masasabi?"**

**"S - Nandiyan naman po si Fiscal (point to Assistant Fiscal Aniceto Malaputo) kaya hindi ko na kinakailanganang abogado."**

**During the trial. Jose Walangtakot repudiated his confession contending that it was made without the assistance of counsel and therefore Inadmissible in evidence. Decide. (1993)**

**A:** The confession of Jose Walangtakot is inadmissible in evidence. The warning given to him is insufficient in accordance with the ruling in *People v. Duero, 104 SCRA 379*, he should have been warned also that he has the right to remain silent and that any statement he makes may be used as evidence against him. Besides, under Art. III, Sec. 12(1) of the Constitution, the counsel assisting a person being investigated must be independent. Assistant Fiscal Aniceto Malaputo could not assist Jose Walangtakot. As held in *People v. Viduya, 189 SCRA 403*, his function is to prosecute criminal cases. To allow him to act as defense counsel during custodial investigations would render nugatory the constitutional rights of the accused during custodial investigation. What the Constitution requires is a counsel who will effectively undertake the defense of his client without any conflict of interest. The A of Jose Walangtakot indicates that he did not fully understand his rights. Hence, it cannot be said that he knowingly and intelligently waived those rights.

**Q: Larry was an overnight guest in a motel. After he checked out the following day, the chambermaid found an attaché case which she surmised was left behind by Larry. She turned it over to the manager who, to determine the name and address of the owner, opened the attache case and saw packages which had a peculiar smell and upon squeezing felt like dried leaves. His curiosity aroused, the manager made an opening on one of the packages and took several grams of the contents thereof. He took the packages to the NBI, and in the presence of agents, opened the packages, the contents of which upon laboratory examination, turned out to be marijuana flowering tops, Larry was subsequently found, brought to the NBI Office where he admitted ownership of the attaché case and the packages. He was made to sign a receipt for the packages. Larry was charged in court for possession of prohibited drugs. He was convicted. On appeal, he now poses the following issues:**

**a. The packages are inadmissible in evidence being the product of an illegal search and seizure;**
**b. Neither is the receipt he signed admissible, his rights under custodial investigation not having been observed. Decide. (1993)**

**A:** According to the ruling in *People v. Mirantes, 209 SCRA 179*, such receipt is in effect an extrajudicial confession of the commission of an offense. Hence, if it was signed without the assistance of counsel, in accordance with Section 12(3), Article IV of the Constitution, it is inadmissible in evidence. (*People v. Duhan, 142 SCRA 100).*

**Q: A, who was arrested as a suspect in a murder case was not represented by counsel during the "question and A" stage. However, before he was asked to sign his statements to the police investigator, the latter provided A with a counsel,**

**who happened to beat the police station. After conferring with A, the counsel told the police investigator that A was ready to sign the statements. Can the statements of A be presented in court as his confession? Explain. (1996)**

**A:** No, the statements of A cannot be presented in court as his confession. He was not assisted by counsel during the actual questioning. There is no showing that the lawyer who belatedly conferred with him fully explained to him the nature and consequences of his confession. In *People v. Compil 244 SCRA 135*, the Supreme Court held that the accused must be assisted by counsel during the actual questioning and the belated assistance of counsel before he signed the confession does not cure the defect.

**ALTERNATIVE ANSWER:** Yes, the statements of A can be presented in court as his confession. As held in *People v. Rous, 242 SCRA 732*, even if the accused was not assisted by counsel during the questioning, his confession is admissible if he was able to consult a lawyer before he signed.

**Q: Mariano was arrested by the NBI as a suspect in the shopping mall bombings. Advised of his rights, Mariano asked for the assistance of his relative, Atty. Santos. The NBI noticed that Atty. Santos was inexperienced, incompetent and inattentive. Deeming him unsuited to protect the rights of Mariano, the NBI dismissed Atty. Santos. Appointed in his place was Atty. Barroso, a bar topnotcher who was in the premises visiting a relative. Atty. Barroso ably assisted Mariano when the latter gave a statement. However, Mariano assailed the investigation claiming that he was deprived of counsel of his choice. Was the NBI correct in dismissing Atty. Santos and appointing Atty. Barroso in his stead? Is Mariano's statement, made with the assistance of Atty. Barroso, admissible in evidence? (2005)**

**A:** The NBI was not correct in dismissing Atty. Santos and appointing Atty. Barroso in his stead. Article III, Section 12(1) of the 1987 Constitution requires that a person under investigation for the commission of an offense shall have no less than "competent and independent counsel preferably of his own choice". This is meant to stress the primacy accorded to the voluntariness of the choice under the uniquely stressful conditions of a custodial investigation. The appointment of Atty. Barroso is questionable because he was visiting a relative working in the NBI and thus his independence is doubtful. Considering that Mariano was deprived of counsel of his own choice, the statement is inadmissible in evidence (*People v. Januario, G.R. No. 98252, February 7, 1997).*

**ALTERNATIVE ANSWER:** The NBI was correct in dismissing Atty. Santos as he was incompetent. The 1987 Constitution requires counsel to be competent and independent. Atty. Barroso, being a bar topnotcher ably assisted Mariano and there is no showing that his having a relative in the NBI affected his independence. Moreover, the accused has the final choice of counsel as he may reject the one chosen for him and ask for another. A lawyer provided by the investigators is deemed engaged by the accused where he raises no objection against the lawyer during the course of the investigation, and the accused thereafter subscribes to the truth of his statement before the swearing officer. Thus, once the prosecution shows there was compliance with the constitutional requirement on pre-interrogation advisories, a confession is presumed to be voluntary and the declarant bears the burden of proving that his confession is involuntary and untrue. A confession is admissible until the accused successfully proves that it was given as a result of violence, intimidation, threat or promise of reward or leniency which are not present in this case. Accordingly, the statement is admissible *(People v. Jerez, G.R. No. 114385, January 29, 1998).*

*Waiver*

**Q: On October 1, 1985, Ramos was arrested by a security guard because he appeared to be "suspicious" and brought to a police precinct where in the course of the investigation he admitted he was the killer in an unsolved homicide committed a week earlier. The proceedings of his investigation were put in writing and dated October 1, 1985, and the only participation of counsel assigned to him was his mere presence and signature on the statement. The admissibility of the statement of Ramos was placed in issue but the prosecution claims that the confession was taken on October 1, 1985 and the 1987 Constitution providing for the right to counsel of choice and opportunity to retain, took effect only on February 2, 1987 and cannot be given retroactive effect. Rule on this. (2000)**

**A:** The confession of Ramos is not admissible, since the counsel assigned to him did not advise him of his rights. The fact that his confession was taken before the effectivity of the 1987 Constitution is of no moment. Even prior to the effectivity of the 1987 Constitution, the Supreme Court already laid down strict rules on waiver of the rights during investigation in the case of *People v. Galit, 135 SCRA 465*.

**Q: Rafael, Carlos and Joseph were accused of murder before the Regional Trial Court of Manila. Accused Joseph turned state witness against his co-accused Rafael and Carlos, and was accordingly discharged from the information. Among the evidence presented by the prosecution was an extrajudicial confession made by Joseph during the custodial Investigation, implicating Rafael and Carlos who, he said, together with him (Joseph), committed the crime. The extrajudicial confession was executed without the assistance of counsel. Accused Rafael and Carlos vehemently objected on the ground that said extrajudicial confession was inadmissible in evidence against them. Rule on whether the said extrajudicial confession is admissible in evidence or not. (2001)**

**A:** According to *People v. Balisteros, 237 SCRA 499*, the confession is admissible. Under Section 12, Article III of the Constitution, the confession is inadmissible only against the one who confessed. Only the one whose rights were violated can raise the objection as his right is personal.

**ALTERNATIVE ANSWER:** According to *People v. Jara, 144 SCRA 516*, the confession is inadmissible. If it is inadmissible against the one who confessed, with more reason it should be inadmissible against others.

**Q: A robbery with homicide had taken place and Lito, Badong, and Rollie were invited for questioning based on the information furnished by a neighbor that he saw them come out of the victim's house at the time of the robbery/killing. The police confronted the three with this and other information they had gathered, and pointedly accused them of committing the crime. Lito initially resisted, but eventually broke down and admitted his participation in the crime. Elated by this break and desirous of securing a written confession soonest, the police called City Attorney Juan Buan to serve as the trio's counsel and to advise them about their rights during the investigation. Badong and Rollie, weakened in spirit by Lito's early admission, likewise admitted their participation.The trio thus signed a joint extrajudicial confession which served as the main evidence against them attheir trial. They were convicted based on their confession.**

**Should the judgment of conviction be affirmed or reversed on appeal? (2013)**

**A:** The judgment of conviction should be reversed on appeal. It relied mainly on the extra judicial confession of the accused. The lawyer assisting them must be independent. City Attorney Juan Buan is not independent. As City Attorney, he provided legal support to the City Mayor in performing his duties which include the maintenance of peace and order *(People v. Sunga, 399 SCRA 624).*

**ALTERNATIVE ANSWER:** The judgment of conviction should be affirmed if the accused failed to object when their extrajudicial confession was offered in evidence which was rendered it admissible *(People v. Samus, 389 SCRA 93).*

**Rights of the accused**

**Q: Johann learned that the police were looking for him in connection with the rape of an 18-year old girl, a neighbor. He went to the police station a week later and presented himself to the desk sergeant. Coincidentally, the rape victim was in the premises executing an extrajudicial statement. Johann, along with six (6) other suspects, were placed in a police lineup and the girl pointed to him as the rapist. Johann was arrested and locked up in a cell. Johann was charged with rape in court but prior to arraignment invoked his right to preliminary investigation. This was denied by the judge, and thus, trial proceeded. After the prosecution presented several witnesses, Johann through counsel, invoked the right to bail and filed a motion therefor, which was denied outright by the Judge. Johann now files a petition for certiorari before the Court of Appeals arguing that he is entitled to bail as a matter of right, thus the Judge should not have denied his motion to fix ball outright. Decide. (1993, 2008)**

**A:** In accordance with Art. III. sec. 13 of the Constitution, Johann may be denied bail if the evidence of his guilt is strong considering that the crime with which he is charged is punishable by *reclusion perpetua*. It is thus not a matter of right for him to be released on bail in such case. The court must first make a determination of the strength of the evidence on the basis of evidence already presented by the prosecution, unless it desires to present some more, and give the accused the opportunity to present countervailing evidence. If having done this the court finds the evidence not to be strong, then it becomes the right of Johann to be admitted to bail. The error of the trial court lies in outrightly denying the motion for bail of Johann.

**Q: State with reason(s) whether bail is a matter of right or a matter of discretion in the following cases:**

**a. The imposable penalty for the crime charged is reclusion perpetua and the accused is a minor;**
**b. The imposable penalty for the crime charged is life imprisonment and the accused is a minor;**
**c. The accused has been convicted of homicide on a charge of murder and sentenced to suffer an indeterminate penalty of from eight (8) years and one (1) day of prision mayor, as minimum, to twelve (12) years and four (4) months of reclusion temporal as maximum. (2005)**

**A:**

a. A minor charged with a crime punishable with reclusion perpetua is entitled to bail as a matter of right. Under Article 68 of the Revised Penal Code, in case of conviction the penalty would be one degree lower than reclusion perpetua. This rules out reclusion perpetua *[Bravo v. Borja, 134 SCRA 466 (1985)].*
b. Bail is a matter of discretion for a minor charged with an offense punishable with life imprisonment, because Article 68 of the Revised Penal Code is inapplicable and he is not entitled to the privileged mitigating circumstance under it *[People v. Lagasca, 148 SCRA 264 (1987)].*
c. Bail is a matter of discretion for an accused convicted of homicide on a charge of murder, because an appeal opens the whole case of review. There is a possibility that he may be convicted of murder, which is punishable with reclusion perpetua to death. His conviction shows the evidence of his guilt is strong *[Obosa v. CA, 266 SCRA 281 (1997)].*

**Q: A law denying persons charged with crimes punishable by recluion perpetua or death the right to bail. 2% State whether or not the law is constitutional. Explain briefly. (2006)**

**A:** A law denying persons charged with crimes punishable by reclusion perpetua or death the right to be bail is unconstitutional, because according to the constitution, "[A]all persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law"

**Q: JC, a major in the Armed Forces of the Philippines, is facing prosecution before the Regional Trial Court of Quezon City for the murder of his neighbor whom he suspected to have molested his (JC's) 15-year old daughter. Is JC entitled to bail? Why or why not? (2008)**

**A:** As a rule, bail is a matter of right even in capital offense, unless it is determined, after due hearing, that the evidence of his guilt is strong (Section 13, Article III of the Constitution; Article 248 of the Revised Penal Code, as amended).

*Presumption of innocence*

**Q: OZ lost five head of cattle which he reported to the police as stolen from his barn. He requested several neighbors, including RR, for help in looking for the missing animals. After an extensive search, the police found two head in RR's farm. RR could not explain to the police how they got hidden in a remote area of his farm. Insisting on his innocence, RR consulted a lawyer who told him he has a right to be presumed innocent under the Bill of Rights. But there is another presumption of theft arising from his unexplained possession of stolen cattle— under the penal law. Are the two presumptions capable of reconciliation In this case? If so, how can they be reconciled? If not, which should prevail? (2004)**

**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, 234 SCRA 63).*

*Assistance of counsel*

**Q: One day a passenger bus conductor found a man's handbag left in the bus. When the conductor opened the bag, he found inside a calling card with the owner's name (Dante Galang) and address, a few hundred peso bills, and a small plastic bag containing a white powdery substance. He brought the powdery substance to the National Bureau of Investigation for laboratory examination and it was determined to be methamphetamine hydrochloride or shabu, a prohibited drug. Dante Galang was subsequently traced and found and brought to the NBI Office where he admitted ownership of the handbag and its contents. In the course of the interrogation by NBI agents, and without the presence and assistance of counsel, Galang was made to sign a receipt for the plastic bag and its shabu contents. Galang was charged with illegal possession of prohibited drugs and was convicted. On appeal he contends that - The receipt he signed is also inadmissible as his rights under custodial investigation were not observed. Decide the case with reasons. (2002)**

**A:** The receipt which Galang signed without the assistance of counsel is not admissible in evidence. As held in *People v. Castro, 274 SCRA 115 (1997)*, since the receipt is a document admitting the offense charged, Galang should have been assisted by counsel as required by Article III, Section 11 of the Constitution.

*Right to speedy, impartial and public trial*

**Q: Charged by Francisco with libel, Pablo was arraigned on January 3, 2000, pre-trial was dispensed with and continuous trial was set for March 7, 8, and 9, 2000. On the first setting, the prosecution moved for its postponement and cancellation of the other settings because its principal and probably only witness, the private complainant Francisco, suddenly had to go abroad to fulfill a professional commitment. The judge instead dismissed the case for failure to prosecute. Would the grant of the motion for postponement have violated the accused's right to speedy trial? (2000)**

**A:** The grant of the motion for postponement would not have violated the right of the accused to speedy trial. As held In *People v. Leviste, 255 SCRA 238,* since the motion for postponement was the first one requested, the need for the offended party to attend to a professional commitment is a valid reason, no substantial right of the accused would be prejudiced, and the prosecution should be afforded a fair opportunity to prosecute its case, the motion should be granted.

**ALTERNATIVE ANSWER:** Since continuous trial of cases is required and since the date of the initial hearing was set upon agreement of all parties, including the private complainant, the judge properly dismissed the case for failure to prosecute.

**Self-incrimination clause**

**Q: Select the best answer and explain.**
**1. An accused's right against self-incrimination is violated in the following cases:**

a. **When he is ordered by the trial court to undergo a paraffin test to prove he is guilty of murder;**
b. **When he is compelled to produce his bankbooks to be used as evidence against his father charged with plunder;**
c. **When he is ordered to produce a sample of his handwriting to be used as evidence that he is the author of a letter wherein he agreed to kill the victim;**
d. **When the president of a corporation is subpoenaed to produce certain documents as proofs he is guilty of illegal recruitment. (2006)**

**A:** The best answer is (c), ordering the accused to produce a sample of his handwriting to be used as evidence to prove that he is the author of a letter in which he agreed to kill the victim as this will violate his right against self-incrimination. Writing is not a purely mechanical act, because it requires the application of intelligence and attention. Producing a sample of his handwriting may identify him as the writer of the letter *(Beltran v. Samson, 53 Phil. 570, [1929]).*

**Q: Congressman Nonoy delivered a privilege speech charging the Intercontinental Universal Bank (IUB) with the sale of unregistered foreign securities, in violation of R.A. 8799. He then filed, and the House of Representatives unanimously approved a Resolution directing the House Committee on Good Government (HCGG) to conduct an inquiry on the matter, in aid of legislation, in order to prevent the recurrence of any similar fraudulent activity.**

**The HCGG immediately scheduled a hearing and invited the responsible officials of IUB, the Chairman and Commissioners of the Securities and Exchange Commission (SEC), and the Governor of the Bangko Sentral ng Pilipinas (BSP). On the date set for the hearing, only the SEC Commissioners appeared, prompting Congressman Nonoy to move for the issuance of the appropriate subpoena ad**

**testificandum to compel the attendance of the invited resource persons.**

**The IUB officials filed suit to prohibit HCGG from proceeding with the inquiry and to quash the subpoena, raising the following argument: *Compelling the IUB officials, who are also respondents in the criminal and civil cases in court, to testify at the inquiry would violate their constitutional right against self-incrimination*. Are the foregoing argument tenable? Reasons. (2009)**

**A:** The argument is untenable. Since the IUB officials were not being subjected to a criminal penalty, they cannot invoke their right against self-incrimination unless a question calling for an incriminating answer is propounded *(Standard Chartered Bank v. Senate Committee, 541 SCRA 456 [2007]).*

*Foreign laws*

**Q: Alienmae is a foreign tourist. She was asked certain questions in regard to a complaint that was filed against her by someone who claimed to have been defrauded by her. Alienmae answered all the questions asked, except in regard to some matters in which she invoked her right against self-incrimination. When she was pressed to elucidate, she said that the questions being asked might tend to elicit incriminating answers insofar as her home state is concerned. Could Alienmae invoke the right against self-incrimination if the fear of incrimination is in regard to her foreign law? (2014)**

**A:** No. Alienmae cannot invoke her right against self-incrimination even if the fear of incrimination is in regard to her foreign law. Under the territoriality principle, the general rule is that a state has jurisdiction over all persons and property within its territory. The jurisdiction of the nation within its own territory is necessary, exclusive, and absolute. However, there are a few exceptions on when a state cannot exercise jurisdiction even within its own territory, to wit: 1) foreign states, head of states, diplomatic representatives, and consults to a certain degree; 2) foreign state property; 3) acts of state; 4) foreign merchant vessels exercising rights of innocent passage or arrival under stress; 5) foreign armies passing through or stationed in its territories with its permission; and 6) such other persons or property, including organisations like the United Nations, over which it may, by agreement, waive jurisdiction.

Seeing that the circumstances surrounding Alienmae do not fall under those exceptions, that she is a foreign tourist who received a complaint for fraud, such principle of territoriality can be exercised by the State to get the information it needs to proceed with the case.

*Application*

**Q: A man was shot and killed and his killer fled. Moments after the shooting, an eyewitness described to the police that the slayer wore white pants, a shirt with floral design, had boots and was about 70 kilos and 1.65 meters. Borja, who fit the description given, was seen nearby. He was taken into custody and brought to the police precinct where his pants, shirt and boots were forcibly taken and he was weighed, measured, photographed, fingerprinted and subjected to paraffin testing. At his trial, Borja objected to the admission in evidence of the apparel, his height and weight, his photographs, fingerprints comparison and the results of the paraffin test, asserting that these were taken in violation of his right against self-incrimination. Rule on the objection. (2000)**

**A:** The objection of Borja is not tenable. As held in *People v. Paynor, 261 SCRA 615*, the rights guaranteed by Section 12, Article in of the Constitution applies only against testimonial evidence. An accused may be compelled to be photographed or measured, his garments may be removed, and his body may be examined.

**Q: A, the wife of an alleged victim of enforced disappearance, applied for the issuance of a Writ of Amparo before a Regional Trial Court in Tarlac. Upon motion of A, the court issued inspection and production orders addressed to the AFP Chief of Staff to allow entry at Camp Aquino and permit the copying of relevant documents, including the list of detainees, if any. Accompanied by court-designated Commission on Human Rights (CHR) lawyers, A took photographs of a suspected isolation cell where her husband was allegedly seen being held for three days and tortured before he finally disappeared. The CHR lawyers requested one Lt. Valdez for a photocopy of the master plan of Camp Aquino and to confirm in writing that he had custody of the master plan. Lt. Valdez objected on the ground that it may violate his right against self-incrimination. Decide with reasons. (2010)**

**A:** The objection of Lt. Valdez is not valid. The right against self-incrimination refers to testimonial evidence and does not apply to the production of a photocopy of the master plan of Camp Aquino, because it is a public record. He cannot object to the request for him to confirm his custody of the master plan, because he is the public officer who had custody of it (*Almonte v. Vasquez, 244 SCRA 286 [1995].)*

**Non-imprisonment for debts**

**Q: Sec. 13 of PD 115 (Trust Receipts Law) provides that when the entrustee in a trust receipt agreement fails to deliver the proceeds of the sale or to return the goods if not sold to the entrustee-bank, the entrustee is liable for estafa under the RPC. Does this provision not violate the constitutional right against imprisonment for non-payment of a debt? Explain. (1993)**

**A:** No, Section 13 of Presidential Decree No. 115 does not violate the constitutional right against imprisonment for non-payment of a debt. As held in *Lee v. Rodil, 175 SCRA 100*, P.D. 115 is a valid exercise of police power and is not repugnant to the constitutional provision on non-imprisonment for non-payment of debt. The non-payment of debt is not the one being punish in the said law, but the violation of a trust receipt committed by disposing of the goods covered thereby and failing to deliver the proceeds of such sale. This act constitutes violation Art. 315 (1) (b) of the Revised Penal Code.

**Double jeopardy**

**Q: Discuss the right of every accused against double jeopardy? (1999)**

**A:** Article III (21) of the New Constitution reads: "No person shall be twice put in jeopardy of punishment for the same offense. 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."

The first sentence sets forth the general rule: the constitutional protection against double jeopardy is not available where the second prosecution is for an offense that is different from the offense charged in the first or prior prosecution, although both the first and second offenses may be based upon the same act or set of acts. The second sentence embodies an exception to the general proposition: the constitutional protection, against double jeopardy is available although the prior offense charged under an ordinance be different from the offense charged subsequently under a national statute such as the Revised Penal Code, provided that both offenses spring from the same act or set of acts.

*Requisites*

**Q: What are the requisites of double jeopardy? (1999)**

**A:** Double jeopardy exists when the following requisites are present:

a. a first jeopardy attached prior to the second;
b. the first jeopardy has been validly terminated; and
c. a second jeopardy is for the same offense as in the first.

A first jeopardy attaches only:

a. after a valid indictment;
b. before a competent court;
c. after arraignment;
d. when a valid plea has been entered; and
e. when the accused has been acquitted or convicted, or the case dismissed or otherwise terminated without his express consent *(Cerezo v. People, G.R. No. 185230, June 1, 2011).*

**Q: On October 21, 1986, 17 year old Virginia Sagrado brought a complaint against Martin Geralde for consented abduction. With the accused pleading not guilty upon arraignment, trial ensued. After trial, a judgment of conviction was rendered against Geralde. When the case was appealed to it, the Court of Appeals reversed the judgment of the Trial Court, ratiocinating and ruling as follows: "This is not to say that the appellant did nothing wrong...she was seduced by the appellant with promises (of marriage) just to accomplish his lewd designs." Years later, Virginia brought another complaint for Qualified Seduction. Geralde presented a Motion to Quash on the ground of double jeopardy, which motion and his subsequent motion for reconsideration were denied: *Question: May Geralde validly invoke double jeopardy in questioning the institution of the case for Qualified Seduction?* He placed reliance principally on the "same evidence" test to support his stance. He asserted that the offenses with which he was charged arose from the same set of facts. Furthermore, he averted that the complaint for Qualified Seduction is barred by waiver and estoppel on the part of the complainant, she having opted to consider the case as consented abduction. Finally, he argued that her delay of more than eight (8) years before filing the second case against him constituted pardon on the part of the offended party. How would you resolve Gerald's contentions? Explain. (1999)**

**A:** Geralde's invocation of double jeopardy is improper. Although the two crimes may have arisen from the same set of facts, they are not identical offenses as would make applicable the rule on double jeopardy. The gravamen of the offense of the abduction of a woman with her own consent, who is still under the control of her parents or guardians is "the alarm and perturbance to the parents and family" of the abducted person, and the infringement of the rights of the parent or guardian. In cases of seduction, the gravamen of the offense is the wrong done the young woman who is seduced.

Moreover, Virginia's filing of a subsequent case against the accused belies his allegation that she has waived or is estopped from filing the second charge against him. Neither could she be deemed to have pardoned him, for the rules require that in cases of seduction, abduction, rape and acts of lasciviousness, pardon by the offended party, to be effective, must be expressly given *(Rule 110, Sec. 4 of the Rules of Court, Ruled 110, Sec. 5 of the 1985 Rules on Criminal Procedure)*. Moreover the length of time it took her to file the second case is of no moment considering that she filed it within the ten (10)-year prescriptive period *(Art. 90, RPC; Perez v. CA, G.R. No. L-80838, November 29, 1988).*

**Q: Charged by Francisco with libel, Pablo was arraigned on January 3, 2000. Pre-trial was dispensed with and continuous trial was set for March 7, 8 and 9, 2000. On the first setting, the prosecution moved for its postponement and cancellation of the other settings because its principal and probably only witness, the private complainant Francisco, suddenly had to go abroad to fulfill a professional commitment. The judge instead dismissed the case for failure to prosecute. Would the reversal of the trial court's assailed dismissal of the case place the accused in double jeopardy? (2000)**

**A:** No, the reversal of the trial court's assailed dismissal of the case would not place the accused in double jeopardy. While generally, dismissal of cases on the ground of failure to prosecute predicated on the clear right of the accused to speedy trial is equivalent to an acquittal that would bar further prosecution of the accused for the same offense, the same rule is not applicable in this case considering that the right of the accused to speedy trial has not been violated by the State. For this reason, Pablo cannot invoke his right against double jeopardy *(People v. Tampal, G.R. No. 102485, May 22, 1995).*

**Q: For the death of Joey, Erning was charged with the crime of homicide before the Regional Trial Court of Valenzuela. He was arraigned. Due to numerous postponements of the scheduled hearings at the instance of the prosecution, particularly based on the ground of unavailability of prosecution**

**witnesses who could not be found or located, the criminal case was pending trial for a period of seven years. Upon motion of accused Erning who invoked his right to speedy trial, the court dismissed the case. Eventually, the prosecution witnesses surfaced, and a criminal case for homicide, involving the same incident was filed anew against Erning. Accused Erning moved for dismissal of the case on the ground of double jeopardy. The prosecution objected, submitting the reason that it was not able to present the said witnesses earlier because the latter went into hiding out of fear. Resolve the motion. (2001)**

**A:** The motion should be granted. As held in *Caes v. IAC, 179 SCRA 54*, the dismissal of a criminal case predicated on the right of the accused to a speedy trial amounts to an acquittal for failure of the prosecution to prove his guilt and bars his subsequent prosecution for the same offense.

**Q: A Tamaraw FX driven by Asiong Cascasero, who was drunk, sideswiped a pedestrian along EDSA in Makati City, resulting in physical injuries to the latter. The public prosecutor filed two separate informations against Cascasero, the first for reckless imprudence resulting in physical injuries under the Revised Penal Code, and the second for violation of an ordinance of Makati City prohibiting and penalizing driving under the influence of liquor. Cascasero was arraigned, tried and convicted for reckless imprudence resulting in physical injuries under the Revised Penal Code. With regard to the second case (i.e., violation of the city ordinance), upon being arraigned, he filed a motion to quash the information invoking his right against double jeopardy. He contended that, under Art. III, Section 21 of the Constitution, 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 He argued that the two criminal charges against him stemmed from the same act of driving allegedly under the influence of liquor which caused the accident. Was there double jeopardy? Explain your Answer. (2002, similar question in 1997)**

**A:** Yes, there was double jeopardy. The constitutional protection against double jeopardy is available so long as the acts which constitute or have given rise to the first offense under a municipal ordinance are the same acts which constitute or have given rise to the offense charged under a statute. In this case, the same act is involved in the two cases. The reckless imprudence which resulted in physical injuries arose from the same act of driving under the influence of liquor. The fact that the two charges sprung from one and the same act of conviction or acquittal under either the law or the ordinance shall bar a prosecution under the other thus making it against the logic of double jeopardy.

**Q: Butchoy installed a jumper cable. He was prosecuted under a Makati ordinance penalizing such act. He moved for its dismissal on the ground that the jumper cable was within the territorial jurisdiction of Mandaluyong and not Makati. The case was dismissed. The City of Mandaluyong thereafter filed a case against him for theft under the Revised Penal Code (RCP). Is there double jeopardy? (2012)**

**a. No. The first jeopardy was terminated with his express consent;**
**b. Yes. This is double jeopardy of the second kind – prosecution for the same act under an ordinance and a law;**
**c. Yes. He is prosecuted for the same offense which has already been dismissed by the City of Makati;**
**d. No. The second kind of double jeopardy under Section 21, Article III only contemplates conviction or acquittal which could terminate a first jeopardy.**

**A:** D. No. The second kind of double jeopardy under Section 21, Article III only contemplates conviction or acquittal which could terminate a first jeopardy. *(Zapatos Vs People, 411 Scra 148)*

## CITIZENSHIP

### Filipino citizens

**Q: From mainland China where he was born of Chinese parents, Mr. Nya Tsa Chan migrated to the Philippines in 1894. As of April 11, 1899, he was already a permanent resident of the Philippine Islands and continued to reside in this country until his death. During his lifetime and when he was already in the Philippines, Mr. Nya Tsa Chan married Charing, a Filipina, with whom he begot one son, Hap Chan, who was born on October 18. 1897. Hap Chan got married also to Nimfa, a Filipina, and one of their children was Lacqui Chan who was born on September 27. 1936. Lacqui Chan finished the course Bachelor of Science in Commerce and eventually engaged in business. In the May 1989 election, Lacqui Chan ran for and was elected Representative (Congressman). His rival candidate, Ramon Deloria, filed a quo warranto or disqualification case against him on the ground that he was not a Filipino citizen. It was pointed out in particular, that Lacqui Chan did not elect Philippine citizenship upon reaching the age of 21.**

**Decide whether Mr. Lacqui Chan suffers from a disqualification or not. (2001)**

**A:** Lacqui Chan is a Filipino citizen and need not elect Philippine citizenship. His father, Hap Chan, was a Spanish subject, was residing in the Philippines on April 11, 1899, and continued to reside in the Philippines. In accordance with Section 4 of the Philippine Bill of 1902, he was a Filipino citizen. Hence, in accordance with Section 1(3) of the 1935 Constitution. Lacqui Chan is a natural born Filipino citizen, since his father was a Filipino citizen.

**Q: Miguel Sin was born a year ago in China to a Chinese father and a Filipino mother. His parents met in Shanghai where they were lawfully married just two years ago. Is Miguel Sin a Filipino citizen? (2003)**

**A:** Yes, Miguel Sin is a Filipino citizen because he is the legitimate child of a Filipino mother. Under Article IV, Section 4 of the 1987 Constitution, his mother retained her Philippine citizenship despite her marriage to an alien husband, and according to Article IV, Section 1(2) of the 1987 Constitution, children born of a Filipino mother are Filipino citizens.

**Q: Atty. Emily Go, a legitimate daughter of a Chinese father and a Filipino mother, was born in 1945. At 21, she elected Philippine citizenship and studied law. She passed the bar examinations and engaged in private practice for many years. The Judicial and Bar Council nominated her as a candidate for the position of Associate Justice of the Supreme Court. But her nomination is being contested by Atty. Juris Castillo, also an aspirant to the position. She claims that Atty. Emily Go is not a natural-born citizen, hence, not qualified to be appointed to the Supreme Court. Is this contention correct? (2006)**

**A:** The contention that Atty. Emily Go is not a natural-born citizen is not correct. She was born before January 17, 1973 of a Chinese father and a Filipino mother. She elected Philippine citizenship when she reached twenty-one years of age. Those who elect Philippine citizenship under Section 1(3), Article IV of the Constitution are natural-born citizens.

**Q: Atty. Richard Chua was born in 1964. He is a legitimate son of a Chinese father and a Filipino mother. His father became a naturalized Filipino citizen when Atty. Chua was still a minor. Eventually, he studied law and was allowed by the Supreme Court to take the bar examinations, subject to his submission to the Supreme Court proof of his Philippine citizenship. Although he never complied with such requirement, Atty. Chua practiced law for many years until one Noel Eugenio filed with the Supreme Court a complaint for disbarment against him on the ground that he is not a Filipino citizen. He then filed with the Bureau of Immigration an affidavit electing Philippine citizenship. Noel contested it claiming it was filed many years after Atty. Chua reached the age of majority. Will Atty. Chua be disbarred? Explain. (2006)**

**A:** Atty. William Chua should not be disbarred. In accordance with Section 15 of the Revised Naturalization Act, he became a naturalized Philippine citizen when his father became a Filipino citizen during his minority. Hence, there was no need for him to elect Philippine citizenship *(Co v. HRET, 199 SCRA 692, [1991]).*

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

**a. Does he still possess Philippine citizenship?**
**b. If Nicasio was born in the United States, would he still be a citizen of the Philippines? (1992)**

**A:**

**a.** No, Nicasio no longer possesses Philippine citizenship. As held in *Frivaldo vs. Commission on Elections, 174 SCRA 245*, by becoming a naturalized American citizen, Nicasio lost his Philippine citizenship. Under Section 1(1) of Commonwealth Act No. 63, Philippine citizenship is lost by naturalization in a foreign country.

b. If Nicasio was born in the United States, he would still be a citizen of the Philippines, since his parents are Filipinos. Under Section 1(2), those whose fathers or mothers are citizens of the Philippines are citizens of the Philippines. Nicasio would possess dual citizenship, since under American Law persons born in the United States are American citizens. As held in *Aznar vs. COMELEC, 185 SCRA 703*, a person who possesses both Philippine and American citizenship is still a Filipino and does not lose his Philippine citizenship unless he renounces it.

**Q: Discuss the evolution of the principle of jus sanguinis as basis of Filipino citizenship under the 1935, 1973, and 1987 Constitutions. (2015)**

**A:** Section 1. Art. III of the 1935 Constitution adopted the jus sanguinis principles as the basis of the Filipino citizenship if the father is a Filipino citizen. However, Subsection 4, Section 1, Art. III of the Constitution provided that if the mother was a Filipino citizen who lost her Philippine citizenship because of her marriage to a foreign husband, her children could elect Philippine citizenship upon reaching the age of majority.

Subsection 2, Section 1, Art. III of the 1973 Constitution provided that a child born of a father or a mother who is a citizen of the Philippines is a Filipino citizen.

Section 2, Art. III of the 1973 Constitution provided that a child whose father or mother is a Filipino citizen is a Filipino citizen. Subsection 3, Section 1, Art. IV of the 1987 Constitution provided that a child born before January 17, 1973, of Filipino mothers, who elected Philippine citizenship upon reaching the age of majority under the 1973 Constitution is a natural-born Filipino citizen *(Tecson v COMELEC, 424 SCRA 277 [2004]).*

**Modes of acquiring citizenship**

**Q: What are the effects of marriages of: (1999)**

**1. A citizen to an alien;**
**2. An alien to a citizen; on their spouses and children? Discuss. (Similar question in 1989)**

**A:**

1. According to Section 4, Article IV of the Constitution, Filipino citizens who marry aliens retain their citizenship, unless by their act or omission they are deemed, under the law, to have renounced it.
2. According to *Mo Ya Lim Yao v. Commissioner of Immigration, 41 SCRA 292,* under Section 15 of the Revised Naturalization Law, a foreign woman who marries a Filipino citizen becomes a Filipino citizen provided she possesses none of the disqualifications for naturalization. A foreign man who marries a Filipino citizen does not acquire Philippine citizenship. However, under Section 3 of the Revised Naturalization Act, in such a case the residence requirement for naturalization will be reduced from ten (10) to five (5) years. Under Section 1(2), Article IV of the Constitution, the children of an alien and a Filipino citizen are citizens of the Philippines.

**Q: Rosebud is a natural-born Filipino woman who got married to Rockcold, a citizen of State Frozen. By virtue of the laws of Frozen, any person who marries its citizens would automatically be deemed its own citizen. After ten years of marriage, Rosebud, who has split her time between the Philippines and Frozen, decided to run for Congress. Her opponent sought her disqualification, however, claiming that she is no longer a natural-born citizen. In any event,**

**she could not seek elective position since she never renounced her foreign citizenship pursuant to the Citizenship Retention and Reacquisition Act (R.A. No. 9225). Is Rosebud disqualified to run by reason of citizenship? (2014)**

**A:** No, because Rosebud never lost her status as a natural-born citizen by reason of marriage to a foreigner. In addition to her status as a natural born citizen, she acquired the citizenship of her husband by operation of law and not by a voluntary act of acquisition thereof and voluntary renunciation of her former citizenship.

In relation to election protest, what is prohibited is dual allegiance. Allegiance to a foreign state is acquired through an express and voluntary act of renouncing once allegiance to the Republic of the Philippines and swearing allegiance to a foreign state e.g. enlisting in the military services of another state.

**Naturalization and denaturalization**

**Q: Enzo, a Chinese national, was granted Philippine citizenship in a decision rendered by the Court of First Instance of Pampanga on January 10, 1956. He took his oath of office on June 5, 1959. In 1970, the Solicitor General filed a petition to cancel his citizenship on the ground that in July 1969 the Court of Tax Appeals found that Enzo had cheated the government of income taxes for the years 1956 to 1959. Said decision of the Tax Court was affirmed by the Supreme Court in 1969. Between 1960 and 1970, Enzo had acquired substantial real property in the Philippines.**

**a. Has the action for cancellation of Enzo's citizenship prescribed?**
**b. Can Enzo ask for the denial of the petition on the ground that he had availed of the Tax Amnesty for his tax liabilities?**
**c. What is the effect on the petition for cancellation of Enzo's citizenship if Enzo died during the pendency of the hearing on said petition? (1994)**

**A:**

a. No, the action has not prescribed. As held in *Republic vs. Li Yao, 214 SCRA 748*, a certificate of naturalization may be cancelled at any time if it was fraudulently obtained by misleading the court regarding the moral character of the petitioner.
b. No. Enzo cannot ask for the denial of the petition for the cancellation of his certificate of naturalization on the ground that he had availed of the tax amnesty. In accordance with the ruling in *Republic vs. Li Yao. 224 SCRA 748*, the tax amnesty merely removed all the civil, criminal and administrative liabilities of Enzo. It did not obliterate his lack of good moral character and irreproachable conduct.
c. On the assumption that he left a family, the death of Enzo does not render the petition for the cancellation of his certificate of naturalization moot. As held in *Republic vs. Li Yao, 224 SCRA 748*, the outcome of the case will affect his wife and children.

**Q: Lim Tong Biao, a Chinese citizen applied for and was granted Philippine citizenship by the court. He took his oath as citizen of the Philippines in July 1963. In 1975, the Office of the Solicitor General filed a petition to cancel his Philippine citizenship for the reason that in August 1963, the Court of Tax Appeals found him guilty of tax evasion for deliberately understating his income taxes for the years 1959-1961.**

**a. Could Lim Tong Biao raise the defense of prescription of the action for cancellation of his Filipino citizenship?**
**b. Supposing Lim Tong Biao had availed of the tax amnesty of the government for his tax liabilities, would this constitute a valid defense to the cancellation of his Filipino citizenship? (1998)**

**A:**

a. No, Lim Tong Biao cannot raise the defense of prescription. As held in *Republic vs. Go Bon Lee, 1 SCRA 1166, 1170*, a decision granting citizenship is not res judicata and the right of the government to ask for the cancellation of a certificate cancellation is not barred by the lapse of time.
b. The fact that Lim Tong Biong availed of the tax amnesty is not a valid defense to the cancellation of his Filipino citizenship. In *Republic vs. Li Yao, 214 SCRA 748, 754*, the Supreme Court held: "xxx the tax amnesty does not have the effect of obliterating his lack of good moral character and irreproachable conduct which are grounds for denaturalization."

**Dual citizenship and dual allegiance**

**TRUE or FALSE. Dual citizenship is not the same as dual allegiance. (2009)**

**A:** True. Dual citizenship arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by those states and is involuntary. On the other hand, dual allegiance refers to the situation in which a person simultaneously owes by some positive and voluntary act, loyalty to two or more states *(Mercado v. Manzano, 307 SCRA 630 [1999]).*

**Loss and re-acquisition of Philippine citizenship**

**Q: Julio Hortal was born of Filipino parents. Upon reaching the age of majority, he became a naturalized citizen in another country. Later, he reacquired Philippine citizenship. Could Hortal regain his status as natural born Filipino citizen? Would your answer be the same whether he reacquires his Filipino citizenship by repatriation or by act of Congress? Explain. (1999)**

**A:** Julio Mortal can regain his status as a natural born citizen by repatriating. Since repatriation involves restoration of a person to citizenship previously lost by expatriation and Julio Mortal was previously a natural born citizen, in case he repatriates he will be restored to his status as a natural born citizen. If he reacquired his citizenship by an act of Congress, Julio Hortal will not be a natural born citizen, since he reacquired his citizenship by legislative naturalization.

**Q: Cruz, a Filipino by birth, became an American citizen. In his old age he has returned to the country and wants to become a Filipino again. As his lawyer, enumerate the ways by which citizenship may be reacquired. (2000)**

**A:** Cruz may reacquire Philippine citizenship in the

following ways:
1. By naturalization;
2. By repatriation pursuant to Republic Act No. 8171; and
3. By direct act of Congress (Section 2 of Commonwealth Act No. 63).

**Q: Warlito, a natural-born Filipino, took up permanent residence in the United States, and eventually acquired American citizenship. He then married Shirley, an American, and sired three children. In August 2009, Warlito decided to visit the Philippines with his wife and children: Johnny, 23 years of age; Warlito, Jr., 20; and Luisa, 17.**

**While in the Philippines, a friend informed him that he could reacquire Philippine citizenship without necessarily losing U.S. nationality. Thus, he took the oath of allegiance required under R.A. 9225.**

**a. Having reacquired Philippine citizenship, is Warlito a natural-born or a naturalized Filipino citizen today? Explain your answer.**

**A:** Warlito is a natural-born Filipino citizen. Repatriation of Filipinos results in the recovery of his original nationality. Since Warlito was a natural-born citizen before he lost his Philippine citizenship, he was restored to his former status as a natural-born Filipino citizen (*Bengson v. House of Representatives Electoral Tribunal, 357 SCRA 545*; RA 2630).

**b. With Warlito having regained Philippine citizenship, will Shirley also become a Filipino citizen? If so, why? If not, what would be the most speedy procedure for Shirley to acquire Philippine citizenship? Explain.**

**A:** Shirley will not become a Filipino citizen, because under RA 9225, Warlito's reacquisition of Philippine citizenship did not extend its benefits to Shirley. She should instead file with the Bureau of Immigration a petition for the cancellation of her alien certificate of registration on the ground that in accordance with Section 15 of the Naturalization Law, because of her marriage with Warlito, she should be deemed to have become a Filipino citizen. She must allege and prove that she possessed none of the disqualification to become a naturalized Filipino citizen (*Burca v. Republic 51 SCRA 248*).

**c. Do the children --- Johnny, Warlito Jr., and Luisa --- become Filipino citizens with their father's reacquisition of Philippine citizenship? Explain your answer. (2009)**

**A:** Under Section 18 of RA 9225, only the unmarried children who are below eighteen years of age of those who reacquire Philippine citizenship shall be deemed Filipino citizens. Thus, only Luisa, who is seventeen years old, became a Filipino citizen.

**Natural-born citizens and public office**

**Q: In 1989, Zeny Reyes married Ben Tulog, a national of the State of Kongo. Under the laws of Kongo, an alien woman marrying a Kongo national automatically acquires Kongo citizenship. After her marriage, Zeny resided in Kongo and acquired a Kongo passport. In 1991, Zeny returned to the Philippines to run for Governor of Sorsogon.**

**a. Was Zeny qualified to run for Governor?**
**b. Suppose instead of entering politics. Zeny just got herself elected as vice-president of the Philippine Bulletin, a local newspaper. Was she qualified to hold that position? (1994)**

**A:**

a. Under Section 4, Article IV of the Constitution. Zeny retained her Filipino citizenship. Since she also became a citizen of Kongo, she possesses dual citizenship. Pursuant to Section 40 (d) of the Local Government Code, she is disqualified to run for governor. In addition, if Zeny returned to the Philippines, less than a year immediately before the day of the election, Zeny is not qualified to run for Governor of Sorsogon. Under Section 39(a) of the Local Government Code, a candidate for governor must be a resident in the province where he intends to run at least one (1) year immediately preceding the day of the election. By residing in Kongo upon her marriage in 1989, Zeny abandoned her residence in the Philippines. This is in accordance with the decision in *Caasi v. Court of Appeals, 191 SCRA 229*.

   **ALTERNATIVE ANSWER:** No. Zeny was not qualified to run for Governor. Under the Constitution, "citizens of the Philippines who marry aliens shall retain their citizenship, unless by their act or omission they are deemed, under the law to have renounced it." (Sec. 4, Art. IV, Constitution). Her residing in Kongo and acquiring a Kongo passport are indicative of her renunciation of Philippine citizenship, which is a ground for loss of her citizenship which she was supposed to have retained. When she ran for Governor of Sorsogon, Zeny was no longer a Philippine citizen and, hence, was disqualified for said position.

b. Although under Section 11(1), Article XVI of the Constitution, mass media must be wholly owned by Filipino citizens and under Section 2 of the Anti-Dummy Law aliens may not intervene in the management of any nationalized business activity, Zeny may be elected vice president of the Philippine Bulletin, because she has remained a Filipino citizen. Under Section 4, Article IV of the Constitution, Filipino citizens who marry aliens retains their citizenship unless by their act or omission they are deemed, under the law, to have renounced it. Zeny is not guilty of any of acts or omission which will result in loss of citizenship are enumerated in Commonwealth Act No, 63. As held in *Kawakita v. United States, 343 U.S. 717*, a person who possesses dual citizenship like Zeny may exercise rights of citizenship in both countries and the use of a passport pertaining to one country does not result in loss of citizenship in the other country.

   **ALTERNATIVE ANSWER:** Neither, was Zeny qualified to hold the position of vice-president of Philippine Bulletin. Under the Constitution, "the ownership and management of mass media shall be limited to citizens, of the Philippines, or to corporation, cooperatives or associations wholly owned and managed by such citizens" (Section XI [1], Art. XVI), Being a non-Philippine citizen, Zeny

cannot qualify to participate in the management of the Bulletin as Vice-President thereof.

**Q: Andres Ang was born of a Chinese father and a Filipino mother in Sorsogon, Sorsogon on January 20, 1973. In 1988, his father was naturalized as a Filipino citizen. On May 11, 1998, Andres Ang was elected Representative of the First District of Sorsogon. Juan Bonto who received the second highest number of votes, filed a petition for Quo Warranto against Ang. The petition was filed with the HRET. Bonto contends that Ang is not a natural born citizen of the Philippines and therefore is disqualified to be a member of the House.**

**The HRET ruled in favor of Ang. Bonto filed a petition for certiorari in the Supreme Court. The following issue is raised: *Whether Ang is a natural born citizen of the Philippines.* How should this case be decided? (1998)**

**A:** Andres Ang should be considered a natural born citizen of the Philippines. He was born of a Filipino mother on January 20, 1973. This was after the effectivity of the 1973 Constitution on January 17, 1973. Under Section (1), Article VI of the 1973 Constitution, those whose fathers or mothers are citizens of the Philippines are citizens of the Philippines. Andres Ang remained a citizen of the Philippines after the effectivity of the 1987 Constitution. Section 1, Article IV of the 1987 Constitution provides: "The following are citizens of the Philippines: (1) Those who are citizens of the Philippines at the time of the adoption of this Constitution;"

**Q: A was born in the Philippines of Filipino parents. When martial law was declared in the Philippines on September 21, 1972, he went to the United States and was naturalized as an American citizen. After the EDSA Revolution, he came home to the Philippines and later on reacquired Philippine citizenship by repatriation. Suppose in the May 2004 elections he is elected Member of the House of Representatives and a case is filed seeking his disqualification on the ground that he is not a natural-born citizen of the Philippines, how should the case against him be decided? Explain your answer. (2002)**

**A:** The case should be decided in favor of A. As held In *Bengson v. HRET*, 357 SCRA 545, repatriation results in the recovery of the original nationality. Since A was a natural-born Filipino citizen before he became a naturalized American citizen, he was restored to his former status as a natural-born Filipino when he repatriated.

**Q: Juan Cruz was born of Filipino parents in 1960 in Pampanga. In 1985, he enlisted in the U.S. Marine Corps and took an oath of allegiance to the United States of America. In 1990, he was naturalized as an American citizen. In 1994, he was repatriated under Republic Act No. 2430. During the 1998 National Elections, he ran for and was elected representative of the First District of Pampanga where he resided since his repatriation. Was he qualified to run for the position? Explain. (2003)**

**A:** Cruz was qualified to run as representative of the First District of Pampanga. Since his parents were Filipino citizens, he was a natural born citizen. Although he became a naturalized American citizen, under the ruling in *Bengson v. HRET, 357 SCRA 545*, by virtue of his repatriation, Cruz was restored to his original status as a natural-born Filipino citizen.

**Q: TCA, a Filipina medical technologist, left in 1975 to work in ZOZ State. In 1988 she married ODH, a citizen of ZOZ. Pursuant to ZOZ's law, by taking an oath of allegiance, she acquired her husband's citizenship.**
**ODH died in 2001, leaving her financially secured. She returned home in 2002, and sought elective office in 2004 by running for Mayor of APP, her hometown. Her opponent sought to have her disqualified because of her ZOZ citizenship. She replied that although she acquired ZOZ's citizenship because of marriage, she did not lose her Filipino citizenship. Both her parents, she said, are Filipino citizens.**

**Is TCA qualified to run for Mayor? (2004)**

**A:** On the assumption that TCA took an oath of allegiance to ZOZ to acquire the citizenship of her husband, she is not qualified to run for mayor. She did not become a citizen of ZOZ merely by virtue of her marriage; she also took an oath of allegiance to ZOZ. By this act, she lost her Philippine citizenship. (Section 1 [3], Commonwealth Act No. 63.)

## LAW ON PUBLIC OFFICERS

**Q: State at least three constitutional provisions reflecting the State policy on transparency in matters of public interest. What is the purpose of said policy? (2000, 1997, 1989)**

**A:** The following are the constitutional provisions reflecting the State policy on transparency in matters of public interest:

1. "Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest." (Section 28, Article II)
2. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded to citizen, subject to such limitations as may be provided by law." (Section 7, Article III)
3. The records and books of accounts of the Congress shall be preserved and be open to the public in accordance with law, and such books shall be audited by the Commission on Audit which shall publish annually an itemized list of amounts paid to and expenses incurred for each Member." (Section 20. Article VI)
4. The Office of the Ombudsman shall have the following powers, functions, and duties:

   (6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence," (Section 12, Article XI)

5. "A public officer or employee shall, upon assumption of office, and as often as thereafter may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law." (Section 17, Article XI)
6. "Information on foreign loans obtained or guaranteed by the Government shall be made available to the public." (Section 21 Article XII) As explained in *Valmonte v. Belmonte, 170 SCRA 256*, the purpose of the policy is to protect the people from abuse of governmental power. If access to information of public concern is denied, the postulate "public office is a public trust" would be mere empty words.

**Modes and kinds of appointment**

**Q: In December 1988, while Congress was in recess, A was extended an ad interim appointment as Brigadier General of the Philippine Army. In February 1989, when Congress was in session, B was nominated as Brigadier General of the Philippine Army. B's nomination was confirmed on August 5, 1989 while A's appointment was confirmed on September 5, 1989.**

**a. Who is deemed more senior of the two, A or B?**
**b. Suppose Congress adjourned without the Commission on Appointments acting on both appointments, can A and B retain their original ranks of colonel? (1994)**

**A:**

a. A is senior to B. In accordance with the ruling in *Summers vs. Ozaeta, 81 Phil. 754*, the ad interim appointment extended to A is permanent and is effective upon his acceptance although it is subject to confirmation by the Commission on Appointments.
b. If Congress adjourned without the appointments of A and B having been confirmed by the Commission on Appointments, A cannot return to his old position. As held in *Summers vs. Ozaeta, 81 Phil. 754*, by accepting an ad interim appointment to a new position, A waived his right to hold his old position. On the other hand, since B did not assume the new position, he retained his old position.

**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. (2003)**

***A:*** According to *Sevilla v. Court of Appeals, 209 SCRA 637 [1992]*, an acting appointment is merely temporary. As held in *Marohombsar v. Alonto. 194 SCRA 390 [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.

***D. Eligibility and qualification requirements***

***E. Disabilities and inhibitions of public officers***

**Q: X was elected provincial governor for a term of three years. He was subsequently appointed by the President of the Philippines serving at her pleasure, as concurrent Presidential Assistant for Political Affairs in the Office of the President, without additional compensation. Is X's appointment valid? (2002)**

**A:** The appointment of X is not valid, because the position of Presidential Assistant for Political Affairs is a public office. Article IX-B Section 7 of the Constitution provides that no elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure. As held in *Flores v. Drilon, 223 SCRA 563 (1993)*, since an elective official is ineligible for an appointive position, his appointment is not valid.

**Q: M is the Secretary of the Department of Finance. He is also an ex-officio member of the Monetary Board of the Bangko Sentral ng Pilipinas from which he receives an additional compensation for every Board meeting attended. N, a taxpayer, filed a suit in court to declare Secretary M's membership in the Monetary Board and his receipt of additional compensation illegal and in violation of the Constitution. N invoked Article VII, Section 13 of the Constitution which provides that the President, Vice-President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in the Constitution, hold any other office or employment during their tenure. N also cited Article IX-B, Section 8 of the Constitution, which provides that no elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law. If you were the judge, how would you decide the following:**

**a. the issue regarding the holding of multiple positions?**
**b. the issue on the payment of additional or double compensation?**

**Explain your answers fully. (2002)**

**A:**

a. If I were the judge, I would uphold the validity of the designation of Secretary M as ex officio member of the Monetary Board. As stated in *Civil Liberties Union v. Executive Secretary, 194 SCRA 317 (1991)*, the prohibition against the holding of multiple positions by Cabinet Members in Article VII, Section 13 of the Constitution does not apply to positions occupied in an ex **officio** capacity as provided by law and as required by the primary functions of their office.
b. If I were the judge, I would rule that Secretary M cannot receive any additional compensation. As stated in *Civil Liberties Union v. Executive Secretary, 194 SCRA 317 (1991),* a Cabinet Member holding an ex-officio position has no right to receive additional compensation, for his services in that position are already paid for by the compensation attached to his principal office.

**Q: Suppose A, a Municipal Mayor, went on a sick leave to undergo medical treatment for a period of four (4) months. During that time:**

**a. Will B, the Municipal Vice-Mayor, be performing executive functions? Why?**
**b. Will B at the same time be also performing legislative functions as presiding officer of the Sangguniang Bayan? Why? (2002)**

**A:**

a. Since the Municipal Mayor is temporarily incapacitated to perform his duties, in accordance with Section 46(a) of the Local Government Code, the Municipal Vice-Mayor shall exercise his powers and perform his duties and functions. The Municipal Vice-Mayor will be performing executive functions, because the functions of the Municipal Mayor are executive.

b. The Municipal Vice-Mayor cannot continue as presiding officer of the Sangguniang Bayan while he is acting Municipal Mayor.

In accordance with *Gamboa v. Aguirre, 310 SCRA 867 (1999),* under the Local Government Code, the Vice-Municipal Mayor was deprived of the power to preside over the Sangguniang Bayan and is no longer a member of it. The temporary vacancy in the office of the Municipal Mayor creates a corresponding temporary vacancy in the Office of the Municipal Vice-Mayor when he acts as Municipal Mayor. This constitutes inability on his part to preside over the sessions of the Sangguniang Bayan.

**Liabilities of public officers**

*Preventive suspension and back salaries*

**Q: Alfonso Beit, a supply officer in the Department of Science and Technology (DOST), was charged administratively. Pending investigation, he was preventively suspended for 90 days. The DOST Secretary found him guilty and meted him the penalty of removal from office. He appealed to the Civil Service Commission (CSC). In the meantime, the decision was executed pending appeal. The CSC rendered a decision which modified the appealed decision by imposing only a penalty of reprimand, and which decision became final.**

**a. Can Alfonso Belt claim salary for the period that his case was pending investigation? Why?**
**b. Can he claim salary for the period that his case was pending appeal? Why? (2001)**

**A:**

a. Alfonso Beit cannot claim any salary for the period of his preventive suspension during the pendency of the investigation. As held in Gloria v. Court of Appeals, 306 SCRA 287, under Section 52 of the Civil Service Law, the provision for payment of salaries during the period of preventive suspension during the pendency of the investigation has been deleted. The preventive suspension was not a penalty. Its imposition was lawful, since it was authorized by law.
b. If the penalty was modified because Alfonso Beit was exonerated of the charge that was the basis for the decision ordering his dismissal, he is entitled to back wages, otherwise, this would be tantamount to punishing him after exoneration from the charge which caused his dismissal *(Gloria v. Court of Appeals, 3O6 SCRA).* If he was reprimanded for the same charge which was the basis of the decision ordering his dismissal, Alfonso Belt is not entitled to back wages, because he was found guilty, and the penalty was merely commuted *(Dela Cruz v. Court of Appeals, 305 SCRA 303).*

**Q: Simeon Valera was formerly a Provincial Governor who ran and won as a Member of the House of Representatives for the Second Congressional District of lloilo. For violation of Section 3 of the Anti-Graft and Corrupt Practices Act (R.A. No.3019), as amended, allegedly committed when he was still a Provincial Governor, a criminal complaint was filed against him before the Office of the Ombudsman for which, upon a finding of probable cause, a criminal case was filed with the Sandiganbayan. During the course of trial, the Sandiganbayan issued an order of preventive suspension for 90 days against him. Representative Valera questioned the validity of the Sandiganbayan order on the ground that, under Article VI , Section 16(3) of the Constitution, he can be suspended only by the House of Representatives and that the criminal case against him did not arise from his actuations as a member of the House of Representatives. Is Representative Valera's contention correct? Why? (2002)**

**A:** The contention of Representative Valera is not correct. As held in *Santiago v. Sandiganbayan, 356 SCRA 636,* the suspension contemplated in Article VI, Section 16(3) of the Constitution is a punishment that is imposed by the Senate or House of Representatives upon an erring member, it is distinct from the suspension under Section 13 of the Anti-Graft and Corrupt Practices Act, which is not a penalty but a preventive measure. Since Section 13 of the Anti-Graft and Corruption Practices Act does not state that the public officer must be suspended only in the office where he is alleged to have committed the acts which he has been charged, it applies to any office which he may be holding.

**Q: Maximino, an employee of the Department of Education, is administratively charged with dishonesty and gross misconduct. During the formal investigation of the charges, the Secretary of Education preventively suspended him for a period of 60 days. On the 60th day of the preventive suspension, the Secretary rendered a verdict, finding Maximino guilty, and ordered his immediate dismissal from the service. Maximino appealed to the Civil Service Commission (CSC), which affirmed the Secretary's decision. Maximino then elevated the matter to the Court of Appeals (CA). The CA reversed the CSC decision, exonerating Maximino. The Secretary Of Education then petitions the Supreme Court (SC) for the review of the CA decision. Is the Secretary of Education a proper party to seek the review of the CA decision exonerating Maximino? Reasons. (2010)**

**A:** The Secretary of Education is not the proper party to seek a review of the decision of the Court of Appeals, because he is the one who heard the case and imposed the penalty. Being the disciplinary authority, the

Secretary of Education should be impartial and should not actively participate in prosecuting Maximino *(National Appellate Board of the National Police Commission v. Mamauag, 466 SCRA 624 [2005]).*

**[b] If the SC affirms the CA decision, is Maximino entitled to recover back salaries corresponding to the entire period he was out of the service? Explain your answer. (2010)**

**A:** Maximino cannot recover back salaries during his preventive suspension. The law does not provide for it. Preventive suspension is not a penalty. During the preventive suspension, he was not yet out of the service. However, he is entitled to back wages from the time of his dismissal until his reinstatement. The enforcement of the dismissal pending appeal was punitive, and he was exonerated *(Gloria v. Court of Appeals, 306 SCRA 287 [1999]).*

**Accountability of public officers**

*Impeachment*

**Q: What are the grounds for impeachment. Explain. (1999, 2012, 2013)**

**A:**
Under Section 2, Article XI of the Constitution, the grounds for impeachment are:

a. Culpable violation of the Constitution – means intentional violation of the Constitution and not violations committed in good faith.
b. Treason – the same meaning as in the Revised Penal Code
c. Bribery – the same meaning as in the Revised Penal Code
d. Graft and Corruption – refers to prohibited acts enumerated in the Anti-Graft and Corrupt Practices Act.
e. Other High Crimes – refers to offenses that strike at the very life or orderly working of the government.
f. Betrayal of Public Trust – refers to any violation of the oath of office. *(Cruz, Philippine Political Law, 1998 ed., pp. 336-337; Bernas, The 1987 Constitution of the Philippines: A Commentary, 1996 ed., pp. 991-992)*

*Ombudsman (Sections 5 to 14, Article XI of the 1987 Constitution, in relation to R.A. No. 6770, or otherwise known as "The Ombudsman Act of 1989.")*

**Q: A group of losing litigants in a case decided by the Supreme Court 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? Explain. (2003)**

**A:** No, the Ombudsman cannot entertain the complaint. As stated in the case of *In re: Laureta v. Court of Appeals 148 SCRA 382,* pursuant to the principle of separation of powers, the correctness of the decisions of the Supreme Court 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 Supreme Court by entertaining a complaint against the Justices of the Supreme Court for knowingly rendering an unjust decision.

**ALTERNATIVE ANSWER:** Article XI, Section 1 of the 1987 Constitution provides that public officers must at all times be accountable to the people. Section 22 of the Ombudsman Act provides that the Office of the Ombudsman has the power to investigate any serious misconduct allegedly committed by officials removable by impeachment for the purpose of filing a verified complaint for impeachment if warranted. The Ombudsman can entertain the complaint for this purpose.

**Q: CTD, a Commissioner of the National Labor Relations Commission (NLRC), sports a No. 10 car plate. A disgruntled litigant filed a complaint against him for violation of the Anti-Graft and Corrupt Practices Act before the Ombudsman. CTD now seeks to enjoin the Ombudsman in a petition for prohibition, alleging that he could be investigated only by the Supreme Court under its power of supervision granted in the Constitution. He contends that under the law creating the NLRC, he has the rank of a Justice of the Court of Appeals, and entitled to the corresponding privileges. Hence, the OMB has no jurisdiction over the complaint against him. Should CTD's petition be granted or dismissed? Reason briefly. (2004)**

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

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

**a. Aggrieved, WOW petitioned the Court of Appeals to annul the preventive suspension order on the ground that the Ombudsman could only recommend but not impose the suspension. Moreover, according to WOW, the suspension was imposed without any notice or hearing, in violation of due process. Is the petitioner's contention meritorious? Discuss briefly.**
**b. For his part, the Ombudsman moved to dismiss WOW's petition. According to the Ombudsman the evidence of guilt of WOW is strong, and petitioner failed to exhaust administrative remedies. WOW admitted he filed no motion for reconsideration, but only because the order suspending him was immediately executory.**

**Should the motion to dismiss be granted or not? Discuss briefly. (2004)**

**A:**

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

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

**Q: Judge Red is the Executive Judge of Green City. Red is known to have corrupt tendencies and has a reputation widely known among practicing lawyers for accepting bribes. Ombudsman Grey, wishing to "clean up" the government from errant public officials, initiated an investigation on the alleged irregularities in the performance of duties of Judge Red.**

**a. Judge Red refused to recognize the authority of the Office of the Ombudsman over him because according to him, any administrative action against him or any court official or employee falls under the exclusive jurisdiction of the Supreme Court. Decide with reasons.**
**b. Does the Ombudsman have authority to conduct investigation over crimes or offenses committed by public officials that are NOT in connection or related at all to the official's discharge of his duties and functions? Explain.**
**c. Who are required by the Constitution to submit a declaration under oath of his assets, liabilities, and net worth? (2012)**

**A:**

a. Since the complaint refers to the performance of the duties of Judge Red, Ombudsman Grey should not act on it and should refer it to the Supreme Court. His investigation will encroach upon the exclusive power of administrative supervision of the Supreme Court over all courts *(Maceda v. Vasquez, 221 SCRA 464).*
b. The Ombudsman can investigate crimes or offenses committed by public officers which are not connected with the performance of their duties. Under Section 13(1), Article XI of the Constitution, the Ombudsman can investigate any act or omission of a public official which is illegal *(Deloso v. Domingo, 191 SCRA 545).*
c. All public officers and employees are required to submit a declaration under oath of their assets, liabilities and net worth (Section 17, Article XI of the Constitution).

*Sandiganbayan; Ill-gotten wealth*

**Q: Suppose a public officer has committed a violation of Section 3 (b) and (c) of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019), as amended, by receiving monetary and other material considerations for contracts entered into by him in behalf of the government and in connection with other transactions, as a result of which he has amassed illegally acquired wealth. (2002)**

**a. Does the criminal offense committed prescribe?**
**b. Does the right of the government to recover the illegally acquired wealth prescribe?**

**A:**

***a.*** A violation of Section 3(b) and (c) of the Anti-Graft and Corrupt Practices Act prescribes. As held in *Presidential Ad-Hoc Fact-Finding Committee on Behest Loans v. Desierto, 317 SCRA 272 (1999)*, Article XI, Section 15 of the Constitution does not apply to criminal cases for violation of the Anti-Graft and Corrupt Practices Act.
b. Article XI, Section 15 of the Constitution provides that the right of the State to recover properties unlawfully acquired by public officials or employees, or from them or from their nominees or transferees, shall not be barred by prescription.

## ADMINISTRATIVE LAW

**Q: Are government-owned or controlled corporations within the scope and meaning of the "Government of the Philippines"? (1997)**

**A:** Section 2 of the Introductory Provision of the Administrative Code of 1987 defines the government of the Philippines as the corporate governmental entity through which the functions of government are exercised throughout the Philippines, including, same as the contrary appears from the context, the various arms through which political authority is made effective in the Philippines, whether pertaining to the autonomous regions, the provincial, city, municipal or barangay subdivisions or other forms of local government. Government owned or controlled corporation are within the scope and meaning of the Government of the Philippines if they are performing governmental or political functions.

**Q: State with reason(s) which of the following is a government agency or a government instrumentality:**

**a. Department of Public Works and Highway;**
**b. Bangko Sentral ng Pilipinas;**
**c. Philippine Ports Authority;**
**d. Land Transportation Office;**
**e. Land Bank of the Philippines. (2005)**

**A:** An agency of the government refers to any of the various units of the government, including a department, bureau, office, instrumentality, or government-owned or controlled corporation, or a local government or a distinct unit therein [Section 2(4j, Introductory Provisions, Administrative Code of 1987; *Mactan Cebu v. Marcos, 261 SCRA 667 (1996)].*

An instrumentality of the government refers to any agency of the national government, not integrated

within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions, and government-owned or controlled corporation [Section 3(10), Introductory Provisions, Administrative Code of 1987; *Mactan Cebu v. Marcos, 261 SCRA 667 (1996)*].

a. The Department of Public Works and Highways is an agency of the government, because it is a department.
b. The Bangko Sentral ng Pilipinas is a government instrumentality, because it is vested with the special function of being the central monetary authority, and enjoys operational autonomy through its charter *(Section 1, Republic Act No. 7653).*
c. The Philippine Ports Authority is a government instrumentality, because it is merely attached to the Department of Transportation and Communication, it is vested with the special function of regulating ports, and it is endowed with all corporate powers through its charter *(Sections 4(a) and 6 (a)(2), Presidential Decree No. 857).*
d. The Land Transportation Office is an agency of the government, because it is an office under the Department of Transportation and Communication *(Section 4(a), Republic Act No. 4136).*
e. The Land Bank of the Philippines is a government instrumentality, because it is vested with the special function of financing agrarian reform, it is endowed with all corporate powers, and it enjoys autonomy through a charter *(Section 74, Agrarian Land Reform Code).*

*Powers of administrative agencies*

**Q: What is a quasi-judicial body or agency? (2006)**

**A:** A quasi-judicial body is an administrative agency which performs adjudicative functions. Although it is authorized by law to try and decide certain cases, it is not bound strictly by the technical rules of evidence and procedure. However, it must observe the requirements of due process.

**Q: The Maritime Industry Authority (MARINA) issued new rules and regulations governing pilotage services and fees, and the conduct of pilots in Philippine ports. This it did without notice, hearing nor consultation with harbor pilots or their associations whose rights and activities are to be substantially affected.**

**The harbor pilots then filed suit to have the new MARINA rules and regulations declared unconstitutional for having been issued without due process. Decide the case. (2000)**

**A:** The issuance of the new rules and regulations violated due process. Under Section 9, Chapter II, Book VII of the Administrative Code of 1987, as far as practicable, before adopting proposed rules, an administrative agency should publish or circulate notices of the proposed rules and afford interested parties the opportunity to submit their views; and in the fixing of rates, no rule shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two weeks before the first hearing on them. In accordance with this provision, in *Commissioner of Internal Revenue v. CA, 261 SCRA 236,* it was held that when an administrative rule substantially increases the burden of those directly affected, they should be accorded the chance to be heard before its issuance.

*Administrative due process*

**Q: The S/S "Masoy" of Panamanian registry, while moored at the South Harbor, was found to have contraband goods on board. The Customs Team found out that the vessel did not have the required ship's permit and shipping documents. The vessel and its cargo were held and a warrant of Seizure and Detention was issued after due investigation. In the course of the forfeiture proceedings, the ship captain and the ship's resident agent executed sworn statements before the Custom legal officer admitting that contraband cargo were found aboard the vessel. The shipping lines object to the admission of the statements as evidence contending that during their execution, the captain and the shipping agent were not assisted by counsel, in violation of due process. Decide. (1993)**

***A:*** The admission of the statements of the captain and the shipping agent as evidence did not violate due process even if they were not assisted by counsel. In *Feeder International Line, Pts, Ltd. v. Court of Appeals, 197 SCRA 842*, it was held that 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.

**Q: A complaint was filed by Intelligence agents of the Bureau of Immigration and Deportation (BID) against Stevie, a German national, for his deportation as an undesirable alien. The Immigration Commissioner directed the Special Board of Inquiry to conduct an investigation. At the said investigation, a lawyer from the Legal Department of the BID presented as witnesses the three Intelligence agents who filed the complaint. On the basis of the findings, report and recommendation of the Board of Special Inquiry, the BID Commissioners unanimously voted for Stevie's deportation. Stevie's lawyer questioned the deportation order:**

**a. On the ground that Stevie was denied due process because the BID Commissioners who rendered the decision were not the ones who received the evidence, in violation of the "He who decides must hear" rule. Is he correct? (1994 Bar Question)**
**b. On the ground that there was a violation of due process because the complainants, the prosecutor and the hearing officers were all subordinates of the BID Commissioners who rendered the deportation decision. Is he correct? (1994)**

**A:**

a. No, Stevie is not correct. As held in *Adamson & Adamson, Inc. vs. Amores, 152 SCRA 237*, administrative due process does not require that the actual taking of testimony or the presentation of evidence before the same officer who will decide the case. In *American Tobacco Co. v. Director of Patents, 67 SCRA 287*, the Supreme Court has ruled that so long as the actual decision on the merits of the cases is made by the officer authorized by law to decide, the power to hold a hearing on the basis of which his decision will be made can be delegated and is not offensive to due process. The Court noted that: "As long as a party is not deprived of his right to present his own case and submit evidence in support thereof, and the decision is supported by the evidence in the record, there is no question that the requirements of due process and fair trial are fully met. In short, there is no abrogation of responsibility on the part of the officer concerned as the actual decision remains with and is made by said officer. It is, however, required that to give the substance of a hearing, which is for the purpose of making determinations upon evidence the officer who makes the determinations must consider and appraise the evidence which justifies them."

b. No, Stevie was not denied due process simply because the complainants, the prosecutor, and the hearing officers were all subordinates of the Commissioner of the Bureau of Immigration and Deportation. In accordance with the ruling in *Erlanger & Galinger, Inc. vs. Court of Industrial Relations, 110 Phil. 470*, the findings of the subordinates are not conclusive upon the Commissioners, who have the discretion to accept or reject them. What is important is that Stevie was not deprived of his right to present his own case and submit evidence in support thereof, the decision is supported by substantial evidence, and the commissioners acted on their own independent consideration of the law and facts of the case, and did not simply accept the views of their subordinates in arriving at a decision

**Judicial recourse and review**

**Q:**

**a. Distinguish the doctrine of primary jurisdiction from the doctrine of exhaustion of administrative remedies.**

**b. Does the failure to exhaust administrative remedies before filing a case in court oust said court of jurisdiction to hear the case? Explain. (1996)**

**A:**

a. The doctrine of primary jurisdiction and the doctrine of exhaustion of administrative remedies both deal with the proper relationships between the courts and administrative agencies. The doctrine of exhaustion of administrative remedies applies where a claim is cognizable in the first instance by an administrative agency alone. Judicial interference is withheld until the administrative process has been completed. As stated in *Industrial Enterprises, Inc. vs. Court of Appeals, 184 SCRA 426,* the doctrine of primary jurisdiction applies where a case is within the concurrent jurisdiction of the court and an administrative agency but the determination of the case requires the technical expertise of the administrative agency. In such a case, although the matter is within the jurisdiction of the court, it must yield to the jurisdiction of the administrative case.

b. No, the failure to exhaust administrative remedies before filing a case in court does not oust the court of jurisdiction to hear the case. As held in *Rosario vs. Court of Appeals, 211 SCRA 384,* the failure to exhaust administrative remedies does not affect the jurisdiction of the court but results in the lack of a cause of action, because a condition precedent that must be satisfied before action can be filed was not fulfilled.

**Q:**

**1. Explain the doctrine of exhaustion of administrative remedies.**

**2. Give at least three (3) exceptions to its application. (2000)**

**A:**

1. The doctrine of exhaustion of administrative remedies means that when an adequate remedy is available within the Executive Department, a litigant must first exhaust this remedy before he can resort to the courts. The purpose of the doctrine is to enable the administrative agencies to correct themselves if they have committed an error *(Rosales v. Court of Appeals, 165 SCRA 344).*

2. The following are the exceptions to the application of the doctrine of exhaustion of administrative remedies:
   a. The question involved is purely legal;
   b. The administrative body is in estoppel;
   c. The act complained of is patently illegal;
   d. There is an urgent need for judicial intervention;
   e. The claim involved is small;
   f. Grave and irreparable injury will be suffered;
   g. There is no other plain, speedy and adequate remedy;
   h. Strong public interest is involved;
   i. The subject of the controversy is private law;
   j. The case involves a quo warranto proceeding *(Sunville Timber Products, Inc. v. Abad, 206 SCRA 48);*
   k. The party was denied due process *(Samahang Magbubukid ng Kapdula, Inc. v. Court of Appeals, 305 SCRA 147)*;
   l. The decision is that of a Department Secretary *(Nazareno v. Court of Appeals, G.R. No. 131641, [2000]);*
   m. Resort to administrative remedies would be futile *(University of the Philippines Board of Regents v. Rasul, G.R. No. 91551 [1991]);*
   n. There is unreasonable delay *(Republic v. Sandiganbayan, 301 SCRA 237);*
   o. The action involves recovery of physical possession of public land *(Gabrito v. Court of Appeals, 167 SCRA 771);*
   p. The party is poor *(Sabello v. Department of Education, Culture and Sports, 180 SCRA 623);* and
   q. The law provides for immediate resort to the court *(Rulian v. Valdez, 12 SCRA 501).*

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

**an administrative action ripe for judicial review? (2001)**

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

a. The administrative action has already been fully completed and, therefore, is a final agency action; and
b. All administrative remedies have been exhausted *(Gonzales, Administrative Law, Rex Bookstore: Manila, p. 136 [1979]).*

The President can also abolish the Bureau in the Department of Interior and Local Governments, provided it is done in good faith because the President has been granted continuing authority to reorganize the administrative structure of the National Government to effect economy and promote efficiency, and the powers include the abolition of government offices. (Presidential Decree No. 1416, as amended by Presidential Decree No. 1772; *Larin v. The Executive Secretary, 280 SCRA 71).*

**Q: The Secretary of the Department of Environment and Natural Resources (DENR) issued Memorandum Circular No. 123-15 prescribing the administrative requirements for the conversion of a timber license agreement (TLA) into an Integrated Forestry Management Agreement (IFMA). ABC Corporation, a holder of a TLA which is about to expire, claims that the conditions for conversion imposed by the said circular are unreasonable and arbitrary and a patent nullity because it violates the non-impairment clause under the Bill of Rights of the 1987 Constitution. ABC Corporation goes to court seeking the nullification of the subject circular. The DENR moves to dismiss the case on the ground that ABC Corporation has failed to exhaust administrative remedies which is fatal to its cause of action. If you were the judge, will you grant the motion? EXPLAIN. (2015)**

**A:** The motion to dismiss should be denied. The doctrine of exhaustion of administrative remedies applies only to judicial review of decisions of administrative agencies in the exercise of their quasi-judicial power. It has no application to their exercise of rule-making power *(Holy Spirit Homeowners Association, Inc. vs. Defensor, 2006).*

## ELECTION LAWS

### Candidacy

*Qualifications of candidates*

**Q: Under the Local Government Code, name four persons who are disqualified from running for any elective position. (1999)**

**A:** Under Section 40 of the Local Government Code, the following are disqualified from running for any local elective position:

1. Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;
2. Those removed from office as a result of an administrative case;
3. Those convicted by final judgment for violating the oath of allegiance to the Republic of the Philippines;
4. Those with dual citizenship;
5. Fugitives from justice in criminal or nonpolitical cases here or abroad;
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 effectivity of the Local Government Code; and
7. The insane or feeble-minded.

**Q: In the May 8, 1995 elections for local officials whose terms were to commence on June 30, 1995, Ricky filed on March 20, 1995 his certificate of candidacy for the Office of Governor of Laguna. He won, but his qualifications as an elected official was questioned. It is admitted that he is a repatriated Filipino citizen and a resident of the Province of Laguna. To be qualified for the office to which a local official has been elected, when at the latest should he be:**

**a. A Filipino Citizen? Explain.**
**b. A resident of the locality? Explain. (2005)**

**A:**

a. To be qualified for the office to which a local official has been elected, it is sufficient that he is a Filipino citizen at the time of his proclamation and at the start of his term. Philippine citizenship is required for holding an elective public office to ensure that no person owing allegiance to another country shall govern our people and a unit of the Philippine territory. An official begins to discharge his functions only upon his proclamation and on the day his term of office begins *[Frivaldo v. Commission on Elections, 257 SCRA 727 (1996)].*
*b.* To be qualified for the office to which a local official has been elected, he must be a resident of the locality for at least one year immediately before the election. *(Section 39(a), Local Government Code).*

**Q: Congress enacted Republic Act No. 1234 requiring all candidates for public offices to post an election bond equivalent to the one (1) year salary for the position for which they are candidates. The bond shall be forfeited if the candidates fail to obtain at least 10% of the votes cast. Is Republic Act No. 1234 valid? (2013)**

**a. It is valid as the bond is a means of ensuring fair, honest, peaceful and orderly elections.**
**b. It is valid as the bond requirements ensures that only candidates with sufficient means and who cannot be corrupted, can run for public office.**
**c. It is invalid as the requirement effectively imposes a property qualification to run for public office.**
**d. It is invalid as the amount of the surety bond is excessive and unconscionable.**
e. **It is valid because it is a reasonable requirement; the Constitution itself expressly supports the accountability of public officers.**

**A:** (C) It is invalid as the requirement effectively imposes a property qualification to run for public office. *(Marquera v. Borra, G.R. No. L-24761, September 7, 1965, 15 SCRA 7)*

**Q: (1) Gandang Bai filed her certificate of candidacy (COC) for municipal mayor stating that she is eligible to run for the said position. Pasyo Maagap, who also filed his COC for the same position, filed a petition to deny due course or cancel Bai's COC under Section 78 of the Omnibus Election Code for material misrepresentation as before Bai filed her COC, she had already been convicted of a crime involving moral turpitude. Hence, she is disqualified perpetually from holding any public office or from being elected to any public office. Before the election, the COMELEC cancelled Bai' s COC but her motion for reconsideration (MR) remained pending even after the election. Bai garnered the highest number of votes followed by Pasyo Maagap, who took his oath as Acting Mayor. Thereafter, the COMELEC denied Bai's MR and declared her disqualified for running for Mayor. P. Maagap asked the Department of Interior and Local Government Secretary to be allowed to take his oath as permanent municipal mayor. This request was opposed by Vice Mayor Umaasa, invoking the rule on succession to the permanent vacancy in the Mayor's office. Who between Pasyo Maagap and Vice Mayor Umaasa has the right to occupy the position of Mayor? Explain your answer. (2015)**

**A:** Pasyo Maagap would be entitled to occupy the position of Mayor upon disqualification of Gandang Bai on the basis of the petition to deny due course or cancel her certificate of candidacy under the provisions of Section 78 of the Omnibus Election Code.

The rule is that "an ineligible candidate who receives the highest number of votes is a wrongful winner. By express legal mandate, he could not even have been a candidate in the first place, but by virtue of the lack of material time or any other intervening circumstances, his ineligibility might not have been passed upon prior to election date. Consequently, he may have had the opportunity to hold himself out to the electorate as a legitimate and duly qualified candidate. However, notwithstanding the outcome of the elections, his ineligibility as a candidate remains unchanged. Ineligibility does not only pertain to his qualifications as a candidate but necessarily affects his right to hold public offive. The number of ballots cast in his favor cannot cure the defect of failure to qualify with the substantive legal requirements of eligibility to run for public office." *(Maquiling v. COMELEC, GR No. 195649, April 16, 2013)*

Accordingly, Gandang Bai "being anon-candidate, the votes cast in his favor should not have been counted." This leaves Pasyo Maagap as "the qualified candidate who obtained the highest number of votes. Therefore, the rule on succession under the Local Government Code will not apply." *(Maquiling v. COMELEC, GR No. 195649, April 16, 2013)*

*Filing of certificates of candidacy*

**Q: A, a City Legal Officer, and B, a City Vice-Mayor, filed certificates of candidacy for the position of City Mayor in the May 14, 2001 elections.**

**a. Was A ipso facto considered resigned and, if so, effective on what date?**

**b. Was B ipso facto considered resigned and, if so, effective on what date? In both cases, state the reason or reasons for your answer. (2002)**

**A:**

a. A was considered ipso facto resigned upon the filing of his certificate of candidacy, because being a City Legal Officer, he is an appointive official. Section 66 of the Omnibus Election Code provides that any person holding a public appointive office shall be considered ipso facto resigned upon the filing of his certificate of candidacy.

b. B is not considered ipso facto resigned. Section 67 of the Omnibus Election Code considers any elective official ipso facto resigned from office upon his filing of a certificate of candidacy for any office other than the one he is holding except for President and Vice-President, was repealed by the Fair Election Act.

**Q: Pedro Reyes is an incumbent Vice-Mayor of Quezon City. He intends to run in the regular elections for the position of City Mayor of Quezon City whose incumbent mayor would have fully served three consecutive terms by 2004.**

**1. Would Pedro Reyes have to give up his position as Vice-Mayor:**

**a. Once he files his certificate of candidacy; or**
**b. When the campaign period starts; or**
**c. Once and if he is proclaimed winner in the election; or**
**d. Upon his assumption to the elective office; or**
**e. None of the above.**

**Choose the correct answer**

**2. If Pedro Reyes were, instead, an incumbent Congressman of Quezon City, who intends to seek the mayoralty post in Quezon City, would your choice of answer in no. (1) above be the same? If not, which would be your choice? (2003)**

**A:**

1. The correct answer is (e). Section 14 of the Fair Election Act repealed Section 67 of the Omnibus Election Code, which provided that any elected official, whether national or local, who runs for any office other than the one he is holding in a permanent capacity, except for President and Vice President, shall be considered ipso facto resigned from his office upon the filing of his certificate of candidacy. Section 14 of the Fair Election Act likewise rendered ineffective the first proviso in the third paragraph of Section 11 of Republic Act No. 8436.

   Consequently, Pedro Reyes can run for Mayor without giving up his position as Vice-Mayor. He will have to give up his position as Vice-Mayor upon expiration of his term as Vice-Mayor on June 30, 2004.

2. The answer is the same if Pedro Reyes is a Congressman of Quezon City, because the repeal of Section 67 of the Omnibus Election Code covers both elective national and local officials.

**Q: What is a "stray ballot"? (1994)**

**A:** Under Rule No. 19 of the rules for the appreciation of ballots in Section 211 of the Omnibus Election Code, stray ballot is one cast in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself. Although the Code does not provide for stray ballot, it is presumed that stray ballot refers to stray vote.

*Effect of disqualification*

**Q: In the municipal mayoralty elections in 1980, the candidate who obtained the highest number of votes was subsequently declared to be disqualified as a candidate and so ineligible for the office to which he was elected. Would this fact entitle a competing candidate who obtained the second highest number of votes to ask and to be proclaimed the winner of the elective office? Reasons. (2003)**

**A:** Yes. The rule is that "an ineligible candidate who receives the highest number of votes is a wrongful winner". By express legal mandate, he could not even have been a candidate in the first place, but by virtue of the lack of material time or any other intervening circumstances, his ineligibility might not have been passed upon prior to election date. Notwithstanding the outcome of the elections, his ineligibility as a candidate remains unchanged. Ineligibility does not only pertain to his qualifications as a candidate but necessarily affects his right to hold public office. The number of ballots cast in his favor cannot cure the defect of failure to qualify with the substantive legal requirements of eligibility to run for public office.

Accordingly, the disqualified candidate, being a non-candidate, the votes cast in his favor should not have been counted. This leaves the candidate who obtained the second highest vote as the qualified candidate who actually obtained the highest number of votes. *(Maquiling v. COMELEC, GR No. 195649, April 16, 2013)*

**Campaign**

**Q: Mayor Pink is eyeing re-election in the next mayoralty race. It was common knowledge in the town that Mayor Pink will run for re-election in the coming elections. The deadline for filing of Certificate of Candidacy (CoC) is on March 23 and the campaign period commences the following day. One month before the deadline, Pink has yet to file her CoC, but she has been going around town giving away sacks of rice with the words "Mahal Tayo ni Mayor Pink" printed on them, holding public gatherings and speaking about how good the town is doing, giving away pink t-shirts with "Kay Mayor Pink Ako" printed on them.a. Mr. Green is the political opponent of Mayor Pink. In April, noticing that Mayor Pink had gained advantage over him because of her activities before the campaign period, he filed a petition to disqualify Mayor Pink for engaging in an election campaign outside the designated period.**

**a. Which is the correct body to rule on the matter? Comelec en banc, or Comelec division? Answer with reasons.**
**b. Rule on the petition. (2012)**

**A:**

a. It is the Commission On Elections En Banc which should decide the petition. Since it involves the exercise of the administrative powers of the Commission On Election, Section 3, Article Ix-C of the Constitution is not applicable *(Baytan V. COMELEC, 396 SCRA 703).*
b. The petition should be denied. Under Section 80 Of the Omnibus Election Code, to be liable for premature campaigning, he must be a candidate and unless he filed his CoC, he is not a candidate *(Lanot Vs. Commission On Elections, 507 Scra 114).*

*Lawful and prohibited election propaganda*

**Q: Discuss the disputable presumptions:**

**a. of conspiracy to bribe voters;**
**b. of the involvement of a candidate and of his principal campaign managers in such conspiracy. (1991)**

**A:**

a. Under Sec. 28 of the Electoral Reforms Law, proof that at least one voter in different precincts representing at least twenty per cent (20%) of the total precincts in any municipality, city or province was offered, promised or given money, valuable consideration or other expenditure by the relatives, leader or sympathizer of a candidate for the purpose of promoting the candidacy of such candidate, gives rise to a disputable presumption of conspiracy to bribe voters.
b. Under Sec. 28, if the proof affects at least 20% of the precincts of the municipality, city or province to which the public office aspired for by the favored candidate relates, this shall constitute a disputable presumption of the involvement of the candidate and of his principal campaign managers in each of the municipalities concerned, in the conspiracy.

**Board of Election Inspectors and Board of Canvassers**

**Q: What is your understanding of the principle of *idem sonans* as applied in the Election Law? (1994)**

**A:** *Idem sonans* literally means the same or similar sound. This principle is made manifest in one of the rules for the appreciation of ballots embodied in the Omnibus Election Code (Sec. 211, BP 881) stating that "A name or surname incorrectly written which when read, has a sound similar to the name or surname of a candidate when correctly written shall be counted in his favor. Thus, if the name as spelled in the ballot, though different from the correct spelling thereof, conveys to the ears when pronounced according to the commonly accepted methods, a sound practically identical with the sound of the correct name as commonly pronounced, the name thus given is a sufficient designation of the person referred to. The question whether one name is *idem sonans* with another is not a question of spelling but of pronunciation *(Mandac v. Samonte, 49 Phil. 284).* Its application is aimed at realizing the objective of every election which is to obtain the expression of the voters will.

**Remedies and jurisdiction in election law**

**Q: Despite lingering questions about his Filipino citizenship and his one-year residence in the district, Gabriel filed his certificate of candidacy for congressman before the deadline set by law. His opponent, Vito, hires you as lawyer to contest Gabriel's candidacy. (2010)**

**a. Before election day, what action or actions will you institute against Gabriel, and before which court, commission or tribunal will you file such action/s? Reasons.**

**A:** I will file a petition to cancel the certificate of candidacy of Gabriel in the Commission on Elections because of the false material representation that he is qualified to run for congressman (Section 78 of the Omnibus Election Code; 574 SCRA 787 [2008]). The question of the disqualification of Gabriel cannot be raised before the House of Representatives Electoral Tribunal, because he is not yet a member of the House of Representatives *(Aquino v. COMELEC, 248 SCRA400 [1995]).*

**b. If, during the pendency of such action / s but before election day, Gabriel withdraws his certificate of candidacy, can he be substituted as candidate? If so, by whom and why? If not, why not?**

**A:** If Gabriel withdraws, he may be substituted by a candidate nominated by his political party. Section 77 of the Omnibus Election Code states: "If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified."

**c. If the action/s instituted should be dismissed with finality before the election, and Gabriel assumes office after being proclaimed the winner in the election, can the issue of his candidacy and/or citizenship and residence still be questioned? If so, what action or actions may be filed and where? If not, why not?**

**A:** The question of the citizenship and residence of Gabriel can be questioned in the House of Representatives Electoral Tribunal by filing a quo warranto case. Since it is within its jurisdiction to decide the question of the qualification of Gabriel, the decision of the Commission on Elections does not constitute res judicata *(Jalandoni v. Crespo, HRET Case No. 01-020, March 6, 2003).* Once a candidate for member of the House of Representatives has been proclaimed, the House of Representatives Electoral Tribunal acquires jurisdiction over election contests relating to his qualifications *(Guerrero v COMELEC, 336 SCRA 458 [2000]).*

*Petition for disqualification*

**Q: During his third term, "A", a Member of the House of Representatives, was suspended from office for a period of 60 days by his colleagues upon a vote of two-thirds of all the Members of the House. In the next succeeding election, he filed his certificate of candidacy for the same position. "B", the opposing candidate, filed an action for disqualification of "A" on the ground that the latter's, candidacy violated Section 7, Article VI of the Constitution which provides that no Member of the House of Representatives shall serve for more than three consecutive terms. "A" answered that he was not barred from running again for that position because his service was interrupted by his 60-day suspension which was involuntary. Can 'A', legally continue with his candidacy or is he already barred? Why? (2001)**

**A:** A cannot legally continue with his candidacy. He was elected as Member of the House of Representatives for a third term. This term should be included in the computation of the term limits, even if "A" did not serve for a full term. *(Record of the Constitutional Commission, Vol. n, p. 592.)* He remained a Member of the House of Representatives even if he was suspended.

**Q: In the May 1992 elections, Manuel Manalo and Segundo Parate were elected as Mayor and Vice Mayor, respectively. Upon the death of Manalo as incumbent municipal mayor, Vice Mayor Segundo Parate succeeded as mayor and served for the remaining portion of the term of office. In the May 1995 election, Segundo Parate ran for and won as mayor and then served for the full term. In the May 1998 elections, Parate ran for reelection as Mayor and won again. In the May 2001 election, Segundo Parate filed his certificate of candidacy for the same position of mayor, but his rival mayoralty candidate sought his disqualification alleging violation of the three term limit for local elective officials provided for in the Constitution and in the Local Government Code. Decide whether the disqualification case will prosper or not. (2001)**

**A:** The disqualification case should be dismissed. As held in *Borja v. COMELEC, 295 SCRA 157,* in computing the three-term limitation imposed upon elective local officials, only the term for which he was elected to should be considered. The term which he served as a result of succession should not be included. It is not enough that the official has served three consecutive terms. He must have been elected to the same position three consecutive times.

**Q: Manuel was elected Mayor of the Municipality of Tuba in the elections of 1992, 1995 and 1998. He fully served his first two terms, and during his third term, the municipality was converted into the component City of Tuba. The said charter provided for a holdover and so without interregnum Manuel went on to serve as the Mayor of the City of Tuba.**

**In the 2001 elections, Manuel filed his certificate of candidacy for City Mayor. He disclosed, though, that he had already served for three consecutive terms as elected Mayor when Tuba was still a municipality. He also stated in his certificate of candidacy that he is running for the position of Mayor for the first time now that Tuba is a city. Reyes, an adversary, ran against Manuel and petitioned that he be disqualified because he had already served for three consecutive terms as Mayor. The petition was not timely acted upon, and Manuel was proclaimed the winner with 20,000 votes over the 10,000 votes received by Reyes as the only other candidate. It was**

**only after Manuel took his oath and assumed office that the COMELEC ruled that he was disqualified for having ran and served for three consecutive terms.**

**a. As lawyer of Manuel, present the possible arguments to prevent his disqualification and removal.**
**b. How would you rule on whether or not Manuel is eligible to run as Mayor of the newly-created City of Tuba immediately after having already served for three (3) consecutive terms as Mayor of the Municipality of Tuba?**
**c. Assuming that Manuel is not an eligible candidate, rebut Reyes' claim that he should be proclaimed as winner having received the next higher number of votes. (2005)**

**A:**

a. As lawyer of Manuel, I would argue that he should not be disqualified and removed because he was a three-term mayor of the municipality of Tuba, and, with its conversion to a component city, the latter has a totally separate and different corporate personality from that of the municipality. Moreover, as a rule, in a representative democracy, the people should be allowed freely to choose those who will govern them. Having won the elections, the choice of the people should be respected.
*b.* Manuel is not eligible to run as mayor of the city of Tuba. The 1987 Constitution specifically included an exception to the people's freedom to choose those who will govern them in order to avoid the evil of a single person accumulating excessive power over a particular territorial jurisdiction as a result of a prolonged stay in the same office. To allow Manuel to vie for the position of city mayor after having served for three consecutive terms as a municipal mayor would obviously defeat the very intent of the framers when they wrote this exception. Should he be allowed another three consecutive terms as mayor of the City of Tuba, Manuel would then be possibly holding office as chief executive over the same territorial jurisdiction and inhabitants for a total of eighteen consecutive years. This is the very scenario sought to be avoided by the Constitution, if not abhorred by it *(Latasa v. COMELEC, G.R. No. 154829, [2003]).*
*c.* Reyes cannot be proclaimed winner for receiving the second highest number of votes. The Supreme Court has consistently ruled that the fact that a plurality or a majority of the votes are cast for an ineligible candidate at a popular election, or that a candidate is later declared to be disqualified to hold office, does not entitle the candidate who garnered the second highest number of votes to be declared elected. The same merely results in making the winning candidate's election a nullity. In the present case, 10,000 votes were cast for private respondent Reyes as against the 20,000 votes cast for petitioner Manuel. The second placer is obviously not the choice of the people in this particular election. The permanent vacancy in the contested office should be filled by succession *(Labo v. COMELEC, G.R. No. 105111, [1992]).*

**ALTERNATIVE ANSWER:** Reyes could not be proclaimed as winner because he did not win the election. To allow the defeated candidate to take over the mayoralty despite his rejection by the electorate is to disenfranchise the electorate without any fault on their part and to undermine the importance and meaning of democracy and the people's right to elect officials of their choice *(Benito v. COMELEC, G.R. No. 106053, [1994]).*

**Q: How do you differentiate the petition filed under Section 68 from the petition filed under Section 78, both of the Omnibus Election Code? (2015)**

**A:** A certificate of candidacy which is denied or cancelled under Section 78 of the Omnibus Election Code would make said certificate of candidacy *void ab initio* (which would preclude the application of the rules on succession for purposes of replacing him upon his disqualification because, up to that point of his disqualification, he shall be considered merely as a de facto officer), unlike in the case of disqualification under Section 68 of Omnibus Election Code, which would give rise to the de jure officership of the disqualified candidate up to the point of disqualification. The other basic distinctions between petitions for disqualification of candidates and petitios to reject or cancel certificates of candidacy are follows- Under Section 68 of OEC, a candidate may be disqualified if he commits any of the election offenses or "prohibited acts" specified therein, of if he is permanent resident of or an immigrant to a foreign country. On the other hand, under Section 78 of the same law, a certificate of candidacy may be denied due course or cancelled if found to be containing material representations which are false and deliberately made. These would include misrepresesntations as to age, residence, citizenship or non-possession of natural-born status, registration as a votes, and eligibility, as when one, although precluded from running for a fourth term because of the three-term limit rule, claims to be nonetheless qualified, or when one claims to be eligible despite his disqualification on the bases of an accessory penalty imposed upon him in connection with his conviction in a criminal case.

A petition for disqualification under Section 68 may be filed at any time after the last day for filing of the certificate of candidacy but not later that the candidate's proclamanation should he win in the elections, while a petition to deny due course to or cancel a certificate of candidacy under Section 78 must be filed within 5 days prior to the last day for filing of certificates of candidacy, but not later than 25 days from the time of the filing of the certificate of candidacy.

While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as candidate at all. Thus, a candidate disqualified under Section 68 may be validly substituted but only by an official candidate of his registered or accredited party.

*Pre-proclamation controversy*

**Q: Give three issues that can be properly raised and brought in a pre-proclamation contest.**

**A:** According to Section 243 of the Omnibus Election Code, the following issues can be properly raised

a. The composition or proceedings of the board of canvassers are illegal;
b. The canvassed election returns are incomplete, contain material defects, approved to be tampered

with, or contain discrepancy in the same returns or in other authenticated copies;
c. The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and
d. Substitute or fraudulent returns in controverter polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.

However, according to Section 15 of the Synchronized Election Law, no pre-proclamation cases shall be allowed on matters relating to the preparation, transmission, receipt, custody and appreciation of the election returns or the certificates of canvass with respect to the positions of President, Vice- President, Senator and Member of the House of Representatives. No pre-proclamation case is allowed in the case of barangay elections.

**Q: The 1st Legislative District of South Cotabato is composed of General Santos and three municipalities including Polomolok. During the canvassing proceedings before the District Board of Canvassers in connection with the 2007 congressional elections, candidate MP objected to the certificate of canvass for Polomolok on the ground that it was obviously manufactured, submitting as evidence the affidavit of a mayoralty candidate of Polomok. The certificate of canvass for General Santos was likewise objected to by MP on the basis of the confirmed report of the local NAMFREL that 10 election returns from non-existent precincts were included in the certificate. MP moved that the certificate of canvass for General Santos be corrected to exclude the results from the non-existent precincts. The District Board of Canvassers denied both objections and ruled to include the certificate of canvass. May MP appeal the rulings to the COMELEC? Explain. (2008)**

**A:** No, MP cannot appeal the rulings to the Commission on Elections. Under Section 15 of Republic Act No. 7166, as amended by Republic Act No. 9369, no pre-proclamation controversies regarding the appreciation of election returns and certificates of canvass maybe entertained in elections for members of the House of Representatives. The canvassing body may correct manifest errors in the certificate of canvass. His recourse is to file a regular election protest before the HRET *(Pimentel v. COMELEC, 548 SCRA 169 [2008]).*

*Election protest*

**Q: Under the Omnibus Election Code (B.P. 881, as amended), briefly differentiate an election protest from a quo warranto case, as to who can file the case and the respective grounds therefor. (2001, 2006)**

**A:** An ELECTION PROTEST maybe filed by a losing candidate for the same office for which the winner filed his certificate of candidacy. A QUO WARRANTO CASE may be filed by any voter who is a registered voter in the constituency where the winning candidate sought to be disqualified ran for office.

In an election contest, the issues are: (a) who received the majority or plurality of the votes which were legally cast and (b) whether there were irregularities in the conduct of the election which affected its results.

In a quo warranto case, the issue is whether the candidate who was proclaimed elected should be disqualified because of ineligibility or disloyalty to the Philippines.

**Q: In the municipal mayoralty elections in 1980, the candidate who obtained the highest number of votes was subsequently declared to be disqualified as a candidate and so ineligible for the office to which he was elected. Would this fact entitle a competing candidate who obtained the second highest number of votes to ask and be proclaimed the winner of the elective office? Reasons. (2003)**

**A:** According to *Trinidad v. COMELEC, 315 SCRA 175 (1999),* if the candidate who obtained the highest number of votes is disqualified, the candidate who obtained the second highest number of votes cannot be proclaimed the winner. Since he was not the choice of the people, he cannot claim any right to the office. However, the alleged "second-placer," should be proclaimed if the certificate of candidacy was void *ab initio*. In short, the winner was never a candidate at all and all votes were stray votes. Thus, the second-placer is the only qualified candidate who actually garnered the highest number of votes *(Tea v. COMELEC, G.R. No. 195229 [2012]*).

**Q: Abdul ran and won in the May 2001, 2004 and 2007 elections for Vice-Governor of Tawi-Tawi. After being proclaimed Vice-Governor in the 2004 elections, his opponent, Khalil, filed an election protest before the Commission on Election. Ruling with finality on the protest, the COMELEC declared Khalil as the duly elected Vice-Governor though the decision was promulgated only in 2007, when Abdul had fully served his 2004-2007 term and was in fact already on his 2007-2010 term as Vice Governor. (2008)**

**a. Abdul now consults you if he can still run for Vice-Governor of Tawi-Tawi in the forthcoming May 2010 election on the premise that he could not be considered as having served as Vice-Governor from 2004-2007 because he was not duly elected to the post, as he assumed office merely as a presumptive winner and that presumption was later overturned when COMELEC decided with finality that had lost in the May 2004 elections. What will be your advice?**

**A:** I shall advice Abdul that he cannot run for Vice-Governor of Tawi-Tawi in the May 2010 elections. His second term should be counted as a full term served in contemplation of the three-term limit prescribed by Section 8, Article X of the Constitution. Since the election protest against him was decided after the term of the contested office had expire, it had no practical and legal use and value *(Ong v. Alegre, 479 SCRA 473).*

**b. Abdul also consults you whether his political party can validly nominate his wife as subtitute candidate for Vice-Mayor of Tawi-Tawi in May 2010 elections in case the COMELEC disqualifies him and denies due course to or cancels his certificate of candidacy in view of a false material representation therein.What will be your advice?**

**A:** I shall advise Abdul that his wife cannot be nominated as substitute candidate for Vice-Governor of Tawi-Tawi. The denial of due course and cancellation of a certificate of candidacy is not one of the cases in which a candidate may be validly substituted. A cancelled certificate does not give rise to a valid candidacy. Under Section 77 of the Omnibus Election Code, a valid candidacy is an indispensable requisite in case of a substitution of a disqualified candidate *(Miranda v. Abaya 311 SCRA 617).*

*Quo warranto*

**Q: Distinguish briefly between Quo Warranto in elective office and Quo Warranto in appointive office. (2012)**

**A:** In quo warranto in elective officer, the issue is the ineligibility of the elected candidate (Section 3(E), Rule 1, Rules Of Procedure In Election Cases). If he is ineligible, the candidate who got the second highest number of votes cannot be proclaimed elected *(Sinsuat v. COMELEC, 492 Scra 264).* A voter may file for quo warranto against an elected candidate. The petition should be filed within ten days after the proclamation of the elected candidate.

In quo warranto in appointive office, the issue is the legality of the appointment. The court will decide who between the parties has the legal title to the office *(Nachura, Outline Reviewers In Political Law, P. 567).* It is the Solicitor General, a public prosecutor, or a person claiming to be entitled to the public office who can file a petition for quo warrato against an appointive official (Section 2 And 5, Rule 65 Of The Rules Of Court). The petition should be filed within one year after the cause of action accrued (Section 11, Rules 66 Of The Rules Of Court).

## LOCAL GOVERNMENTS

**Q: Under the Constitution, what are the three main sources of revenues of local government units? (1999)**

***A:*** The following are the main sources of revenues of local government units under the constitution:

a. Taxes, fees, and charges. *(Section 5, Article X)*
b. Share in the national taxes. *(Section 6, Article X)*
c. Share in the proceeds of the utilizations and development of the national wealth within their areas. *(Section 7, Article X)*

**Creation, conversion, division, merger or dissolution**

**Q: From an existing province, Wideland, Congress created a new province, Hundred Isles, consisting of several islands, with an aggregate area of 500 square kilometres. The law creating Hundred Isles was duly approved in a plebiscite called for that purpose. Juan, a taxpayer and a resident of Wideland, assailed the creation of Hundred Isles claiming that it did not comply with the area requirement as set out in the Local Government Code, i.e., an area of at least 2,000 square kilometres. The proponents justified the creation, however, pointing out that the Rules and Regulations Implementing the Local Government Code states that "the land area requirement shall not apply where the proposed province is composed of one (1) or more islands." Accordingly, since the new province consists of several islands, the area requirement need not be satisfied. How tenable is the position of the proponents? (2014)**

**A:** In exempting provinces composed of one or more islands from both the contiguity and land area requirements, Article 9 of the IRR cannot be considered inconsistent with the criteria under Section 461 of the Local Government Code. Far from being absolute regarding application of the requirement of a contiguous territory of at least 2,000 square kilometers as certified by the Land Management Bureau, Section 461 allows for said exemption by providing, under paragraph (b) thereof, that (t)he territory need not be contiguous if (the new province) comprises two or more islands or is separated by a chartered city or cities which do not contribute to the income of the province. For as long as there is compliance with the income requirement, the legislative intent is, after all, to the effect that the land area and population requirements may be overridden by the established economic viability of the proposed province.

**Police power (general welfare clause)**

**Q:**
**a. Can a Barangay Assembly exercise any police power?**
**b. Can the Liga ng mga Barangay exercise legislative powers? (2003)**

**A:**
a. No, the Barangay Assembly cannot exercise any police power. Under Section 398 of the Local Government Code, it can only recommend to the Sangguniang Barangay the adoption of measures for the welfare of the barangay and decide on the adoption of an initiative.
b. The Liga ng Mga Barangay cannot exercise legislative powers. As stated in *Bito-Onon v. Fernandez. 350 SCRA 732 [2001]*, it is not a local government unit and its primary purpose is to determine representation of the liga in the sanggunians; to ventilate, articulate, and crystallize issues affecting barangay government administration; and to secure solutions for them through proper and legal means.

**Q: The City of San Rafael passed an ordinance authorizing the City Mayor, assisted by the police, to remove all advertising signs displayed or exposed to public view in the main city street, for being offensive to sight or otherwise a nuisance. AM, whose advertising agency owns and rents out many of the billboards ordered removed by the City Mayor, claims that the City should pay for the destroyed billboards at their current market value since the City has appropriated them for the public purpose of city beautification. The Mayor refuses to pay, so AM is suing the City and the Mayor for damages arising from the taking of his properly without due process nor just compensation. Will AM's suit prosper? Reason briefly. (2004)**

**A:** The suit of AM will not prosper. The removal of the billboards is not an exercise of the power of eminent domain but of police power *(Churchill v. Rafferty, 32 Phil. 580 11915D)*. The abatement of a nuisance in the exercise of police power does not constitute taking of

property and does not entitle the owner of the property involved to compensation *(Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, 175 SCRA 343 [1989]).*

**Q: The Sangguniang Panlungsod of Pasay City passed an ordinance requiring all disco pub owners to have all their hospitality girls tested for the AIDS virus. Both disco pub owners and the hospitality girls assailed the validity of the ordinance for being violative of their constitutional rights to privacy and to freely choose a calling or business. Is the ordinance valid? Explain. (2010)**

**A:** The ordinance is a valid exercise of police power. The right to privacy yields to certain paramount rights of the public and defers to the exercise of police power. The ordinance is not prohibiting the disco pub owners and the hospitality girls from pursuing their calling or business but is merely regulating *it (Social Justice Society v. Dangerous Drugs Board, 570 SCRA 410 [2008])* The ordinance is a valid exercise of police power, because its purpose is to safeguard public health *(Beltran vs. Secretary of Health, 476 SCRA 168 [2005]).*

**Q: ABC operates an industrial waste processing plant within Laoag City. Occasionally, whenever fluid substances are released through a nearby creek, obnoxious odor is emitted causing dizziness among residents in Barangay La Paz. On complaint of the Punong Barangay, the City Mayor II wrote ABC demanding that it abate the nuisance. This was ignored. An invitation to attend a hearing called by the Sangguniang Panlungsod was also declined by the president of ABC. The city government thereupon issued a cease and desist order to stop the operations of the plant, prompting ABC to file a petition for injunction before the Regional Trial. Court, arguing that the city government did not have any power to abate the alleged nuisance. Decide with reasons. (2010)**

**A:** The city government has no power to stop tile operations of the plant. Since its operations is not a nuisance per se, the city government cannot abate it extra judicially. A suit must be filed in court *(AC Enterprises, Inc. v. Frabelle Properties Corporation, 506 SCRA 625 [2006]).*

**Eminent domain**

**Q: The Sangguniang Bayan of the Municipality of Santa, Ilocos Sur passed Resolution No. 1 authorizing its Mayor to initiate a petition for the expropriation of a lot owned by Christina as site for its municipal sports center. This was approved by the Mayor. However, the Sangguniang Panlalawigan of Ilocos Sur disapproved the Resolution as there might still be other available lots in Santa for a sports center. Nonetheless, the Municipality of Santa, through its Mayor, filed a complaint for eminent domain. Christina opposed this on the following grounds: (a) the Municipality of Santa has no power to expropriate: (b) Resolution No. 1 has been voided since the Sangguniang Panlalawigan disapproved it for being arbitrary; and (c) the Municipality of Santa has other and better lots for that purpose. Resolve the case with reasons. (2005)**

**A:** (a) The Municipality of Santa has the power to expropriate. Section 19 of the Local Government Code grants all local government units the power of eminent domain. However, Section 19 of the Local Government Code requires an ordinance, not a resolution, for the exercise of the power of eminent domain *[Heirs of Alberto Suguitan v. City ofMandaluyong, 328 SCRA 137 (2000)].*

(b) The disapproval of Resolution No. 1 by the Sangguniang Panlalawigan of Ilocos Sur on the ground that there may be other lots available in Santa is not a valid ground, because it can disapprove Resolution No. 1 solely on the ground that it is beyond the power of the Sangguniang Bayan of Santa *[Modayv. Court of Appeals, 268 SCRA 586 (1997)].*

(c) If there are other lots that are better and more appropriate for the municipal sports center, the lot owned by Christina should not be expropriated. Its choice is arbitrary *[Municipality of Meycauayan v. IAC, 157 SCRA 640 (1988)].*

**Q: The Municipality of Bulalakaw, Leyte, passed Ordinance No. 1234, authorizing the expropriation of two parcels of land situated in the poblacion as the site of a freedom park, and appropriating the funds needed therefor. Upon review, the Sangguniang Panlalawigan of**
**Leyte disapproved the ordinance because the municipality has an existing freedom park which, though smaller in size, is still suitable for the purpose, and to pursue expropriation would be needless expenditure of the people's money. Is the disapproval of the ordinance correct? Explain your answer. (2009)**

**A:** The disapproval of the ordinance is not correct. Under Section 56(c) (Local Government Code), the
Sangguniang Panlalawigan of Leyte can declare the ordinance invalid only if it is beyond the power of the Sangguniang Bayan of Bulalakaw. In the instant case, the ordinance is well within the power of the Sangguniang Bayan. The disapproval of the ordinance by the Sangguniang Panlalawigan of Leyte was outside its authority having been done on a matter pertaining to the wisdom of the ordinance which pertains to the Sangguniang Bayan *[Moday v. Court of Appeals, 268 SCRA 586 [1997]).*

**Legislative power**

**Q: An aggrieved resident of the City of Manila filed mandamus proceedings against the city mayor and the city engineer to compel these officials to remove the market stalls from certain city streets which they had designated as flea markets. Portions of the said city streets were leased or licensed by the respondent officials to market stallholders by virtue of a city ordinance. Decide the dispute. (2003)**

**A:** The petition should be granted. In accordance with *Macasiano v. Diokno. 212 SCRA 464 (1992),* since public streets are properties for public use and are outside the commerce of man, the City Mayor and the City Engineer cannot lease or license portions of the city streets to market stallholders.

**ALTERNATIVE ANSWER:** The petition should be denied. Under Section 21(d) of the Local Government

Code, a city may by ordinance temporarily close a street so that a flea market may be established.

**Q:**

**a. How does the local legislative assembly override the veto by the local chief executive of an ordinance?**

**b. On what grounds can a local chief executive veto an ordinance?**

**c. How can an ordinance vetoed by a local chief executive become a law without it being overridden by the local legislative assembly? (1996)**

**A:**

a. Under Sections 54 (a) and 55 (c) of the Local Government Code, the local legislative assembly can override the veto of the local chief executive by two-thirds vote of all its members.

b. Under Section 55[a] of the Local Government Code, the local chief executive may veto an ordinance on the ground that it is *ULTRA VIRES* or *PREJUDICIAL TO THE PUBLIC WELFARE.*

c. Pursuant to Section 54(b) of the Local Government Code, an ordinance vetoed by the local chief executive shall be deemed approved if he does not communicate his veto to the local legislative assembly within 15 days in the case of a province and 10 days in the case of a city or a municipality. Likewise, if the veto by the local executive has been overridden by the local legislative assembly, a second veto will be void. Under Section 55(c) of the Local Government Code, the local chief executive may veto an ordinance only once.

**Q: Jose Y. Sabater is a real estate developer. He acquires raw lands and converts them into subdivisions. After acquiring a lot of around 15 hectares in Cabanatuan City, he caused the preparation of a subdivision plan for the property. Before he was able to submit the subdivision plan to the Bureau of Lands and/or Land Registration Commission for verification and/or approval, he was informed that he must first present the plan to the City Engineer who would determine whether the zoning ordinance of the Cabanatuan City had been observed. He was surprised when he was asked to pay the city government a service fee of P0.30 per square meter of land, covered by his subdivision plan. He was even more surprised when informed that a fine of P200.00 and/or imprisonment for not exceeding six months or both, have been fixed in the ordinance as penalty for violation thereof. Believing that the city ordinance is illegal, he filed suit to nullify the same. Decide the case with reasons. (1998)**

**A:** The ordinance is null and void. In *Villacorta v. Bernardo, 143 SCRA 480 (1986),* the Supreme Court held that a municipal ordinance cannot amend a national law in the guise of implementing it. In this case, the requirement actually conflicts with sec. 44 of Act No. 496 because the latter does not require subdivision plans to be submitted to the City Engineer before they can be submitted for approval to, and verification by, the Land Registration Commission and/or the Bureau of Lands.

**Q: The Municipality of Bulalakaw, Leyte, passed Ordinance No. 1234, authorizing the expropriation of two parcels of land situated in the poblacion as the site of a freedom park, and appropriating the funds needed therefor. Upon review, the *Sangguniang Panlalawigan* of Leyte disapproved the ordinance because the municipality has an existing freedom park which, though smaller in size, is still suitable for the purpose, and to pursue expropriation would be needless expenditure of the people's money. Is the disapproval of the ordinance correct? Explain your answer. (2009)**

**A:** The disapproval of the ordinance is not correct. Under Section 56(c) (Local Government Code), the Sangguniang Panlalawigan of Leyte can declare the ordinance invalid only if it is beyond the power of the Sangguniang Bayan of Bulalakaw. In the instant case, the ordinance is well within the power of the Sangguniang Bayan. The disapproval of the ordinance by the Sangguniang Panlalawigan of Leyte was outside its authority having been done on a matter pertaining to the wisdom of the ordinance which pertains to the Sangguiniang Bayam *(Moday v. Court of Appeals, 268 SCRA 586).*

**Corporate powers**

**Q: The Municipality of Pinatukdao is sued for damages arising from injuries sustained by a pedestrian who was hit by a glass pane that fell from a dilapidated window frame of the municipal hall. The municipality files a motion to dismiss the complaint, invoking state immunity from suit. Resolve the motion with reasons. (2009)**

**A:** The motion to dismiss should be denied. Under Section 24 of the Local Government Code and Article 2189 of the Civil Code, the Municipality of Pinatukdao is liable for damages arising from injuries to person by reason of negligence of local government units or local officers of the defective condition of the municipal hall, which is under their control and supervision.

*To enter into contracts*

**Q: The Municipality of Sibonga, Cebu, wishes to enter into a contract involving expenditure of public funds. What are the legal requisites therefor? (1991 & 1995)**

**A:** The following are the legal requisites for the validity of a contract to be entered into by the Municipality of Sibonga which involves the expenditure of public funds:

1. The contract must be within the power of the municipality;
2. The contract must be entered into by the proper officer, i.e., the mayor, upon resolution of the Sangguniang Bayan pursuant to Section 142 of the Local Government Code;
3. In accordance with Sec. 606 of the Revised Administrative Code, there must be an appropriation of the public funds; and in accordance with Sec. 607, there must be a certificate of availability of funds issued by the municipal treasurer; and
4. The contract must conform with the formal requisites of written contracts prescribed by law.

*Settlement of boundary disputes*

**Q: What body or bodies are vested by law with the authority to settle disputes involving: (1999)**

**a. two or more towns within the same province**
**b. two or more highly urbanized cities.**

**A:**

a. Under Section 118(b) of the Local Government Code, boundary disputes involving two or more municipalities within the same province shall be settled by the Sangguniang Panlalawigan concerned.
b. Under Section 118(d) of the Local Government Code, boundary disputes involving two or more highly urbanized cities shall be settled by the Sangguniang Panlungsod of the parties.

**Q: There was a boundary dispute between Duenas, a municipality, and Passi, an independent component city, both of the same province. State how the two local government units should settle their boundary dispute. (2005)**

**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 Regional Trial Court in the said province. Since the Local Government Code 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 Regional Trial Courts have general jurisdiction to adjudicate the said controversy *(Municipality of Kananga v. Madrona, G.R. No. 141375 [2003]*).

**Discipline of local officials**

*Appointive officials*

**Q: A vacancy occurred in the sangguniang bayan of a municipality when** X, **a member, died.** X **did not belong to any political party. To fill up the vacancy, the provincial governor appointed** A **upon the recommendation of the sangguniang panlalawigan. On the other hand, for the same vacancy, the municipal mayor appointed** B **upon the recommendation of the sangguniang bayan. Which of these appointments is valid? (2002)**

**A:** As held in *Farinas v. Barba, 256 SCRA 396 (1996)*, neither of the appointments is valid. Under Section 45 of the Local Government Code, in case of a permanent vacancy in the Sangguniang Bayan created by the cessation in office of a member who does not belong to any political party, the Governor shall appoints qualified person recommended by the Sangguniang Bayan. Since A was not recommended by the Sangguniang Bayan, his appointment by the Governor is not valid. Since B was not appointed by the Governor but by the Municipal Mayor, his appointment is also not valid.

**Q: On August 8, 2008, the Governor of Bohol died and Vice- Governor Cesar succeeded him by operation of law. Accordingly, Benito, the highest ranking member of the Sangguniang Panlalawigan was elevated to the position of Vice-Governor. By the elevation of Benito to the office of Vice-Governor, a vacancy in the Sangguniang Panlalawigan was created. How should the vacancy be filled? (2008)**

**A:** In accordance with Section 45 of the Local Government Code, the vacancy should be filled by appointment by the President of the nominee of the political party of Benito since his elevation to the position of Vice-Governor created the last vacancy in the Sangguniang Panlalawigan. If Benito does not belong to any political party, a qualified person recommended by the Sangguniang Panlalawigan should be appointed *(Navarro v. Court of Appeals, 355 SCRA 672 [2001]).*

**Recall**

**Q: Suppose the people of a province want to recall the provincial governor before the end of his three-year term of office.**

**a. On what ground or grounds can the provincial governor be recalled?**
**b. How will the recall be initiated?**
**c. When will the recall of an elective local official be considered effective? (2002)**

**A:**

***a.*** In accordance with Section 69 of the Local Government Code, the Governor can be recalled for loss of confidence.
b. Under Section 70 of the Local Government Code, the recall may be initiated by a resolution adopted by a majority of all the members of the preparatory recall assembly, which consists of all the mayors, the vice-mayors, and the sangguniang members of the municipalities and component cities, or by a written petition signed by at least twenty-five per cent (25%) of the total number of registered voters in the province.
c. According to Section 72 of the Local Government Code, the recall of an elective local official shall take effect 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.

## NATIONAL ECONOMY AND PATRIMONY

**Q: What is meant by National Patrimony? Explain the concept of National Patrimony? (1999)**

***A:*** According to *Manila Prince Hotel v. Government Service Insurance System, 267 SCRA 408*, the national patrimony refers not only to our natural resources but also to our cultural heritage.

**Q: The Philippine Environmentalists' Organization for Nature, a duly recognized nongovernmental-organization, intends to file suit to enjoin the Philippine Government from allocating funds to operate a power plant at Mount Tuba in a southern island. They claim that there was no consultation with the indigenous cultural community which will be displaced from ancestral lands essential to their livelihood and indispensable to their religious practices.**

**a. The organization is based in Makati. All its officers live and work in Makati. Not one of its officers or members belong to the affected**

**indigenous cultural community. Do they have the standing in this dispute? Explain.**

**b. Would your answer be different if the Philippine Power Corporation, a private company, were to operate the plant? Explain. (2010)**

**A:**

***a.*** If the projected lawsuit will be based on violation of the rights of the indigenous cultural communities, the Philippine Environmentalists Organization will have no standing to file the case. None of its officers and members belong to the indigenous cultural community. None of their rights are affected.

If the lawsuit will seek to enjoin the use of public funds to operate the power plant, the Philippine Environmentalists' Organization, can file a taxpayer's suit. As held in *Maceda vs. Macaraig, 197 SCRA 771*, a taxpayer has standing to question the illegal expenditure of public funds.

b. The Philippine Environmentalists Organization will have no standing to file the case if it is a private company that will operate the power plant, because no public funds will be spent for its operation. As held in *Gonzales vs. Marcos, 65 SCRA 624*, a taxpayer has no standing to file a case if no expenditure of public funds is involved.

*Nationalist and citizenship requirement provisions*

**Q:**

**1. Give a business activity the equity of which must be owned by Filipino citizens: (1994)**
- **a. at least 60%**
- **b. at least 70%**
- **c. 100%**
- **d.**

**2. Give two cases in which aliens may be allowed to acquire equity in a business activity but cannot participate in the management thereof? (1994)**

**A:**

1.

a. At least sixty per cent (60%) of the equity of the entities engaged in the following business must be owned by Filipino citizens under the Constitution.
   i. Co-production, joint venture, or production-sharing agreement with the State for the exploration, development, and utilization of natural resources *(Section 2, Article XII)*
   ii. Operation of a public utility *(Section 11, Article XII)*
   *iii.* Education *(Section 4(2), Article XIV)*

b. At least seventy percent (70%) of the equity of business entities engaged in advertising must be owned by Filipino citizens under the Constitution. (Section 11(2), Article XVI)

c. Mass media must be wholly owned by Filipino citizens under the Constitution (Section 11(1), Article XVI).

2. Under the Constitution, aliens may acquire equity but cannot participate in the management of business entities engaged in the following activities:

a. Public utilities *(Section 11, Article XII)*
b. Education *(Section 4(2), Article XIV)*
*c.* Advertising *(Section 11(2), Article XVI)*

**Q: BD Telecommunications, Inc. (BDTI), a Filipino-owned corporation, sold its 1,000 common shares of stock in the Philippine Telecommunications Company (PTC), a public utility, to Australian Telecommunications (AT), another stockholder of the PTC which also owns 1,000 common shares. A Filipino stockholder of PTC questions the sale on the ground that it will increase the common shares of AT, a foreign company, to more than 40% of the capital (stock) of PTC in violation of the 40% limitation of foreign ownership of a public utility. AT argues that the sale does not violate the 60-40 ownership requirement in favor of Filipino citizens decreed in Section II, Article XII of the 1987 Constitution because Filipinos still own 70% of the capital of the PTC. AT points to the fact that it owns only 2,000 common voting shares and 1,000 non-voting preferred shares while Filipino stockholders own 1,000 common shares and 6,000 preferred shares, therefore, Filipino stockholders still own a majority of the outstanding capital stock of the corporation, and both classes of shares have a par value of Php 20.00 per share. Decide. (2015)**

**A:** "The application of the Grandfather Rule is justified by the circumstance of the case to determine the nationality of petitioners. The use of the Grandfather Rule as a "Supplement" to the Control Test is not Prescribed by the Constitution…" "The grandfather Rule, standing alone, should not be used to determine the Filipino ownership and control in a corporation, as it could result in an otherwise foreign corporation rendered qualified to perform nationalized or partly nationalized activities. Hence, it is only when the control test is first complied with that the Grandfather Rule may be applied. Put in another manner, if the subject corporation's Filipino equity falls below the threshold 60%, the corporation is immediately considered foreign-owned, in which case, the need to resort to the Grandfather Rule disappears. As a corollary rule, even if the 60-40 Filipino to foreign equity ratio is apparently met by the subject or investee corporation, a resort to the Grandfather Rule is necessary if doubt exists as to the locus of the "beneficial ownership" and "control" *(Narra Nickel Mining and Development Corporation v. Redmont Consolidated Mines Corporation, G.R. No. 195580, January 28, 2015).*

**Q: Pursuant to its mandate to manage the orderly sale, disposition and privatization of the National Power Corporation's (NPC) generation assets, real estate and other disposable assets, the Power Sector Assets and Liabilities Management (PSALM) started the bidding process for the privatization of Angat Hydro Electric Power Plant (AHEPP). After evaluation of the bids, K-Pop Energy Corporation, a South Korean Company, was the highest bidder. Consequently, a notice of award was issued to K-Pop. The Citizens' Party questioned the sale arguing that it violates the constitutional provisions on the appropriation and utilization of a natural resource which should be limited to Filipino citizens and corporations which are at least 60% Filipino-owned. The PSALM countered that only the hydroelectric facility is being sold and not the Angat Dam; and that the utilization of water by a hydroelectric power plant does not constitute appropriation of water from its natural source of water that enters the intake gate of the power plant which is an artificial structure. Whose claim is correct? Explain. (2015)**

**A:** PSALM is correct. Foreign ownership of a hydroelectric power plant is not prohibited by the Constitution. PSALM will not retain ownership of the Angat Dam. Angat Dam will trap the natural flow of water from the river. The water supplied by PSALM will then be used for power generation. Once the water is removed from its natural source, it ceases to be part of the natural resources of the Philippines and may be acquired by the foreigners *(Initiatives for Dialogue vs. Power Sector Assets and Liabilities Management Corp., 2012).*

**Acquisition, ownership and transfer of public and private lands**

**Q: Express your agreement or disagreement with any of the following statements. Begin your answer with the statement: "I AGREE" or "DISAGREE" as the case may be:**

**a. Anyone, whether individual, corporation or association, qualified to acquire private lands is also qualified to acquire public lands in the Philippines.**
**b. A religious corporation is qualified to have lands in the Philippines on which it may build its church and make other improvements provided these are actually, directly and exclusively used for religious purposes.**
**c. A religious corporation cannot lease private lands in the Philippines.**
**d. A religious corporation can acquire private lands in the Philippines provided all its members are citizens of the Philippines.**
**e. A foreign corporation can only lease private lands in the Philippines. (1998)**

**A:**

a. I disagree. Under Section 7, Article XII of the Constitution, a corporation or association which is sixty percent owned by Filipino citizens can acquire private land, because it can lease public land and can therefore hold public land. However, it cannot acquire public land. Under Section 3, Article XII of the Constitution, private corporations and associations can only lease and cannot acquire public land. Under Section 8, Article XII of the Constitution, a natural-born Filipino citizen who lost his Philippine citizenship may acquire private land only and cannot acquire public land.
b. I disagree. 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, 97 Phil. 58, 61,* 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 sixty per cent owned by Filipino citizens.
c. I disagree. Under Section 1 of Presidential Decree No. 471, corporations and associations owned by aliens are allowed to lease private lands up to twenty-five years, renewable for another period of twenty-five years upon agreement of the lessor and the lessee. Hence, even if the religious corporation is owned by aliens, it can lease private lands.
d. I disagree. For a corporation to qualify to acquire private lands in the Philippines, under Section 7, Article X of the Constitution in relation to Section 2, Article XII of the Constitution, only sixty per cent (60%) of the corporation is required to be owned by Filipino citizens for it to qualify to acquire private lands.
e. I agree. A foreign corporation can lease private lands only and cannot lease public land. Under Section 2, Article XII of the Constitution, the exploration, development and utilization of public lands may be undertaken through co-production. Joint venture or production-sharing agreements only with Filipino citizen or corporations or associations which are at least sixty per cent owned by Filipino citizen.

**Q: Andy Lim, an ethnic Chinese, became a naturalized Filipino in 1935. But later he lost his Filipino citizenship when he became a citizen of Canada in 1971. Wanting the best of both worlds, he bought, in 1987, a residential lot in Forbes Park and a commercial lot in Binondo. Are these sales valid? Why? (2000)**

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

**Q: A, a Filipino citizen, and his wife B, a Japanese national, bought a five-hectare agricultural land from X, a Filipino citizen. The couple later executed a deed of donation over the same land in favor of their only child C. A year later, however, C died in vehicular accident without leaving a last will and testament.**

**Now, X brought suit to recover the land on the ground that B, being an alien, was not qualified to buy the land when B and A jointly bought the land from him and that, upon the death of C, the land was inherited by his parents but B cannot legally acquire and/or inherit it. How should the case be decided? If X filed the suit against C when the latter was still alive, would your answer be the same? Why? (2002)**

**A:** X cannot recover the land whether from C or A and B. Under Article IV, Section 1 (2) of the Constitution, C is a Filipino citizen since his father is a Filipino. When A and B donated the land to C, it became property of a Filipino citizen. As held in *Halili v. Court of Appeals, 287 SCRA 465 (1998),* the sale of land to an alien can no longer be annulled if it has been conveyed to a Filipino citizen. Since C left no will and his parents are his heirs, in accordance with Article XII, Section 7 of the Constitution, B can acquire the land by hereditary succession.

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

**Subsequently, EAP entered into a joint venture agreement (JVA) with ARI, a private foreign corporation, to develop Liberty Islands.**

**Additionally, the JVA provided for the reclamation of 250 hectares of submerged land in the area surrounding Liberty Islands. EAP agreed to sell and transfer to ARI a portion of Liberty Islands and a portion of the area to be reclaimed as the consideration for ARI's role and participation in the joint venture, upon approval by the Office of the President. Is there any constitutional obstacle to the sale and transfer by EAP to ARI of both portions as provided for in the JVA? (2004)**

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

**Q: TRUE or FALSE. Explain your answer in not more than two (2) sentences: Aliens are absolutely prohibited from owning private lands in the Philippines. (2009)**

**A:** False. Under Section 7, Article XII of the Constitution, aliens may acquire private land by hereditary succession. Under Section 8, Article XII of the Constitution, natural-born citizens of the Philippines who lost their Filipino citizenship may be transferees of private land.

## SOCIAL JUSTICE AND HUMAN RIGHTS

### Commission on Human Rights

**Q: In order to implement a big government flood control project, the Department of Public Works and Highways (DPWH) and a local government unit (LGU) removed squatters from the bank of a river and certain esteros for relocation to another place. Their shanties were demolished. The Commission on Human Rights (CHR) conducted an investigation and issued an order for the DPWH and the LGU to cease and desist from effecting the removal of the squatters on the ground that the human rights of the squatters were being violated. The DPWH and the LGU objected to the order of the CHR. Resolve which position is correct. Reasons. (2001)**

**A:** The position of the Department of Public Works and Highways and of the local government unit is correct. As held in *Export Processing Zone Authority v. Commission on Human Rights*, *208 SCRA125 (1992)*, no provision in the Constitution or any law confers on the Commission on Human Rights jurisdiction to issue temporary restraining orders or writs of preliminary injunction. The Commission on Human Rights have no judicial power. Its powers are merely investigatory.

**Q: Squatters and vendors have put up structures in an area intended for a People's Park, which are impeding the flow of traffic in the adjoining highway. Mayor Cruz gave notice for the structures to be removed, and the area vacated within a month, or else, face demolition and ejectment. The occupants filed a case with the Commission on Human Rights (CHR) to stop the Mayor's move.**

**The CHR then issued an "order to desist" against Mayor Cruz with warning that he would be held in contempt should he fail to comply with the desistance order. When the allotted time lapsed, Mayor Cruz caused the demolition and removal of the structures. Accordingly, the CHR cited him for contempt.**

**a. What is your concept of Human Rights? Does this case involve violations of human rights within the scope of the CHR's jurisdiction?**
**b. Can the CHR issue an "order to desist" or restraining order?**
**c. Is the CHR empowered to declare Mayor Cruz in contempt? Does it have contempt powers at all? (2005)**

**A:**

a. Under the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights, the scope of human rights includes "*those that relate to an individual's social, economic, cultural, political and civil relations... along with what is generally considered to be his inherent and inalienable rights, encompassing almost all aspects of life*."

In the case at bar, the land adjoins a busy national highway and the construction of the squatter shanties impedes the flow of traffic. The consequent danger to life and limb cannot be ignored. It is paradoxical that a right which is claimed to have been violated is one that cannot, in the first place, even be invoked, if it is, in fact, extant. Based on the circumstances obtaining in this instance, the CHR order for demolition do not fall within the compartment of human rights violations involving civil and political rights intended by the Constitution *(Simon v. Commission on Human Rights, G.R. No. 100150 [1994]).*

b. The CHR may not issue an "order to desist" or restraining order. The constitutional provision directing the CHR to provide for preventive measures to those whose human rights have been violated or need protection may not be construed to confer jurisdiction on the Commission to issue a restraining order or writ of injunction for, it that were the intention, the Constitution would have expressly said so. Jurisdiction is conferred only by the Constitution or by law. It is never derived by implication *(Export Processing Zone Authority v. Commission on Human Rights, G.R. No. 101476 [1992]).*

*c.* The CHR does not possess adjudicative functions and therefore, on its own, is not empowered to declare Mayor Cruz in contempt for issuing the "order to desist." However, under the 1987 Constitution, the CHR is constitutionally authorized, in the exercise of its investigative functions, to "adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court." Accordingly, the CHR, in the course of an investigation, may only cite or hold any person in contempt and impose the appropriate penalties in accordance with the procedure and sanctions

provided for in the Rules of Court *(Carino v. Commission on Human Rights, G.R. No. 96681 [1991].*

## EDUCATION, SCIENCE, TECHNOLOGY, ARTS, CULTURE AND SPORTS

### Academic freedom

**Q: What is Academic Freedom? Discuss the extent of Academic Freedom enjoyed by institutions of higher learning. (1989, 1999, 2013)**

**A:** According to *Reyes v. Court of Appeals*, *194 SCRA 402,* academic freedom is the freedom of a faculty member to pursue his studies in his particular specialty and thereafter to make known or publish the result of his endeavors without fear that retribution would be visited on him in the event that his conclusions are found distasteful or objectionable by the powers that be, whether in the political, economic, or academic establishments.

In *Garcia v. Faculty Admission Committee*, *68 SCRA 277,* it was held that the academic freedom of an institution of higher learning includes the freedom to determine who may teach, what may be taught, how it shall be taught, and who may be admitted to study. Because of academic freedom, an institution of higher learning can refuse to re-enroll a student who is academically deficient or who has violated the rules of discipline. Academic freedom grants institutions of higher learning the discretion to formulate rules for the granting of honors. Likewise, because of academic freedom, an institution of higher learning can close a school.

**Q: Undaunted by his three failures in the National Medical Admission Test (NMAT), Cruz applied to take it again but he was refused because of an order of the Department of Education, Culture and Sports (DECS) disallowing flunkers from taking the test a fourth time. Cruz filed suit assailing this rule raising the constitutional grounds of accessible quality education, academic freedom and equal protection. The government opposes this, upholding the constitutionality of the rule on the ground of exercise of police power. Decide the case discussing the grounds raised. (2000)**

**A:** As held in Department of Education, Culture and *Sports v. San Diego, 180 SCRA 533*, the rule is a valid exercise of police power to ensure that those admitted to the medical profession are qualified. The arguments of Cruz are not meritorious. The right to quality education and academic freedom are not absolute. Under Section 5(3), Article XIV of the Constitution, the right to choose a profession is subject to fair, reasonable and equitable admission and academic requirements. The rule does not violate equal protection. There is a substantial distinction between medical students and other students. Unlike other professions, the medical profession directly affects the lives of the people.

**Q: Ting, a student of Bangkerohan University, was given a failing grade by Professor Mahigpit. Ting confronted Professor Mahigpit at the corridor after class and a heated argument ensued. Cooler heads prevented the verbal war ending in physical confrontation. Mahigpit left the campus and went shopping in a department store. Ting saw Mahigpit and without any warning mauled the latter. Mahigpit filed an administrative complaint against Ting before the Dean of Students for breach of university rules and regulations. The Dean set the complaint for hearing. However, Ting filed a petition before the RTC to prohibit the Dean and the school from investigating him contending that the mauling incident happened outside the school premises and therefore, outside the school's jurisdiction. The school and the Dean answered that the school can investigate Ting since his conduct outside school hours and even outside of school premises affect the welfare of the school; and furthermore, the case involves a student and faculty member. If you were the judge, how would you decide the case? (1993)**

**A:** If I were the Judge, I would dismiss the petition. In *Angeles v. Sison, 112 SCRA 26,* it was held that a school can subject to disciplinary action a student who assaulted a professor outside the school premises, because the misconduct of the student involves his status as, a student or affects the good name or reputation of the school. The misconduct of Ting directly affects his suitability as a student.

**Q: What is the rule on the number of aliens who may enroll in educational institutions in the Philippines? Give the exception to the rule. May such institutions accept donations from foreign students under the pretext that such donations are to be used to buy equipment and improve school facilities? Explain. (1999)**

**A:** Under Section 4(2), Article XIV of the Constitution, no group of aliens shall comprise more than one-third of the enrollment in any school. The exception refers to schools established for foreign diplomatic personnel and their dependents and, unless otherwise provided by law, for other foreign temporary residents.

Educational institutions may accept donations from foreign students. No provision in the Constitution or any law prohibits it.

**Q: Children who are members of a religious sect have been expelled from their respective public schools for refusing, on account of their religious beliefs, to take part in the flag ceremony which includes playing by a band or singing the national anthem, saluting the Philippine flag and reciting the patriotic pledge. The students and their parents assail the expulsion on the ground that the school authorities have acted in violation of their right to free public education, freedom of speech, and religious freedom and worship. Decide the case. (2003)**

**A:** The students cannot be expelled from school. As held in *Ebralinag v. The Division Superintendent of Schools of Cebu.* 219 SCRA 256, to compel students to take part in the flag ceremony when it is against their religious beliefs will violate their religious freedom. Their expulsion also violates the duty of the State under Article XIV, Section 1 of the Constitution to protect and promote the right of all citizens to quality education and make such education accessible to all.

**Q: What is the constitutional provision concerning the teaching of religion in the elementary and high schools in the Philippines? Explain. (1999)**

**A:** Under Section 3(3), Article XIV of the Constitution, at the option expressed in writing by the parents or guardians, religion shall be allowed to be taught to their children or wards in public elementary and high schools within the regular class hours by instructors designated or approved by the religious authorities to which the children or wards belong, without additional cost to the Government.

**Q: Give two duties of the state mandated by the Constitution regarding education. (1999)**

**A:** Article XIV of the Constitution imposes the following duties regarding education upon the State:

a. The State shall protect and promote the right of all citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all (Section 1).
b. The State shall establish, maintain and support a complete, adequate, and integrated system of education relevant to the needs of the people and society [Section 2(1)].
c. The State shall establish and maintain a system of free public education in the elementary and high school levels [Section 2(2)].
d. The State shall establish and maintain a system of scholarship grants, student loan programs, subsidies, and other incentives which shall be available to deserving students in both public and private schools, especially to the underprivileged [Section 2(3)].
e. The State shall encourage non-formal, informal and indigenous learning systems, as well as self-learning, independent and out-of-school study program particularly those that respond to community needs, [Section 2|4|]
f. The State shall provide adult citizens, the disabled, and out-of-school youth with training in civics, vocational efficiency and other skills. [Section 2(5)]
g. The State shall take into account regional and sectoral needs and conditions and shall encourage local planning in the development of educational policies and programs. [Section 5(1|]
h. The State shall enhance the rights of teachers to professional advancement.
i. Non-teaching academic and non-academic personnel shall enjoy the protection of the State. [Section 5(4)]
j. The State shall assign the highest budgetary priority to education and ensure that teaching will attract and retain its rightful share of the best available talents through adequate remuneration and other means of job satisfaction and fulfillment. [Section 5(5)]

**Q: Bobby, an incoming third year college student, was denied admission by his university, a premiere educational institution in Manila, after he failed in three (3) major subjects in his sophomore year. The denial of admission was based on the university's rules and admission policies. Unable to cope with the depression that his non-admission triggered, Bobby committed suicide. His family sued the school for damages, citing the school's grossly unreasonable rules that resulted in the denial of admission. They argued that these rules violated Bobby's human rights and the priority consideration that the Constitution gives to the education of the youth. You are counsel for the university. Explain your arguments in support of the university's case. (2013)**

**A:** I shall argue that under Article XIV, Section 5(2) of the 1987 Constitution, the educational institution enjoys academic freedom. Academic freedom includes its rights to prescribe academic standards, policies and qualifications for the admission of a student (University of San Agustin, Inc. v. Court of Appeals, G.R. No. 100588, March 7, 1994, 230 SCRA 761).

## PUBLIC INTERNATIONAL LAW

**Q: Select any five (5) of the following and explain each, using examples:**

**a. Reprisal**
**b. Retorsion**
**c. Declaratory Theory of Recognition Principle**
**d. Recognition of Belligerency**
**e. Continental Shelf**
**f. Exequatur**
**g. Principle of Double Criminality (also asked in 2007 Bar)**
**h. Protective Personality**
**i. Innocent Passage**
**j. Jus cogens in International Law (1991)**

**A:**

a. REPRISAL is a coercive measure short of war, directed by a state against another, in retaliation for acts of the latter and as means of obtaining reparation or satisfaction for such acts. Reprisal involves retaliatory acts which by themselves would be illegal. For example, for violation of a treaty by a state, the aggrieved state seizes on the high seas the ships of the offending state.
b. RETORSION is a legal but deliberately unfriendly act directed by a state against another in retaliation for an unfriendly though legal act to compel that state to alter its unfriendly conduct. An example of retorsion is banning exports to the offending state.
c. The DECLARATORY THEORY OF RECOGNITION is a theory according to which recognition of a state is merely an acknowledgment of the fact of its existence. In other words, the recognized state already exists and can exist even without such recognition. For example, when other countries recognized Bangladesh, Bangladesh already existed as a state even without such recognition.
d. RECOGNITION OF BELLIGERENCY is the formal acknowledgment by a third party of the existence of a state of war between the central government and a portion of that state.
   Belligerency exists when a sizeable portion of the territory of a state is under the effective control of an insurgent community which is seeking to establish a separate government and the insurgents are in de facto control of a portion of the territory and population, have a political organization, are able to maintain such control, and conduct themselves according to the laws of war. For example, Great Britain recognized a state of belligerency in the United States during the Civil War.
e. CONTINENTAL SHELF of a coastal state 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 from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental shelf does not extend up to that distance.

f. EXEQUATUR is an authorization from the receiving state admitting the head of a consular post to the exercise of his functions. For example, if the Philippines appoints a consul general for New York, he cannot start performing his functions unless the President of the United States issues an exequatur to him.
g. The principle of DOUBLE CRIMINALITY is the rule in extradition which states that for a request to be honored the crime for which extradition is requested must be a crime in both the requesting state and the state to which the fugitive has fled. For example, since murder is a crime both in the Philippines and in Canada, under the Treaty on Extradition between the Philippines and Canada, the Philippines can request Canada to extradite a Filipino who has fled to Canada.
h. PROTECTIVE PERSONALITY principle is the principle by which the state exercise jurisdiction over the acts of an alien even if committed outside its territory, if such acts are adverse to the interest of the national state.
i. INNOCENT PASSAGE means the right of continuous and expeditious navigation of a foreign ship through the territorial sea of a state for the purpose of traversing that sea without entering the internal waters or calling at a roadstead or port facility outside internal waters, or proceeding to or from internal waters or a call at such roadstead or port facility. The passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal state.
j. JUS COGENS is a peremptory norm of general international law accepted and recognized by the international community 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. An example is the prohibition against the use of force.

**Q: How is state sovereignty defined in International Law? (2006)**

**A:** Sovereignty signifies the right to exercise the functions of a State in regard to a portion of the globe to the exclusion of any other State. It is the principle of exclusive competence of a State in regard to its own territory *(The Island of Las Palmas Case, 2 Report of International Arbitration Awards 839 [1928].*

**ALTERNATIVE ANSWER:** State sovereignty is the ability of a state to act without external controls on the conduct of its affairs *(Fox, Dictionary of International and Comparative Law, p. 294).*

**Q: Is state sovereignty absolute? (2006)**

**A:** State sovereignty is not absolute. It is subject to limitations imposed by membership in the family of nations and limitations imposed by treaty stipulations *(Tanada v Angara, 272 SCRA 18, 1997).*

*Jus cogens*

**Q: May a treaty violate international law? If your answer is in the affirmative, explain when such may happen. If your answer is in the negative, explain why. (2008)**

**A**: Yes, a treaty may violate international law (understood as general international law) if it conflicts with a peremptory norm or jus cogens of international law. Jus cogens norm is defined as a norm of general international law 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." Article 53 of the Vienna Convention on the Law of Treaties (1969) provides that (a) treaty is void if the at the time of its conclusion, it conflicts with jus cogens norm. Moreover, under Article 54 of this Convention if a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

**International and national law**

**Q: In February 1990, the Ministry of the Army Republic of Indonesia, invited bids for the supply of 500,000 pairs of combat boots for the use of the Indonesian Army. The Marikina Shoe Corporation, a Philippine corporation, which has no branch office and no assets in Indonesia, submitted a bid to supply 500,000 pairs of combat boots at U.S. $30 per pair delivered in Jakarta on or before 30 October 1990.**

**The contract was awarded by the Ministry of the Army to Marikina Shoe Corporation and was signed by the parties in Jakarta. Marikina Shoe Corporation was able to deliver only 200,000 pairs of combat boots in Jakarta by 30 October 1990 and it received payment for 100,000 pairs or a total of U.S. $3,000,000.00. The Ministry of the Army promised to pay for the other 100,000 pairs already delivered as soon as the remaining 300,000 pairs of combat boots are delivered, at which time the said 300,000 pairs will also be paid for. Marikina Shoe Corporation failed to deliver any more combat boots.**

**On 1 June 1991, the Republic of Indonesia filed an action before the Regional Trial Court of Pasig, Rizal to compel Marikina Shoe Corporation to perform the balance of its obligations under the contract and for damages. In its answer, Marikina Shoe Corporation sets up a counterclaim for U.S. $3,000,000.00 representing the payment for the 100,000 pairs of combat boots already delivered but unpaid.**

**Indonesia moved to dismiss the counterclaim, asserting that it is entitled to sovereign immunity from suit. The trial court denied the motion to dismiss and issued two writs of garnishment upon Indonesian Government funds deposited in the Philippine National Bank and Far East Bank. Indonesia went to the Court of Appeals on a petition for certiorari under Rule 65 of the Rules of Court. How would the Court of Appeals decide the case? (1991)**

**A:** The Court of Appeals should dismiss the petition insofar as it seeks to annul the order denying the motion of the Government of Indonesia to dismiss the counterclaim. The counterclaim in this case is a compulsory counterclaim since it arises from the same contract involved in the complaint. As such it must be set up otherwise it will be barred. Above all, as held in *Froilan v. Pan Oriental Shipping Co., 95 Phil. 905*, by filing a complaint, the State of Indonesia waived its immunity from suit. It is not right that it can sue in the courts but it cannot be sued. The defendant therefore acquires the right to set up a compulsory counterclaim against it.

However, the Court of Appeals should grant the petition of the Indonesian government insofar as it sought to annul the garnishment of the funds of Indonesia which were deposited in the Philippine National Bank and Far East Bank. Consent to the exercise of jurisdiction of a foreign court does not include waiver of the separate immunity from execution (Brownlie, Principles of Public International Law, 4th ed., p. 344). Thus, in *Dexter v. Carpenter vs. Kunglig Jarnvagsstyrelsen, 43 Fed. 705*, it was held the consent to be sued does not give consent to the attachment of the property of a sovereign government.

**Q: The State of Nova, controlled by an authoritarian government, had unfriendly relations with its neighboring State, Ameria. Bresia, another neighboring State, had been shipping arms and ammunitions to Nova for use in attacking Ameria.**

**To forestall an attack, Ameria placed floating mines on the territorial waters surrounding Nova. Ameria supported a group of rebels organized to overthrow the government of Nova and to replace it with a friendly government.**

**Nova decided to file a case against Ameria in the International Court of Justice.**

**a. On what grounds may Ameria move to dismiss the case with the ICJ?**
**b. Decide the case. (1994)**

**A:**

**a.** By virtue of the principle of sovereign immunity, no sovereign state can be made a party to a proceeding before the International Court of Justice unless it has given its consent. If Ameria has not accepted the Jurisdiction of the International Court of Justice, Ameria can invoke the defense of lack of jurisdiction. Even if Ameria has accepted the jurisdiction of the court but the acceptance is limited and the limitation applies to the case, it may invoke such limitation its consent as a bar to the assumption of jurisdiction. If jurisdiction has been accepted, Ameria can invoke the principle of anticipatory self-defense, recognized under customary international law, because Nova is planning to launch an attack against Ameria by using the arms it bought from Bresia.

b. If jurisdiction over Ameria is established, the case should be decided in favor of Nova, because Ameria violated the principle against the use of force and the principle of nonintervention. The defense of anticipatory self-defense cannot be sustained, because there is no showing that Nova had mobilized to such an extent that if Ameria were to wait for Nova to strike first it would not be able to retaliate. However, if jurisdiction over Ameria is not established, the case should be decided in favor of Ameria because of the principle of sovereign immunity.

**Q: What do you understand by the "Doctrine of Incorporation" in Constitutional Law? (1997)**

**A:** The DOCTRINE OF INCORPORATION 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 to a country. The Philippines follows this doctrine, because Section 2, Article II of the Constitution states that the Philippines adopts the generally accepted principles of international law as part of the law of the land.

**Q: What is the doctrine of sovereign immunity in International Law? (1998)**

**A:** By the doctrine of sovereign immunity, a State, its agents and property are immune from the judicial process of another State, except with its consent. Thus, immunity may be waived and a State may permit itself to be sued in the courts of another State.

Sovereign immunity has developed into two schools of thought, namely, absolute immunity and restrictive immunity. By absolute immunity, all acts of a State are covered or protected by Immunity. On the other hand, restrictive immunity makes a distinction between governmental or sovereign acts (acta jure imperii) and nongovernmental, propriety or commercial acts (acta jure gestiones). Only the first category of acts is covered by sovereign immunity. The Philippine adheres to the restrictive immunity school of thought.

**ALTERNATIVE ANSWER:** In *United States vs. Ruiz, 128 SCRA 487, 490-491*, the Supreme Court explained the doctrine of sovereign Immunity in international law; "The traditional rule of State immunity exempts a State from being sued in the courts of another State without its consent or waiver, this rule is a necessary consequence of the principles of independence and equality of states. However, the rules of International Law are not petrified, they are constantly developing and evolving. Arid because the activities of states have multiplied, it has been necessary to distinguish them — between sovereign and government acts (jure imperii) and private, commercial and proprietary acts (jure gestionis). The result is that State immunity now extends only to acts jure imperii."

**Q: An organization of law students sponsored an inter-school debate among three teams with the following assignments and propositions for each team to defend:**

**Team "A" - International law prevails over municipal law.**
**Team "B" - Municipal law prevails over international law.**
**Team "C" – A country's Constitution prevails over international law but international law prevails over municipal statutes.**

**If you were given a chance to choose the correct proposition, which would you take and why? (2003)**

**A:** I shall take the proposition for Team C. International Law and municipal laws are supreme in their own respective fields. Neither has hegemony over the other (Brownlie, Principles of Public International Law, 4th ed. p. 157). Under Article II, Section 2 of the 1987 Constitution, the generally accepted principles of international law form part of the law of the land. Since they merely have the force of law, if it is Philippine courts that will decide the case, they will uphold the Constitution over international law. If it is an international tribunal that will decide the case, it will uphold international law over municipal law. As held by the Permanent International Court of Justice in the case of the Polish Nationals in Danzig, a State cannot invoke its own Constitution to evade obligations incumbent upon it under international law.

**ALTERNATIVE ANSWER:** I would take the proposition assigned to Team "C" as being nearer to the legal reality in the Philippines, namely, "A country's Constitution prevails over international law but international law prevails over municipal statutes".

This is, however, subject to the place of international law in the Philippine Constitutional setting in which treaties or customary norms in international law stand in parity with statutes and in case of irreconcilable conflict, this may be resolved by *lex posteriori derogat lex priori* as the Supreme Court obiter dictum in *Abbas v. COMELEC GR. No. 89651 (1989)* holds. Hence, a statute enacted later than the conclusion or effectivity of a treaty may prevail.

In the Philippine legal system, there are no norms higher than constitutional norms. The fact that the Constitution makes generally accepted principles of international law or conventional international law as part of Philippine law does not make them superior to statutory law, as clarified in *Secretary of Justice v. Lantion and Philip Morris, GR. No. 139465 (2000)* decision.

**Q: What is the principle of auto-limitation? (2006)**

**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. L-26379, [1969]).*

**Q: What is the relationship between reciprocity and the principle of auto-limitation? (2006)**

**A:** By reciprocity, States grants to one another rights or concessions, in exchange for identical or comparable duties, thus acquiring a right as an extension of its sovereignty and at the same time accepting an obligation as a limitation to its sovereign will, hence, a complementation of reciprocity and auto-limitation.

**Q: The dictatorial regime of President A of the Republic of Gordon was toppled by a combined force led by Gen. Abe, former royal guards and the secessionist Gordon People's Army. The new government constituted a Truth and Reconciliation Commission to look into the serious crimes committed under President A's regime. After the hearings, the Commission recommended that an amnesty law be passed to cover even those involved in mass killings of members of indigenous groups who opposed President A. International human rights groups argued that the proposed amnesty law is contrary to international law. Decide with reasons. (2010)**

**A:** The proposed amnesty law is contrary to international law. The mass killings of member of indigenous groups constitute genocide under Article II (a), Convention for the Prevention and Punishment of the crime of Genocide. The proposed amnesty law is against international law because it is incompatible with, or in violation of the international obligation under Article IV of this Convention that "Persons committing genocide… shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals."

The Contracting Parties confirm that genocide, whether committed in time of peace of in time of war, is a crime under international law which they undertake to prevent and to punish.

**Sources**

**Q: State your general understanding of the primary sources and subsidiary sources of international law, giving an illustration of each. (2003)**

**A:** Under Article 38 of the Statute of the International Court of Justice, the primary sources of international law are the following:

1. International conventions, e.g., Vienna Convention on the Law of Treaties.
2. International customs, e.g., cabotage, the prohibition against slavery, and the prohibition against torture.
3. General principles of law recognized by civilized nations, e.g., prescription, res judicata, and due process.

The subsidiary sources of international law are judicial decisions, subject to the provisions of Article 59, e.g., the decision in the Anglo-Norwegian Fisheries Case and Nicaragua v. United States, and teachings of the most highly qualified publicists of various nations, e.g., Human Rights in International Law by Lauterpacht and International Law by Oppenheim-Lauterpacht.

**ALTERNATIVE ANSWER:** Reflecting general international law, Article 38(1) of the Statute of the International Court of Justice is understood as providing for international convention, international custom, and general principles of law as primary sources of international law, while indicating that judicial decisions and teachings of the most highly qualified publicists as "subsidiary means for the determination of the rules of law."

The primary sources may be considered as formal sources in that they are the methods by which norms of international law are created and recognized. A conventional or treaty norm comes into being by established treaty-making procedures and a customary norm is the product of the formation of general practice accepted as law.

By way of illustrating International Convention as a source of law, we may refer to the principle embodied in Article 6 of the Vienna Convention on the Law of Treaties which reads: "Every State possesses capacity to conclude treaties". It tells us what the law is and the process or method by which it came into being.

International Custom may be concretely illustrated by pacta sunt servanda, a customary or general norm which came about through extensive and consistent practice by a great number of states recognizing it as obligatory.
The subsidiary means serves as evidence of law.

**Q: The legal yardstick in determining whether usage has become customary international law is expressed in the maxim opinio juris sive necessitates or opinion juris for short. What does the maxim mean? (2008)**

**A:** Opinio juris sive necessitates or simply opinion juris means that as an element in the formation of customary norm in international law, it is required that States in their conduct amounting to general practice, must act out of a sense of legal duty and not only by the motivation of courtesy, convenience or tradition. According to the International Court of Justice in the North Sea Continental Shelf Cases (ICJ Reports, 1969, para. 77), and quoted by the Philippine Supreme Court in Mijares v Ranada (455 SCRA 397 [2005]), "Not only must the acts amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it."

**Q: Under international law, differentiate "hard law" from "soft law". (2009)**

**A:** "Hard law" is used to designate a norm or rule of conduct accepted and recognized by the international community of states as a whole, as a source of law binding on them. "Hard law" produces obligations which when breached gives rise to international responsibility and, consequently, to reparation.

On the other hand, "soft law" has no binding force and pertains to a statement or declaration of principles with moral force on the conduct of states but no normative character and without intent to create enforceable obligations. In the development of international law, a number of "soft law" principles or declarations have become the basis of norm-creation in treaty-making and in general practice of states in customary-norm formation.

**ALTERNATIVE ANSWER:** Soft law has no binding force and pertains to a statement or declaration of principles with moral force on the conduct of states but no normative character and without intent to create enforceable obligations.
On the other hand, hard law is a norm or rule of conduct accepted and recognized by the international community of states as a whole, as a source of law that is binding on them. Hard law produces obligations which when breached gives rise to international responsibility and, consequently, to reparation.

**ALTERNATIVE ANSWER:** Soft law is an expression' of non-binding norms, principles and practices that influence State behavior. On the other hand, hard law involves binding rules of international law *(Pharmaceutical and Health Care Association of the Philippines v. Duque, 535 SCRA 265 [2007]).*

**Q: What are the sources of International Law? (2012)**

**A:** The following are the sources of International Law:

a. International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
b. International custom, as evidence of a general practice accepted as law;
c. The general principles of law recognized by civilized nations

**Q: What is *opinio juris* in International Law? (2008 & 2012)**

**A:** To establish customary international law, two elements must concur: the general state practice and *opinio juris sire necessitatis.* State practice refers to the continuous repetition of the same or similar kind of acts or norms by states. *Opinio juris* requires that the state practice or norm be carried out in such a way as to be evidence of the belief that it is obligatory by the existence of a rule of law requiring it *(Bayan Muna v. Romulo, 641 SCRA 244).*

**Subjects**

**Q: The Japanese Government confirmed that during the Second World War, Filipinas were among those conscripted as "comfort women" (or prostitutes) for Japanese troops in various parts of Asia. The Japanese Government has accordingly launched a goodwill campaign and has offered the Philippine Government substantial assistance for a program that will promote — through government and non-governmental organizations — women's rights, child welfare, nutrition and family health care.**

**An executive agreement is about to be signed for that purpose. The agreement includes a clause whereby the Philippine Government acknowledges that any liability to the "comfort women" or their descendants are deemed covered by the reparations agreements signed and implemented immediately after the Second World War. Juliano Iglesias, a descendant of a now deceased comfort woman, seeks your advice on the validity of the agreement. Advise him. (1992)**

**A:** The agreement is valid. The comfort women and their descendants cannot assert individual claims against Japan. As stated in *Davis & Moore vs. Regan, 453 U.S. 654*, the sovereign authority of a State to settle claims of its nationals against foreign countries has repeatedly been recognized. This may be made without the consent of the nationals or even without consultation with them. Since the continued amity between a State and other countries may require a satisfactory compromise of mutual claims, the necessary power to make such compromises has been recognized. The settlement of such claims may be made by executive agreement.

**Q: Distinguish between de facto recognition and de jure recognition of states. (1998)**

**A:** The following are the distinctions between de facto recognition and de jure recognition of a government:

a. De facto recognition is provisional, de jure recognition is relatively permanent;
b. De facto recognition does not vest title in the government to its properties abroad; de Jure recognition does;

c. De facto recognition is limited to certain juridical relations; de jure recognition brings about full diplomatic relations. (Cruz. International Law. 1996 ed.. p. 83.)

**ALTERNATIVE ANSWER:** The distinction between de facto recognition and de jure recognition of a State is not clear in international law. It is, however, usually assumed as a point of distinction that while de facto recognition is provisional and hence may be withdrawn, de jure recognition is final and cannot be withdrawn.

Confronted with the emergence of a new political entity in the international community, a State may experience some difficulty in responding to the question whether the new political order qualifies to be regarded as a state under international law, in particular from the viewpoint of its effectiveness and independence on a permanent basis. The recognizing State may consider its act in regard to the new political entity as merely a de facto recognition, implying that it may withdraw it if in the end it turns out that the conditions of statehood are not fulfilled should the new authority not remain in power.

But even then, a de facto recognition in this context produces legal effects in the same way as de jure recognition. Whether recognition is de facto or de jure, steps may be taken to withdraw recognition if the conditions of statehood in international law are not fulfilled.

Thus, from this standpoint, the distinction is not legally significant.

**Q: Distinguish: The constitutive theory and the declaratory theory concerning recognition of states. (2004)**

**A:** According to the CONSTITUTIVE THEORY, recognition is the last indispensable element that converts the state being recognized into an international person.

According to the DECLARATORY THEORY, recognition is merely an acknowledgment of the pre-existing fact that the state being recognized is an international person (Cruz, International Law, 2003 ed.)

*International organizations*

**Q: What is the concept of association under international law? (2009)**

**A:** An association is formed when two states of unequal power voluntarily establish durable links. The associate delegates certain responsibilities to the other, the principal, while maintaining its status as a state. It is an association between sovereigns. The associated state arrangement has usually been used as a transitional device of former colonies on their way to full independence. *(Province of North Cotabato v. GRP Peace Panel on Ancestral Domain, 568 SCRA 402 [2008].)*
Association, under international law, is a formal arrangement between a non-self-governing territory and an independent State whereby such territory becomes an associated State with internal self-government, but the independent state is responsible for foreign relations and defense.

For an association to be lawful, it must comply with the general conditions prescribed in UN General Assembly Resolution 1541 (XV) of 14 December 160: (1) the population must consent to the association; and (2) the association must promote the development and well being of the dependent state (the non-self-governing territory). Association is subject to UN approval.

**Diplomatic and consular law**

**Q:**

1. **Discuss the differences, if any, in the privileges or immunities of diplomatic envoys and consular officers from the civil or criminal jurisdiction of the receiving state.**
2. **A consul of a South American country stationed in Manila was charged with serious physical injuries. May he claim immunity from jurisdiction of the local court? Explain.**
3. **Suppose after he was charged, he was appointed as his country's ambassador to the Philippines. Can his newly-gained diplomatic status be a ground for dismissal of his criminal case? Explain. (1995)**

**A:**
1. Under Article 32 of the Vienna Convention on Diplomatic Relations, 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:
   a. 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 purposes of the mission;
   b. An action relating to succession in which the diplomatic agent is invoked as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
   c. An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

On the other hand, under Article 41 of the Vienna Convention on Consular Relations, a consular officer does not enjoy immunity from the Criminal jurisdiction of the receiving State. Under Article 43 of the Vienna Convention on Consular Relations, consular officers 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:
   a. arising out of a contract concluded by a consular officer in which he did not contract expressly or impliedly as an agent of the sending State; or
   b. by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel, or aircraft.

2. No. he may not claim immunity from the jurisdiction of the local court. Under Article 41 of the Vienna Convention of Consular Relations, consuls do not enjoy immunity from the criminal jurisdiction of the receiving State. He is not liable to arrest or detention pending trial unless the offense was committed against his father, mother, child, ascendant, descendant or spouse. Consuls are not liable to arrest and detention pending trial

except in the case of a grave crime and pursuant to a decision by the competent judicial authority. The crime of physical injuries is not a grave crime unless it be committed against any of the above-mentioned persons *(Schneckenburger v. Moran, 63 Phil. 249).*

3. Yes, the case should be dismissed. Under Article 40 of the Vienna Convention on Diplomatic Relations, if a diplomatic agent is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up his post, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit.

**Q: A foreign ambassador to the Philippines leased a vacation house in Tagaytay for his personal use. For some reason, he failed to pay rentals for more than one year. The lessor filed an action for the recovery of his property in court.**

**a. Can the foreign ambassador invoke his diplomatic immunity to resist the lessor's action?**
**b. The lessor gets hold of evidence that the ambassador is about to return to his home country. Can the lessor ask the court to stop the ambassador's departure from the Philippines? (2000)**

**A:**

a. No, the foreign ambassador cannot invoke his diplomatic immunity to resist the action, since he is not using the house in Tagaytay City for the purposes of his mission but merely for vacation. Under Article 3(1)(a) of the Vienna Convention on Diplomatic Relations, a diplomatic agent has no immunity in case of 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 purposes of the mission.
b. No, the lessor cannot ask the court to stop the departure of the ambassador from the Philippines. Under Article 29 of the Vienna Convention, a diplomatic agent shall not be liable to any form of arrest or detention

**Q: Dr. Velen, an official of the World Health Organization (WHO) assigned in the Philippines, arrived at the Ninoy Aquino International Airport with his personal effects contained in twelve crates as unaccompanied baggage. As such, his personal effects were allowed free entry from duties and taxes, and were directly stored at Arshaine Corporation's warehouse at Makati, pending Dr. Velen's relocation to his permanent quarters.**

**At the instance of police authorities, the Regional Trial Court (RTC) of Makati issued a warrant for the search and seizure of Dr. Velen's personal effects in view of an alleged violation of the Tariff and Custom's Code. According to the police, the crates contained contraband items. Upon protest of WHO officials, the Secretary of Foreign Affairs formally advised the RTC as to Dr. Velen's immunity. The Solicitor General likewise joined Dr. Velen's plea of immunity and motion to quash the search warrant. The RTC denied the motion. Is the denial of the motion to quash proper? (2001)**

**A:** The denial of the motion is improper. As held in *World Health Organization v. Aquino, 48 SCRA 242,* as an official of the World Health Organization, Dr. Velen enjoyed diplomatic immunity and this included exemption from duties and taxes. Since diplomatic immunity involves a political question, where a plea of diplomatic immunity is recognized and affirmed by the Executive Department, it is the duty of the court to accept the claim of immunity.

**Q: A group of high-ranking officials and rank-and-file employees stationed in a foreign embassy in Manila were arrested outside embassy grounds and detained at Camp Crame on suspicion that they were actively collaborating with "terrorists" out to overthrow or destabilize the Philippine Government. The Foreign Ambassador sought their immediate release, claiming that the detained embassy officials and employees enjoyed diplomatic immunity. If invited to express your legal opinion on the matter, what advice would you give? (2003)**

**A:** I shall advice that the high-ranking officials and rank-and- file employees be released because of their diplomatic immunity. Article 29 of the Vienna Convention on Diplomatic Relations provides: "The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention."

Under Article 37 of the Vienna Convention on Diplomatic Relations, members of the administrative and technical staff of the diplomatic mission shall, if they are not nationals of or permanent residents in the receiving State, enjoy the privileges and immunities specified in Article 29.

Under Article 9 of the Vienna Convention on Diplomatic Relations, the remedy is to declare the high-ranking officials and rank-and-file employees personae non gratae and ask them to leave.

**ALTERNATIVE ANSWER:** Under the Vienna Convention on Diplomatic Relations, a diplomatic agent "shall not be liable to any form of arrest or detention (Article 29) and he enjoys immunity from criminal jurisdiction (Article 31). This immunity may cover the "high-ranking officials" in question, who are assumed to be diplomatic officers or agents.

With respect to the "rank-and-file employees" they are covered by the immunity referred to above, provided they are not nationals or permanent residents of the Philippines, pursuant to Article 37(2) of the said Convention. If the said rank-and-file employees belong to the service staff of the diplomatic mission (such as drivers) they may be covered by the immunity (even if they are not Philippine nationals or residents) as set out in Article 37(3), if at the time of the arrest they were in "acts performed in the course of their duties." If a driver was among the said rank-and-file employees and he was arrested while driving a diplomatic vehicle or engaged in related acts, still he would be covered by immunity.

**Q: MBC, an alien businessman dealing in carpets and caviar, filed a suit against policemen and YZ, an attache of XX Embassy, for damages because of malicious prosecution. MBC alleged that YZ concocted false and malicious charges that he was engaged in drug trafficking, whereupon narcotics policemen conducted a "buy-bust" operation and**

**without warrant arrested him, searched his house, and seized his money and jewelry, then detained and tortured him in violation of his civil and human rights as well as causing him, his family and business serious damages amounting to two million pesos. MBC added that the trial court acquitted him of the drug charges.**

**Assailing the court's jurisdiction: YZ now moves to dismiss the complaint, on the ground that:**

1. **he is an embassy officer entitled to diplomatic immunity; and that**
2. **the suit is really a suit against his home state without its consent. He presents diplomatic notes from XX Embassy certifying that he is an accredited embassy officer recognized by the Philippine government. He performs official duties, he says, on a mission to conduct surveillance on drug exporters and then inform local police officers who make the actual arrest of suspects.**

**Are the two grounds cited by YZ to dismiss the suit tenable? (2004)**

**A:** The claim of diplomatic immunity of YZ is not tenable, because he does not possess an acknowledged diplomatic title and is not performing duties of a diplomatic nature. However, the suit against him is a suit against XX without its consent. YZ was acting as an agent of XX and was performing his official functions when he conducted surveillance on drug exporters and informed the local police officers who arrested MBC. He was performing such duties with the consent of the Philippine government, therefore, the suit against YZ is a suit against XX without its consent *(Minucher v. Court of Appeals, 397 SCRA 244).*

**Q: Italy, through its Ambassador, entered into a contract with Abad for the maintenance and repair of specified equipment at its Embassy and Ambassador's Residence, such as air conditioning units, generator sets, electrical facilities, water heaters, and water motor pumps. It was stipulated that the agreement shall be effective for a period of four years and automatically renewed unless cancelled. Further, it provided that any suit arising from the contract shall be filed with the proper courts in the City of Manila.**

**Claiming that the Maintenance Contract was unilaterally, baselessly and arbitrarily terminated, Abad sued the State of Italy and its Ambassador before a court in the City of Manila. Among the defenses, they raised were "sovereign immunity" and "diplomatic immunity."**

**a. As counsel of Abad, refute the defenses of "sovereign immunity" and "diplomatic immunity" raised by the State of Italy and its Ambassador.**
**b. At any rate, what should be the court's ruling on the said defenses? (2005)**

**A:**

a. As counsel for Abad, I will argue that sovereign immunity will not lie as it is an established rule that when a State enters into a contract, it waives its immunity and allows itself to be sued. Moreover, there is a provision in the contract that any suit arising therefrom shall be filed with the proper courts of the City of Manila.

   On the issue of diplomatic immunity, I will assert that the act of the Ambassador unilaterally terminating the agreement is tortuous and done with malice and bad faith and not a sovereign or diplomatic function.

b. The court should rule against said defenses. The maintenance contract and repair of the Embassy and Ambassador's Residence is a contract in jus imperii, because such repair of said buildings is indispensable to the performance of the official functions of the Government of Italy. Hence, the contract is in pursuit of a sovereign activity in which case, it cannot be deemed to have waived its immunity from suit.

   On the matter of whether or not the Ambassador may be sued, Article 31 of the Vienna Convention on Diplomatic Relations provides that a diplomatic agent enjoys immunity from the criminal, civil and administrative jurisdiction of the receiving state except if the act performed is outside his official functions, in accordance with the principle of functional necessity. In this case, the act of entering into the contract by the Ambassador was part of his official functions and thus, he is entitled to diplomatic immunity *(Republic of Indonesia v. Vinzons, G.R. No. 154705 [2003]).*

**Q: Adams and Baker are American citizens residing in the Philippines. Adams befriended Baker and became a frequent visitor at his house. One day, Adams arrived with 30 members of the Philippine National Police, armed with a search warrant authorizing the search of Baker's house and its premises for dangerous drugs being trafficked to the United States of America.**

**The search purportedly yielded positive results, and Baker was charged with Violation of the Dangerous Drugs Act. Adams was the prosecution's principal witness. However, for failure to prove his guilt beyond reasonable doubt, Baker was acquitted.**

**Baker then sued Adams for damages for filing trumped-up charges against him. Among the defenses raised by Adams is that he has diplomatic immunity, conformably with the Vienna Convention on Diplomatic Relations. He presented Diplomatic Notes from the American Embassy stating that he is an agent of the United States Drug Enforcement Agency tasked with "conducting surveillance operations" on suspected drug dealers in the Philippines believed to be the source of prohibited drugs being shipped to the U.S. It was also stated that after having ascertained the target, Adams would then inform the Philippine narcotic agents to make the actual arrest.**

**a. As counsel of plaintiff Baker, argue why his complaint should not be dismissed on the ground of defendant Adams' diplomatic immunity from suit.**
**b. As counsel of defendant Adams, argue for the dismissal of the complaint. (2005)**

**A:**

a. As counsel for Baker, I would argue that Adams is not a diplomatic agent considering that he is not a head of mission nor is he part of the diplomatic staff that is accorded diplomatic rank. Thus, the suit should not be dismissed as Adams has no diplomatic immunity under the 1961 Vienna Convention on Diplomatic Relations.

*b.* As counsel for Adams, I would argue that he worked for the United States Drug Enforcement Agency and was tasked to conduct surveillance of suspected drug activities within the country with the approval of the Philippine government. Under the doctrine of State Immunity from Suit, if the acts giving rise to a suit are those of a foreign government done by its foreign agent, although not necessarily a diplomatic personage, but acting in his official capacity, the complaint could be barred by the immunity of the foreign sovereign from suit without its consent. Adams may not be a diplomatic agent but the Philippine government has given its imprimatur, if not consent, to the activities within Philippine territory of Adams and thus he is entitled to the defense of state immunity from suit *(Minucher v. CA, G.R. No. 142396, [2003]).*

**Q: *Ambassador Gaylor* is *State Juvenus* diplomatic representative to *State Hinterlands*. During one of his vacations, *Ambassador Gaylor* decided to experience for himself the sights and sounds of *State Paradise*, a country known for its beauty and other attractions. While in *State Paradise*, *Ambassador Gaylor* was caught in the company of children under suspicious circumstances. He was arrested for violation of the strict anti-pedophilia statute of *State Paradise*. He claims that he is immune from arrest and incarceration by virtue of his diplomatic immunity. Does the claim of *Ambassador Gaylor* hold water? (2014)**

**A:** Ambassador Gaylor cannot invoke his diplomatic immunity. In accordance with Paragraph 1, Article 31 of Vienna Convention of Diplomatic Relations, since State Paradise is not his receiving state, he does not enjoy diplomatic immunity within its territory. Under Paragraph 1, Article 40 of the Vienna Convention of diplomatic Relations, he cannot be accorded diplomatic immunity in State Paradise, because he is not passing through it to take up or return to his post or to return to State Paradise.

## Treaties

**Q: An Executive Agreement was executed between the Philippines and a neighboring State. The Senate of the Philippines took it upon itself to procure a certified true copy of the Executive Agreement and, after deliberating on it, declared, by a unanimous vote, that the agreement was both unwise and against the best interest of the country. Is the Executive Agreement binding (a) from the standpoint of Philippine law and (b) from the standpoint of international law? Explain. (2003)**

**A:** (a) From the standpoint of Philippine law, the Executive Agreement is binding. According to *Commissioner of Customs v. Eastern Sea Trading, 3 SCRA 351 [1961]*, the President can enter into an Executive Agreement without the necessity of concurrence by the Senate.

(b) The Executive Agreement is also binding from the standpoint of international law. As held in *Bayan v. Zamora, 342 SCRA 449 [2000]*, in international law executive agreements are equally binding as treaties upon the States who are parties to them. Additionally, under Article 2(1)(a) of the Vienna Convention on the Law of Treaties, whatever may be the designation of a written agreement between States, whether it is indicated as a Treaty, Convention or Executive Agreement, is not legally significant. Still it is considered a treaty and governed by the international law of treaties.

**Q: May a treaty violate international law? If your answer is in the affirmative, explain when such may happen. If your answer is in the negative, explain why. (2008)**

**A:** Yes, a treaty may violate international law if it conflicts with a peremptory norm or *jus cogens* of international law. *Jus cogens* norm is defined as a norm of general international law 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. Article 53 of the Vienna Convention of the Law of Treaties provides that a treaty is void if at the time of its conclusion, it conflicts with *jus cogens* norm. Moreover, under Article 54 of this convention, if a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

**Q: The President alone without the concurrence of the Senate abrogated a treaty. Assume that the other country- party to the treaty is agreeable to the abrogation provided it complies with the Philippine Constitution. If a case involving the validity of the treaty abrogation is brought to the Supreme Court, how should it be resolved? (2009)**

**A:** The Supreme Court should dismiss the case. The jurisdiction of the Supreme Court (or of all lower courts) over a treaty is only with respect to questions of its constitutionality or validity (See Art. VIII, sec. 5 (2) (a) of 1987 Constitution). In other words, the question should involve the constitutionality of a treaty or its validity in relation to a statute *(Gonzales v. Henchanova, 9 SCRA 230 [1963]).* It does not pertain to the termination (or abrogation) of a treaty.

The authority of the Senate over treaties is limited to concurrence (Art. VIII, sec. 21 of 1987 Constitution). There being no express constitutional provision regulating the termination (or abrogation) of treaties, it is presumed that the power of the President over treaty agreements and over foreign relations includes the authority to "abrogate" (or more properly referred as "terminate") treaties. The termination of the treaty by the President without the concurrence of the Senate is not subject to constitutional attack, there being no Senate authority to that effect.

The Philippines is a party to the Vienna Convention on the Law of Treaties. Hence, the said Convention thus becoming part of Philippine Law governs the act of the President in terminating (or abrogating) the treaty. Article 54 of this Convention provides that a treaty may be terminated "at any time by consent of all the parties."

Apparently, the treaty in question is a bilateral treaty in which the other state is agreeable to its termination. Article 67 of the Convention adds the formal requirement that the termination must be in an instrument communicated to the other party signed by the Head of State or of Government or by the Minister of Foreign Affairs.

**ALTERNATIVE ANSWER:** The Supreme Court should dismiss the case. The case involved is a political question, because it involves the authority of the President in the conduct of foreign relations and the extent to which the Senate is authorized to negate the action of the President. Since Section 21, Article VII of the Constitution is silent as to the participation of the Senate in the abrogation of a treaty, the question may be answered in different ways and should be decided by political standards rather than judicially manageable standards *(Goldwater v. Carter, 444 U.S. 996 [1979J).*

**ALTERNATIVE ANSWER:** While it is the President who negotiates and ratifies treaties and other international agreements, it must be underscored that when the same has been concurred by the qualified majority of the Senate, they become part of the law of the land. Accordingly, it is submitted that the President alone cannot unilaterally abrogate a treaty without Congressional authorization, in the same way that she would have no authority to repeal a law.

Further, even as what the Constitution requires in the concurrence of the Senate in treaties and international agreements entered into, not the abrogation of the same, the same should not also be construed as empowering the President to simply render nugatory a treaty that has already acquired the imprimatur of the Senate *(See Goldwater v. Carter, 444U.S. 996 [1979J, cited in Be mas, An Introduction to Public International Law [2002] at 53).*

**Q: President Black of the Republic of Pasensya (RP) had a telephone conversation with President Blue of the People's Republic of Conquerors (PRC). In that conversation, both leaders agreed that they will both pull-out all their vessels, civilian or otherwise, sea crafts and other ships from the hotly disputed Kalmado Shoal area within eight (8) days in order to de-escalate the situation. After eight days, all RP ships and vessels have left the area. However, several military and civilian ships carrying the PRC flag remained in the area and began construction of a dock that could provide fuel and other supplies to vessels passing by. (2012)**

**a. Assuming that President Black and President Blue both had full capacity to represent their states and negotiate with each other under their respective systems of government, and further assuming that both leaders acknowledge the existence of the conversation, is the verbal agreement via telephone binding under international law? Explain.**
**b. Assuming the answer to (a.) is in affirmative, does that agreement constitute a Treaty under the 1969 Vienna Convention on the Law on Treaties?**

**A:**

a. The verbal agreement by telephone is binding between the parties on the basis of customary international law. (Aust Modern Treaty Law and Practice, p. 7)
b. The verbal agreement does not constitute a treaty under Vienna Convention on the Law of Treaties. Article 3 requires that for an international agreement to be a treaty, it must be in written form.

**Nationality and statelessness**

**Q:**
**(a) Who are stateless persons under International Law?**
**(b) What are the consequences of statelessness?**
**(c) Is a stateless person entirely without right, protection or recourse under the Law of Nations? Explain.**
**(d) What measures, if any, has International Law taken to prevent statelessness? (1995)**

**A:**

(a) *STATELESS PERSONS* are those who are not considered as nationals by any State under the operation of its laws.
(b) The consequences of statelessness are the following:
    a. No State can intervene or complain in behalf of a stateless person for an international delinquency committed by another State in inflicting injury upon him.
    b. He cannot be expelled by the State if he is lawfully in its territory except on grounds of national security or public order.
    c. He cannot avail himself of the protection and benefits of citizenship like securing for himself a passport or visa and personal documents.
(c) No. Under the Convention in Relation to the Status of Stateless Person, the contracting states agreed to accord to stateless persons within their territories treatment at least as favorable as that accorded to their nationals with respect to freedom of religion, access to the courts, rationing of products in short supply, elementary education, public relief and assistance, labor legislation and social security. They also agreed to accord to 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 stateless person.
(d) In the Convention on the Conflict of Nationality Laws of 1930, the contracting states agreed 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.

**ALTERNATIVE ANSWER:** Under the Convention on the Reduction of Statelessness of 1961, a contracting state shall grant its nationality to a person born in its territory who would otherwise be stateless and a contracting state may not deprive a person or a group of persons of their nationality for racial, ethnic, religious or political grounds.

*1. Vienna Convention on the Law of Treaties*

**State responsibility**

**Q: In a raid conducted by rebels in a Cambodian town, an American businessman who has been a long-time resident of the place was caught by the rebels and robbed of his cash and other valuable personal belongings. Within minutes, two truckloads of government troops arrived prompting the rebels to withdraw. Before fleeing they shot the American causing him physical injuries. Government troopers immediately launched pursuit operations and killed several rebels. No cash or other valuable property taken from the American businessman was recovered.**

**In an action for indemnity filed by the US Government in behalf of the businessman for injuries and losses in cash and property, the Cambodian government contended that under International Law it was not responsible for the acts of the rebels.**

**a. Is the contention of the Cambodian government correct? Explain.**
**b. Suppose the rebellion is successful and a new government gains control of the entire State, replacing the lawful government that was toppled, may the new government be held responsible for the injuries or losses suffered by the American businessman? Explain. (1995)**

**A:**

a. Yes, the contention of the Cambodian Government is correct. Unless it clearly appears that the government has failed to use promptly and with appropriate force its constituted authority it cannot be held responsible for the acts of rebels, for the rebels are not its agents and their acts were done without its volition. In this case, government troopers immediately pursued the rebels and killed several of them.
b. The new government may be held responsible if it succeeds in overthrowing the government. Victorious rebel movements are responsible for the illegal acts of their forces during the course of the rebellion. The acts of the rebels are imputable to them when they assumed as duly constituted authorities of the state.

**Q: A, a British photojournalist, was covering the violent protests of the Thai Red-Shirts Movement in Bangkok. Despite warnings given by the Thai Prime Minister to foreigners, especially journalists, A moved around the Thai capital. In the course of his coverage, he was killed with a stray bullet which was later identified as having come from the ranks of the Red-Shirts. The wife of A sought relief from Thai authorities but was refused assistance. (2009)**

**a. Is there state responsibility on the part of Thailand?**

**A:** There is no state responsibility on the part of Thailand. The wrongful act in question is an act of private individuals and not of an organ of the government or a state official. Hence, it is not attributable to Thailand as its wrongful act for the purpose of state responsibility.

**b. What is the appropriate remedy available to the victim's family under international law?**

**A:** The appropriate remedy available to the family of A is to seek diplomatic protection from Great Britain to press a claim for reparation *(Brownlie, Principles of Public of International Law, 7th ed., pp.460 and 477-478).* However, in order that the claim will be allowable under customary international law, the family of A must first exhaust the legal remedies available in Thailand *(Brownlie, Principles of Public of International Law, 7th ed., p. 492).*

**Jurisdiction of States**

**Q: Police Officer Henry Magiting of the Narcotics Section of the Western Police District applied for a search warrant in the Regional Trial Court of Manila for violation of Section 11, Article II (Possession of Prohibited Drugs) of Republic Act (R.A.) No. 9165 (Comprehensive Dangerous Drugs Act of 2002) for the search and seizure of heroin in the cabin of the Captain of the MSS Seastar, a foreign-registered vessel which was moored at the South Harbor, Manila, its port of destination.**

**Based on the affidavits of the applicant's witnesses who were crew members of the vessel, they saw a box containing ten (10) kilograms of heroin under the bed in the Captain's cabin. The RTC found probable cause for the issuance of a search warrant; nevertheless, it denied the application on the ground that Philippine courts have no criminal jurisdiction over violations of R.A. No. 9165 committed on foreign-registered vessels found in Philippine waters. Is the ruling of the court correct? Support your answer with reasons. (2005)**

**A:** The RTC may assert its jurisdiction over the case by invoking the territorial principle, which provides that crimes committed within a state's territorial boundaries and persons within that territory, either permanently or temporarily, are subject to the application of local law. Jurisdiction may also be asserted on the basis of the universality principle, which confers upon all states the right to exercise jurisdiction over *delicta juris gentium* or international crimes, such as the international traffic narcotics. The possession of 10 kilos of heroin constitutes commercial quantity and therefore qualifies as trafficking of narcotics.

Consequently, the denial of the search warrant should have been anchored on the failure of the court to conduct personal examination of the witnesses to the crime in order to establish probable cause, as required by Sections 3 and 4 of Rule 126.

In any event, there is no showing that the requisite quantum of probable cause was established by mere reference to the affidavits and other documentary evidence presented.

**Q. William, a private American citizen, a university graduate and frequent visitor to the Philippines, was inside the U.S. embassy when he got into a heated argument with a private Filipino citizen. Then, in front of many shocked witnesses, he killed the person he was arguing with. The police came, and brought him to the nearest police station. Upon reaching the station, the police investigator, in**

**halting English, informed William of his Miranda rights, and assigned him an independent local counsel. William refused the services of the lawyer, and insisted that he be assisted by a Filipino lawyer currently based in the U.S. The request was denied, and the counsel assigned by the police stayed for the duration of the investigation.**

**William protested his arrest. He argued that since the incident took place inside the U.S. embassy, Philippine courts have no jurisdiction because the U.S. embassy grounds are not part of Philippine territory; thus, technically, no crime under Philippine law was committed. Is William correct? Explain your answer.**

**A:** William is not correct. The premises occupied by the United States Embassy do not constitute territory of the United Stated but of the Philippines. Crimes committed within them are subject to the territorial jurisdiction of the Philippines. Since William has no diplomatic immunity, the Philippines can prosecute him if it acquires custody over him *(Reagan v. Commissioner of Internal Revenue, 30 SCRA 968).*

**Q: If William applies for bail, claiming that he is entitled thereto under the "international standard of justice" and that he comes from a U.S. State that has outlawed capital punishment, should William be granted bail as a matter of right? Reasons. (2009)**

**A:** William should not be granted bail as a matter of right. He is subject to Philippine criminal jurisdiction, therefore, his right to bail must be determined on the basis of Section 13, Article III of the Constitution.

*Conflicts of jurisdiction*

**Q: Under its Statute, give two limitations on the jurisdiction of the International Court of Justice? (1999)**

**A:** The following are the limitations on the jurisdiction of the International Court of Justice under its Statute:

a. Only states may be parties in cases before it. (Article 34)
b. The consent of the parties is needed for the court to acquire jurisdiction over a case. (Article 36)

**Q: Compare and contrast the jurisdiction of the International Criminal Court and International Court of Justice. (2010)**

**A:**

a. The jurisdiction of the International Court of Justice (ICJ) pertains to international responsibility in the concept of civil liability, while that of the International Criminal Court (ICC) pertains to criminal liability.
b. While states are the subject of law in international responsibility under the jurisdiction of the International Court of Justice, the criminal liability within the jurisdiction of the International Criminal Court pertains to individual natural person. (Article 34(i) of the Statute of the International Court of Justice; Articles 25 and 27of the Statute of the International Criminal Court).

**Treatment of aliens**

*Extradition*

**Q: The Extradition Treaty between France and the Philippines is silent as to its applicability with respect to crimes committed prior to its effectivity.**

**a. Can France demand the extradition of A, a French national residing in the Philippines, for an offense committed in France prior to the effectivity of the treaty? Explain.**
**b. Can A contest his extradition on the ground that it violates the *ex post facto* provision of the Philippine Constitution? Explain. (1996)**

**A:**

a. Yes, France can ask for the extradition of A for an offense committed in France before the effectivity of the Extradition Treaty between France and the Philippines. In *Cleugh v. Strakos 109 Fed. 330,* it was held that an extradition treaty applies to crimes committed before its effectivity unless the extradition treaty expressly exempts them. As Whiteman points out, extradition does not define crimes but merely provides a means by which a State may obtain the return and punishment of persons charged with or convicted of having committed a crime who fled the jurisdiction of the State whose law has been violated. It is therefore immaterial whether at the time of the commission of the crime for which extradition is sought no treaty was in existence. If at the time extradition is requested there is in force between the requesting and the requested State a treaty covering the offense on which the request is based, the treaty is applicable *(Whiteman, Digest of International Law, Vol. 6, pp. 753-754.).*
b. No, A cannot contest his extradition on the ground that it violates the ex post facto provision of the Constitution. As held in *Wright v. Court of Appeals, 235 SCRA 341*, the prohibition against ex post facto laws in Section 22, Article III of the Constitution applies to penal laws only and does not apply to extradition treaties.

**Q: John is a former President of the Republic X, bent on regaining power which he lost to President Harry in an election. Fully convinced that he was cheated, he set out to destabilize the government of President Harry by means of a series of protest actions. His plan was to weaken the government and, when the situation became ripe for a take-over, to assassinate President Harry. William, on the other hand, is a believer in human rights and a former follower of President Harry. Noting the systematic acts of harassment committed by government agents against farmers protesting the seizure of their lands, laborers complaining of low wages, and students seeking free tuition, William organized groups which held peaceful rallies in front of the Presidential Palace to express their grievances.**

**On the eve of the assassination attempt, John's men were caught by members of the Presidential Security Group. President Harry went on air threatening to prosecute plotters and dissidents of his administration. The next day, the government charged John with assassination attempt and William with inciting to sedition. John fled to**

**Republic A. William, who was in Republic B attending a lecture on democracy, was advised by his friends to stay in Republic B. Both Republic A and Republic B have conventional extradition treaties with Republic X. If Republic X requests the extradition of John and William, can Republic A deny the request? Why? State your reason fully. (2002)**

**A:** Republic A can refuse to extradite John, because his offense is a political offense. John was plotting to take over the government and the plan of John to assassinate President Harry was part of such plan. However, if the extradition treaty contains an attentat clause, Republic A can extradite John, because under the attentat clause, the taking of the life or attempt against the life of a head of state or that of the members of his family does not constitute a political offense and is therefore extraditable.

**ALTERNATIVE ANSWER:** Republic A may or can refuse the request of extradition of William because he is not in its territory and thus it is not in the position to deliver him to Republic X.

Even if William were in the territorial jurisdiction of Republic A, he may not be extradited because inciting to sedition, of which he is charged, constitutes a political offense. It is a standard provision of extradition treaties, such as the one between Republic A and Republic X, that political offenses are not extraditable.

**ALTERNATIVE ANSWER:** Republic B can deny the request of Republic X to extradite William because his offense was not a political offense. On the basis of the pre-dominance or proportionality test his acts were not directly connected to any purely political offense.

**Q: The Philippines and Australia entered into a Treaty of Extradition concurred in by the Senate of the Philippines on September 10, 1990. Both governments have notified each other that the requirements for the entry into force of the Treaty have been complied with. It took effect in 1990.**

**The Australian government is requesting the Philippine government to extradite its citizen, Gibson, who has committed in his country the indictable offense of Obtaining Property by Deception in 1985. The said offense is among those enumerated as extraditable in the Treaty.**

**For his defense, Gibson asserts that the retroactive application of the extradition treaty amounts to an ex post facto law. Rule on Gibson's contention. (2005)**

**A:** Gibson is incorrect. In *Wright v. Court of Appeals, G.R. No.113213 (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.

**Q: Lawrence is a Filipino computer expert based in Manila who invented a virus that destroys all the files stored in a computer. Assume that in May 2005, this virus spread all over the world and caused $50 million in damage to property in the United States, and that in June 2005, he was criminally charged before the United States courts under their anti-hacker law, Assume that in July 2005, the Philippines adopted its own anti-hacker law, to strengthen existing sanctions already provided against damage to property. The United States has requested the Philippines to extradite him to US courts under the RP-US Extradition Treaty.**

**Is the Philippines under an obligation to extradite Lawrence? State the applicable rule and its rationale. (2007)**

**A:** If there was no anti-hacker law in the Philippines when the United States requested the extradition of Lawrence, the Philippines is under no obligation to extradite him. Under the principle of double criminality, extradition is available only when the act is an offense in both countries *(Cruz, International Law, 2003 ed., p. 205; Coquia and Santiago, International Law and World Organizations, 2005 ed., 342).* Double criminality is intended to ensure each state that it can rely on reciprocal treatment and that no state will use its processes to surrender a person for conduct which it does not characterize as criminal. *(Bassiouni, International Extradition, 4th ed., p. 467).*

**ALTERNATIVE ANSWER:** Even if there was no anti-hacker law in the Philippines when the United States requested the extradition of Lawrence, if the act penalized under the anti-hacker law of the United States is similar to malicious mischief under Article 327 of the Revised Penal Code, the Philippines will be under obligation to extradite Lawrence *(Coquia and Defensor, International Law and World Organizations, 4th ed. p. 342).*

**Q: Assume that the extradition request was made after the Philippines adopted its anti-hacker legislation. Will that change your answer? (2007)**

**A:** The Philippines will be under obligation to extradite Lawrence. Both the Philippines and the United States have an anti-hacker law. The requirement of double criminality is satisfied even if the act was not criminal in the requested state at the time of its occurrence if it was criminal at the time that the request was made (Bassiouni, International Extradition, 4th ed., p. 469).

**ALTERNATIVE ANSWER:** The Philippines is under no obligation to extradite Lawrence. There was no anti-hacker law in the Philippines when Lawrence was charged in the United States; hence, an extradition of Lawrence is tantamount to ex post facto application of the Philippine anti-hacker law, prohibited by Section 22, Article III of the 1987 Constitution.

**Q: What is the difference if any between extradition and deportation? (1993)**

**A:** The following are the differences between extradition and deportation:

a. EXTRADITION is effected for the benefit of the state to which the person being extradited will be surrendered because he is a fugitive criminal in that state, while DEPORTATION is effected for the protection of the State expelling an alien because his presence is not conducive to the public good.

b. EXTRADITION is effected on the basis of an extradition treaty or upon the request of another state, while DEPORTATION is the unilateral act of the state expelling an alien.
c. In EXTRADITION, the alien will be surrendered to the state asking for his extradition, while in DEPORTATION the undesirable alien may be sent to any state willing to accept him.

**International Human Rights Law**

**Q: Walang Sugat, a vigilante group composed of private businessmen and civic leaders previously victimized by the Nationalist Patriotic Army (NPA) rebel group, was implicated in the torture and kidnapping of Dr. Mengele, a known NPA sympathizer.**
**326Under public international law, what rules properly apply? What liabilities, if any, arise thereunder if Walang Sugat's involvement is confirmed. (1992)**

**A:** On the assumption that Dr. Mengele is a foreigner, his torture violates the International Covenant on Civil and Political Rights, to which the Philippine has acceded. Article 7 of the Covenant on Civil and Political Rights provides: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

In accordance with Article 2 of the Covenant on Civil and Political Rights, it is the obligation of the Philippines to ensure that Dr. Mengele has an effective remedy, that he shall have his right to such a remedy determined by competent authority, and to ensure the enforcement of such remedy when granted.

**ALTERNATIVE ANSWER:** On the assumption that Dr. Mengele is a foreigner, his claim will have to be directed against the members of Walang Sugat on the basis of the Philippine law and be addressed to the jurisdiction of Philippine courts. His claim may be based on the generally accepted principles of international law, which form part of Philippine law under Section 2, Article II of the Constitution. His claim may be premised on relevant norms of international law of human rights.

Under international law, Dr. Mengele must first exhaust the remedies under Philippine law before his individual claim can be taken up by the State of which he is a national unless the said State can satisfactorily show it is its own interests that are directly injured. If this condition is fulfilled, the said State's claim will be directed against the Philippines as a subject of international law. Thus it would cease to be an individual claim of Dr. Mengele.

Dr. Mengele's case may concern international law norms on State responsibility, but the application of these norms require that the basis or responsibility is the relevant acts that can be attributed to the Philippines as a State.

Hence, under the principle of attribution it is necessary to show that the acts of the vigilante group Walang Sugat can be legally attributed to the Philippines by the State of which Dr. Mengele is a national.

The application of treaty norms of international law on human rights, such as the provision against torture in the International Covenants in Civil and Political Rights pertain to States. The acts of private citizens composing Walang Sugat cannot themselves constitute a violation by the Philippines as a State.

**International Humanitarian Law and Neutrality**

**Q: On October 13, 2001, members of Ali Baba, a political extremist organization based in and under the protection of Country X and espousing violence worldwide as a means of achieving its objectives, planted high-powered explosives and bombs at the International Trade Tower (ITT) in Jewel City in Country Y, a member of the United Nations. As a result of the bombing and the collapse of the 100-story twin towers, about 2,000 people, including women and children, were killed or injured, and billions of dollars in property were lost.**

**Immediately after the incident, Ali Baba, speaking through its leader Bin Derdandat, admitted and owned responsibility for the bombing of ITT, saying that it was done to pressure Country Y to release captured members of the terrorist group. Ali Baba threatened to repeat its terrorist acts against Country Y if the latter and its allies failed to accede to Ali Baba's demands. In response, Country Y demanded that Country X surrender and deliver Bin Derdandat to the government authorities of Country Y for the purpose of trial and "in the name of justice." Country X refused to accede to the demand of Country Y.**

**What action or actions can Country Y legally take against Ali Baba and Country X to stop the terrorist activities of Ali Baba and dissuade Country X from harboring and giving protection to the terrorist organization? Support your answer with reasons. (2002)**

**A:** Country Y may exercise the right of self-defense, as provided under Article 51 of the UN Charter "until the Security Council has taken measure necessary to maintain international peace and security". Self-defense enables Country Y to use force against Country X as well as against the Ali Baba organization.

It may bring the matter to the Security Council which may authorize sanctions against Country X, including measure invoking the use of force. Under Article 4 of the UN Charter, Country Y may use force against Country X as well as against the Ali Baba organization by authority of the UN Security Council.

**ALTERNATIVE ANSWER:** Under the Security Council Resolution No. 1368, the terrorist attack of Ali Baba may be defined as a threat to peace, as it did in defining the September 11, 2001 attacks against the United States. The resolution authorizes military and other actions to respond to terrorist attacks. However, the use of military force must be proportionate and intended for the purpose of detaining the persons allegedly responsible for the crimes and to destroy military objectives used by the terrorists.

The fundamental principles of international humanitarian law should also be respected. Country Y cannot be granted sweeping discretionary powers that include the power to decide what states are behind the terrorist organizations. It is for the Security Council to

decide whether force may be used against specific states and under what conditions the force may be used.

**Q: Not too long ago, "allied forces", led by American and British armed forces, invaded Iraq to "liberate the Iraqis and destroy suspected weapons of mass destruction." The Security Council of the United Nations failed to reach a consensus on whether to support or oppose the "war of liberation" Can the action taken by the allied forces find justification in International Law? Explain. (2003)**

**A:** The United States and its allied forces cannot justify their invasion of Iraq on the basis of self-defense under Article 51 attack by Iraq, and there was no necessity for anticipatory self-defense which may be justified under customary international law. Neither can they justify their invasion on the ground that Article 42 of the Charter of the United Nations permits the use of force against a State if it is sanctioned by the Security Council. Resolution 1441, which gave Iraq a final opportunity to disarm or face serious consequences, did not authorize the use of armed force.

**ALTERNATIVE ANSWER:** In International Law, the action taken by the allied forces cannot find justification. It is covered by the prohibition against the use of force prescribed by the United Nations Charter and it does not fall under any of the exceptions to that prohibition.

The UN Charter in Article 2(4) prohibits the use of force in the relations of states by providing that all members of the UN "shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations." This mandate does not only outlaw war; it encompasses all threats of and acts of force or violence short of war.

As thus provided, the prohibition is addressed to all UN members. However, it is now recognized as a fundamental principle in customary international law and, as such, is binding on all members of the international community.

The action taken by the allied forces cannot be justified under any of the three exceptions to the prohibition against the use of force which the UN Charter allows. These are: (1) inherent right of individual or collective self-defense under Article 51; (2) enforcement measure involving the use of armed forces by the UN Security Council under Article 42; and (3) enforcement measure by regional arrangement under Article 53, as authorized by the UN Security Council. The allied forces did not launch military operations and did not occupy Iraq on the claim that their action was in response to an armed attack by Iraq, of which there was none.

Moreover, the action of the allied forces was taken in defiance or disregard of the Security Council Resolution No. 1441 which set up "an enhanced inspection regime with the aim of bringing to full and verified completion the disarmament process", giving Iraq "a final opportunity to comply with its disarmament obligations". This resolution was in the process of implementation; so was Iraq's compliance with such disarmament obligations.

**Q: A terrorist group called the Emerald Brigade is based in the State of Asyaland. The government of Asyaland does not support the terrorist group, but being a poor country, is powerless to stop it.**

**The Emerald Brigade launched an attack on the Philippines, firing two missiles that killed thousands of Filipinos. It then warned that more attacks were forthcoming. Through diplomatic channels, the Philippines demanded that Asyaland stop the Emerald Brigade; otherwise, it will do whatever is necessary to defend itself.**

**Receiving reliable intelligence reports of another imminent attack by the Emerald Brigade, and it appearing that Asyaland was incapable of preventing the assault, the Philippines sent a crack commando team to Asyaland. The team stayed only for a few hours in Asyaland, succeeded in killing the leaders and most of the members of the Emerald Brigade, then immediately returned to the Philippines. (2009)**

**a. Was the Philippine action justified under the international law principle of "self-defense"? Explain your answer. (2003)**

**A:** The Philippine action cannot be justified as self-defense. Self-defense is an act of State by reason of an armed attack by another State. The acts of terrorism in this case were acts of private group and cannot be attributed to Asyaland, which does not support the Emerald brigade. Article 51 of the Charter of the United Nations has no applicability, because self-defense in Article 51 contemplates a response to a legitimate armed attack by a State against another State. The attack by the Emerald Brigade is an attack by a private group without authority or as an organ of Asyaland.

**b. As a consequence of the foregoing incident, Asyaland charges the Philippines with violation of Article 2.4 of the United Nations Charter that prohibits "the threat or use of force against the territorial integrity or political independence of any State." The Philippines counters that its commando team neither took any territory nor interfered in the political processes of Asyaland. Which contention is correct? Reasons.**

**A:** The contention of Asyaland is correct. The Philippines violated Article 2(4) of the Charter of the United Nations, which prohibits States from the threat or use of force against the territorial integrity of any State.

**c. Assume that the commando team captured a member of the Emerald Brigade and brought him back to the Philippines. The Philippine Government insists that a special international tribunal should try the terrorist. On the other hand, the terrorist argues that terrorism is not an international crime and, therefore, the municipal laws of the Philippines, which recognize access of the accused to constitutional rights, should apply. Decide with reasons.**

**A:** The terrorist should be tried in the Philippines. Section 58 of RA 9372, the Human Security Act, provides for its extraterritorial application to individual persons who, although outside the territorial limits of the Philippines, commits an act of terrorism directly against

Filipino citizens where their citizenship was a factor in the commission of the crime.

**Q: In 1993, historians confirmed that during World War II, "comfort women" were forced into serving the Japanese military. These women were either abducted or lured by false promises of jobs as cooks or waitresses, and eventually forced against their will to have sex with Japanese soldiers on a daily basis during the course of the war, and often suffered from severe beatings and venereal diseases. The Japanese government contends that the "comfort stations" were run as "onsite military brothels" (or prostitution houses) by private operators, and not by the Japanese military. There were many Filipina "comfort women." (2007)**

**Name at least one basic principle or norm of international humanitarian law that was violated by the Japanese military in the treatment of the "comfort women."**

**A:** The treatment of "comfort woman" by the Japanese military violated Article XXVII of the Geneva Convention (IV), which provides that: "Women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault."

**ALTERNATIVE ANSWER:** The treatment of "comfort women" by the Japanese military violated Article II of the Geneva Convention (IV) which prohibits outrages upon personal dignity, in particular humiliating and degrading treatment.

**Q: The surviving Filipina "comfort women" demand that the Japanese government apologize and pay them compensation. However, under the 1951 San Francisco Peace Agreement – the legal instrument that ended the state of war between Japan and the Allied Forces – all the injured states, including the Philippines, received war reparations and, in return, waived all claims against Japan arising from the war. Is that a valid defense?**

**A:** The defense is not valid. Under the preamble of the San Francisco Treaty, Japan undertook to conform to the protection and observance of human rights. Article 103 of the United Nations Charter provides that the obligations of the member-State prevail over any other international agreement. The waiver in Article 14(a) of the San Francisco Treaty is qualified by Article 14(b), which stated that Japan had no resources presently sufficient to make complete reparation for all such damages and sufferings and meet its other obligations. Thus, the waiver was operative only while Japan had inadequate resources.

**Q: The surviving Filipina "comfort women" sue the Japanese government for damages before Philippine courts. Will that case prosper?**

**A:** The Filipina "comfort women" cannot sue Japan for damages, because a foreign State may not be sued before Philippine courts as a consequence of the principles of independence and equality of States *(Republic of Indonesia v. Vonzon, 405 SCRA 126).*

*Prisoners of war*

**Q: Reden, Jolan and Andy, Filipino tourists, were in Bosnia-Herzegovina when hostilities erupted between the Serbs and the Moslems. Penniless and caught in the crossfire, Reden, Jolan, and Andy, being retired generals, offered their services to the Moslems for a handsome, salary, which offer was accepted. When the Serbian National Guard approached Sarajevo, the Moslem civilian population spontaneously took up arms to resist the invading troops. Not finding time to organize, the Moslems wore armbands to identify themselves, vowing to observe the laws and customs of war. The three Filipinos fought side by side with the Moslems. The Serbs prevailed resulting in the capture of Reden, Jolan and Andy, and part of the civilian fighting force.**

**a. Are Reden, Jolan and Andy considered combatants thus entitled to treatment as prisoners of war?**
**b. Are the captured civilians likewise prisoners of war? (1993)**

**A:**

a. Reden, Jolan and Andy are not combatants and are not entitled to treatment as prisoners of war, because they are mercenaries. Article 47 of the Protocol I to the Geneva Conventions of 1949 provides: "A Mercenary shall not have the right to be combatant or a prisoner of war." Pursuant to Article 47 of Protocol I of the Geneva Conventions of 1949, Reden Jolan, and Andy are mercenaries, because they were recruited to fight in an armed conflict, they in fact took direct part in the hostilities, they were motivated to take part in the hostilities essentially by the desire for private gain and in fact was promised a handsome salary by the Moslems, they were neither nationals of a party to the conflict nor residents of territory controlled by a party to the conflict, they are not members of the armed forces of a party to the conflict, and they were not sent by a state which is not a party to the conflict on official duty as members of its armed forces.
b. The captured civilians are prisoners of war. Under Article 4 of the Geneva Convention relative to the Treatment of Prisoners of War, inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed forces, provided they carry arms openly and respect the laws and customs of war, are considered prisoners of war if they fall into the power of the enemy.

*Law on neutrality*

**Q: Switzerland and Australia are outstanding examples of neutralized states**

**a. What are the characteristics of a neutralized state?**
**b. Is neutrality synonymous with neutralization? If not, distinguish one from the other. (1988)**

**A:**

a. Whether simple or composite, a State is said to be neutralized where its independence and integrity are guaranteed by an international convention on

the condition that such State obligates itself never to take up arms against any other State, except for self-defense, or enter into such international obligations as would indirectly involve it in war. A State seeks neutralization where it is weak and does not wish to take an active part in international politics. The power that guarantee its neutralization may be motivated either by balance of power considerations or by the desire to make the weak state a buffer between the territories of the great powers (J. Salonga & P. Yap, Public International Law, pp. 76 (1966)).

b. Firstly, neutrality obtains only during war, whereas neutralization is a condition that applies in peace or in war. Secondly, neutralization is a status created by means of treaty, whereas neutrality is a status created under international law, by means of a stand on the part of a state not to side with any of the parties at war. Thirdly, neutrality is brought about by a unilateral declaration by the neutral State, while neutralization cannot be effected by unilateral act, but must be recognized by other States. (Id.)

**Law of the sea**

**Q: State Epsilon, during peace time, has allowed foreign ships innocent passage through Mantranas Strait, a strait within Epsilon's territorial sea which has been used by foreign ships for international navigation. Such passage enabled the said ships to traverse the strait between one part of the high seas to another. On June 7, 1997, a warship of State Beta passed through the above-named strait. Instead of passing through continuously and expeditiously, the ship delayed its passage to render assistance to a ship of State Gamma which was distressed with no one nearby to assist. When confronted by Epsilon about the delay, Beta explained that the delay was due to force majeure in conformity with the provision of Article 18(2) of the 1982 Convention on the Law of the Sea (UNCLOS). Seven months later, Epsilon suspended the right of innocent passage of warships through Mantranas Strait without giving any reason therefor. Subsequently, another warship of Beta passed through the said strait, and was fired upon by Epsilon's coastal battery. Beta protested the aforesaid act of Epsilon drawing attention to the existing customary international law that the regime of innocent passage (even of transit passage) is non-suspendable. Epsilon countered that Mantranas Strait is not a necessary route, there being another suitable alternative route. Resolve the above-mentioned controversy. Explain your answer. (1999)**

**A:** Assuming that Epsilon and Beta are parties to the UNCLOS, the controversy maybe resolved as follows:

Under the UNCLOS, warships enjoy a right of innocent passage. It appearing that the portion of Epsilon's territorial sea in question is a strait used for international navigation, Epsilon has no right under international law to suspend the right of innocent passage. Article 45(2) of the UNCLOS is clear in providing that there shall be no suspension of innocent passage through straits used for international navigation.

On the assumption that the straits in question is not used for international navigation, still the suspension of innocent passage by Epsilon cannot be effective because suspension is required under international law to be duly published before it can take effect. There being no publication prior to the suspension of innocent passage by Beta's warship, Epsilon's act acquires no validity.

Moreover, Epsilon's suspension of innocent passage may not be valid for the reason that there is no showing that it is essential for the protection of its security. The actuation of Beta's warship in resorting to delayed passage is for cause recognized by the UNCLOS as excusable, i.e., for the purpose of rendering assistance to persons or ship in distress, as provided in Article 18(2) of the UNCLOS. Hence, Beta's warship complied with the international law norms on right of innocent passage.

**Q: En route to the tuna fishing grounds in the Pacific Ocean, a vessel registered in Country TW entered the Balintang Channel north of Babuyan Island and with special hooks and nets dragged up red corals found near Batanes.**

**By international convention certain corals are protected species, just before the vessel reached the high seas, the Coast Guard patrol intercepted the vessel and seized its cargo including tuna. The master of the vessel and the owner of the cargo protested, claiming the rights of transit passage and innocent passage, and sought recovery of the cargo and the release of the ship. Is the claim meritorious or not? Reason briefly. (2004)**

**A:** The claim of innocent passage is not meritorious. While the vessel has the right of innocent passage, it should not commit a violation of any international convention. The vessel did not merely navigate through the territorial sea, it also dragged red corals in violation of the international convention which protected the red corals. This is prejudicial to the good order of the Philippines (Article 19(2) of the Convention on the Law of the Sea).

**Q: Distinguish briefly but clearly between: The territorial sea and the internal waters of the Philippines. (2004)**

**A:** Territorial sea is an adjacent belt of sea with a breadth of twelve nautical miles measured from the baselines of a state and over which the state has sovereignty (Articles 2 and 3 of the Convention
336on the Law of the Sea). Ship of all states enjoy the right of innocent passage through the territorial sea (Article 14 of the Convention on the Law of the Sea.).

Under Section 1, Article I of the 1987 Constitution, the internal waters of the Philippines consist of the waters around, between and connecting the islands of the Philippine Archipelago, regardless of their breadth and dimensions, including the waters in bays, rivers and lakes. No right of innocent passage for foreign vessels exists in the case of internal waters *(Harris, Cases and Materials on International Law, 5th ed., 1998)* Internal waters are the waters on the landward side of baselines from which the breadth of the territorial sea is calculated *(Brownlie, Principles of Public International Law, 4th ed., 1990).*

*Territorial sea*

**Q: Describe the following maritime regimes under UNCLOS:**

**a. Territorial sea**
**b. Contiguous zone**
**c. Exclusive economic zone**
**d. Continental shelf (2015)**

**A:** Under the provisions of UNCLOS III-

a. The territorial waters of an archipelagic state shall extend up to 12 nautical miles from its baselines over which the State exercises jurisdictional control
b. Its contiguous zone shall extend up to 24 nautical miles over which the State exercises control as is necessary to prevent infringement of its customs, fiscal, immigration, or sanitary laws within its territory
c. Its exclusive economic zone shall extend up to 200 nautical miles from its baselines over which the State exercises sovereignty over all the exploration, exploitation, or conservation and managing of the economic natural resources, whether living or non-living.
d. Its continental shelf "comprises the seabed 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 from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.'

*Exclusive economic zone*

**Q: In the desire to improve the fishing methods of the fishermen, the Bureau of Fisheries, with the approval of the President, entered into a memorandum of agreement to allow Thai fishermen to fish within 200 miles from the Philippine sea coasts on the condition that Filipino fishermen be allowed to use Thai fishing equipment and vessels, and to learn modern technology in fishing and canning. Is the agreement valid? (1994)**

**A:** No. the President cannot authorize the Bureau of Fisheries to enter into a memorandum of agreement allowing Thai fishermen to fish within the exclusive economic zone of the Philippines, because the Constitution reserves to Filipino citizens the use and enjoyment of the exclusive economic zone of the Philippines.

**Q: Explain exclusive economic zone. (2000)**

**A:** The exclusive economic zone under the Convention on the Law of the Sea is an area beyond and adjacent to the territorial sea, which shall not extend beyond 200 nautical miles from the baselines from which the territorial sea is measured. The coastal State has in the exclusive economic zone:

a. Sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, if the waters superjacent to the sea-bed and of the seabed and subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;
b. Jurisdiction as provided in the relevant provisions of the Convention with regard to:
   i. the establishment and use of artificial islands, installations and structures;
   ii. marine scientific research;
   iii. and the protection and preservation of the marine environment;
c. Other rights and duties provided for in the Convention *(Article 56 of the Convention of the Law of the Sea.)*

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

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

The EXCLUSIVE ECONOMIC ZONE is a zone extending up to 200 nautical miles from the baselines of a state over which the coastal state has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or nonliving, of the waters superjacent to the seabed and of the seabed and subsoil, and with regard to other activities for the economic exploitation and exploration of the zone (Articles 56 and 57 of the Convention on the Law of the Sea).

**Q: Enumerate the rights of the coastal State in the exclusive economic zone. (2005)**

**A:** In the EXCLUSIVE ECONOMIC ZONE, the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds in an area not extending more than 200 nautical miles beyond the baseline from which the territorial sea is measured. Other rights include the production of energy from the water, currents and winds, the establishment and use of artificial islands, installations and structures, marine scientific research and the protection and preservation of the marine environment. (Art. 56, U.N. Convention on the Law of the Sea)