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**BAR Q & A**  
**POLITICAL LAW**  
**AND PUBLIC**  
**INTERNATIONAL LAW**

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**2024 Edition**

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*Examiner*

*Political Law and Public International Law*  
*2018 Bar Examinations*

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**2009**

**PART I**

**I**

**TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)**

**a. A law making “Bayan Ko” the new national anthem of the Philippines, in lieu of “Lupang Hinirang,” is constitutional.**

**TRUE.**

Under Section 2 of Article XVI of the Constitution, the Congress may, by law, adopt a new national anthem which shall be truly reflective and symbolic of the ideals, history, and traditions of the people. Such law shall take effect only upon its ratification by the people in a national referendum.

**b. 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.**

**FALSE.**

The *Archipelago Doctrine*, which is provided for in Article I of the Constitution, states that the waters, around, between and connecting the islands of the

archipelago, regardless of their breadth or dimensions, shall form part of the internal waters, and not of the "territorial sea," of the archipelagic state.

**c. A law that makes military service for women merely voluntary is constitutional.**

FALSE.

Section 4 of Article II of the Constitution authorizes the government to call upon the people to defend the State and, in the fulfillment thereof, all citizens, without distinction as to gender, may be required, under conditions provided by law, to render personal, military or civil service.

[*Acceptable Answer: TRUE.* Such a law may be upheld as a reasonable condition in view of what may be considered as substantial distinctions between men and women in terms of personal military or civil service.]

**d. A law fixing the passing grade in the Bar examinations at 70%, with no grade lower than 40% in any subject, is constitutional.**

FALSE.

Said law would serve to pre-empt the constitutional and exclusive prerogative of the Supreme Court to promulgate rules concerning admission to the practice of law, under Section 5 [5] of Article VIII of the Constitution, and would therefore be violative of the principle of separation of powers. (*In re Cunanan*, 94 Phil. 534)

**e. An educational institution 100% foreign-owned may be validly established in the Philippines.**

TRUE.

Section 4 [2] of Article XIV of the Constitution provides that educational institutions established by religious groups and mission boards may be wholly-owned by non-Filipinos, or 100% foreign-owned.

## II

**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.**

**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. (2%)**

I will file with the Commission on Elections a petition to deny due course to or cancel his certificate of candidacy under Section 78 of the Omnibus Election Code for purposes of questioning his eligibility in terms of citizenship and residence.

Said petition can be filed for purposes of questioning the qualifications of candidates for the House of Representatives before an election. (*Limkaichong v. COMELEC*, G.R. Nos. 178831-32, April 1, 2009)

**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? (2%)**

Yes, he can be substituted, but only by a person belonging to, and certified by, the same political party.

This would be consistent with the general provisions of Section 77 of the Omnibus Election Code, which would allow such a substitution 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.

Under said law, the substitute candidate nominated by the political party concerned may file his certificate of candidacy for the office affected not later than mid-day of the day of the election.

[Note: A candidate who is disqualified under Section 68 can validly be substituted under Section 77 of the OEC because he/she remains a candidate until disqualified; but a person whose CoC has been denied due course or cancelled under Section 78 cannot be substituted because he/she is never considered a candidate. (*Miranda v. Abaya*, G.R. No. 136351, July 28, 1999, 311 SCRA 617, cited in *De la Cruz v. Commission on Elections*, G.R. No. 192221, November 13, 2012 and *Talaga v. Commission on Elections*, G.R. No. 196804, October 9, 2012)]

[Note: Considering that a cancelled CoC does not give rise to a valid candidacy (*Bautista v. Commission on Elections*, G.R. No. 133840, November 13, 1998, 298 SCRA 480, 493), there can be no valid substitution of the candidate under Section 77 of the Omnibus Election Code. It should be clear, too, that a candidate who does not file a valid CoC may not be validly substituted, because a person without a valid CoC is not considered a candidate in much the same way as any person who has not filed a CoC is not at all a candidate. (*Miranda v. Abaya*, G.R. No. 136351, July 28, 1999, 311 SCRA 617)]

[Note: In *Federico v. Commission on Elections* (G.R. No. 199612, January 22, 2013), the Supreme Court sustained the legality of Section 13 of COMELEC Resolution No. 8678, which prescribed different grounds and deadlines for the substitution of candidates, and considered it to be within its authority "to prescribe such rules

so as to make efficacious and successful the conduct of the first national automated election." Said Section 13 provides:

SEC. 13. *Substitution of Candidates, in case of death, disqualification or withdrawal of another.*—If after the last day for the filing of certificate of candidacy, an official candidate of a registered political party dies, withdraws or is disqualified for any cause, he may be substituted by a candidate belonging to, and nominated by, the same political party. No substitute shall be allowed for any independent candidate.

The substitute for a candidate who withdrew may file his certificate of candidacy as herein provided for the office affected not later than December 14, 2009.

The substitute for a candidate who died or suffered permanent incapacity or disqualified by final judgment, may file his certificate of candidacy up to mid-day of election day. If the death or permanent disability should occur between the day before the election and mid-day of election day, the substitute candidate may file the certificate with any board of election inspectors in the political subdivision where he is a candidate, or in the case of a candidate for President, Vice-President or Senator, with the Law Department of the Commission on Elections in Manila.

No person who has withdrawn his candidacy for a position shall be eligible as substitute candidate for any other position after the deadline for filing of certificates of candidacy.]

[Note: Different deadlines were set to govern the specific circumstances that would necessitate the substitution of a candidate due to death, disqualification or withdrawal. In case of death or disqualification, the substitute had until midday of the election day to file the COC. In case of withdrawal, which is the situation at bench, the substitute should have filed a COC by December 14, 2009. (Section 13 of COMELEC Resolution 8678 covering the May 10, 2010 Automated Elections, cited in *Federico v. Commission on Elections*, G.R. No. 199612, January 22, 2013)]

[Note: When Batangas Governor Armando Sanchez died on April 27, 2010, Edna withdrew her candidacy as mayor and substituted her late husband as gubernatorial candidate for the province on April 29, 2010. The party actually had the option to substitute another candidate for Governor aside from Edna. By fielding Edna

as their substitute candidate for Governor, the party knew that she had to withdraw her candidacy for Mayor. Considering that the deadline for substitution in case of withdrawal had already lapsed, no person could substitute her as mayoralty candidate. The sudden death of then Governor Armando Sanchez and the substitution by his widow in the gubernatorial race could not justify a belated substitution in the mayoralty race. (*Federico v. Commission on Elections*, G.R. No. 199612, January 22, 2013)]

**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? (2%)**

Yes, the issue of the candidacy and/or citizenship and residence of a congressional candidate who has been proclaimed may still be resolved in a petition for *quo warranto* which can be filed with the House of Representatives Electoral Tribunal, which, under the provisions of Section 17 of Article VI of the Constitution, shall be the sole judge of all contests relating to the election, returns and qualifications of members of the House of Representatives (and of the Senate).

[Note: Indeed, the issue of citizenship may be resolved even beyond the prescriptive period for filing petitions for *quo warranto* before the HRET. Citizenship, being a continuing requirement, may be questioned even beyond said period, but then only by the State, through its representative designated by statute, usually in direct proceedings, such as suits for *quo warranto*. The same principles would be applicable with respect to the constitutional residence requirement for Members of the House of Representatives, which can likewise be characterized as a continuing qualification. (*Limkaichong v. COMELEC*, G.R. Nos. 178831-32, April 1, 2009)]

### III

**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. (2%)**

No, the disapproval of the ordinance is not correct because, under Section 56 (c) of the Local Government Code, a *Sangguniang Panlalawigan* may invalidate only such ordinances or resolutions of a *Sangguniang Bayan* as may be "beyond the power" conferred upon the same.

In other words, a *Sangguniang Panlalawigan* may only determine whether or not the ordinance passed by a *Sangguniang Bayan* is within the authority conferred upon it by law. Under Section 19 of the Local Government Code, a *Sangguniang Bayan* clearly possesses the power of eminent domain. (*Velazco v. Blas*, G.R. No. L-30456, July 30, 1982, 115 SCRA 540, 544-545, cited in *Moday v. Court of Appeals*, G.R. No. 107916 February 20, 1997)

Accordingly, the disapproval of the subject ordinance is incorrect. The *Sangguniang Panlalawigan* may not pass upon the wisdom of said ordinance.

[Note: "The only ground upon which a provincial board may declare any municipal resolution, ordinance, or order invalid is when

such resolution, ordinance, or order is 'beyond the powers conferred upon the council or president making the same.' Absolutely no other ground is recognized by the law. A strictly legal question is before the provincial board in its consideration of a municipal resolution, ordinance, or order. The provincial (board's) disapproval of any resolution, ordinance, or order must be premised specifically upon the fact that such resolution, ordinance, or order is outside the scope of the legal powers conferred by law. If a provincial board passes these limits, it usurps the legislative function of the municipal council or president. Such has been the consistent course of executive authority." (*Velazco v. Blas*, G.R. No. L-30456, July 30, 1982, 115 SCRA 540, 544-545, cited in *Moday v. Court of Appeals*, G.R. No. 107916 February 20, 1997)

#### IV

**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. (3%)**

The motion should be denied.

The injuries sustained by the victim were caused by the apparent negligence of the Municipality in the maintenance of a glass pane from a window frame of its municipal hall, or a public building under its control or supervision.

Under Article 2189 of the Civil Code, provinces, cities and municipalities shall be liable for damages for the death of, or injuries suffered by, any person by reason of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision. This general law constitutes the consent of the State, or, in this case, of the Municipality, to be sued

for the subject injuries. Accordingly, the Municipality can be considered as having waived its immunity from suit.

## V

To address the pervasive problem of gambling, Congress is considering the following options: (1) prohibit all forms of gambling; (2) allow gambling only on Sundays; (3) allow gambling only in government-owned casinos; and (4) remove all prohibitions against gambling but impose a tax equivalent to 30% on all winnings.

a. If Congress chooses the first option and passes the corresponding law absolutely prohibiting all forms of gambling, can the law be validly attacked on the ground that it is an invalid exercise of police power? Explain your answer. (2%)

No, the law prohibiting all forms of gambling cannot be considered as an invalid exercise of the police power.

The tests for a valid exercise of the police power would be that the interests of the public generally, as distinguished from those of a particular class, require the exercise of the police power, and the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon the individual.

It is respectfully submitted that the subject law absolutely prohibiting all forms of gambling complies with both tests. (*Stone v. Mississippi*, 101 US 814; see also

*U.S. v. Pacis*, 31 Phil. 524 [1915], *U.S. v. Espiritu-Santo*, 23 Phil. 610 [1912]; *U.S. v. Joson*, 26 Phil. 1 [1913]; *People v. Chan Hong*, 65 Phil. 625 [1938]; *U.S. v. Tamparong*, 31 Phil. 321 [1915]; *U.S. v. Salaveria*, 39 Phil. 102 [1918])

**b. If Congress chooses the last option and passes the corresponding law imposing a 30% tax on all winnings and prizes won from gambling, would the law comply with the constitutional limitations on the exercise of the power of taxation? Explain your answer. (2%)**

It is submitted that said tax measure fulfills the constitutional requirements that tax laws shall be both uniform and equitable, as it appears to apply to all winnings or prizes from gambling, and is based on the capacity to pay of the winners, who shall be paying, not on the basis of the fruits of their legitimate labor or employment, but on the basis of their earnings from their mere participation in games of chance.

The last option, which would provide for a law imposing a 30% tax on all winnings and prizes won from gambling, would likewise comply with the constitutional limitations on the exercise of the power of taxation, which has generally been accepted as an implement for the attainment of a legitimate police objective. (Cruz and Cruz, *Constitutional Law*, 2015 Edition, pages 95-97; see *Powell v. Pennsylvania*, 127 US 678 and *Lutz v. Araneta*, 98 Phil. 148)

## VI

**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. (3%)**

The objection should be overruled on the ground that the prohibition in the subject law covers only the overhearing, intercepting, or recording of private communications. (*Ramirez v. Court of Appeals*, 248 SCRA 590 [1995], cited in *Navarro v. Court of Appeals*, G.R. No. 121087, August 26, 1999)

It is clear that the “heated exchange” depicted in the videotape occurred at the lobby of a hotel. Having taken place in a public setting, it cannot be considered as a private communication.

Moreover, said evidence may likewise not be suppressed on the ground of the right to privacy of the accused. The constitutional right to privacy is not absolute and may be waived, as in this case, where the accused may be considered as having subjected himself to the security videotape monitoring policies of the Manila Hotel when he entered the same as a guest.

**VII**

**Crack agents of the Manila Police Anti-Narcotics Unit were on surveillance of a cemetery where the sale and use of prohibited drugs were rumored to be rampant. The team saw a man with reddish and glassy eyes walking unsteadily towards them, but he immediately veered away upon seeing the policemen. The team approached the man, introduced themselves as peace officers, then asked what he had in his clenched fist. Because the man refused to answer, a policeman pried the fist open and saw a plastic sachet filled with crystalline substance. The team then took the man into custody and submitted the contents of the sachet to forensic examination. The crystalline substance in the sachet turned out to be shabu. The man was accordingly charged in court.**

**During the trial, the accused:**

**a. challenged the validity of his arrest; (2%) and**

**b. objected to the admission in evidence of the prohibited drug, claiming that it was obtained in an illegal search and seizure. (2%)**

**Decide with reasons.**

**a. The arrest was unlawful, not falling under any of the situations covered under Section 5 of Rule 113 of the Rules of Court, which would authorize peace officers to arrest a person, even without a warrant, to wit –**

(1) when such person has in fact just committed, is actually committing, or is attempting to commit an offense in his presence

(2) when an offense has in fact just been committed and he has personal knowledge of facts indicating that the person to be arrested has committed it

(3) when the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

A warrantless arrest of a person just because he had “reddish and glassy eyes” or that he was “walking unsteadily towards” the police agents cannot be considered as lawful, as he cannot, on the basis of those facts alone, be considered as falling under any of the situations stated above.

[*Acceptable Answer*: The warrantless arrest can be upheld considering that, as stated in the problem, the policemen “were on surveillance of a cemetery where the sale and use of prohibited drugs were rumored to be rampant” and they saw there the accused,” a “man with reddish and glassy eyes walking unsteadily towards them” and who “immediately veered away upon seeing the policemen.” (*Manalili v. Court of Appeals*, G.R. No. 113447, October 9, 1997) The fact that he “acted suspiciously and attempted to flee” can be considered as valid basis for the policemen validly to stop and frisk him. (*Posadas vs. Court of Appeals* (G.R. No. 89139, August 2, 1990))]

[Note: The writer acknowledges that the generally accepted answers to the foregoing questions are based on the case of *Manalili v. Court of Appeals* (G.R. No. 113447, October 9, 1997), where a warrantless arrest, and the subsequent warrantless search and seizure of the evidence, under circumstances “similar” to those specified in the problem were upheld. Thus –

“Upon reaching the Kalookan City Cemetery, the policemen alighted from their vehicle. They then chanced upon a male person in front of the cemetery who appeared high on drugs. The male person was observed to have reddish eyes and to be walking in a swaying manner. When this male person tried to avoid the policemen, the latter approached him and introduced themselves as police officers. The policemen then asked the male person what he was holding in his hands. The male person tried to resist. Pat Romeo Espiritu asked the male person if he could see what said male person had in his hands. The latter showed the wallet and allowed Pat. Romeo Espiritu to examine the same. Pat. Espiritu took the wallet and examined it. He found suspected crushed marijuana residue inside. He kept the wallet and its marijuana contents.”

The Court further relied in said case on the following testimony of the arresting officer –

Q What did you say when you introduced yourselves?

A We asked him what he was holding in his hands, sir.

Q And what was the reaction of the person when you asked him what he was holding in his hands?

A He tried to resist, sir.

Q When he tried to resist, what did you do?

A I requested him if I can see what was he was (*sic*) holding in his hands.

Q What was the answer of the person upon your request?

A He allowed me to examine that something in his hands, sir.

xxx            xxx            xxx

Q What was he holding?

A He was holding his wallet and when we opened it, there was a marijuana (*sic*) crushed residue.

The writer is of the view though that the *Manalili* case can be considered as not applicable in view of the statement in the problem to the effect that, in effecting the subject search upon the accused, the policeman “pried the fist open and saw a plastic sachet filled with crystalline substance.” This fact specified in the problem differentiates it from the said case.

In *Manalili*, the accused clearly consented to the search. No such consent can be gleaned from the subject problem. It is submitted that the “prying open of the fist” of the accused, or the use of violence upon his person, necessarily invalidates the warrantless search and seizure.

Moreover, as explained in the writer’s answer (a), the fact that the accused simply had “reddish and glassy eyes” as he was “walking unsteadily towards them,” and that “he immediately veered away upon seeing the policemen” should not be considered as falling under any of the grounds for a warrantless arrest.]

b. The evidence is inadmissible, having been forcibly obtained from the accused without a valid warrant prior to or before his lawful arrest, the rule being that there must first be a lawful arrest before a lawful warrantless search can be made – the process cannot be reversed. (*People v. Chua Ho San*, 308 SCRA 432)

It is submitted that the search and seizure effected by the policeman cannot be justified as a valid “stop and frisk” because the accused simply had “reddish and glassy eyes” while “walking unsteadily towards” him. The man could have just awakened from a deep sleep (hence, the “reddish and glassy eyes”) and therefore also a bit dizzy. Neither can the fact that he “immediately veered away upon seeing the policemen,” which can be considered as but a natural reaction of ordinary persons upon seeing a group of policemen, justify the arrest and subsequent search and seizure, as they cannot be considered as creating “a reasonable inference of criminal activity which would constitute a ‘genuine reason’ to

conduct a ‘stop and frisk’ search.” (See *Comerciante v. People*, G.R. No. 205926, July 22, 2015)

Neither could the same have been validly seized on the basis of the “plain view doctrine,” which requires for its applicability, among others, that the discovery of the evidence in plain view is inadvertent. (*Revaldo v. People*, G.R. No. 170589, April 16, 2009) It is emphasized that the evidence obtained and sought to be admitted against the accused was seized after forcibly opening his closed palm or prying open his fist.

[*Acceptable Answer*: The evidence is admissible, having been obtained on the basis of a valid “stop and frisk search.” It must be noted that the policemen were on a legitimate surveillance operation in a place “where the sale and use of prohibited drugs were rumored to be rampant.” The fact that the accused had “reddish and glassy eyes walking unsteadily towards them” and that “he immediately veered away upon seeing the” policemen necessarily justified the latter in conducting the stop and frisk search. (*Manalili v. Court of Appeals*, G.R. No. 113447, October 9, 1997)]

## VIII

**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 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; (3%) and

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. (3%)

**Are the foregoing arguments tenable?  
Reasons.**

a. This contention is untenable.

It is established that the mere filing of a criminal, civil or administrative action before a court or quasi-judicial body, as the case may be, should not automatically bar the conduct of a legislative inquiry. (*Standard Chartered Bank v. Senate Committee on Banks, Financial Institutions and Currencies*, G.R. No. 167173, December 17, 2007)

For the subpoena to be validly quashed, there must be a showing that no legislation was apparently being contemplated in connection with said investigation. (*Bengzon v. Senate Blue Ribbon Committee*, 203 SCRA 767)

b. Neither may the right against self-incrimination be validly invoked by the IUB officials for purposes of quashing the subject subpoena.

The right against self-incrimination, although extended to respondents in administrative investigations (including witnesses in legislative inquiries) that partake of the nature of or are analogous to criminal proceedings, may not properly be invoked by the IUB officials since they neither stand as accused in a criminal case nor will they be subjected by the HCGG to any penalty by reason of their testimonies. Hence, they cannot altogether decline from appearing before the HCGG, although they may invoke this right when a question calling for an incriminating answer is propounded. (*Standard Chartered Bank v. Senate Committee on Banks, Financial Institutions and Currencies*, G.R. No. 167173, December 17, 2007, citing *Bengzon v. Senate Blue Ribbon Committee*, G.R. No. 89914, November 20, 1991, 203 SCRA 767, 784)

**c. May the Governor of the BSP validly invoke executive privilege and, thus, refuse to attend the legislative inquiry? Why or why not? (3%)**

The Governor of the BSP may not validly invoke executive privilege and refuse to attend the legislative inquiry.

Only the President may be exempted from the power of the Congress to conduct legislative inquiries. The only way for the Governor of the BSP to exempt himself therefrom is by a valid claim of executive privilege done or invoked by the President, or under his express and unequivocal authorization. (*Senate v. Ermita*, G.R. No. 169777, April 20, 2006)

## IX

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. (3%)

Warlito is today to be considered a natural-born, and not just a naturalized, Filipino.

Natural-born Filipinos who re-acquire their Filipino citizenship under the provisions of RA 9225 are restored to their natural-born status for they "are

deemed not to have lost” their Philippine citizenship when they avail themselves of the dual citizenship privilege provided for under said law. (Section 2; *Re: Application for Admission to the Philippine Bar. Vicente D. Ching*, Bar Matter No. 914, October 1, 1999, 316 SCRA 1, 7-8) Moreover, it is established that a natural born citizen who is naturalized as an American, shall, upon repatriation, be considered a natural born citizen again. (*Bengson v. House of Representatives Electoral Tribunal*, 357 SCRA 545)

It may further be pointed out that RA 9225 is a repatriation statute which has been described as an “abbreviated repatriation process that restores one’s Filipino citizenship,” (*Sobejana-Condon v. COMELEC*, 692 Phil. 407), and under which “the repatriation of the former Filipino will allow him to recover his natural-born citizenship.” (*Tabasa v. Court of Appeals*, 531 Phil. 407) It is significant that, in *Parreno v. Commission on Audit* (551 Phil. 368), the Supreme Court categorically ruled that if a natural-born Filipino who had in the meantime lost his citizenship by reason of his naturalization in another country “reacquires his Filipino citizenship (under RA 9225), he will recover his natural-born citizenship.” (See *Poe-Llamanzares v. Commission on Elections*, G.R. Nos. 221697 & 221698-700, March 8, 2016)

**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. (3%)**

It is submitted that Shirley can be considered also as a Filipino citizen upon Warlito's regaining of his Philippine citizenship under the provisions of R.A. No. 9225.

As noted earlier, under Section 2 of R.A. No 9225, natural-born Filipinos who re-acquire their Filipino citizenship thereunder are restored to their natural-born citizenship status and "are deemed not to have lost" their Philippine citizenship when they avail themselves of the dual citizenship privilege provided for under said law. In other words, the effect of their re-acquisition of their natural-born Philippine citizenship can be said to retroact to the date of their loss of the same with their naturalization in another country. (See *David v. Agbay*, G.R. No. 199113, March 18, 2015)

Under Section 15 of Commonwealth Act No. 473, any woman who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines.

In *Moya Lim Yao v. Commissioner of Immigration* (G.R. No. L-21289, October 4, 1971), this provision was interpreted to mean that an alien woman marrying a Filipino, native-born or naturalized, becomes *ipso facto* a Filipina provided she is not disqualified to be a citizen of the Philippines under Section 4 of the same law. Likewise, an alien woman married to an alien who is subsequently naturalized here follows the Philippine citizenship of her husband the moment he takes his oath as Filipino citizen, provided she does not suffer from any of the disqualifications under said Section 4.

Therefore, in view of the fact that Warlito, because of the retroactive effect of his re-acquisition of his Philippine citizenship under the provisions of R.A. No. 9225 in or after 2009, can be considered as a Filipino at the

time that he married Shirley, the latter can also be considered as a Filipino citizen, following the ruling in *Moya Lim Yao*.

This would be true even if Warlito's re-acquisition of his natural-born Philippine citizenship were to be given only prospective effect, or would be effective only after he takes his citizenship oath under RA 9225 in 2009, because the rule, as prescribed in said Section 15 of CA 473 and affirmed in *Moya Lima Yao*, is that an alien woman married to an alien who is subsequently naturalized here follows the Philippine citizenship of her husband the moment he takes his oath as Filipino citizen, provided she does not suffer from any of the disqualifications under said Section 4.

Accordingly, consistent with the pronouncements of the Supreme Court in the *Moya Lim Yao* case, the procedure for an alien wife to formalize the conferment of Filipino citizenship upon her would be for the alien woman to file a petition for the cancellation of her alien certificate of registration alleging, among other things, that she is married to a Filipino citizen and that she is not disqualified from acquiring her husband's citizenship pursuant to Section 4 of Commonwealth Act No. 473, as amended. Upon the filing of said petition, which should be accompanied or supported by the joint affidavit of the petitioner and her Filipino husband to the effect that the petitioner does not belong to any of the groups disqualified by the cited section from becoming naturalized Filipino citizen, the Bureau of Immigration conducts an investigation and thereafter promulgates its order or decision granting or denying the petition.

[Note: The foregoing answer is essentially based on the pronouncements of the Supreme Court in the case of *David v. Agbay*, which was decided more than four years after this question was

asked in the 2009 Political Law Bar Examination. Thus, it was clarified in said case that –

In fine, for those who were naturalized in a foreign country, they shall be deemed to have re-acquired their Philippine citizenship which was lost pursuant to CA 63, under which naturalization in a foreign country is one of the ways by which Philippine citizenship may be lost. As its title declares, R.A. 9225 amends CA 63 by doing away with the provision in the old law which takes away Philippine citizenship from natural-born Filipinos who become naturalized citizens of other countries and allowing dual citizenship, and also provides for the procedure for re-acquiring and retaining Philippine citizenship. In the case of those who became foreign citizens after R.A. 9225 took effect, they shall retain Philippine citizenship despite having acquired foreign citizenship provided they took the oath of allegiance under the new law. (*David v. Agbay*, G.R. No. 199113, March 18, 2015)

[*Acceptable Answer*: No, Shirley will not also become a Filipino citizen upon Warlito's re-acquisition of Filipino citizenship under the provisions of R.A. No. 9225. Under Section 4 of said law, derivative citizenship shall be extended only to the unmarried child, whether legitimate, illegitimate or adopted, below eighteen (18) years of age, of those who re-acquire Philippine citizenship thereunder.]

**c. Do the children — Johnny, Warlito Jr., and Luisa — become Filipino citizens with their father's reacquisition of Philippine citizenship? Explain your answer. (3%)**

Under Section 4 of RA 9225, derivative citizenship shall be extended only to the unmarried child, whether legitimate, illegitimate or adopted, below eighteen (18) years of age, of those who re-acquire Philippine citizenship thereunder.

Therefore, only Luisa, Warlito's minor child who is seventeen years old, or was a minor at the time of his reacquisition of Philippine citizenship, assuming she is unmarried or single, shall be deemed a citizen of the Philippines.

Johnny, who is 23 years old, and Warlito, Jr., who is 20 years old, are not covered by said provision.

## X

**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 sixty (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.**

**a. Is the Secretary of Education a proper party to seek the review of the CA decision exonerating Maximino? Reasons. (2%)**

No, the Secretary of Education cannot be considered as a proper party to seek the review of the Court of Appeals decision exonerating Maximino.

This would be consistent with the rule to the effect that the government party that can appeal is not the disciplining authority or tribunal which previously heard the case and imposed the penalty of dismissal

from the service. The government party appealing must be one that is prosecuting the administrative case against the respondent. Otherwise, an anomalous situation will result where the disciplining authority or tribunal hearing the case, instead of being impartial and detached, becomes an active participant in prosecuting the respondent. (*Mathay, Jr. v. Court of Appeals*, 378 Phil. 466 [1999]; *The National Appellate Board of the National Police Commission*, G.R. No. 153624, October 24, 2008; *Office of the Ombudsman v. Liggayu*, G.R. No. 174297, June 20, 2012)

**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. (3%)**

No, Maximino is not entitled to recover back salaries corresponding to the entire period that he was out of service. Specifically, he is not entitled to recover his salaries for the period during which he was under preventive suspension (pending investigation) for sixty days. (*Gloria v. Court of Appeals*, 306 SCRA 287)

He is however entitled to back salaries corresponding to the period of his preventive suspension pending appeal, *i.e.*, from the implementation of the order of dismissal by the Secretary of Education until his exoneration by the Supreme Court, considering that the conditions for his entitlement to said back salaries would have been met, to wit: a) the employee must be found innocent of the charges and b) his suspension must be unjustified. (*Bangalisan v. CA*, 342 Phil. 586 [1997], cited in *Civil Service Commission v. Cruz*, G.R. No. 187858, August 9, 2011)

An employee of the civil service who is ordered reinstated is also entitled to the full payment of his or her backwages during the entire period of time that he or she was wrongfully prevented from performing the duties of his or her position and from enjoying its benefits. (*Campol v. Balao*, G.R. No. 197634, November 28, 2016)

Indeed, he should be paid his back salaries and other benefits for the entire time that he should have been automatically reinstated at the rate owing to his position that he last received prior to his preventive suspension. (*Baculi v. Office of the President*, G.R. No. 188681, March 8, 2017)

[Note: “An employee who is exonerated is not entitled to the payment of his salaries because his suspension, being authorized by law, cannot be unjustified. To be entitled to such compensation, the employee must not only be found innocent of the charges but his suspension must likewise be unjustified. But though an employee is considered under preventive suspension during the pendency of his appeal in the event he wins, his suspension is unjustified because what the law authorizes is preventive suspension for a period not exceeding 90 days. Beyond that period the suspension is illegal. Hence, the employee concerned is entitled to reinstatement with full pay.” (*Miranda v. Commission on Audit*, 200 SCRA 657 [1991], at 662 [1991], citing *Gabriel v. Domingo*, 189 SCRA 672 [1990]; *Rubio v. PHHC*, 185 SCRA 656 [1990]; *Gementiza v. Court of Appeals*, 113 SCRA 477 [1982]; *Balquiedra v. CFI of Capiz*, 80 SCRA 123 [1977]; *Cristobal v. Melchor*, 78 SCRA 175 [1977], cited in *Gloria v. Court of Appeals*, G.R. No. 131012, April 21, 1999, 306 SCRA 287; see also *Trade and Investment Development Corporation of the Philippines v. Manalang-Demigilio*, G.R. No. 176343, September 18, 2012)]

## PART II

### XI

**TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)**

**a. Aliens are absolutely prohibited from owning private lands in the Philippines.**

**FALSE.**

Under Section 7 of Article XII of the Constitution, aliens may acquire private lands by hereditary succession.

Moreover, Under Section 8, also of Article XII, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, subject to limitations provided by law.

**b. A *de facto* public officer is, by right, entitled to receive the salaries and emoluments attached to the public office he holds.**

**FALSE.**

As a general rule, the *de facto* officer is not entitled as a matter of right to a salary and other compensation for services rendered by him as such. He may, however, collect said salaries as such if he assumes his office in good faith (*Rodriguez v. Tan*, 91 Phil. 724; *Menzon v. Petilla*, 197 SCRA 251) and there is no *de jure* officer claiming title to the office. (*Patterson v. Benson*, 112 Pac. 32)

**c. The President exercises the power of control over all executive departments and agencies, including government-owned or controlled corporations.**

TRUE.

Under Section 17 of Article VII of the Constitution, the President shall have control of all the executive departments, bureaus, and offices.

**d. Decisions of the Ombudsman imposing penalties in administrative disciplinary cases are merely recommendatory.**

FALSE.

The Ombudsman's decisions imposing penalties for disciplinary action are not merely recommendatory but are actually mandatory. (*Office of the Ombudsman v. Court of Appeals and Armilla,*, G.R. No. 160675, June 16, 2006; *Estarija v. Ranada*, G.R. No. 159314, June 26, 2006, 492 SCRA 652; *Office of the Ombudsman v. Santiago*, G.R. No. 161098, September 13, 2007; *Republic of the Philippines v. Bajao*, G.R. No. 160596, March 20, 2009)

**e. Dual citizenship is not the same as dual allegiance.**

TRUE.

Dual citizenship can be considered as different from dual allegiance. While dual citizenship may be involuntary, as in the case of a person born of parents whose country follows the *jus sanguinis* principle in a country which adopts the *jus soli* principle, dual allegiance is

generally considered to be the result of an individual's volition. (*Mercado v. Manzano*, 307 SCRA 630; AASJS [*Advocates and Adherents of Social Justice for School Teachers and Allied Workers*] v. *Datumanong*, G.R. No. 160869, May 11, 2007)

## XII

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.

a. 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. (3%)

Williams is not correct.

It is established that Philippine courts have jurisdiction over acts done even within said U.S. embassy grounds because the “ground occupied by an embassy is not in fact the territory of the foreign State to which the premises belong through possession or ownership. The lawfulness or unlawfulness of acts there committed is determined by the territorial sovereign.” (2 Hyde, *International Law Chiefly as Interpreted and Applied by the United States*, pp. 1285-1286 (1947), cited in *Reagan v. Commissioner of Internal Revenue*, G.R. No. L-26379, December 27, 1969)

**b. 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? (3%)**

No, William cannot claim that his “Miranda rights” were violated.

The rule is that a person under investigation for an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel, preferably of his own choice, prior to any questioning (*Miranda v. Arizona*, 384 US 436 [1966]), and not necessarily upon his arrest.

Moreover, even if he was informed of his rights in “halting” English, the essential thing is that he understood the same, as evidenced by his rather unreasonable request to be assisted by his Filipino lawyer then based

in the U.S. Said request, which was patently impracticable, was correctly addressed by the police who instead assigned a lawyer to assist him for the duration of the investigation.

**c. 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. (3%)**

No, he is not entitled to bail as a matter of right.

Article III, Section 13 of the Constitution provides that all persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable. Therefore, assuming that his offense is punishable by *reclusion perpetua* and the evidence of his guilt is strong, his petition for bail may be properly denied.

His reliance on the “international standard of justice” in support of his petition for bail cannot take precedence over our municipal rules on the matter, for it is settled that, in case of a conflict between a principle of international law and a municipal requirement, the latter should be made to prevail. (*Ichong v. Hernandez*, 101 Phil. 1155)

Indeed, there is no showing that our constitutional rule on entitlement to bail as a matter of right is in conflict or not compliant with the “international standard of justice” invoked or claimed by William.

**XIII**

**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.**

**a. Was the Philippine action justified under the international law principle of “self-defense”? Explain your answer. (3%)**

**Yes, the Philippines’ limited action against the private terrorist group located in Asyaland can be considered as justified under the international law principle of “self-defense.”**

**Article 51 of the Charter of the United Nations acknowledges the inherent right of individual or collective self-defense. The presence of an “armed attack” to jus-**

tify the exercise of the right of self-defense under this article suggests that forcible measures may be taken by a state only in the face of “a necessity of self-defense instant, overwhelming and leaving no choice of means and no moment for deliberation.” (Caroline, 1 Whart, Sec. 50, cited in Cruz and Cruz, *International Law*, 2020 Edition, page 138)

It is submitted that these conditions were present in the situation presented.

*[Acceptable Answer: No, the Philippines' limited action against the private terrorist group located in Asyaland cannot be considered as justified under the international law principle of “self-defense.” Mere apprehended danger or any direct threat to the state does not, by itself alone, warrant the employment by that state of any force against a suspected or potential enemy. (Caroline, 1 Whart, Sec. 50, cited in Cruz and Cruz, International Law, 2020 Edition, page 138)]*

**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. (3%)**

Asyaland’s claim that the Philippines violated Article 2.4 of the United Nations Charter is without merit.

The limited self-defense measure or action taken by the Philippines against the Emerald Brigade was, as stressed earlier, clearly undertaken only against the forces of this private terrorist group, and did not result in any real prejudice to Asyaland. It bears emphasis

that the Philippines undertook said measures only after it first invoked “diplomatic channels” to demand that “Asyaland stop the Emerald Brigade; otherwise, it will do whatever is necessary to defend itself.”

The Philippines’ retaliatory measure, pursued by it strictly as a measure of self-defense, cannot or should not be considered as a “threat or use of force against the territorial integrity or political independence” of Asyaland. Indeed, said retaliatory act is sanctioned under the aforesaid Article 51 of the United Nations Charter, which, it is submitted, is a special provision in the Charter which should take precedence as against the general pronouncement in said Article 2.4.

*[Acceptable Answer: The Philippines’ action taken against the Emerald Group can be considered as violative of the provisions of Article 2.4 of the United Nations Charter because of what may be considered as unwarranted intrusion into the territory of Asyaland, thereby undermining its territorial integrity and political independence. At the very least, the Philippines ought to have sought the cooperation and consent of Asyaland before it undertook the subject self-defense measures.]*

**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. (3%)**

The member of the Emerald Brigade should be subjected to the jurisdiction of the courts of the Philippines.

Although “terrorism” has largely been acknowledged as an international crime, the commission thereof can still be cognizable by the courts of the country where they are considered to have been committed, following the international law principles on criminal jurisdiction, to wit, *objective territorial jurisdiction*, where the state assumes jurisdiction over an offense, which produces, as in this case, results in its state, although initiated in another state; or the *passive personality principle*, where jurisdiction over the offense is vested in the state of the offended party, in this case, the Philippines; or even on the basis of the *universality principle*, where criminal jurisdiction is vested in the state which has custody of the offender, as in this case.

#### XIV

**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 Mataandang 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.**

**a. Decide with reasons. (3%)**

The suit should be dismissed.

Details relevant to pending treaty negotiations are generally considered privileged and may validly not be disclosed. The Supreme Court has invariably ruled that secrecy of negotiations with foreign countries is not violative of the constitutional provisions on freedom of speech or of the press or of the right of access to information. (*People's Movement for Press Freedom v. Manglapus*, G.R. No. 84642, Resolution of the Court *En Banc* dated September 13, 1988, cited in *AKBAYAN v. Aquino*, G.R. No. 170516, July 16, 2008)

**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? (3%)**

No.

It is submitted that contracts entered into by the Government in its proprietary or commercial capacity should be considered as transactions involving public interest which are, under Section 28 of Article II of the Constitution, subject to the policy of full public disclosure, subject only to reasonable conditions prescribed by law. (*Sereno v. Committee on Trade and Related Matters of the NEDA*, G.R. No. 175210, February 1, 2016)

[*Acceptable Answer*: Yes, provided it can be shown that information sought to be disclosed with respect to the contracts entered into, or which are sought to be executed, are in connection with treaties or executive agreements being negotiated or concluded with a foreign country. But only the details relevant to their negotiation may be considered as privileged, involving as they do our country's

diplomatic and economic relations with that other state, and may lawfully not be disclosed. (*Neri v. Senate Committee on Accountability*, G.R. No. 180643, September 4, 2008)]

## XV

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:

a. The act of MTRCB constitutes “prior restraint” and violates the constitutionally guaranteed freedom of expression; (3%) and

b. While Memorandum Circular No. 98-17 was issued and published in a newspaper of general circulation, a copy thereof was never filed with the Office of the National Register of the University of the Philippines Law Center. (2%)

Resolve the foregoing issues, with reasons.

a. The act of the MTRCB constitutes “prior restraint” and its order suspending the airing of KKK-TV programs can be considered as “subsequent punishment.” Both are therefore violative of freedom of expression. Any system of prior restraint has against it a heavy presumption against its validity. (*New York Times v. US*, 403 US 713)

There is no showing that the airing of the subject documentary would create a clear and present danger which may warrant the exercise by the MTRCB of its “power of prior review,” which, concededly can be acknowledged as a valid exercise of the police power. (*Iglesia ni Cristo v. Court of Appeals*, G.R. No. 119673, July 26, 1996)

b. Memorandum Circular No. 98-17 is unenforceable considering that it was never registered with the Office of the National Register of the University of the Philippines Law Center, as required under Sections 3[1] and 4, Chapter 2, Book VII of the Administrative Code of 1987. (*Philippine Association of Service Exporters, Inc. v. Torres*, 212 SCRA 298)

## XVI

a. **Angelina, a married woman, is a Division Chief in the Department of Science and Technology. She had been living with a married man, not her husband, for the last fifteen (15) years. Administratively charged with immorality and conduct prejudicial to the best interest of the service, she admits her live-in arrangement, but maintains that this conjugal understanding is in conformity with their religious beliefs. As members of the religious sect, *Yahweh's Observers*, they had ex-**

**cuted a Declaration of Pledging Faithfulness which has been confirmed and blessed by their Council of Elders. At the formal investigation of the administrative case, the Grand Elder of the sect affirmed Angelina's testimony and attested to the sincerity of Angelina and her partner in the profession of their faith. If you were to judge this case, will you exonerate Angelina? Reasons. (3%)**

I will exonerate Angelina.

It has been ascertained, after appropriate proceedings and on the basis of adequate evidence, that Angelina's claimed religious belief is sincere and that her live-in arrangement is in conformity with her and her live-in partner's religious beliefs. Accordingly, absent any evidence on the state's "compelling interest" to override respondent's religious belief and practice, to convict her would result in a violation of her religious freedom. Indeed, the state is duty-bound to pursue or adopt only such means in pursuing its interests as would be the least restrictive to religious freedom. (*Estrada v. Escritor*, 492 SCRA 1)

**b. Meanwhile, Jenny, also a member of *Yahweh's Observers*, was severely disappointed at the manner the Grand Elder validated what she considered was an obviously immoral conjugal arrangement between Angelina and her partner. Jenny filed suit in court, seeking the removal of the Grand Elder from the religious sect on the ground that his act in supporting Angelina not only ruined the reputation of their religion, but also violated the constitutional policy upholding the sanctity of marriage and the solidarity of the**

**family. Will Jenny's case prosper? Explain your answer. (2%)**

No. The separation of church and state shall be inviolable. (Constitution, Article II, Section 6)

Accordingly, intramural disputes regarding religious dogma and other matters of faith are outside the jurisdiction of secular authorities. (Cruz and Cruz, Constitutional Law, 2015 Edition, page 443) It is only where said intramural disputes somehow involve property or civil rights that courts may intervene, but only to the extent of such property or civil issues. Courts may not take cognizance of purely ecclesiastical matters. (*Fonacier v. Court of Appeals*, 96 Phil. 417; *Gonzales v. Archbishop of Manila*, 51 Phil. 420)

## XVII

**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.**

**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. (5%)**

As counsel for FCC, I can claim that there is no necessity for the expropriation and that the same cannot be considered as being for a public purpose.

The taking of the property would clearly result in a closure of the manufacturing plant and the consequent loss of employment for FCC's employees, which cannot be justified. These adverse effects can be invoked to reject the claimed public purpose underscoring the acquisition of the subject land for later subdivision and sale, though at cost, only to a few members of the City's population.

It is significant that the expropriation sought to be done by the City appears to be based on its general grant of authority to expropriate under the provisions of the Local Government Code, or not on the basis of a specific grant of legislative authority to exercise the power of eminent domain with respect to the subject land. Accordingly, the matter of it being for a public purpose can be subject to judicial review, being a justiciable question. (*City of Manila v. Chinese Community of Manila*, G.R. No. L-14355, October 31, 1919, 40 Phil. 349)

**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. (2%)**

No. All that FCC may do would be to insist on the payment of just compensation. It may not demand the return of the property. (*Forfom Development Corpora-*

*tion v. Philippine National Railways*, G.R. No. 124795, December 10, 2008; see *De Ynchausti v. Manila Electric Railroad & Light Co.*, 36 Phil. 908, 911-912 [1917]; *Department of Public Works and Highways v. Spouses Heracleo and Ramona Tecson*, G.R. No. 179334, July 1, 2013, 700 SCRA 243)

**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? (2%)**

Yes, since the “public purpose” or the reason for the expropriation or taking no longer exists, the City is bound to reconvey the property back to FCC, on condition that FCC return to the City whatever it may have received as and by way of just compensation. (*Mactan Cebu International Airport Authority v. Tudtud*, G.R. No. 174012, November 14, 2008; *Mactan-Cebu International Airport Authority v. Lozada, Sr.*, G.R. No. 176625, February 25, 2010)

## XVIII

**What are the essential elements of a valid petition for a people’s initiative to amend the 1987 Constitution? Discuss. (2%)**

Section 2 of Article XVII of the Constitution provides that amendments to the Constitution may be directly proposed by the people through initiative upon a petition of at least twelve *per centum* of the total num-

ber of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters therein.

It is further provided under Section 4, paragraph 2 of Article XVII of the Constitution that any amendment under Section 2 of Article XVII shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than sixty days nor later than ninety days after the certification by the Commission on Elections of the sufficiency of the petition.

Moreover, the Supreme Court has declared that, for there to be a valid initiative under the foregoing constitutional provisions, two essential elements must be present – *first*, the people must author and thus sign the entire proposal. No agent or representative can sign on their behalf, and, *second*, as an initiative upon a petition, the proposal must be embodied in a petition. The full text of the proposed amendments may be either written on the face of the petition, or attached to it. If so attached, the petition must state the fact of such attachment. (*Lambino v. COMELEC*, G.R. No. 174153, October 25, 2006)

**2010****PART I****I**

**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. (4%)**

The proposed amnesty can be considered as contrary to international law.

The mass killings of members of indigenous groups constitutes genocide, which is universally and customarily recognized as a crime, and as acknowledged and defined in several international covenants, among them being the Convention for the Prevention and Punishment of the Crime of Genocide and the Rome Statute of the International Criminal Court.

## II

### **Compare and contrast the jurisdiction of the International Criminal Court and International Court of Justice. (3%)**

The International Criminal Court is a permanent tribunal which prosecutes individuals for genocide, crimes against humanity, war crimes, and the crime of aggression. (Article 5, Rome Statute of the International Criminal Court)

The International Court of Justice is the judicial organ of the United Nations which shall exercise jurisdiction over all cases which the parties refer to it and all matters specially provided for in the Chapter of the United Nations or in treaties and conventions in force, including all legal disputes concerning the interpretation of a treaty, any question of international law, the existence of any fact which, if established, would constitute a breach of an international obligation, and the nature or extent of the reparation to be made for the breach of an international obligation. (UN Charter, Article 36) It may likewise give advisory opinions on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations. (*Ibid.*, Article 65)

## III

**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, specially 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.**

**a. Is there state responsibility on the part of Thailand? (2%)**

The Thai Government is liable.

Under the Doctrine of State Responsibility, a state may be held responsible for an international delinquency directly or indirectly imputable to it which causes injury to the national of another state. It may be held liable if it does not make reasonable efforts to prevent injury to the alien or, having done so unsuccessfully, as in this case, fails to repair such injury by employing the necessary diligence to arrest and punish the malefactors or otherwise redress the wrong committed. (See Cruz and Cruz, International Law, 2020 Edition, page 358.)

Although A's death is not directly imputable to the Thai Government, its "refusal" to assist his wife when she "sought relief" for her husband's death constitutes a failure to employ the necessary diligence to arrest and punish the malefactors or otherwise redress the wrong committed. It is established that a state can be held liable for its indifference in preventing or punishing a crime. In such a case, it can be considered as having connived in effect in its commission. This would be true notwithstanding A's contributory negligence.

**b. What is the appropriate remedy available to the victim's family under international law? (3%)**

The victim's family may resort to diplomatic protection and seek the assistance of Great Britain, which may file an international claim for damages, but only after the family shall first have exhausted all local remedies without success. (See Cruz and Cruz, International Law, 2020 Edition, page 359.)

This claim may also be resolved through negotiation or, if this fails, any of the other methods of settling disputes, like good offices, arbitration and judicial settlement. (See Cruz and Cruz, International Law, 2020 Edition, Chapter 17.)

#### IV

**Choose the statement which appropriately completes the opening phrase:**

**"A State which resorts to retorsion in international law**

- a. must ensure that all states consent to its act."**
- b. cannot curtail migration from the offending state."**
- c. can expel the nationals of the offending state."**
- d. should apply proportionate response within appreciable limit."**
- e. None of the above.**

**Explain your answer. (2%)**

Retorsion, as understood in International Law, is a retaliation by a state where the acts complained of do not constitute a legal ground of offense but is rather in the nature of an unfriendly act done primarily in pursuance of legitimate state interests but indirectly hurtful to other states. (Fenwick, 532) This act of retaliation is also unfriendly but not illegal and may be in kind or of a different nature than the act that provoked it. (See Cruz and Cruz, International Law, 2020 Edition, page 384.)

It is generally acknowledged as a measure of self-defense and therefore should be limited by necessity and should be proportionate to the act complained of. (Oppenheim's International Law, 9<sup>th</sup> Edition, Volume I, page 420)

## V

**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. (3%)**

The constitutional challenge is without merit.

Congresswoman A, consistent with the provisions of Section 12 of Article VI of the Constitution, duly dis-

closed in her Statement of Assets and Liabilities her co-ownership of the subject industrial estate upon her assumption into office. She did not author the questioned law and was therefore not obliged to notify the House of Representatives of the potential conflict of interest arising from her co-ownership of the same.

## VI

**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.**

**a. Does Mang Pandoy have legal standing to question the law? (2%)**

**b. Is the grant of authority to the Oversight Committee to screen beneficiaries constitutional? (3%)**

**Decide with reasons.**

a. Yes, *Mang Pandoy* has legal standing to question the law, as he is among those who may be directly benefited by the same, and may, in turn, suffer a direct

injury in case of its defective or deficient implementation.

b. No, such grant would partake of the nature of a legislative veto, and would therefore be unconstitutional, as it would entitle Congress to pre-empt the executive department's implementation of a law.

Moreover, the requirement that the implementation of a law would be subjected to approval by Congress, through its Joint-Congressional Oversight Committee, which is, as in this case, authorized "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," would violate the cardinal constitutional principles of bicameralism and the rule on presentment. (*Macalintal v. COMELEC*, G.R. No. 157013, July 10, 2003; *Abakada Guro Party List v. Purisima*, G.R. No. 166715, August 14, 2008)

## VII

### True or False.

a. **A proclamation of a state of emergency is sufficient to allow the President to take over any public utility. (0.5%)**

False.

[Note: Article XII, Section 17 of the Constitution is not a self-executing provision. There must be a law authorizing the President to take over any public utility. (*David v. Arroyo*, G.R. No. 171396, May 3, 2006)]

**b. A treaty which provides tax exemption needs no concurrence by a majority of all the Members of the Congress. (0.5%)**

False.

[Note: This rule does not imply, though, that the President is given *carte blanche* to exercise this discretion. Although the Chief Executive wields the exclusive authority to conduct our foreign relations, this power must still be exercised within the context and the parameters set by the Constitution, as well as by existing domestic and international laws. There are constitutional provisions that restrict or limit the President's prerogative in concluding international agreements, such as those that involve the following: a. The policy of freedom from nuclear weapons within Philippine territory. b. The fixing of tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or imposts, which must be pursuant to the authority granted by Congress. c. **The grant of any tax exemption, which must be pursuant to a law concurred in by a majority of all the Members of Congress.** d. The contracting or guaranteeing, on behalf of the Philippines, of foreign loans that must be previously concurred in by the Monetary Board. e. The authorization of the presence of foreign military bases, troops, or facilities in the country must be in the form of a treaty duly concurred in by the Senate. f. For agreements that do not fall under paragraph 5, the concurrence of the Senate is required, should the form of the government chosen be a treaty. (*Saguisag v. Executive Secretary*, G.R. No. 212426, January 12, 2016)]

## VIII

**Distinguish “presidential communications privilege” from “deliberative process privilege.” (3%)**

The Presidential Communications Privilege applies to the decision-making prerogative of the President. Its elements are –

a. The protected communication must relate to a “quintessential and non-delegable presidential power.”

b. The communication must be authored or “solicited and received” by a close advisor of the President or the President himself. The judicial test is that an advisor must be in “operational proximity” with the President.

c. The presidential communications privilege remains a qualified privilege that may be overcome by a showing of adequate need, such that the information sought “likely contains important evidence” and by the unavailability of the information elsewhere by an appropriate investigating authority.

On the other hand, the Deliberative Process Privilege applies to decision-making prerogative of executive officials and is based on common law privilege.

Unlike the deliberative process privilege, the presidential communications privilege applies to documents in their entirety, and covers final and post-decisional materials as well as pre-deliberative ones. As a consequence, congressional or judicial negation of the presidential communications privilege is always subject to greater scrutiny than denial of the deliberative process privilege. (*Neri v. Senate Committee on Accountability of Public Officers*, G.R. No. 180643, March 25, 2008)

## IX

**The League of Filipino Political Scientists (LFPS) organized an international conference on the human rights situation in Myanmar at the**

**Central Luzon State University (CLSU). An exiled Myanmar professor Sung Kui, critical of the military government in Myanmar, was invited as keynote speaker. The Secretary of Foreign Affairs informed the President of the regional and national security implications of having Prof. Kui address the conference. The President thereupon instructed the immigration authorities to prevent the entry of Prof. Kui into Philippine territory. The chancellor of CLSU argued that the instruction violates the Constitution. Decide with reasons. (4%)**

The instruction of the President is not unconstitutional.

Every sovereign power has the inherent right to exclude from its territory upon such grounds as it may deem proper for its self-preservation or public interest. (*Lao Tan Bun v. Fabre*, 81 Phil. 682 [1948], cited in *Harvey v. Santiago*, 162 SCRA 840; *Rosas v. Montor*, G.R. No. 204105, October 14, 2015)

The Philippine Government's national security concerns justify said instruction. States may regulate the entry, immigration and stay of aliens and to provide for their deportation whenever warranted. (See Cruz and Cruz, *International Law*, 2020 Edition, pages 364-365.)

## X

**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. (4%)**

The requests for a photocopy of the master plan of Camp Aquino and for Lt. Valdez's confirmation in writing that he had custody of the master plan would not be violative of the latter's right against self-incrimination.

The kernel of the right is against not all compulsion but testimonial compulsion only. (4 Wigmore, Sec. 2263; *People v. Malimit*, G.R. No. 109775 November 14, 1996; see *Office of the Court Administrator v. Judge Eliza B. Yu*, A.M. No. MTJ-12-1813, March 14, 2017)

While the prohibition generally applies to the compulsion for the production of documents, papers and chattels that may be used as evidence against persons, it may not be properly invoked in cases where the State has a right to inspect the same, such as the books of accounts of corporations, under the police power. (See 4 Wigmore, Sec. 2264)

The subject requests were merely consistent with the production orders made in connection with the application for the issuance of a writ of amparo. Moreover,

said requests pertained to public records. Accordingly, Lt. Valdez may not validly invoke his right against self-incrimination if said master plan were truly under his custody. (See *Secretary of National Defense v. Manalo*, G.R. No. 180906, October 7, 2008)

## XI

**Which statement best completes the following phrase: (1%)**

**“Freedom from torture is a right**

**a. subject to derogation when national security is threatened.”**

**b. confined only during custodial investigation.”**

**c. which is non-derogable both during peacetime and in a situation of armed conflict.”**

**d. both (a) and (b)**

**e. none of the above.**

## C

[Note: Under Article 2, Section 2 of the Convention Against Torture and Other Criminal, Inhuman or Degrading Treatment or Punishment, torture may not be justified under any exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency.]

## XII

**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 PO1 Nuval. The following day, PO1 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. PO1 Nuval insisted on getting inside the garage. Out of fear, the caretaker allowed him. PO1 Nuval took 2 ski masks and 2 bats beside the motorcycle. Was the search valid? What about the seizure? Decide with reasons. (4%)**

Both the warrantless search and the seizure, which were made one day after the murder of B, were invalid. They cannot be considered as falling within the coverage of any of the instances when warrantless searches and seizures are allowed or can be done.

PO1 Nuval had adequate opportunity to obtain a search warrant after he saw the subject motorcycle parked in the garage of the house, where the search was made. Moreover, there was no effective consent for the house to be searched, as the same was given “out of fear,” even if the caretaker could have validly given said consent, but only upon prior authorization of the owners of the house. (*People v. Damaso*, G.R. No. 93516, August 12, 1992) Ski masks and baseball bats are not unlawful *per se*, and their seizure cannot be justified as having been effected on the basis of a valid plain view search.

Accordingly, the warrantless search not having been lawfully made, the items seized would be inadmissible in evidence.

### XIII

#### **True or False.**

**a. A valid and definite offer to buy a property is a pre-requisite to expropriation initiated by a local government unit. (0.5%)**

True.

[Note: Under Section 19 of the Local Government Code, a local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: Provided, however, That **the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted:** Provided, further, That the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated: Provided, finally, That, the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value at the time of the taking of the property.]

**b. Re-classification of land by a local government unit may be done through a resolution. (0.5%)**

False.

[Note: Section 20 of the Local Government Code provides, in part, that a city or municipality may, **through an ordinance** passed by the sanggunian after conducting public hearings for the purpose, authorize the reclassification of agricultural lands and provide for the manner of their utilization or disposition xxx.]

**c. Boundary disputes between and among municipalities in the same province may be filed immediately with the Regional Trial Court. (0.5%)**

False.

[Note: See *Municipality of Sta. Fe v. Municipality of Aritao*, G.R. No. 140474, September 21, 2007]

**d. The Metropolitan Manila Development Authority is authorized to confiscate a driver's license in the enforcement of traffic regulations. (0.5%)**

False.

[Note: The MMDA generally has no statutory authority to confiscate driver's licenses without a prior authorization from the Land Transportation Office. (RA 4136, Section 29)]

[*Acceptable Answer*: True. (The MMDA may confiscate driver's licenses, if duly deputized by the Land Transportation Office and only in certain instances, *e.g.* when the driver was involved in a traffic accident or when he has accumulated three or more unsettled traffic violations.)]

#### XIV

**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 dizzy-**

ness among residents in Barangay La Paz. On complaint of the Punong Barangay, the City Mayor 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. (3%)

The cease and desist order is unlawful and its implementation may be properly enjoined by the Regional Trial Court.

An industrial waste processing plant cannot be considered as a nuisance *per se*, or as a nuisance under any and all circumstances, because it constitutes a direct menace to public health or safety, and, for that reason, may thus be abated summarily under the undefined law of necessity. (*Aquino v. Municipality of Malay, Aklan*, G.R. No. 211356, September 29, 2014)

It is rather a nuisance *per accidens* which “depends upon certain conditions and circumstances, and its existence being a question of fact, it cannot be abated without due hearing thereon in a tribunal authorized to decide whether such a thing does in law constitute a nuisance;” it may only be so proven in a hearing conducted for that purpose and may not be summarily abated without judicial intervention. (*Cruz and Dela Cruz v. Pandacan Hikers’ Club, Inc.*, G.R. No. 188213, January 11, 2016)

Accordingly, the operations of the industrial waste processing plant may be ordered stopped only after judicial proceedings. (*Parayno v. Jovellanos*, G.R. No. 148408, July 14, 2006)

## XV

### True or False.

**a. A person who occupies an office that is defectively created is a de facto officer. (0.5%)**

False.

[Note: There must be a *de jure* office. (*Tuanda v. Sandiganbayan*, G.R. No. 110544 October 17, 1995; *Arroyo v. Court of Appeals*, G.R. No. 202860, April 10, 2019)]

**b. The rule on nepotism does not apply to designations made in favor of a relative of the authority making a designation. (0.5%)**

False.

[Note: See *Laurel v. Civil Service Commission*, G.R. No. 71562 October 28, 1991.]

**c. A discretionary duty of a public officer is never delegable. (0.5%)**

True.

[Note: An officer to whom a discretion is entrusted cannot delegate it to another, the presumption being that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and unless the power to substitute another in his place has been given to him, he cannot delegate his duties to an-

other. In those cases in which the proper execution of the office requires, on the part of the officer, the exercise of judgment or discretion, the presumption is that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and, unless power to substitute another in his place has been given to him, he cannot delegate his duties to another. (*State v. Patterson*, 34 N. 567; 46 Corpus Juris, 1033; Mechem, Law of Public Officers, p. 567, cited in *Binamira v. Garrucho*, G.R. No. 92008 July 30, 1990, 188 SCRA 154)]

[Acceptable Answer: False.]

[Note: A delegate can exercise the discretionary duty if duly authorized. (See Cruz, The Law of Public Officers, 2018 Edition, pages 316-317; *American Tobacco Co. v. Director of Patents*, G.R. No. L-26803 October 14, 1975, 67 SCRA 286)]

**d. Acquisition of civil service eligibility during tenure of a temporary appointee does not automatically translate to a permanent appointment. (0.5%)**

True.

[Note: See *Maturan v. Maglana*, G.R. No. L-52091 March 29, 1982.]

## XVI

**Rudy Domingo, 38 years old, natural-born Filipino and a resident of the Philippines since birth, is a Manila-based entrepreneur who runs KABAKA, a coalition of peoples' organizations from fisherfolk communities. KABAKA's operations consist of empowering fisherfolk leaders through livelihood projects and trainings on good governance. The Dutch Foundation for Global Initiatives, a private organization registered in The Netherlands, receives a huge subsidy from**

**the Dutch Foreign Ministry, which, in turn is allocated worldwide to the Foundation's partners like KABAKA. Rudy seeks to register KABAKA as a party-list with himself as a nominee of the coalition. Will KABAKA and Rudy be qualified as a party-list and a nominee, respectively? Decide with reasons. (4%)**

No, KABAKA and Rudy cannot be considered as qualified to be a party-list and a nominee, respectively.

Although Rudy may appear to be qualified as a nominee of KABAKA, being a *bona fide* member of the party and a natural-born Filipino with the requisite age and residence (Section 9, RA 7941), KABAKA is not qualified to be registered as a party-list because it receives support from a foreign foundation, which receives a "huge subsidy from the Dutch Foreign Ministry." This is among the grounds for the refusal or cancellation of registration of a party-list. (Section 6(4), RA 7941)

## **PART II**

### **XVII**

**During his campaign sortie in Barangay Salamanca, Mayor Galicia was arrested at a PNP checkpoint for carrying high-powered firearms in his car. He was charged and convicted for violation of the COMELEC gun ban. He did not appeal his conviction and instead applied for executive clemency. Acting on the favorable recommendation of the Board of Pardons and Parole, the President granted him pardon. Is he eligible to run again for an elective position? Explain briefly. (5%)**

Yes, he may be qualified to run again for an elective position, provided his pardon would have been granted in his favor upon prior favorable recommendation of the Commission on Elections, his crime being an election offense. (Constitution, Article IX-C, Section 5)

A pardon exempts the individual on whom it is bestowed from the punishment which the law inflicts for the crime he has committed. (*Pellobello v. Palatino*, G.R. No. L-48100, June 20, 1941) and renders him eligible for elective local office. (Section 40, Local Government Code; See *Moreno v. Commission on Elections*, G.R. No. 168550, August 10, 2006.)

## XVIII

**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.**

**a. May X be compelled to appear and testify? If yes, what sanction may be imposed on him? (2%)**

Yes, X may be compelled to appear and testify, as his testimony would be crucial to the conduct of the

legislative inquiry. (*Sabio v. Gordon*, G.R. No. 174340, October 17, 2006) His failure or refusal to testify may subject him to arrest and punishment for legislative contempt. (*Arnault v. Nazareno*, G.R. No. L-3820, July 18, 1950)

**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? (3%)**

The Secretary may not validly invoke executive privilege, as the same pertains only to the President. Unless and until said privilege is invoked directly by the President with respect to the testimony of the Secretary, the latter may be punished for legislative contempt for his refusal to testify. (*Senate v. Ermita*, G.R. No. 169777, April 20, 2006; *Neri v. Senate Committee on Accountability of Public Officers*, G.R. No. 180643, September 4, 2008)

## XIX

**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. (5%)**

The principal is not liable.

The grotto and chapel were not constructed using public funds and were established “without additional cost to the Government.” It therefore cannot be said that their construction was violative of the constitutional prohibition against appropriations for sectarian purposes. (Article VI, Section 28 [2])

Moreover, the ecumenical religious services and seminars are held “after school hours” and therefore can be considered as consistent with the constitutional prescription on religious instruction. (Article XIV, Section 3 [3])

The construction of the subject grotto and chapel can be justified as a mere religious accommodation which has been acknowledged as not being offensive to or violative of the general precepts pertinent to religious freedom. (*Re: Letter of Tony Q. Valenciano*, A.M. No. 10-4-19-SC, March 7, 2017)

## XX

**Define/explain the following:**

**a. Doctrine of operative facts (1%)**

Under the *operative fact doctrine*, the law is recognized as unconstitutional but the effects of the unconstitutional law, prior to its declaration of nullity, may be left undisturbed as a matter of equity and fair play. In fact, the invocation of the operative fact doctrine is an admission that the law is unconstitutional. The operative fact doctrine is a rule of equity. As such, it must be

applied as an exception to the general rule that an unconstitutional law produces no effects. It can never be invoked to validate as constitutional an unconstitutional act. In short, the operative fact doctrine affects or modifies only the effects of the unconstitutional law, not the unconstitutional law itself. (*League of Cities of the Philippines v. COMELEC*, G.R. No. 176951, August 24, 2010)

The *doctrine of operative fact* only applies as a matter of equity and fair play. It nullifies the effects of an unconstitutional law by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences which cannot always be ignored. The doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law. (*Planters Products Inc. v. Fertiphil Corporation*, G.R. No. 166006, March 14, 2008)

**b. De facto municipal corporation (1%)**

A *de facto* municipal corporation is one organized under color of a statute before this was declared unconstitutional, its officers having been either elected or appointed, and the municipality itself having discharged its corporate functions preceding the institution of an action challenging the validity of its existence, and resulting in a declaration of its unlawfulness. (See *Municipality of Malabang v. Benito*, G.R. No. L-28113, March 28, 1969.)

**c. Municipal corporation by estoppel (1%)**

A municipal corporation by estoppel is one which is neither *de jure* nor *de facto* but is dealt or transacted with as such by individuals who are thereby precluded or estopped from denying their existence as municipal corporations by reason of said acknowledgment by said individuals of their existence.

**d. Doctrine of necessary implication  
(1%)**

Under the doctrine of necessary implication, the grant of an express power carries with it all the powers that may be reasonably inferred from it. (*Angara v. Electoral Commission*, G.R. No. L-45081, July 15, 1936)

**e. Principle of holdover (1%)**

The *principle of holdover* entitles the public officer who occupies an office with a fixed term to stay in office during the succeeding term, or after his original term had expired, and to remain in said office until his successor shall have been duly elected or appointed and qualified. (*Lecaroz v. Sandiganbayan*, G.R. No. 130872, March 25, 1999, 305 SCRA 396)

**XXI**

**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. (5%)**

The ordinance is valid and may be justified as a lawful exercise by the City of its police power under the General Welfare Clause of the Local Government Code. (Section 16)

## XXII

**Governor Diy was serving his third term when he lost his governorship in a recall election.**

**a. Who shall succeed Governor Diy in his office as Governor? (1%)**

The winner in the recall election shall be his successor. (Local Government Code, Section 72)

**b. Can Governor Diy run again as governor in the next election? (2%)**

Yes, he would be qualified to run in the next election because his third term was interrupted by his loss in the recall election. Accordingly, the three-term limit rule shall be inapplicable to him. (*Socrates v. Commission on Elections*, G.R. No. 154512, November 12, 2002, 391 SCRA 457; *Mendoza v. COMELEC*, G.R. No. 149736, December 17, 2002)

**c. Can Governor Diy refuse to run in the recall election and instead resign from his position as governor? (2%)**

He may not refuse to run in the recall election because, under the provisions of the Local Government Code, officials sought to be recalled shall automatically be considered as duly registered candidates and, like other candidates, shall be entitled to be voted upon.

(Local Government Code, Section 71) Neither is he allowed to resign. (*Ibid.*, Section 73)

### XXIII

**A was a career Ambassador when he accepted an *ad interim* appointment as Cabinet Member. The Commission on Appointments bypassed his *ad interim* appointment, however, and he was not re-appointed. Can he re-assume his position as career Ambassador? (5%)**

No, A cannot re-assume his position as a career Ambassador.

A's acceptance of his *ad interim* appointment as a Cabinet Member, which is a permanent appointment (*Matibag v. Benipayo*, G.R. No. 149036, April 2, 2002; *Pamantasan ng Lungsod ng Maynila v. Intermediate Appellate Court*, G.R. No. L-65439, November 13, 1985), necessarily resulted in his forfeiture of his position as Ambassador.

### XXIV

**Compare and contrast “overbreadth doctrine” from “void-for-vagueness” doctrine. (5%)**

Under the *overbreadth doctrine*, a governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms. The overbreadth doctrine is an analytical tool developed for testing “on their faces” statutes in free speech cases. It is not intended for testing the validity of a law that “reflects legitimate state interest

in maintaining comprehensive control over harmful, constitutionally unprotected conduct.”

Thus, claims of facial overbreadth are entertained in cases involving statutes which, by their terms, seek to regulate only “spoken words” and again, that “overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct.”

Under the *void-for-vagueness doctrine*, a law is rendered invalid if men of common intelligence must necessarily guess at its meaning and differ as to its application.

Related to the “overbreadth” doctrine is the “void for vagueness doctrine” which holds that “a law is facially invalid if men of common intelligence must necessarily guess at its meaning and differ as to its application.” It is subject to the same principles governing overbreadth doctrine. For one, it is also an analytical tool for testing “on their faces” statutes in free speech cases. And like overbreadth, it is said that a litigant may challenge a statute on its face only if it is vague in all its possible applications. (*David v. Arroyo*, G.R. No. 171396, May 3, 2006)

## XXV

### **a. What is the rotational scheme of appointments in the COMELEC? (2%)**

The Chairman and the Commissioners of the Commission on Elections shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, three Members

shall hold office for seven years, two Members for five years, and the last Members for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity. (Constitution, Article IX-C, Section 1[2])

**b. What are the two conditions for its workability? (2%)**

The two conditions are –

(1) that the terms of the first commissioners should *start on a common date*; and

(2) that any vacancy due to death, resignation or disability before the expiration of the term should be filled only for the unexpired balance of the term. (*Republic v. Imperial*, G.R. No. L-08684, March 31, 1955, 96 Phil. 770)

**c. To what other constitutional offices does the rotational scheme of appointments apply? (2%)**

The rotational scheme applies to –

1. the Commissioners of the Civil Service Commission (Constitution, Article IX-B, Section 1 [2]),

2. the Commissioners of the Commission on Audit (*Ibid.*, Article IX-D, Section 1 [2]),

3. the Senators (*Ibid.*, Article VI, Section 4, in relation to Article XVIII, Section 2) and

4. the regular members of the Judicial and Bar Council (*Ibid.*, Article VIII, Section 8 [2]).

## XXVI

**Distinguish between “pocket veto” and “item veto.” (2%)**

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.

## XXVII

**What is the concept of association under international law? (2%)**

An association is formed when two states of unequal power voluntarily establish durable links. In the basic model, one state, the associate, delegates certain responsibilities to the other, the principal, while maintaining its international status as a state. In international practice, the “*associated state*” arrangement has usually been used a transitional device of former colonies on their way to full independence. (*The Province of North Cotabato v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, G.R. No. 183591, October 14, 2008)

## 2011

**(1) Filipino citizenship may be acquired through judicial naturalization only by an alien**

(A) born, raised, and educated in the Philippines who has all the qualifications and none of the disqualifications to become a Filipino citizen.

**(B) who has all the qualifications and none of the disqualifications to become a Filipino citizen.**

(C) born and raised in the Philippines who has all the qualifications and none of the disqualifications to become a Filipino citizen.

(D) whose mother or father is a naturalized Filipino and who himself is qualified to be naturalized.

**(2) Jax Liner applied for a public utility bus service from Bacolod to Dumaguete from the Land Transportation Franchising and Regulatory Board (LTFRB). BB Express opposed. LTFRB ruled in favor of Jax. BB appealed to the Secretary of the Department of Transportation and Communication (DOTC), who reversed the LTFRB decision. Jax appealed to the Office of the President which reinstated the LTFRB's ruling. BB Express went to the Court of Appeals on certiorari questioning the decision of the Office of the President on the ground that Office of the President has no jurisdiction over the case in the absence of any law providing an appeal from DOTC to the Office of the President. Will the petition prosper?**

(A) No, exhaustion of administrative remedies up to the level of the President is a pre-requisite to judicial recourse.

**(B) No, the action of the DOTC Secretary bears only the implied approval of the President who is not precluded from reviewing the decision of the former.**

(C) Yes, when there is no law providing an appeal to the Office of the President, no such appeal may be pursued.

(D) Yes, the doctrine of qualified political agency renders unnecessary a further appeal to the Office of the President.

**(3) Where A is set for promotion to Administrative Assistant III and B to the post of Administrative Assistant II vacated by A, the appointing authority must**

**(A) submit to the CSC the two promotional appointments together for approval.**

(B) not appoint B until the CSC has approved A's appointment.

(C) submit to the Civil Service Commission (CSC) the second appointment after its approval of the first.

(D) simultaneously issue the appointments of A and B.

**(4) When a witness is granted transactional immunity in exchange for his testimony on how his immediate superior induced him to destroy public records to cover up the latter's act of mal-**

**versation of public funds, the witness may NOT be prosecuted for**

- (A) direct contempt.
- (B) infidelity in the custody of public records.**
- (C) falsification of public documents.
- (D) false testimony.

**(5) Mario, a Bureau of Customs' examiner, was administratively charged with grave misconduct and preventively suspended pending investigation. The head of office found him guilty as charged and ordered his dismissal. The decision against him was executed pending appeal. The Civil Service Commission (CSC) subsequently found him guilty and after considering a number of mitigating circumstances, reduced his penalty to only one month suspension. Is Mario entitled to back salaries?**

- (A) Yes, the reduction of the penalty means restoration of his right to back salaries.
- (B) No, the penalty of one month suspension carries with it the forfeiture of back salaries.
- (C) No, he is still guilty of grave misconduct, only the penalty was reduced.**
- (D) Yes, corresponding to the period of his suspension pending appeal less one month.

**(6) Althea, a Filipino citizen, bought a lot in the Philippines in 1975. Her predecessors-in-interest have been in open, continuous, exclusive**

**and notorious possession of the lot since 1940, in the concept of owner. In 1988, Althea became a naturalized Australian citizen. Is she qualified to apply for registration of the lot in her name?**

- (A) Yes, provided she acquires back her Filipino citizenship.
- (B) No, except when it can be proved that Australia has a counterpart domestic law that also favors former Filipino citizens residing there.
- (C) Yes, the lot is already private in character and as a former natural-born Filipino, she can buy the lot and apply for its registration in her name.**
- (D) No, foreigners are not allowed to own lands in the Philippines.

**(7) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court or when**

- (A) public safety or public health requires otherwise as prescribed by law.
- (B) dictated by the need to maintain public peace and order.
- (C) public safety or order requires otherwise as prescribed by law.**
- (D) public safety or order requires otherwise as determined by the President.

**(8) One advantage of a written Constitution is its**

- (A) reliability.
- (B) permanence.**
- (C) flexibility.
- (D) expediency.

**(9) An appointment held at the pleasure of the appointing power**

- (A) is essentially temporary in nature.**
- (B) requires special qualifications of the appointee.
- (C) requires justifiable reason for its termination.
- (D) is co-extensive with the term of the public officer who appointed him.

**(10) The city government filed a complaint for expropriation of 10 lots to build a recreational complex for the members of the homeowners' association of Sitio Sto. Tomas, the most populated residential compound in the city. The lot owners challenged the purpose of the expropriation. Does the expropriation have a valid purpose?**

- (A) No, because not everybody uses a recreational complex.
- (B) No, because it intends to benefit a private organization.**
- (C) Yes, it is in accord with the general welfare clause.
- (D) Yes, it serves the well-being of the local residents.

**(11) An example of a content-based restraint on free speech is a regulation prescribing**

- (A) maximum tolerance of pro-government demonstrations.**
- (B) a no rally-no permit policy.**
- (C) when, where, and how lawful assemblies are to be conducted.**
- (D) calibrated response to rallies that have become violent.**

**(12) The President forged an executive agreement with Vietnam for a year supply of animal feeds to the Philippines not to exceed 40,000 tons. The Association of Animal Feed Sellers of the Philippines questioned the executive agreement for being contrary to R.A. 462 which prohibits the importation of animal feeds from Asian countries. Is the challenge correct?**

- (A) Yes, the executive agreement is contrary to our existing domestic law.**
- (B) No, the President is the sole organ of the government in external relations and all his actions as such form part of the law of the land.**
- (C) No, international agreements are sui generis which must stand independently of our domestic laws.**
- (D) Yes, the executive agreement is actually a treaty which does not take effect without ratification by the Senate.**

**(13) Jose Cruz and 20 others filed a petition with the COMELEC to hold a plebiscite on their petition for initiative to amend the Constitution by shifting to a unicameral parliamentary form of government. Assuming that the petition has been signed by the required number of registered voters, will it prosper?**

- (A) No, only Congress can exercise the power to amend the Constitution.
- (B) Yes, the people can substantially amend the Constitution by direct action.
- (C) Yes, provided Congress concurs in the amendment.
- (D) No, since they seek, not an amendment, but a revision.**

**(14) The Comelec en banc cannot hear and decide a case at first instance EXCEPT when**

- (A) a Division refers the case to it for direct action.
- (B) the case involves a purely administrative matter.**
- (C) the inhibition of all the members of a Division is sought.
- (D) a related case is pending before the Supreme Court en banc.

**(15) Each of the Constitutional Commissions is expressly described as "independent," exemplified by its**

- (A) immunity from suit.
- (B) fiscal autonomy.**
- (C) finality of action.
- (D) collegiality.

**(16) There is double jeopardy when the dismissal of the first case is**

- (A) made at the instance of the accused invoking his right to fair trial.
- (B) made upon motion of the accused without objection from the prosecution.
- (C) made provisionally without objection from the accused.
- (D) based on the objection of the accused to the prosecution's motion to postpone trial.**

**(17) The new Commissioner of Immigration, Mr. Suarez, issued an Office Order directing the top immigration officials to tender courtesy resignation to give him a free hand in reorganizing the agency. In compliance, Director Sison of the Administrative Department tendered his resignation in writing which Mr. Suarez immediately accepted. Director Sison went to court, assailing the validity of his courtesy resignation and Mr. Suarez's acceptance of the same. Will the action prosper?**

- (A) No, Director Sison tendered his resignation and it was accepted.
- (B) No, estoppel precludes Director Sison from disclaiming the resignation he freely tendered.

(C) Yes, for so long as no one has yet been appointed to replace him, Director Sison may still withdraw his resignation.

**(D) Yes, Director Sison merely complied with the order of the head of office; the element of clear intention to relinquish office is lacking.**

**(18) An administrative rule that fixes rates is valid only when the proposed rates are**

(A) published and filed with the UP Law Center.

**(B) published and hearings are conducted.**

(C) published and posted in three public places.

(D) published and all stakeholders are personally notified.

**(19) The government sought to expropriate a parcel of land belonging to Y. The law provides that, to get immediate possession of the land, the government must deposit the equivalent of the land's zonal value. The government insisted, however, that what apply are the rules of court which require an initial deposit only of the assessed value of the property. Which should prevail on this matter, the law or the rules of court?**

(A) Both law and rules apply because just compensation should be fixed based on its zonal or assessed value, whichever is higher.

(B) Both law and rules apply because just compensation should be fixed based on its zonal or assessed value, whichever is lower.

**(C) The law should prevail since the right to just compensation is a substantive right that Congress has the power to define.**

(D) The rules of court should prevail since just compensation is a procedural matter subject to the rule making power of the Supreme Court.

[Note: (D) is offered as an acceptable answer because this would be consistent with the rule that the determination of just compensation is exclusively a prerogative of the Judiciary. (*Land Bank of the Philippines v. Escandor*, G.R. No. 171685, October 11, 201, 632 SCRA 504; *Land Bank v. Heirs of Listana*, G.R. No. 182758, May 30, 2011, 649 SCRA 416; see also *Land Bank of the Philippines v. Umandap*, G.R. No. 166298, November 17, 2010, 635 SCRA 116, and *Land Bank of the Philippines v. Heirs of Trinidad S. Vda. De Arieta*, G.R. No. 161834, August 11, 2010, 628 SCRA 43)]

**(20) After X, a rape suspect, was apprised of his right to silence and to counsel, he told the investigators that he was waiving his right to have his own counsel or to be provided one. He made his waiver in the presence of a retired Judge who was assigned to assist and explain to him the consequences of such waiver. Is the waiver valid?**

- (A) No, the waiver was not reduced in writing.
- (B) Yes, the mere fact that the lawyer was a retired judge does not cast doubt on his competence and independence.
- (C) Yes, the waiver was made voluntarily, expressly, and with assistance of counsel.**
- (D) No, a retired Judge is not a competent and independent counsel.

**(21) Governor Paloma was administratively charged with abuse of authority before the Office of the President. Pending hearing, he ran for reelection and won a second term. He then moved to dismiss the charge against him based on this supervening event. Should the motion be granted?**

- (A) Yes, Governor Paloma's reelection is an expression of the electorate's obedience to his will.
- (B) No, Governor Paloma's reelection cannot extinguish his liability for malfeasance in office.
- (C) No, Governor Paloma's reelection does not render moot the administrative case already pending when he filed his certificate of candidacy for his reelection bid.
- (D) Yes, Governor Paloma's reelection is an expression of the electorate's restored trust.**

**(22) The decision of the Regional Trial Court on appeals pertaining to inclusions or exclusions from the list of voters**

- (A) is inappealable.**
- (B) is subject to an action for annulment.
- (C) may be brought straight to the Supreme Court.
- (D) is appealable to the Commission on Elections.

[Note: (C) is offered as an acceptable answer in view of the basic *certiorari* (grave abuse discretion) jurisdiction of the Court. It should be noted though that said Rule 65 petition is an original action and is not by way of appeal. (*David v. Senate Electoral Tribunal*, G.R. No. 221538, September 20, 2016)]

**(23) The equal protection clause allows valid classification of subjects that applies**

- (A) only to present conditions.
- (B) so long as it remains relevant to the government.
- (C) for a limited period only.
- (D) for as long as the problem to be corrected exists.**

**(24) The President wants to appoint A to the vacant post of Associate Justice of the Supreme Court because of his qualifications, competence, honesty, and efficiency. But A's name is not on the list of nominees that the Judicial and Bar Council (JBC) submitted to the President. What should the President do?**

- (A) Request the JBC to consider adding A to the list.
- (B) Decline to appoint from the list.
- (C) Appoint from the list.**
- (D) Return the list to JBC.

**(25) Courts may still decide cases that have otherwise become academic when they involve**

- (A) the basic interest of people.**
- (B) petitions for habeas corpus.
- (C) acts of the Chief Executive.
- (D) Presidential election protests.

**(26) The right of the State to prosecute crimes by available evidence must yield to the right of**

- (A) the accused against self-incrimination.**
- (B) another State to extradite a fugitive from justice.
- (C) the State to deport undesirable aliens.
- (D) the complainant to drop the case against the accused.

**(27) A temporary appointee to a public office who becomes a civil service eligible during his tenure**

- (A) loses his temporary appointment without prejudice to his re-appointment as permanent.
- (B) has the right to demand conversion of his appointment to permanent.
- (C) automatically becomes a permanent appointee.
- (D) retains his temporary appointment.**

**(28) Upon endorsement from the Senate where it was first mistakenly filed, the House of Representatives Committee on Justice found the verified complaint for impeachment against the President sufficient in form but insufficient in substance. Within the same year, another impeachment suit was filed against the President who questioned the same for being violative of the Constitution. Is the President correct?**

(A) No, "initiated" means the Articles of Impeachment have been actually filed with the Senate for trial; this did not yet happen.

(B) No, the first complaint was not deemed initiated because it was originally filed with the Senate.

(C) Yes, the dismissal of the first impeachment proceeding bars the initiation of another during the same term of the President.

**(D) Yes, no impeachment proceeding can be filed against the President more than once within a year.**

**(29) The Solicitor General declines to institute a civil action on behalf of a government agency due to his strained relation with its head, insisting that the agency's lawyers can file the action. Is the Solicitor General correct?**

(A) Yes, when he deems he cannot harmoniously and effectively work with the requesting agency.

**(B) No, he must, in choosing whether to prosecute an action, exercise his discretion according to law and the best interest of the State.**

(C) Yes, as in any lawyer-client relationship, he has the right to choose whom to serve and represent.

(D) No, the Solicitor General's duty to represent the government, its offices and officers is mandatory and absolute.

**(30) A department secretary may, with the President's consent, initiate his appearance be-**

**fore the Senate or the House of Representatives which**

- (A) must seek the concurrence of the other House before acting.
- (B) must hold an executive session to hear the department secretary.
- (C) **may altogether reject the initiative.**
- (D) must accept such initiated appearance.

**(31) The Metro Manila Development Authority (MMDA) passed a rule authorizing traffic enforcers to impound illegally parked vehicles, for the first offense, and confiscate their registration plates for the second. The MMDA issued this rule to implement a law that authorized it to suspend the licenses of drivers who violate traffic rules. Is the MMDA rule valid?**

- (A) No, since the MMDA does not have rule-making power.
- (B) Yes, it is a valid exercise of the power of subordinate legislation.
- (C) Yes, it is an implicit consequence of the law upon which it acted.
- (D) **No, the rule goes beyond the sphere of the law.**

**(32) Senator Bondoc was charged with murder and detained at the Quezon City Jail. He invoked, in seeking leave from the court to attend the session of the Senate, his immunity from ar-**

**rest as a Senator. How should the court rule on his motion?**

- (A) Deny the motion unless the Senate issues a resolution certifying to the urgency of his attendance at its sessions.
- (B) Grant the motion provided he posts bail since he is not a flight risk.
- (C) Grant the motion so as not to deprive the people who elected him their right to be represented in the Senate.
- (D) Deny the motion since immunity from arrest does not apply to a charge of murder.

**(33) X, an administrative officer in the Department of Justice, was charged with grave misconduct and preventively suspended for 90 days pending investigation. Based on the evidence, the Secretary of Justice found X guilty as charged and dismissed him from the service. Pending appeal, X's dismissal was executed. Subsequently, the Civil Service Commission (CSC) reversed the Secretary's decision and the reversal became final and executory. What is the effect of X's exoneration?**

- (A) X is entitled to reinstatement and back salaries both during his 90 day preventive suspension and his suspension pending appeal.
- (B) X is entitled to reinstatement and back salaries corresponding only to the period of delay caused by those prosecuting the case against him.

(C) X is entitled to reinstatement but not to back salaries on ground of “*damnum absque injuria*.”

**(D) X is entitled to reinstatement and back salaries during his suspension pending appeal.**

**(34) Courts may dismiss a case on ground of mootness when**

(A) the case is premature.

(B) petitioner lacks legal standing.

**(C) the questioned law has been repealed.**

(D) the issue of validity of law was not timely raised.

**(35) Alfredo was elected municipal mayor for 3 consecutive terms. During his third term, the municipality became a city. Alfredo ran for city mayor during the next immediately succeeding election. Voltaire sought his disqualification citing the 3 term limit for elective officials. Will Voltaire’s action prosper?**

(A) No, the 3 term limit should not apply to a person who is running for a new position title.

(B) Yes, the 3 term limit applies regardless of any voluntary or involuntary interruption in the service of the local elective official.

**(C) Yes, the 3 term limit uniformly applies to the office of mayor, whether for city or municipality.**

(D) No, the 3 term limit should not apply to a local government unit that has assumed a different corporate existence.

**(36) In what scenario is an extensive search of moving vehicles without warrant valid?**

(A) The police became suspicious on seeing something on the car's back seat covered with blanket.

(B) The police suspected an unfenced lot covered by rocks and bushes was planted to marijuana.

(C) The police became suspicious when they saw a car believed to be of the same model used by the killers of a city mayor.

**(D) The driver sped away in his car when the police flagged him down at a checkpoint.**

**(37) Pre-proclamation controversies shall be heard**

(A) **summarily without need of trial.**

(B) through trial by commissioner.

(C) *ex parte*.

(D) through speedy arbitration.

**(38) When the President orders the Chief of the Philippine National Police to suspend the issuance of permits to carry firearms outside the residence, the President exercises**

(A) **the power of control.**

(B) the Commander-in-Chief power.

- (C) the power of supervision.
- (D) the calling out power.

**(39) Carlos, a foreign national was charged with and convicted of a serious crime in State X and sentenced to life imprisonment. His country applied for relief with the International Court of Justice (ICJ), arguing that State X did not inform Carlos of his right under Article 36 of the Vienna Convention to be accorded legal assistance by his government. State X, as signatory to the Vienna Convention, agreed to ICJ's compulsory jurisdiction over all disputes regarding the interpretation or application of the Vienna Convention. ICJ ruled that State X violated its obligation to provide consular notification to the foreign national's country. ICJ also required State X to review and reconsider the life sentence imposed on the foreign national. State X then wrote the United Nations informing that it was withdrawing from the Optional Protocol on Vienna Convention and was not bound by the ICJ decision. What principle of international law did State X violate?**

- (A) *Pacta Sunt Servanda*
- (B) Act of State Doctrine
- (C) Protective Principle
- (D) *Jus Cogens*

**(40) An informer told the police that a Toyota Car with plate ABC 134 would deliver an unspecified quantity of ecstasy in Forbes Park, Makati City. The officers whom the police sent to**

**watch the Forbes Park gates saw the described car and flagged it down. When the driver stopped and lowered his window, an officer saw a gun tucked on the driver's waist. The officer asked the driver to step out and he did. When an officer looked inside the car, he saw many tablets strewn on the driver's seat. The driver admitted they were ecstasy. Is the search valid?**

- (A) No, the rule on warrantless search of moving vehicle does not allow arbitrariness on the part of the police.
- (B) Yes, the police officers had the duty to verify the truth of the information they got and pursue it to the end.
- (C) Yes, the police acted based on reliable information and the fact that an officer saw the driver carrying a gun.**
- (D) No, police officers do not have unbridled discretion to conduct a warrantless search of moving vehicles.

**(41) The Commission on Elections is an independent body tasked to enforce all laws relative to the conduct of elections. Hence, it may**

- (A) conduct two kinds of electoral count: a slow but official count; and a quick but unofficial count.
- (B) make an advance and unofficial canvass of election returns through electronic transmission.
- (C) undertake a separate and unofficial tabulation of the results of the election manually.

**(D) authorize the citizens arm to use election returns for unofficial count.**

**(42) The President may proclaim martial law over a particular province subject to revocation or extension**

(A) by Congress, subject to ratification by the Supreme Court.

(B) by the Supreme Court.

**(C) by Congress alone**

(D) by Congress, upon recommendation of the respective Sangguniang Panlalawigan.

**(43) During his incumbency, President Carlos shot to death one of his advisers during a heated argument over a game of golf that they were playing. The deceased adviser's family filed a case of homicide against President Carlos before the city prosecutor's office. He moved to dismiss the case, invoking presidential immunity from suit. Should the case be dismissed?**

(A) Yes, his immunity covers his interactions with his official family, including the deceased adviser.

(B) No, his immunity covers only work-related crimes.

**(C) Yes, his immunity holds for the whole duration of his tenure.**

(D) No, his immunity does not cover crimes involving moral turpitude.

**(44) The School Principal of Ramon Magsaysay High School designated Maria, her daughter, as public school teacher in her school. The designation was assailed on ground of nepotism. Is such designation valid?**

(A) No, because the law prohibits relatives from working within the same government unit.

**(B) Yes, because Maria's position does not fall within the prohibition.**

(C) No, because her mother is not the designating authority.

(D) No, because Maria is related to the supervising authority within the prohibited degree of consanguinity.

**(45) The President's appointment of an acting secretary although Congress is in session is**

(A) voidable.

**(B) valid.**

(C) invalid.

(D) unenforceable.

**(46) Congress passed a bill appropriating P50 million in assistance to locally based television stations subject to the condition that the amount would be available only in places where commercial national television stations do not operate. The President approved the appropriation but vetoed the condition. Was the veto valid?**

- (A) Yes, since the vetoed condition may be separated from the item.
- (B) Yes, the President's veto power is absolute.
- (C) No, since the veto amounted to a suppression of the freedom to communicate through television.
- (D) No, since the approval of the item carried with it the approval of the condition attached to it.**

**(47) In the exercise of its power of legislative inquiries and oversight functions, the House of Representatives or the Senate may only ask questions**

- (A) that the official called is willing to answer.
- (B) that are relevant to the proposed legislation.
- (C) to which the witness gave his prior consent.
- (D) material to the subject of inquiry.**

**(48) An ordinance prohibits "notorious street gang members" from loitering in public places. The police are to disperse them or, if they refuse, place them under arrest. The ordinance enumerates which police officers can make arrest and defines street gangs, membership in them, and public areas. The ordinance was challenged for being vague regarding the meaning of "notorious street gang members." Is the ordinance valid?**

- (A) No, it leaves the public uncertain as to what conduct it prohibits.**

(B) No, since it discriminates between loitering in public places and loitering in private places.

(C) Yes, it provides fair warning to gang members prior to arrest regarding their unlawful conduct.

(D) Yes, it is sufficiently clear for the public to know what acts it prohibits.

**(49) The people may approve or reject a proposal to allow foreign investors to own lands in the Philippines through an electoral process called**

(A) referendum.

(B) plebiscite.

(C) initiative.

(D) certification.

**(50) Where a candidate for the Senate stated in his certificate of candidacy that he is single, when he is very much married, though separated, his certificate of candidacy**

(A) may be canceled.

(B) will subject him to a *quo warranto* action.

(C) remains valid.

(D) may be denied due course.

**(51) A candidate who commits vote buying on Election Day itself shall be prosecuted by the**

(A) COMELEC.

(B) Secretary of Justice.

- (C) police and other law enforcement agencies.
- (D) City or Provincial Prosecutor.

**(52) A law authorized the Secretary of Agriculture to require the quarantine of animals that suffer from dangerous communicable diseases at such place and for such time he deems necessary to prevent their spread. The Secretary of Agriculture issued a regulation, imposing a penalty of imprisonment for 10 days on persons transporting quarantined animals without his permission. The regulation is**

- (A) a valid exercise of the power of subordinate legislation.
- (B) invalid for being ultra vires.**
- (C) a valid exercise of police power.
- (D) invalid for being discriminatory.

**(53) Small-scale utilization of natural resources by Filipino citizens may be allowed by**

- (A) Congress.**
- (B) either the Senate or the House of Representatives.
- (C) the President.
- (D) the President with the consent of Congress.

**(54) When the Civil Service Commission (CSC) approves the appointment of the Executive Director of the Land Transportation Franchising**

**and Regulatory Board who possesses all the prescribed qualifications, the CSC performs**

- (A) a discretionary duty.
- (B) a mix discretionary and ministerial duty.
- (C) **a ministerial duty.**
- (D) a rule-making duty.

**(55) Xian and Yani ran for Congressman in the same district. During the canvassing, Yani objected to several returns which he said were tampered with. The board of canvassers did not entertain Yani's objections for lack of authority to do so. Yani questions the law prohibiting the filing of pre-proclamation cases involving the election of Congressmen since the Constitution grants COMELEC jurisdiction over all pre-proclamation cases, without distinction. Is Yani correct?**

- (A) Yes, the Constitution grants jurisdiction to COMELEC on all pre-proclamation cases, without exception.
- (B) **No, COMELEC's jurisdiction over pre-proclamation cases pertains only to elections for regional, provincial, and city officials.**
- (C) No, COMELEC's jurisdiction over pre-proclamation cases does not include those that must be brought directly to the courts.
- (D) Yes, any conflict between the law and the Constitution relative to COMELEC's jurisdiction must be resolved in favor of the Constitution.

**(56) When the Supreme Court nullified the decisions of the military tribunal for lack of jurisdiction, it excluded from their coverage decisions of acquittal where the defendants were deemed to have acquired a vested right. In so doing, the Supreme Court applied**

- (A) the operative fact doctrine.**
- (B) the rule against double jeopardy.**
- (C) the doctrine of supervening event.**
- (D) the orthodox doctrine.**

**(57) Accused X pleaded not guilty to the charge of homicide against him. Since he was admitted to bail, they sent him notices to attend the hearings of his case. But he did not show up, despite notice, in four successive hearings without offering any justification. The prosecution moved to present evidence in absentia but the court denied the motion on the ground that the accused has a right to be present at his trial. Is the court correct?**

- (A) No, the court is mandated to hold trial in absentia when the accused had been arraigned, had notice, and his absence was unjustified.**
- (B) Yes, it remains discretionary on the court whether to conduct trial in absentia even if the accused had been arraigned and had notice and did not justify his absence.**

(C) Yes, it is within the court's discretion to determine how many postponements it will grant the accused before trying him in absentia.

(D) No, the court may reject trial in absentia only on grounds of fraud, accident, mistake, or excusable negligence.

**(58) Following COMELEC Chairman Bocay's conviction for acts of corruption in the impeachment proceedings, he was indicted for plunder before the Sandiganbayan and found guilty, as charged. Can he get Presidential pardon on the plunder case?**

(A) No, plunder is not a pardonable offense.

(B) No, conviction in a criminal case for the same acts charged in the impeachment proceedings is not pardonable.

(C) Yes, convictions in two different fora for the same acts, are too harsh that they are not beyond the reach of the President's pardoning power.

**(D) Yes, conviction in court in a criminal action is subject to the President's pardoning power.**

**(59) A private person constituted by the court as custodian of property attached to secure a debt sought to be recovered in a civil proceeding is**

(A) a private sheriff.

(B) a public officer.

**(C) a private warehouseman.**

(D) an agent of the party to whom the property will ultimately be awarded.

**(60) The COMELEC en banc shall decide a motion for reconsideration of**

(A) the House or Representatives and the Senate electoral tribunals.

(B) the decision of the election registrar.

**(C) the decision of the COMELEC division involving an election protest.**

(D) its own decision involving an election protest.

**(61) Adela served as Mayor of Kasim for 2 consecutive terms. On her third term, COMELEC ousted her in an election protest that Gudi, her opponent, filed against her. Two years later, Gudi faced recall proceedings and Adela ran in the recall election against him. Adela won and served as Mayor for Gudi's remaining term. Can Adela run again for Mayor in the next succeeding election without violating the 3 term limit?**

(A) No, she won the regular mayoralty election for two consecutive terms and the recall election constitutes her third term.

(B) A. No, she already won the mayoralty election for 3 consecutive terms.

**(C) Yes, her ouster from office in her third term interrupted the continuity of her service as mayor.**

(D) Yes, the fresh mandate given her during the recall election erased her disqualification for a third term.

**(62) A child born in the United States to a Filipino mother and an American father is**

- (A) a Filipino citizen by election.
- (B) a repatriated Filipino citizen.
- (C) a dual citizen.
- (D) a natural born Filipino citizen.**

[Note: (C) is offered as an acceptable answer because of the concurrence in application of the *jus soli* and *jus sanguinis* principles.]

**(63) Involuntary servitude may be required as**

- (A) part of rehabilitation of one duly charged with a crime.
- (B) substitute penalty for one who has been duly tried for a crime.
- (C) punishment for a crime where one has been duly convicted.**
- (D) condition precedent to one's valid arraignment.

**(64) Van sought to disqualify Manresa as congresswoman of the third district of Manila on the ground that the latter is a greencard holder. By the time the case was decided against Manresa, she had already served her full term as con-**

**gresswoman. What was Manresa's status during her incumbency as congresswoman?**

- (A) She was a *de jure* officer, having been duly elected.
- (B) She was not a public officer because she had no valid existing public office.
- (C) She was a *de jure* officer since she completed her term before she was disqualified.
- (D) She was a de facto officer since she was elected, served, and her disqualification only came later.**

**(65) Whose appointment is NOT subject to confirmation by the Commission on Appointments?**

- (A) Chairman of the Civil Service Commission
- (B) Chief Justice of the Supreme Court**
- (C) Chief of Staff of the Armed Forces of the Philippines
- (D) Executive Secretary

**(66) The system of checks and balances operates when**

- (A) the President nullifies a conviction in a criminal case by pardoning the offender.**
- (B) Congress increases the budget proposal of the President.
- (C) the President does not release the countryside development funds to members of Congress.

(D) Congress expands the appellate jurisdiction of the Supreme Court, as defined by the Constitution.

**(67) The price of staple goods like rice may be regulated for the protection of the consuming public through the exercise of**

- (A) power of subordinate legislation.
- (B) emergency power.
- (C) police power.**
- (D) residual power.

**(68) Associate Justice A retires from the Supreme Court 90 days before the forthcoming Presidential election. May the incumbent President still appoint Justice A's successor?**

- (A) No, it will violate the Constitutional prohibition against midnight appointments.
- (B) Yes, vacancies in the Supreme Court should be filled within 90 days from occurrence of the vacancy.**
- (C) Yes, vacancies in the Supreme Court should be filled within 90 days from submission of JBC nominees to the President.
- (D) No, the incumbent President must yield to the choice of the next President

**(69) The President may set a limit on the country's import quota in the exercise of his**

- (A) delegated power.**
- (B) concurring power.

- (C) residual power.
- (D) inherent power.

**(70) Amor sued for annulment of a deed of sale of Lot 1. While the case was ongoing, Baltazar, an interested buyer, got a Certification from Atty. Crispin, the Clerk of Court, that Lot 1 was not involved in any pending case before the court. Acting on the certification, the Register of Deeds canceled the notice of lis pendens annotated on Lot 1's title. Amor filed a damage suit against Atty. Crispin but the latter invoked good faith and immunity from suit for acts relating to his official duty, claiming he was not yet the Clerk of Court when Amor filed his action. Decide.**

- (A) Atty. Crispin is immune from suit since he enjoys the presumption of regularity of performance of public duty.
- (B) Atty. Crispin's defense is invalid since he issued his certification recklessly without checking the facts.**
- (C) Atty. Crispin's defense is valid since he was unaware of the pendency of the case.
- (D) As Clerk of Court, Atty. Crispin enjoys absolute immunity from suit for acts relating to his work.

**(71) The Housing and Land Use Regulatory Board (HLURB) found Atlantic Homes, Inc. liable in damages arising from its delayed release of the title to the house and lot that it sold to Josephine. Atlantic appealed to the Office of the President which rendered a one page decision, affirming the**

**attached HLURB judgment. Atlantic challenges the validity of the decision of the Office of the President for not stating the facts and the law on which it is based. Is the challenge correct?**

- (A) No, the Office of the President is governed by its own rules respecting review of cases appealed to it.
- (B) Yes, the decision of the Office of the President must contain its own crafted factual findings and legal conclusions.
- (C) Yes, administrative due process demands that the Office of the President make findings and conclusions independent of its subordinate.
- (D) No, the Office of the President is not precluded from adopting the factual findings and legal conclusions contained in the HLURB decision.**

**(72) A collision occurred involving a passenger jeepney driven by Leonardo, a cargo truck driven by Joseph, and a dump truck driven by Lauro but owned by the City of Cebu. Lauro was on his way to get a load of sand for the repair of the road along Fuente Street, Cebu City. As a result of the collision, 3 passengers of the jeepney died. Their families filed a complaint for damages against Joseph who in turn filed a third party complaint against the City of Cebu and Lauro. Is the City of Cebu liable for the tort committed by its employee?**

**(A) The City of Cebu is not liable because its employee was engaged in the discharge of a governmental function.**

(B) The City of Cebu is liable for the tort committed by its employee while in the discharge of a non-governmental function.

(C) The City of Cebu is liable in accord with the precept of respondeat superior.

(D) The City of Cebu is not liable as a consequence of its non-suitability.

**(73) During promulgation of sentence, the presence of the accused is mandatory but he may appear by counsel or representative when**

**(A) he is charged with a light offense.**

(B) he was able to cross-examine the prosecution's witnesses.

(C) he waives his right to be present.

(D) he is convicted of a bailable offense.

**(74) An information for murder was filed against X. After examining the case records forwarded to him by the prosecution, the trial judge granted bail to X based on the prosecution's manifestation that it was not objecting to the grant of bail. Is the trial judge correct?**

(A) Yes, the trial judge may evaluate the strength or weakness of the evidence based on the case records forwarded to him.

**(B) No, the trial judge should have held a hearing to ascertain the quality of the evidence of guilt that the prosecution had against X.**

(C) No, the trial judge should have conducted a hearing to ascertain first whether or not X was validly arrested.

(D) Yes, the trial judge may reasonably rely on the prosecution's manifestation that he had no objection to the grant of bail.

**(75) The President CANNOT call out the military**

**(A) to enforce customs laws.**

(B) to secure shopping malls against terrorists.

(C) to arrest persons committing rebellion.

(D) to raid a suspected haven of lawless elements.

**(76) Mass media in the Philippines may be owned and managed by**

**(A) corporations wholly owned and managed by Filipinos.**

(B) corporations 60% owned by Filipinos.

(C) corporations wholly owned by Filipinos.

(D) corporations 60% owned and managed by Filipinos.

**(77) Procedural due process in administrative proceedings**

**(A) requires the tribunal to consider the evidence presented.**

(B) allows the losing party to file a motion for reconsideration.

(C) requires hearing the parties on oral argument.

(D) permits the parties to file memoranda.

**(78) The Constitution prohibits cruel and inhuman punishments which involve**

**(A) torture or lingering suffering.**

(B) primitive and gross penalties.

(C) unusual penal methods.

(D) degrading and queer penalties.

**(79) Judge Lloyd was charged with serious misconduct before the Supreme Court. The Court found him guilty and ordered him dismissed. Believing that the decision was not immediately executory, he decided a case that had been submitted for resolution. The decision became final and executory. But the losing party filed a certiorari action with the Court of Appeals seeking to annul the writ of execution issued in the case and bar Judge Lloyd from further acting as judge. Can the relief against Judge Lloyd be granted?**

**(A) No, Judge Lloyd's right to stay as judge may be challenged only by direct proceeding, not collaterally.**

(B) Yes, the action against Judge Lloyd may be consolidated with the case before the Court of Appeals and decided by it.

(C) Yes, Judge Lloyd's right to stay as judge may be challenged as a necessary incident of the certiorari action.

(D) No, the losing party has no standing to challenge Judge Lloyd's right to stay as judge.

**(80) Executive Secretary Chua issued an order prohibiting the holding of rallies along Mendiola because it hampers the traffic flow to Malacanang. A group of militants questioned the order for being unconstitutional and filed a case against Secretary Chua to restrain him from enforcing the order. Secretary Chua raised state immunity from suit claiming that the state cannot be sued without its consent. Is the claim correct?**

(A) No, public officers may be sued to restrain them from enforcing an act claimed to be unconstitutional.

(B) Yes, the order was not a proprietary act of the government.

(C) No, only the president may raise the defense of immunity from suit.

(D) Yes, Secretary Chua cannot be sued for acts done in pursuance to his public office.

**(81) Anton was the duly elected Mayor of Tunawi in the local elections of 2004. He got 51% of all the votes cast. Fourteen months later, Victoria, who also ran for mayor, filed with the Local**

**Election Registrar, a petition for recall against Anton. The COMELEC approved the petition and set a date for its signing by other qualified voters in order to garner at least 25% of the total number of registered voters or total number of those who actually voted during the local election in 2005, whichever is lower. Anton attacked the COMELEC resolution for being invalid. Do you agree with Anton?**

(A) No, the petition, though initiated by just one person, may be ratified by at least 25% of the total number of registered voters.

(B) No, the petition, though initiated by just one person may be ratified by at least 25% of those who actually voted during the 2004 local elections.

(C) Yes, the petition should be initiated by at least 25% of the total number of registered voters who actually voted during the 2004 local elections.

(D) Yes, the petition should be initiated by at least 25% of the total number of registered voters of Tunawi.

(82) Using the description of the supplier of shabu given by persons who had been arrested earlier for selling it, the police conducted a surveillance of the area indicated. When they saw a man who fitted (*sic*) the description walking from the apartment to his car, they approached and frisked him and he did not object. The search yielded an unlicensed gun tucked on his waist and shabu in his car. Is the search valid?

**(A) No, the man did not manifest any suspicious behavior that would give the police sufficient reason to search him.**

(B) Yes, the police acted on reliable information which proved correct when they searched the man and his car.

(C) Yes, the man should be deemed to have waived his right to challenge the search when he failed to object to the frisking.

(D) No, reliable information alone, absent any proof beyond reasonable doubt that the man was actually committing an offense, will not validate the search.

**(83) A law interfering with the rights of the person meets the requirements of substantive due process when**

(A) the means employed is not against public policy.

(B) it is in accord with the prescribed manner of enforcement as to time, place, and person.

(C) all affected parties are given the chance to be heard.

**(D) the interest of the general public, as distinguished from those of a particular case, requires such interference.**

**(84) A judge of the Regional Trial Court derives his powers and duties from**

**(A) statute.**

- (B) the President, the appointing power.
- (C) Supreme Court issuances.
- (D) the rules of court.

**(85) When an elective official's preventive suspension will result in depriving his constituents of his services or representation, the court may**

- (A) require the investigating body to expedite the investigation.**
- (B) hold in abeyance the period of such suspension.
- (C) direct the holding of an election to fill up the temporary vacancy.
- (D) shorten the period of such suspension.

**(86) When the State requires private cemeteries to reserve 10% of their lots for burial of the poor, it exercises its**

- (A) eminent domain power.**
- (B) zoning power.
- (C) police power.
- (D) taxing power.

**(87) In the valid exercise of management prerogative consistent with the company's right to protect its economic interest, it may prohibit its employees from**

- (A) joining rallies during their work shift.

- (B) marrying employees of competitor companies.
- (C) publicly converging with patrons of competitor companies.
- (D) patronizing the product of competitor companies.**

**(88) The President issued an executive order directing all department heads to secure his consent before agreeing to appear during question hour before Congress on matters pertaining to their departments. Is the executive order unconstitutional for suppressing information of public concern?**

- (A) No, because those department heads are his alter egos and he is but exercising his right against self-incrimination.
- (B) Yes, the President cannot control the initiative of the department heads to conform with the oversight function of Congress.
- (C) Yes, the President cannot withhold consent to the initiative of his department heads as it will violate the principle of check and balance.
- (D) No, the President has the power to withhold consent to appearance by his department heads during question hour.**

**(89) When the President contracted a personal loan during his incumbency, he may be sued for sum of money**

- (A) during his term of office.
- (B) during his tenure of office.

- (C) after his term of office.
- (D) after his tenure of office.**

**(90) The Senate Blue Ribbon Committee summoned X, a former department secretary, to shed light on his alleged illicit acquisition of properties claimed by the Presidential Commission on Good Government. X sought to restrain the Committee from proceeding with its investigation because of a pending criminal case against him before the Sandiganbayan for ill-gotten wealth involving the same properties. Decide. The investigation may**

- (A) not be restrained on ground of separation of powers.
- (B) be restrained on ground of prejudicial question.
- (C) not be restrained on ground of presumed validity of legislative action.
- (D) be restrained for being sub judice.**

[Note: (A) is offered as an acceptable answer as this would be considered as consistent with the rule that the conduct and subjects of legislative inquiries are political questions. (*De la Paz v. Senate*, G.R. No. 184849, February 13, 2009)]

**(91) A government that actually exercises power and control as opposed to the true and lawful government is in terms of legitimacy**

- (A) a government of force.
- (B) an interim government.
- (C) a de facto government.**

(D) an illegitimate government.

**(92) The Special Committee on Naturalization is headed by**

- (A) the Secretary of Justice.
- (B) the Secretary of Foreign Affairs.
- (C) the National Security Adviser.
- (D) the Solicitor General.**

**(93) The President issued Proclamation 9517 declaring a state of emergency and calling the armed forces to immediately carry out necessary measures to suppress terrorism and lawless violence. In the same proclamation, he directed the government's temporary takeover of the operations of all privately owned communication utilities, prescribing reasonable terms for the takeover. Is the takeover valid?**

- (A) Yes, it is an implied power flowing from the President's exercise of emergency power.
- (B) No, it is a power reserved for Congress alone.**
- (C) Yes, subject to ratification by Congress.
- (D) No, it is a power exclusively reserved for the People's direct action.

**(94) A candidate for Senator must be at least 35 years old on**

- (A) the day he is duly proclaimed.
- (B) the day the election is held.**

- (C) the day he files his certificate of candidacy.
- (D) the day he takes his oath of office.

**(95) The Office of the Special Prosecutor may file an information against a public officer for graft**

- (A) on its own initiative subject to withdrawal of the information by the Ombudsman.
- (B) independently of the Ombudsman, except in plunder cases.
- (C) only when authorized by the Ombudsman.**
- (D) independently of the Ombudsman.

**(96) Since the Constitution is silent as to who can appoint the Chairman of the Commission on Human Rights, the President appointed W to that position without submitting his appointment to the Commission on Appointments for confirmation. Is W's appointment by the President valid?**

- (A) No, since the position of Chairman of the Commission was created by statute, the appointment of its holder requires the consent of Congress.
- (B) Yes, since the power to appoint in the government, if not lodged elsewhere, belongs to the President as Chief Executive.**
- (C) Yes, since the power to fill up all government positions mentioned in the Constitution has been lodged in the President.

(D) No, because absent any express authority under the Constitution, the power to appoint does not exist.

**(97) The Chief Justice appointed X, the President's sister, as Assistant Court Administrator in the Supreme Court during the President's tenure. Claiming that the Constitution prohibits the appointment in government of a President's relative, a taxpayer asks for its nullification. Will the challenge prosper?**

(A) Yes, since the appointment essentially violates the law against nepotism.

(B) Yes, because relatives of the President within the fourth civil degree cannot be appointed as heads of offices in any department of government.

(C) No, X's appointment, although in the government, is not in the Executive Department that the President heads.

**(D) No, the position to which X was appointed is not among those prohibited under the Constitution.**

**(98) May an incumbent Justice of the Supreme Court be disbarred as a lawyer?**

(A) No, it will amount to removal.

(B) No, his membership in the bar is secure.

(C) Yes, by the Supreme Court itself.

(D) Yes, by Congress in joint session.

**(99) Mayor Lucia of Casidsid filed her certificate of candidacy for congresswoman of the district covering Casidsid. Still, she continued to act as mayor of Casidsid without collecting her salaries as such. When she lost the election and a new mayor assumed office, she filed an action to collect the salaries she did not get while serving as mayor even when she ran for congresswoman. Is her action correct?**

- (A) No, salaries can be waived and she waived them.
- (B) No, because her acts as de facto officer are void insofar as she is concerned.**
- (C) Yes, public policy demands that a de facto officer enjoy the same rights of a *de jure* officer.
- (D) A. Yes, it is but just that she be paid for the service she rendered.

**(100) X, a Filipino and Y, an American, both teach at the International Institute in Manila. The institute gave X a salary rate of P1,000 per hour and Y, P1,250 per hour plus housing, transportation, shipping costs, and leave travel allowance. The school cited the dislocation factor and limited tenure of Y to justify his high salary rate and additional benefits. The same package was given to the other foreign teachers. The Filipino teachers assailed such differential treatment, claiming it is discriminatory and violates the equal protection clause. Decide.**

- (A) The classification is based on superficial differences.**

- (B) The classification undermines the “Filipino First” policy.
- (C) The distinction is fair considering the burden of teaching abroad.
- (D) The distinction is substantial and uniformly applied to each class.

## 2012

### Set A

**1. Constitution is defined by Cooley as:**

a. a body of statutory, administrative and political provisions by which the three branches of government are defined.

**b. a body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised.**

c. a body of rules and edicts emanating from the rulings of courts and written guidelines of the executive and the legislature by which government is governed.

d. a body of interpretations and rules by which the three branches of government are judged for purposes of sovereign compliance with good corporate governance.

**2. The three essential parts of a Constitution are:**

**a. the bill of rights, governmental organization and functions, and method of amendment.**

b. the preamble, the bill of rights, and provisions on checks and balances.

c. the national territory, the declaration of principles and state policies, and the transitory provisions.

d. the executive department, the legislative department and the judiciary.

**3. The constitutional provision on initiative and referendum is not self-executory. This is so because it requires:**

a. an implementing resolution from the COMELEC.

b. an implementing resolution from the Supreme Court.

**c. an implementing legislation.**

d. an implementing resolution from the party-list representative of the House of Representatives.

**4. In an amendment to the constitution by “initiative and referendum”, the “initiative” phase is meant that the people propose the amendments. There is a valid proposal when a proposition has received the approval of:**

a. at least 3% of the persons of majority age of each district, and 12% of the registered voters of the region from proposal emanates.

b. at least 3% of the registered voters of each province and 12% of the total number of registered voters nationwide.

**c. at least 3% of the registered voters of each district and 12% of the total number of registered voters nationwide.**

d. more than 3% of the 3% of the registered voters of each district but less than 12% of the total number of registered voters nationwide.

**5. The Constitution declares that the Philippines is a republican state. Republicanism means:**

a. the form of government must be presidential.

**b. the representatives of the government are elected by the people.**

c. sovereignty resides in the elected representatives of the government.

d. the form of government cannot be changed by the people.

**6. A chief characteristic of the presidential form of government is:**

a. concentration of power in the judiciary thru the power of expanded judicial review.

b. supremacy of the presidency compared to the totality of powers of the legislative.

**c. regular periodic election of the President for a fixed term.**

d. unlimited term for the President for as long as elected by the people in free and honest elections.

**7. Which of the following best exemplifies how the system of checks and balances is carried out:**

a. the legislature passes a law that prohibits the president from commuting a judiciary imposed sentence, as a check of the president.

**b. the President pardons a convict as a way to set aside or modify a judgment of the judiciary.**

c. the judiciary overturns a pardon granted by the President as a check on executions.

d. the President pardons an accused after arraignment in the interest of justice.

**8. Which phrase best completes the statement – The starting point of the principle of separation of powers is the assumption of the division of the functions of government into three distinct classes:**

a. the bill of rights, state policies, and social justice and human rights.

b. the accountability of public officers, the constitutional commissions, and the national economy and patrimony.

c. the self-executing provisions, the non-self-executing provisions, and the self-evident social justice provisions.

**d. the executive, the legislative, and the judicial.**

**9. The Constitution provides that the “separation of church and state shall be inviolable.” This is implemented most by the constitutional principles embodied in:**

- a. the free exercise clause.
- b. the non-establishment clause.**
- c. the freedom of religious belief clause.
- d. the freedom of religion clause.

**10. Which one of the following is a non-self-executing provision of the Constitution:**

- a. no law shall be passed abridging the freedom of speech.
- b. no law shall be made respecting an establishment of religion.
- c. no person shall be held to answer for a criminal offense without due process of law.
- d. the state shall encourage and support researches and studies on the arts and culture.**

**11. Basic Philippine law, in respect of the modes of acquiring citizenship, follows the rule(s) of:**

- a. *jus soli* and *jus sanguinis*.
- b. naturalization and provides for *jus soli*.
- c. *jus sanguinis* and provides for naturalization.**
- d. none of the above.

**12. Dual allegiance by citizen is:**

- a. inimical to the national interest and is therefore proscribed by law.

b. inimical to the national interest and is therefore prescribed by law.

**c. inimical to the national interest and therefore shall be dealt with by law.**

d. inimical to the national interest and is therefore outside of coverage of law.

**13. Margarita was born in 1986 to a Filipino mother and Swedish father. She has been living and continues to live in the US for the last 20 years and has also been naturalized as a US citizen. She recently reacquired Philippine citizenship under RA 9225, the Citizenship Retention and Reacquisition Act of 2003. Can Margarita vote in the next national elections?**

**a. Yes. Dual citizens who are not residents may register under the Overseas Absentee Voting Law.**

b. Yes. Margarita is a Filipino citizen and thus may enjoy the right to suffrage like everyone else without registering as an overseas absentee voter.

c. No. Margarita fails the residency requirement under Section 1, Article V of the Constitution for Filipinos.

d. No. Dual citizens upon renunciation of their Filipino citizenship and acquisition of foreign citizenship, have practically and legally abandoned their domicile and severed their legal ties to their homeland as a consequence.

**14. Identify which one is an invalid exercise of the legislative power:**

a. legislation by local government on purely local matters.

**b. law granting an administrative agency the power to define policy and fix standards on price control.**

c. law authorizing the President, in times of war or other national emergency, for a limited period, subject to prescribed restrictions, to exercise powers necessary and proper to carry out a declared national policy.

d. law authorizing the President to fix, within specific limits, tariff rates, import and export quotas, and other duties, within the framework of the national development program of the government.

**15. Which one of the following theories does not support the valid delegation of authority by the Congress to an administrative agency:**

a. an administrative agency may "fill up the details" of a statute.

b. the legislature may leave to another body the ascertainment of facts necessary to bring the law into actual operation.

**c. an administrative agency has equal expertise with the legislature in crafting and implementing laws.**

d. contingent legislation.

**16. The rule in Article VI, Section 5 (3) of the Constitution that “Each legislative district shall comprise, as far as practicable, contiguous, compact and adjacent territory” is a prohibition against:**

- a. re-apportionment.
- b. commandeering of votes.
- c. **Gerrymandering.**
- d. re-districting.

**17. Article VI, Section 5(3) of the Constitution requires that for a city to be entitled to have at least one representative, its population shall be at least:**

- a. **250,000.**
- b. 150,000.
- c. 100,000.
- d. 175,000.

**18. A Senator or Member of the House of Representatives shall be privileged from arrest while Congress is in session for all offenses punishable by imprisonment of not more than:**

- a. life imprisonment.
- b. reclusion perpetua.
- c. **six years imprisonment.**
- d. four years imprisonment.

**19. No Senator or member of the House of Representatives may personally appear as counsel before:**

- a. any regional court.
- b. any court of justice.**
- c. any inferior court.
- d. any appellate court.

**20. Which of the following can be changed by an ordinary law enacted by Congress?**

- a. Commencement of the term of office of Senators.**
- b. Date of regular election for President and Vice Presidential.
- c. Authority to transfer appropriation.
- d. Regular election of the members of Congress.

[Note: (d) is offered as an acceptable answer. (Constitution, Article VII, Section 4, 3<sup>rd</sup> paragraph)]

**21. Congress shall have the sole power to declare the existence of a state of war by vote of:**

- a. three-fourths of both Houses in joint session assembled, voting jointly.
- b. two-thirds of both Houses in joint session assembled, voting jointly.
- c. two-thirds of both Houses in separate session assembled, voting jointly.

**d. two-thirds of both Houses in joint session, voting separately.**

**22. 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:**

- a. referred.
- b. unacted.
- c. refilled.
- d. re-enacted.**

**23. Provisions unrelated to an appropriation bill are considered prohibited. These are called:**

- a. interlopers.
- b. riders.**
- c. outriggers.
- d. add-ons.

**24. The requirement that “Every bill shall embrace only one subject which shall be expressed in the title thereof” prevents:**

- a. rollercoaster legislation.
- b. log-rolling legislation.**
- c. rolling fields legislation.
- d. loggerhead legislation.

**25. The power of the President to veto any particular part in an appropriation revenue, or tariff bill, is called the:**

- a. specific veto.
- b. revenue veto.
- c. item veto.**
- d. monetary veto.

**26. A tax is progressive when:**

- a. the rate fluctuates as the tax base decreases.
- b. the rate increases as the tax base remains the same.
- c. the rate increases as the tax base increases.**
- d. the rate decreases as the tax base increases.

**27. When the Supreme Court sits en banc, cases are decided by the concurrence of a majority of the members who:**

- a. actually sent in memos on matters for deliberation and called in their votes thereon.
- b. actually participated in the oral arguments and voted thereon.
- c. actually took part in the deliberations on the issues in the case and voted thereon.**

d. actually took part in the voting thereon and took notes on the actual deliberations.

**28. When the Supreme Court sits in division, cases can be decided by as few as a minimum of:**

- a. three votes.
- b. four votes.
- c. five votes.
- d. six votes.

**29. A person who has a personal and substantial interest in the case, such that he has sustained, or will sustain, direct injury as a result of its enforcement is considered to have:**

- a. understanding to challenge the governmental act.
- b. standing to challenge the governmental act.
- c. opportunity to challenge the governmental act.
- d. familiarity to challenge the governmental act.

**30. Congressman Sugar Oll authored a bill called House Bill No, 0056 which legalizes jueteng. When the Bill became law (RA 10156), Fr. Nosu Gal, a priest, filed a petition seeking for the nullification of RA 10156 on the ground that it is unconstitutional as it violates Section 13, Article II, of the 1987 Constitution which states that "The state recognizes the vital role of the youth in na-**

**tion-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being". Fr. Gal filed the petition as a concerned citizen and as taxpayer. Does Fr. Gal have locus standi?**

- a. No, because Fr. Gal has no personal and substantial interest that will be prejudiced by the implementation of the law.**
- b. No, the law concerns neither citizens nor expenditure of public funds.**
- c. Yes, because the issue is of transcendental importance.**
- d. Yes, because as priest, Fr. Gal has special interest in the well-being of the youth.**

**31. Where there is "the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncement by various departments on a question," describes what kind of political question:**

- a. adherence kind.**
- b. prudential kind.**
- c. respectful kind.**
- d. deference kind.**

**32. The "operative fact" doctrine of constitutional law is applied when a law is declared:**

- a. operative.
- b. factual.
- c. constitutional.
- d. unconstitutional.**

**33. The totality of governmental power is contained in three great powers:**

- a. police power, power of sequestration, power of foreign policy.
- b. power of immigration, municipal power, legislative power.
- c. executive power, legislative power, judicial power.**
- d. police power, power of eminent domain, power of taxation.

[Note: (d) can be considered also as an acceptable answer.]

**34. The most essential, insistent and the least limitable of (government) powers, extending as it does to all the great public needs, is:**

- a. emergency power.
- b. police power.**
- c. legislative power.
- d. power to declare martial law.

**35. In the hierarchy of civil liberties, which right occupies the highest preferred position:**

- a. right to academic freedom.

- b. right to a balanced and healthful ecology.
- c. right to freedom of expression and of assembly.**
- d. right to equal health.

**36. In which of the following would there be no double jeopardy even if a subsequent case is filed?**

a. Pot is accused before the RTC of qualified theft. After innumerable postponements against Pot's wishes, he moves for dismissal for denial of the right to a speedy trial. Prosecutor objected. Dismissal granted.

**b. Pot is accused before the RTC of qualified theft. After innumerable postponements against Pot's wishes, the prosecutor moves for dismissal with the consent of Pot. Granted.**

c. Pot is accused before the RTC of qualified theft. After innumerable postponements against Pot's wishes, he moves for dismissal for denial of the right to a speedy trial. Prosecutor posts no objections. Dismissal granted.

d. Pot is accused before the RTC of qualified theft. After innumerable postponements against Pot's wishes, the prosecutor moves for dismissal over the objections of Pot. Granted.

**37. Under Article III, Section 2 of the Bill of Rights, which provides for the exclusion of evidence that violates the right to privacy of communication and correspondence, to come under**

**the exclusionary rule, the evidence must be obtained by:**

- a. private individuals acting on their own.
- b. government agents.**
- c. private individuals acting on orders of superiors.
- d. former high government officials.

**38. The complementing regime that best characterizes the guarantees of freedom of speech and of the press are:**

- a. prior punishment and moderate punishment.
- b. prior censorship and subsequent remedies.
- c. no prior restraint and subsequent punishment.
- d. no prior restraint and no subsequent punishment.**

**39. The free exercise and non-establishment clauses pertain to which right under the Bill of Rights:**

- a. Liberty of movement.
- b. Liberty of abode.
- c. Religion.**
- d. Life and liberty.

**40. The Gangnam Style's Witnesses (whose tenets are derogatory to the Catholic Church), applied for a permit to use the public plaza and kiosk to hold their religious meeting on the occasion of their founding anniversary. Mayor Lebron allowed them to use the northwestern part of the plaza but not the kiosk (which is a few meters away from the Catholic church). Members of the Gangnam Style Witnesses claim that the act of Mayor Lebron is a violation of their freedom of assembly and religion. Is this correct?**

- a. No, because this is valid exercise of police power.
- b. Yes, because the plaza being of public use can be used by anybody regardless of religious belief.
- c. No, because historical experience shows that peace and order may be disturbed whenever two opposing religious groups or beliefs expound their dogmas.
- d. Yes, because there is no clear and present danger in holding a religious meeting by another religious group near a catholic church.

**41. Which one is NOT a recognized limitation to the right to information on matters of public concern:**

- a. national security matters.
- b. trade secrets and banking transactions.

c. criminal matters or classified law enforcement matters.

d. government research data used as a basis for policy development.

**42. Which one of the following circumstances is NOT an element of taking under eminent domain?**

a. entering upon public property for a momentary period.

b. under color of legal authority.

c. devoting it to public use.

d. as substantially to oust the owner of all beneficial ownership.

**43. Market value for purposes of determining just compensation in eminent domain has been described as the fair value of property:**

a. between one who desires to purchase and one does not desire to sell.

b. between one who desires to purchase and one who wants to delay selling.

c. between one who desires to purchase and one who desires to sell.

d. between one who desires to purchase on terms and one who desires to sell after a period of time.

**44. Under Article III, Section 12 of the Constitution, any person under investigation for the**

**commission of an offense shall have the right to be informed of his right to remain silent, etc. The investigation referred to is called:**

- a. preliminary investigation.
- b. summary investigation.
- c. criminal investigation.
- d. **custodial investigation.**

**45. All persons charged shall, before conviction, be bailable by sufficient sureties, except those charged with:**

- a. offenses punishable by death when evidence of guilt is strong.
- b. **offenses punishable by life imprisonment when evidence of guilt is strong.**
- c. offenses punishable by death when evidence of guilt is weak.
- d. offenses punishable by reclusion perpetua when evidence of guilt is strong.

[Note: (d) is offered as an acceptable answer.]

**46. Criminal trial may proceed, notwithstanding the absence of the accused provided that he has been duly notified, and his failure to appear is unjustifiable, after:**

- a. preliminary investigation.
- b. **arraignment.**
- c. sentencing.

d. prosecution has rested its case.

**47. The requisites of a valid trial *in absentia* exclude:**

a. Wherein his/her failure to appear is unjustifiable.

**b. Wherein he/she allows himself/herself to be identified by the witness in his/her absence, without further unqualified admitting that every time a witness mentions a name by which he/she is known, it shall be understood to refer to him/her.**

c. Wherein he/she has been duly notified of the trial.

d. Wherein the accused has already been arraigned.

**48. The privilege of the writ of habeas corpus shall not be suspended except in cases of:**

a. imminent danger of invasion or rebellion when the public safety requires it.

b. grave danger of invasion or rebellion when the public safety requires it.

c. clear and present danger of invasion or rebellion when the public safety requires it.

**d. invasion or rebellion when the public safety requires it.**

**49. The right of the accused against self-incrimination will be violated if:**

**a. he is charged with violation of the Anti-Money Laundering Act and he was required to produce his bank passbook.**

b. he is a public officer charged with amassing ill-gotten wealth and his statement of assets and liabilities will be presented as evidence.

c. his gun was subjected to a ballistics test.

d. a sample of his blood was taken if his blood type matches the blood type found at the scene of the crime.

**50. The death penalty shall not be imposed:**

a. unless for compelling reasons involving death penalty crimes and the executive hereafter provides for it.

b. unless for compelling reasons involving heinous crimes and a constitutional amendment provides for it.

**c. unless for compelling reasons involving heinous crimes and Congress hereafter provides for it.**

d. unless for compelling reasons involving heinous crimes and the Supreme Court hereafter upholds it.

**51. An *ex post facto* law has been defined as one:**

a. which aggravates a crime or makes it lesser than when it was committed.

b. which mitigates a crime or makes it lesser than when it was committed.

**c. which aggravates a crime or makes it greater than when it was committed.**

d. which aggravates a crime or makes it non-criminal after it was committed.

**52. A bill of attainder is:**

a. an executive act which inflicts punishment without tender.

b. a judicial act which inflicts punishment without tender.

**c. a legislative act which inflicts punishment without trial.**

d. a legislative act which pardons punishment after tender.

**53. Which one of the following is NOT an independent Constitutional Commission under Article IX, Section 1 of the Constitution:**

a. Commission on Elections.

**b. Commission on Human Rights.**

c. Civil Service Commission.

d. Commission on Audit.

**54. The independent Constitutional Commissions enjoy:**

a. decisional autonomy.

b. organizational autonomy.

**c. fiscal autonomy.**

d. quasi-judicial autonomy.

**55. The Civil Service shall be administered by the Civil Service Commission composed of a:**

- a. Chairman and a Commissioner.
- b. Chairman and two (2) Commissioners.**
- c. Chairman and three (3) Commissioners.
- d. Chairman and four (4) Commissioners.

**56. In *Oposa vs. Factoran, Jr.*, G.R. No. 101083, July 30, 1993, the Supreme Court held that the personality of the petitioners to sue is based on the concept of:**

- a. ecological responsibility.
- b. environmental accountability.
- c. intergenerational responsibility.**
- d. interdisciplinary responsibility.

**57. In a unitary system of government, such as the government under the Philippine Constitution, local government can only be:**

- a. an *imperium in imperio*.
- b. an infa-sovereign subdivision.**
- c. a sovereign nation.
- d. a sovereign entity.

**58. Which one is NOT among the Constitutionally mandated grounds for impeachment of impeachable officials:**

- a. culpable violation of the Constitution.
- b. treason, bribery, graft and corruption and other high crimes.
- c. betrayal of public trust.
- d. culpable violation of the duty to be at all times accountable to the people.**

**59. Which is NOT an impeachable public officer?**

- a. A justice of the Supreme Court.
- b. A commissioner of the Comelec.
- c. The administrator of the Supreme Court.**
- d. The Ombudsman.

**60. Which has the exclusive power to initiate all cases of impeachment?**

- a. The Senate.
- b. The House of Representatives.**
- c. The Senate President.
- d. The Speaker of the House of Representatives.

**61. At least one-third of all the members of the House of Representatives may file articles of impeachment by:**

- a. verified bill and resolution.
- b. verified complaint and resolution.**

- c. verified notice and resolution.
- d. verified complaint and notice.

**62. The President cannot grant pardon in cases of impeachment. He may however exercise such power when:**

**a. a person convicted in an impeachment proceeding is subject to prosecution, trial and punishment in an ordinary criminal action.**

b. a person convicted in an impeachment proceeding is granted an absolute pardon.

c. a person convicted in an impeachment proceeding files his appeal before the Supreme Court.

d. None of the above.

**63. A public officer impeached and removed from office shall:**

a. nevertheless be immune from prosecution, trial and punishment according to law.

b. nevertheless be liable and subject to prosecution, trial and punishment under the Anti-Graft and Corrupt Practices Act.

**c. nevertheless be liable and subject to prosecution, trial and punishment according to law.**

d. nevertheless be liable and subject to prosecution, trial and punishment only for criminal acts under the law.

**64. The Ombudsman and his deputies are appointed by the President from a list prepared by:**

- a. the Integrated Bar of the Philippines.
- b. the Commission on Appointments.
- c. the Judicial and Bar Council.**
- d. the Supreme Court.

**65. SALN means:**

- a. Summary of assets, liabilities and net worth.
- b. Statement of assets in banks, liabilities and net worth.
- c. Statement of assets, liabilities and net worth.**
- d. Statement of personal assets, liabilities and net worth.

**66. The independent economic planning agency of the Government as provided for by the Constitution is the:**

- a. National Privatization Office.
- b. National Productivity Commission.
- c. National Economic Development Authority.**
- d. National Economic Council.

**67. The Independent Central Monetary Authority of the Government is the:**

- a. Bankers Association of the Philippines.
- b. Philippine Mission of the International Monetary Fund.
- c. Central Bank of the Philippines.**
- d. World Bank, Philippine Affiliate.

**68. The President may contract or guarantee foreign loans on behalf of the Republic of the Philippines only upon prior concurrence of the:**

- a. House of Representatives.
- b. Senate.
- c. Central Bank.
- d. Monetary Board.**

**69. *Bona fide* associations of citizens which demonstrate capacity of promote the public interest and with identifiable leadership, membership, and structure are:**

- a. independent party-list organizations.
- b. independent sectoral organizations.
- c. independent indigenous organizations.
- d. independent people's organizations.**

**70. The principal function of the Commission on Human Rights is:**

- a. issue writs of injunction/ restraining orders.
- b. investigatory.**

- c. quasi-judicial.
- d. rule-making.

**71. Optional religious instruction in public elementary and high schools is allowed provided it be:**

- a. without additional overtime cost to Government.
- b. without additional cost to Government.**
- c. without additional cost for religious books to Government.
- d. without additional power consumption costs to Government.

**72. Academic freedom shall be enjoyed:**

- a. in all public institutions.
- b. in all elementary and high schools.
- c. in all schools.
- d. in all institutions of higher learning.**

**73. Under Article 38(1) of the Statute of the International Court of Justice, which one of the following is NOT considered a source of international law:**

- a. international conventions.
- b. international custom.
- c. international humanitarian law.**

- d. general principles of law.

**74. In international law, it is a norm which States cannot derogate or deviate from their agreements:**

- a. terra nullius.
- b. opinio juris.
- c. **jus cogens.**
- d. jus cogentus.

[Note: (c) is selected because it is closest to the correct answer, which is *pacta sunt servanda*.]

**75. In international law, the status of an entity as a State is accepted by other States through this act. It is the “act by which another State acknowledges that the political entity recognized possesses the attributes of statehood.”**

- a. Accession.
- b. **Recognition.**
- c. Acknowledgment.
- d. Attribution.

**76. An act or process by which a State, in compliance with a formal demand or request, surrenders to another State an alleged offender or fugitive criminal who has sought refuge in the territory of the first State, in order to stand trial or complete his prison term.**

- a. Extramediation.

- b. Exterritoriality.
- c. **Extradition.**
- d. extraterritoriality.

**77. This doctrine considers the general or customary norms of international law as a part of municipal law and are to be enforced as such, without regard as to whether they are enacted as statutory or legislative rules or not.**

- a. Accession.
- b. **Incorporation.**
- c. Accretion.
- d. Adoption.

**78. Under the United Nations Conference of the Law of the Sea (UNCLOS), the extent of the contiguous zone is:**

- a. 3 nautical miles from the lowest water mark.
- b. **12 miles from the outer limits.**
- c. 12 miles from the lowest water mark.
- d. 200 miles from the outer limits.

**79. It is a line from which the breadth of the territorial sea and other maritime zones is measured.**

- a. contiguous line.
- b. economic line.

- c. **baseline.**
- d. archipelagic line.

**80. It is a maritime zone adjacent to the territorial seas where the coastal state may exercise certain protective jurisdiction:**

- a. baseline zone.
- b. **contiguous zone.**
- c. transit zone.
- d. appurtenant zone.

**81. 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?**

- 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 con-**

**templates conviction or acquittal which could terminate a first jeopardy.**

**82. One of the cardinal primary due process rights in administrative proceedings is that evidence must be “substantial.” “Substantial evidence” is:**

- a. less than a mere scintilla.
- b. less than preponderant scintilla.
- c. more than a glint of scintilla.
- d. more than a mere scintilla.

**83. A statutory provision requiring the President or an administrative agency to present the proposed implementing rules and regulations of a law to Congress which by itself or through a committee formed by it, retains a “right” or “power” to approve or disapprove such regulations before they may take effect, is a:**

- a. legislative encroachment.
- b. legislative veto.
- c. legislative oversight.
- d. legislative scrutiny.

**84. Which one of the enumeration below does not come under the Administrative Code definition of a “rule”?**

- a. Agency statement of general applicability that implements or interprets a law.

b. Fixes and describes the procedures in or practice requirements of, an agency.

c. Includes memoranda and statements concerning internal administration.

**d. An agency process for the formulation of a final order.**

**85. Under the Administrative Code, “adjudication” means:**

a. whole or any part of any agency permit, certificate, or other form of permission, or regulation of the exercise of a right or privilege.

**b. an agency process for the formulation of a final order.**

c. agency process for the formulation, amendment, or repeal of a rule.

d. agency process involving the grant, renewal, denial, revocation or conditioning of a license.

**86. The requirement of the Administrative Code on “public participation” is that, if not otherwise required by law, an agency shall:**

a. in all cases, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.

b. in all clear and proper cases, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.

c. as far as practicable, publish or circulate notices of proposed rules and afford the party-list parties the opportunity to submit their views prior to the adoption of any rule.

**d. as far as practicable, publish or circulate notices of proposed rules and afford interested parties the opportunity to submit their views prior to the adoption of any rule.**

**87. Under the Administrative Code, in the fixing of rates, no rules or final order shall be valid unless:**

a. the proposed rates shall have been submitted to the U.P. Law Center for publication at least two weeks before the first hearing thereon.

b. the proposed rates shall have been published in the Official Gazette at least two weeks before the final hearing thereon.

**c. the proposed rates shall have been published in a newspaper of general circulation at least two weeks before the first hearing thereon.**

d. the proposed rates shall have been published in a newspaper of general circulation at least two weeks before the final hearing thereon.

**88. In the judicial review of decisions of administrative agencies, the Administrative Code requires that the review shall be made:**

a. on the basis of the pleadings taken as a whole.

**b. on the basis of the record taken as a whole.**

c. on the basis of the evidence taken as a whole.

d. on the basis of the memoranda taken as a whole.

**89. In the judicial review of decisions of administrative agencies, the Administrative Code requires that, except when specifically provided otherwise by law:**

a. the findings of law of agency when supported by substantial evidence, shall be final.

b. the findings of fact of the agency when supported by preponderant evidence, shall be final.

**c. the findings of fact of the agency when supported by substantial evidence, shall be final.**

d. the findings of law of the agency when supported by credible evidence, shall be final.

**90. The right of the accused to be informed is violated if:**

**a. he was accused of killing his wife by strangulation but it was proven that his wife died of poisoning.**

b. it was proven that he killed somebody on a date different from the one alleged in the information.

c. he was charged with parricide but was convicted of murder, because it turned out that he and the victim were not married.

d. the accused was charged with commission of acts of lasciviousness and was convicted of unjust vexation.

**91. A criminal statute that “fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by statute” is:**

- a. void for fair notice.
- b. void for arbitrariness.
- c. **void for vagueness.**
- d. void conclusively.

**92. “Chilling effect” is a concept used in the area of constitutional litigation affecting:**

- a. **protected speech.**
- b. protected executive privilege.
- c. protected legislative discretion.
- d. protected judicial discretion.

**93. In the law of libel and protected speech, a person who, by his accomplishments, fame, or mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doings, his affairs, and his character, has become a:**

- a. **public figure.**

- b. celebrity.
- c. public official.
- d. de facto public officer.

**94. Which one of the following is not a proper test in cases of challenges to governmental acts that may violate protected speech?**

- a. Clear and present danger.
- b. Balancing of interests.
- c. Reasonable relation.
- d. **Dangerous tendency.**

**95. Commercial speech is entitled to:**

- a. more protection compared to other constitutionally guaranteed expression.
- b. equal protection compared to other constitutionally guaranteed expression.
- c. **lesser protection compared to other constitutionally guaranteed expression.**
- d. none of the above.

**96. No liability can attach to a false, defamatory statement if it relates to official conduct, unless the public official concerned proves that the statement was with knowledge that it was false or with reckless disregard of whether it was false or not. This is known as what rule?**

- a. Libel malice rule.
- b. **Actual malice rule.**

- c. Malice in fact rule.
- d. Legal malice rule.

**97. It is a form of entrapment. The method is for an officer to pose as a buyer. He, however, neither instigates nor induces the accused to commit a crime because in these cases, the “seller” has already decided to commit a crime. The offense happens right before the eyes of the officer. Under these circumstances:**

a. there is a need for an administrative but not a judicial warrant for seizure of goods and arrest of the offender.

b. there is need for a warrant for the seizure of the goods and for the arrest of the offender.

c. there is no need for a warrant either for the seizure of the goods or for the arrest of the offender.

d. the offender can be arrested but there is a need for a separate warrant for the seizure of the goods.

**98. Where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and dangerous and he identifies himself and makes reasonable inquiries, but nothing serves to dispel his reasonable fear for his own or other’s safety, he is entitled to conduct a carefully limited search of the outer clothing of such persons for weapons. Such search is constitutionally permissible and is known as a:**

- a. stop and search.
- b. stop and frisk.**
- c. stop and interrogate.
- d. stop and detain.

**99. Accused was charged with slight illegal detention. On the day set for the trial, the trial court proceeded as follows:**

**“Court: to the accused: Q: “Do you have an attorney or are you going to plead guilty?”**

**A: “I have no lawyer and I will plead guilty.”**

**Accused was then arraigned, pleaded guilty, was found guilty and sentenced.**

**On appeal, the Supreme Court reversed. The accused was deprived of his:**

- a. right to cross-examination.
- b. right to be presumed innocent.
- c. right to counsel.**
- d. right to production of evidence.

**100. The constitutional right of an accused “to meet the witnesses face to face” is primarily for the purpose of affording the accused an opportunity to:**

- a. identify the witness.

- b. **cross-examine the witness.**
- c. be informed of the witness.
- d. be heard.

## Set B

### I.

**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. (5%)**

The challenge must be rejected.

The liberty of abode and right to travel are not absolute rights and may be reasonably impaired, among others, by upon the exercise by trial courts of their in-

herent power to limit the movements of persons charged with a crime, including leaving the country, to ensure that they can make themselves available at all times whenever the Court requires their presence. (*Silverio v. Court of Appeals*, G.R. No. 94284, April 8, 1991)

It is submitted that the bail conditions imposed upon Mr. Violet are reasonable and well within the court's authority. (*Manotoc v. Court of Appeals*, G.R. No. L-62100, May 30, 1986).

**b. Are “liberty of abode” and “the right to travel” absolute rights? Explain. What are the respective exception/s to each right if any? (5%)**

The exercise of one's right to travel or the freedom to move from one place to another, as assured by the Constitution, is not absolute. (*Mirasol v. Department of Public Works and Highways*, G.R. No. 158793, June 8, 2006, 490 SCRA 318, 353)

Under the provisions of Section 6 of Article III of the Constitution, the liberty of abode and of changing the same may be subject to “limits prescribed by law” and may be impaired upon lawful order of the court.

Said provision likewise allows impairment of the right to travel “in the interest of national security, public safety, or public health, as may be provided by law.” (*Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, G.R. No. 225442, August 8, 2017; *Genuino v. de Lima*, G.R. No. 197930; *Arroyo v. de Lima*; G.R. No. 199034; *Arroyo v. de Lima*, G.R. No. 199046, April 17, 2018)

**II.**

**A verified impeachment complaint was filed by two hundred (200) Members of the House of Representatives against Madam Chief Justice Blue. The complaint was immediately transmitted to the Senate for trial.**

**a. Madam Chief Justice Blue challenges such immediate transmittal to the Senate because the verified complaint 1) was not included in the order of business of the House, 2) was not referred to the House Committee on Justice for hearing and consideration for sufficiency in form and substance, and 3) was not submitted to the House Plenary for consideration as enumerated in Paragraph (2), Section 3, Article XI of the 1987 Constitution. Decide with reasons. (5%)**

Her contentions are untenable.

Under Section 3 (4) of Article XI of the Constitution, "in case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed."

Considering that 200 Members of the House of Representatives, or more than one-third of entire membership, filed the complaint, there would be no need for the inclusion of the matter in the order of business or the referral of the same to the House Committee on Justice.

**b. What is the purpose of Impeachment? Does conviction prevent further prosecution and punishment? Explain. (3%)**

Impeachment, acknowledged as a method of national inquest into the conduct of public men, is an extraordinary means of removal exercised by the legislature over a selected number of officials, the purpose being to ensure the highest care in their indictment and conviction and the imposition of special penalties in case of a finding of guilt, taking into account the degree or nature of the offense committed and the high status of the wrongdoers. (Cruz and Cruz, Political Law, 2014 Edition, pages 730-731) The convicted official may later be prosecuted in an ordinary criminal action if the ground for his conviction in the impeachment proceedings is also an indictable offense. (*Ibid.*, pages 749-750; Constitution, Article XI, Section 3[7]).

**c. Enumerate the grounds for impeachment. Is graft and corruption a ground for impeachment? (2%)**

Yes, graft and corruption are among the grounds for impeachment.

The other grounds are culpable violation of the Constitution, treason, bribery, other high crimes, and betrayal of public trust. (Constitution, Article XI, Section 2)

### III.

**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 passerby 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 (5%)**

No, he is not.

The right to counsel under Section 12 of Article III of the Constitution is available only during a custodial investigation.

It is not available during a police line-up as this is not considered part of the custodial investigation. (*Gamboa v. Cruz*, 162 SCRA 642 [1988]; *People v. Lam-sing*, 248 SCRA 471; *People v. Salvatierra*, 276 SCRA 55; *De la Torre v. Court of Appeals*, 294 SCRA 196; *People v. Lara*, G.R. No. 199877, August 13, 2012; *People v. Pepino*, G.R. No. 174471, January 12, 2016)

A police line-up is not part of the custodial investigation because during a police line-up, the process has not yet shifted from the investigatory to the accusatory and it is usually the witness or the complainant who is interrogated and who gives a statement in the course of the line-up. (*People v. Lara*, G.R. No. 199877, August 13, 2012, citing *People v. Amestuzo*, 413 Phil. 500 [2001]; see *People v. Pepino*, G.R. No. 174471, January 12, 2016)

**b. Would the answer in (a.) be the same if Brown was specifically invited by White be-**

**cause an eyewitness to the crime identified him as the perpetrator? Explain. (3%)**

No, because, by reason of said invitation, it can now be said that his custodial investigation has begun and, because he is already considered as a suspect, he should now be entitled to counsel.

A custodial investigation begins when there is no longer a general inquiry into an unsolved crime and the investigation has started to focus on a particular person as a suspect, *i.e.*, when the police investigator starts interrogating or exacting a confession from the suspect in connection with an alleged offense. (*People v. Morial*, 415 Phil. 310, 329 (2001); see *People v. Lara*, G.R. No. 199877, August 13, 2012)

It is significant that, under Section 2 of Republic Act (R.A.) No. 7438, “custodial investigation” shall include the practice of issuing an “invitation” to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the “inviting” officer for any violation of law.

**c. Briefly enumerate the so-called “Miranda Rights”. (2%)**

The so-called Miranda Rights are specified in Section 12 (1) of Article III of the Constitution, which provides that any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

## IV.

**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.**

**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. (3%)**

It is submitted that the Supreme Court does not have jurisdiction over the decision of the PET, because, when it acted as such, or as the PET, it actually acted as the Supreme Court, although referred to in that capacity as the PET. In other words, the PET and the Supreme Court, in the resolution of all contests relating to the election, returns, and qualifications of the President or Vice-President, are necessarily one and the same institution. (*Macalintal v. Presidential Electoral Tribunal*, G.R. No. 191618, November 23, 2010 and June 7, 2011)

Under Section 4 of Article VII of the Constitution, the Supreme Court, sitting *en banc*, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.

**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? (3%)**

No, because the Supreme Court may exercise jurisdiction over and review the decisions of the SET with respect to contests relating to the election, returns, and qualifications of Senators for purposes of determining whether or not they were promulgated with grave abuse of discretion. (*David v. Senate Electoral Tribunal*, G.R. No. 221538, September 20, 2016)

**c. What is the composition of the PET? (2%)**

The composition of the PET is the same as the composition of the Supreme Court, *i.e.*, the Chief Justice and fourteen Associate Justices of the Supreme Court, sitting *en banc*. (Constitution, Article VIII, Section 4 [1], in relation to Article VII, Section 4)

**c. What is judicial power? Explain Briefly. (2%)**

Under Section I of Article VIII of the Constitution, 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.

It further provides that judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

It should be added that the Supreme Court likewise exercises judicial power when, as earlier noted, it acts the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President (Constitution, Article VII, Section 4; *Macalintal v. Presidential Electoral Tribunal*, G.R. No. 191618, November 23, 2010 and June 7, 2011); when it reviews, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof (Constitution, Article VII, Section 18, 3<sup>rd</sup> paragraph; *Lagman v. Medialdea*, G.R. No. 231658, July 4, 2017); when it reviews on *certiorari* decisions, orders or rulings of any of the Constitutional Commissions (Constitution, Article IX-A, Section 7; see *Lagman v. Medialdea*, G.R. No. 231658, July 4, 2017); and whenever there are serious allegations that “a law has infringed the Constitution,” in which case, “it becomes not only the right but the duty of the Court to look into such allegations and, when warranted, uphold the supremacy of the Constitution.” (*Petitioner Organizations v. Executive Secretary*, G.R. Nos. 147036-37, April 10, 2012, 669 SCRA 49) Verily, this duty includes the power to set aside acts of government, even if not tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. (See *Atong Paglaum, Inc. v. Commission on Elections*, G.R. No. 203766, April 2, 2013.)

V.

**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. (5%)**

Judge Red is correct. Any administrative action against him or any court official or employee falls under the exclusive jurisdiction of the Supreme Court, and may not be taken cognizance of by the Ombudsman. (Constitution, Article VIII, Section 6; *Orap v. Sandiganbayan*, G.R. Nos. L-50508-11, October 11, 1985)

Administrative complaints against judges and their appurtenant judicial staff are outside the Ombudsman’s investigatory power. The reason for such exclusion is quite evident: under Section 6, Article 10 of the Constitution, it is the Supreme Court that exercises administrative supervision over all courts and their personnel and, therefore, is the proper forum to which administrative complaints involving judges and the court’s personnel should be lodged. (*Judge Caoibes, Jr. v. Hon. Ombudsman*, 413 Phil. 717 (2001); and *Fuentes v. Office of*

*the Ombudsman-Mindanao*, G.R. No. 124295, October 23, 2001, 368 SCRA 36)

**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. (3%)**

Yes, the Ombudsman possesses such authority to conduct such investigations regarding crimes or offenses committed by public officials that are not in connection with or related at all to the official's discharge of his duties and functions.

Section 13(1), Article XI of the 1987 Constitution states that the Ombudsman can investigate on its own or on complaint by any person any act or omission of any public official or employee when such act or omission appears to be illegal, unjust, or improper. Thus, even if the complaint concerns an act of the public official or employee which is not service-connected, the case is within the jurisdiction of the Ombudsman. The law does not require that the act or omission be related to or be connected with or arise from the performance of official duty. (*Deloso v. Domingo*, G.R. No. 90591, November 21, 1990; See *Santos v. Rasalan*, G.R. No. 155749, February 8, 2007, citing *Vasquez v. Hobilla-Alinio*, G.R. Nos. 118813-14, April 8, 1997, 271 SCRA 67, 74)

**c. Who are required by the Constitution to submit a declaration under oath of his assets, liabilities, and net worth? (2%)**

Under Section 17 of Article XI of the Constitution, a public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. 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.

## VI.

**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.**

**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. (5%)**

Yes, said verbal agreement via telephone can be considered as binding so long as both Presidents had full powers with respect to the same, and absent any showing that their consent to said agreement was attended with any vice of consent.

This mode or method of agreement can be justified on the basis of customary international law.

Official acts of heads of states, such as the recognition of states, done through customary methods, such as through letters or telegrams or during official calls or conferences, have invariably been acknowledged as binding. (Cruz and Cruz, International Law, 2020 Edition, page 124)

**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? (2%)**

No, because under Article 2 (1) (a) of said Convention, treaties need to be in writing.

**c. What are the sources of International Law? (2%)**

The sources of International Law are international conventions, whether general or particular, establishing rules expressly recognized by the contesting state; international custom, as evidence of a general practice accepted by law; the general principles of law recognized by civilized nations; and judicial decisions and the teachings of the most highly qualified publicists of the

various nations, as subsidiary means for the determination of the rules of law. (Statute of the International Court of Justice, Article 38)

**d. What is *opinio juris* in International Law? (1%)**

*Opinio juris* is among the two elements of customary international law or international custom which, as a source of international law, is defined as the general and consistent practice of states recognized and followed by them from a sense of legal obligation.

In order to establish the customary status of a particular norm, two elements must concur: State practice, the objective element; and *opinio juris sive necessitates*, the subjective element.

State practice refers to the continuous repetition of the same or similar kind of acts or norms by States. It is demonstrated upon the existence of the following elements: (1) generality; (2) uniformity and consistency; and (3) duration. While, *opinio juris*, the psychological element, requires that the state practice or norm "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." (*Bayan Muna v. Romulo*, G.R. No. 159618, February 1, 2011)

## VII.

**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.1. Which is the correct body to rule on the matter? Comelec *en banc*, or Comelec division? Answer with reasons. (2%)

The petition properly pertains to the jurisdiction of the Comelec *en banc*, involving as it does an election offense allegedly committed by one who, at the time of the alleged commission of the same, was not yet a candidate.

The Comelec *en banc* may properly take cognizance of this administrative matter.

The provisions of Article IX-B, Section 3 requiring a motion for reconsideration before the Comelec *en banc* may take action are confined only to cases where it exercises its quasi-judicial power. They find no application, however, in matters concerning the Comelec’s exercise of administrative functions.

**a.2. Rule on the petition. (5%)**

The petition should be dismissed because it is based on alleged election offenses, or acts, committed by Mayor Pink before she officially became a candidate for re-election.

It is established that a candidate can be held liable for an election offense only for acts done during the campaign period, not before. (*Penera v. Commission on Elections*, G.R. No. 181613, November 25, 2009)

**b. Distinguish briefly between Quo Warranto in elective office and Quo Warranto in appointive office. (3%)**

*Quo warranto* petitions against elective officials are for purposes of contesting their election on the ground of ineligibility or of disloyalty to the Republic of the Philippines and should be filed with the Commission on Elections (in the case of regional, provincial or city officials), or the proper courts of general or limited jurisdiction (with regard to other local elective officials), the House of Representatives Electoral Tribunal (insofar as Members of the House of Representatives are concerned), the Senate Electoral Tribunal (with respect to Members of the Senate), and the Supreme Court, acting as the Presidential Electoral Tribunal (with respect to candidates for President or Vice-President). Said petitions must be sworn and filed within the reglementary periods prescribed in the rules of said entities.

*Quo warranto* suits against appointive officials are based on Rule 66 of the Rules of Court which allow said action against a person who usurps, intrudes into, or unlawfully holds or exercises a public office, position or

franchise, or a public officer who does or suffers an act which, by the provision of law, constitutes a ground for the forfeiture of his office. (Section 1) The Solicitor General or a public prosecutor, when directed by the President of the Philippines, or when upon complaint or otherwise he has good reason to believe that any case specified in the preceding section can be established by proof, must commence such action. (Section 2)

### VIII.

**a. What is the doctrine of “overbreadth”? In what context can it be correctly applied? Not correctly applied? Explain (5%)**

Under the *overbreadth doctrine*, a proper governmental purpose, constitutionally subject to state regulation, may not be achieved by means that unnecessarily sweep its subject broadly, thereby invading the area of protected freedoms. (*Disini v. Secretary of Justice*, G.R. No. 203335, February 18, 2014)

The so-called *overbreadth doctrine* has likewise been applied when a statute needlessly restrains even constitutionally guaranteed rights. (*White Light Corporation v. City of Manila*, G.R. No. 122846, January 20, 2009, 576 SCRA 416)

This doctrine can be properly invoked in “as applied” challenges, where the petitioner can contest the constitutionality of a statute only if he asserts a violation of his own rights.

It can be applied as well in “facial” challenges against the constitutionality of a statute even if the petitioner claims no violation of his own rights under the assailed statute where it involves free speech, which

includes religious freedom, freedom of the press, and the right of the people to peaceably assemble, and to petition the Government for a redress of grievances. After all, the fundamental right to religious freedom, freedom of the press and peaceful assembly are but component rights of the right to one's freedom of expression, as they are modes which one's thoughts are externalized. (*Disini v. Secretary of Justice*, G.R. No. 203335, February 18, 2014; *Imbong v. Ochoa*, G.R. No. 204819, April 8, 2014, 721 SCRA 146)

It has been pronounced though that this doctrine may not be invoked in facial challenges against the constitutionality of penal statutes, unless they involve freedom of expression. (*Disini v. Secretary of Justice*, G.R. No. 203335, February 18, 2014; *Imbong v. Ochoa*, G.R. No. 204819, April 8, 2014, 721 SCRA 146)

**b. What is the doctrine of “void for vagueness”? In what context can it be correctly applied? Not correctly applied? Explain (5%)**

Under this doctrine, a statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. It is repugnant to the Constitution in two (2) respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle. (*Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, G.R. No. 225442, August 8, 2017)

Like the overbreadth doctrine, this doctrine can be properly invoked in “as applied” challenges and in “facial” challenges against the constitutionality of a statute even if the petitioner claims no violation of his own rights under the assailed statute where it involves, as earlier discussed, free speech, (*Disini v. Secretary of Justice*, G.R. No. 203335, February 18, 2014; *Imbong v. Ochoa*, G.R. No. 204819, April 8, 2014, 721 SCRA 146) but not in facial challenges against the constitutionality of penal statutes, unless they involve freedom of expression. (*Disini v. Secretary of Justice*, G.R. No. 203335, February 18, 2014; *Imbong v. Ochoa*, G.R. No. 204819, April 8, 2014, 721 SCRA 146)

## IX.

**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. (5%)**

It is submitted that Pedrong Pulo should be acquitted.

His speech and his act of pretending to hurl a rock toward the flagpole of a government building presented no clear and present danger which could justify or warrant his conviction. (*Primicias v. Fugoso*, G.R. No. L-1800, January 27, 1948, 80 Phil. 71, citing *Whitney v. California*, 274 U.S. 357)

**b. What is “commercial speech”? Is it entitled to constitutional protection? What must be shown in order for government to curtail “commercial speech”? Explain. (3%)**

Commercial speech is a form of free expression which “does no more than propose a commercial transaction” and also comes under the coverage or protection of Section 4 of Article III, which provides that “No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.” (*Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, January 21, 2015)

Commercial speech is a separate category of speech which is not accorded the same level of protection as that given to other constitutionally guaranteed forms of expression but is nonetheless entitled to protection. (*Disini v. Executive Secretary*, G.R. No. 203335, February 18, 2014)

It may be curtailed, or subject to review and punishment, only for purposes of promoting and protecting the interests of the public in general against false and deceptive claims. (*Pharmaceutical Health and Care*

*Association of the Philippines v. Duque*, G.R. No. 173034, October 9, 2007)

**c. What are the two (2) basic prohibitions of the freedom of speech and of the press clause? Explain. (2%)**

The two basic prohibitions pertinent to freedom of speech and of the press, which are otherwise known as the elements of freedom of expression, are freedom from prior restraint and from subsequent punishment. (Cruz and Cruz, Constitutional Law, 2015 Edition, page 482)

## X.

**a. What do you understand by the term “hierarchy of civil liberties”? Explain. (5%)**

In the hierarchy of civil liberties, the rights of free expression and of assembly occupy a preferred position as against property rights as they are essential to the preservation and vitality of our civil and political institutions; and such priority “gives these liberties the sanctity and the sanction not permitting dubious intrusions.” (*Terminiello vs. Chicago*, 337 U.S. 1 and *Thomas vs. Collins* (1945), 323 U.S., 516, 530, cited in *Philippine Blooming Mills Employees Organization, v. Philippine Blooming Mills Co., Inc.*, G.R. No. L-31195 June 5, 1973)

**b. Distinguish fully between the “free exercise of religion clause” and the “non-establishment of religion clause”. (3%)**

The free exercise clause prohibits government from inhibiting religious beliefs with penalties for religious

beliefs and practice. Under this part of religious freedom guarantee, the State is prohibited from unduly interfering with the outside manifestations of one's belief and faith. (*Imbong v. Ochoa*, G.R. No. 204819, April 8, 2014, 721 SCRA 146, citing *Estrada v. Escritor*, A.M. No. P-02-1651, June 22, 2006, 492 SCRA 1; see also A.M. No. P-02-1651, August 4, 2003, 455 Phil. 411)

The non-establishment clause reinforces the wall of separation between Church and State. It simply means that the State cannot set up a Church; nor pass laws which aid one religion, aid all religion, or prefer one religion over another nor force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion; that the state cannot punish a person for entertaining or professing religious beliefs or disbeliefs, for church attendance or nonattendance; that no tax in any amount, large or small, can be levied to support any religious activity or institution whatever they may be called or whatever form they may adopt or teach or practice religion; that the state cannot openly or secretly participate in the affairs of any religious organization or group and vice versa. Its minimal sense is that the state cannot establish or sponsor an official religion. (*Re: Letter of Tony Q. Valenciano*, A.M. No. 10-4-19-SC, March 7, 2017)

**c. When can evidence “in plain view” be seized without need of a search warrant? Explain. (2%)**

The “plain view” doctrine applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a

particular area; (b) the discovery of the evidence in plain view is inadvertent; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. The object must be open to eye and hand and its discovery inadvertent. (*Revaldo v. People*, G.R. No. 170589, April 16, 2009, 585 SCRA 341; see also *Harris v. US*, 390 US 234; *People v. Chi Chan Liu*, G.R. No. 189272, January 21, 2015)

## 2013

### ESSAY QUESTIONS

#### I

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 the 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 ten (10) high powered van cranes but delivered only five (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 Php1.0 Million deposit and advance rental required under their contract.

**(A) Will the action by the group of importers prosper? (5%)**

No, the action will not prosper. The Bureau of Customs is part of the Department of Finance with no personality of its own apart from that of the national government. Its primary function is governmental, *i.e.*, that of assessing and collecting lawful revenues from im-

ported articles and all other tariff and customs duties, fees, charges and penalties. (*Mobil Philippine Exploration, Inc. v. Customs Arrastre Service*, 18 SCRA 1120; *Farolan v. Court of Tax Appeals*, 217 SCRA 298)

Accordingly, it may not be sued without its consent, particularly when it performs governmental functions, as in this case, when its agents seized what they apparently believed were smuggled goods.

**(B) Can XYZ Corp. sue the Bureau of Customs to collect rentals for the delivered cranes? (5%)**

No, XYZ Corporation may not sue the Bureau of Customs for uncollected rentals for the delivered cranes, without its prior consent. Its contract with the Bureau of Customs clearly has a governmental purpose, *i.e.*, to enable the latter to perform its function of assessing and collecting lawful revenues from imported articles and all other tariff and customs duties, fees, charges and penalties, which includes, the seizure of apparently smuggled goods. (*USA v. Ruiz*, 136 SCRA 487)

[Note: *Acceptable Answer*: Yes, XYZ Corporation may sue the Bureau of Customs because the latter had waived its immunity from suit when it executed the subject contract, which can be considered as proprietary in character.]

## II

**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? (5%)**

No, the petition should not be granted.

The power to appoint is essentially executive in nature, and the legislature may not interfere with the exercise of this executive power except in those instances when the Constitution expressly allows it to interfere. (*Pimentel v. Ermita*, G.R. No. 164978, October 13, 2005, 472 SCRA 587)

### III

**A robbery with homicide had taken place and Lito, Badong and Rolliewere invited for questioning based on the information furnished by a neighbor that he saw them come out of the victim's house at about 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 at their trial. They were convicted based on their confession.**

**Should the judgment of conviction be affirmed or reversed on appeal? (5%)**

The judgment of conviction should be reversed for the following reasons –

1. Lito's admission, which eventually served as basis for Badong's and Rollie's confessions, was given without his first having been informed of his rights to remain silent and to have competent and independent counsel, preferably of his own choice. He clearly confessed without the presence or assistance of counsel. (*People v. Lucero*, G.R. No. 188705, March 2, 2011)

2. It does not appear that Lito, Badong and Rollie were given a real opportunity to retain the services of their own independent and competent counsel, as provided for or required under Section 12 (1) of Article III of the Constitution. (*People v. Lucero*, G.R. No. 188705, March 2, 2011; *People v. Cachuela*, G.R. No. 191752, June 10, 2013)

#### IV

**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? (6%)**

No, the law is not constitutional, as it contravenes the rule-making authority of the Supreme Court, which, under the Constitution, possesses the sole power to prescribe rules pertinent to pleadings, practice and procedure in all courts. (Constitution, Article VIII, Section 5 [5])

**V**

**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 RP-US relations.**

**Cite at least two (2) grounds for impeachment and explain why you chose them. (6%)**

My impeachment complaint would be based on the following grounds –

1. *Betrayal of Public Trust*, which has been defined as “gross faithlessness against public trust, tyrannical abuse of power, inexcusable negligence of duty, favoritism and gross exercise of discretionary powers.” (*Gonzales v. Office of the President*, 679 SCRA 614)

The President’s granting of the subject territory for free in favor of the United States of America can clearly be considered as a betrayal of the public trust.

2. *Culpable violation of the Constitution*, which is generally understood as the “wrongful, intentional or willful disregard or flouting of the fundamental law.” The President’s Executive Agreement entitles the United States to use the former Subic Naval Base for free amounts to a surrender of a portion of our territory, as defined in Article I, Section of the Constitution.

[*Acceptable Answer: Graft and Corruption*, which is a ground based on the provisions of the Anti-Graft and Corrupt Practices Act, which was in force at the time of the adoption of the Constitution, Section 3 (e) of which punishes “causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.”

The President’s granting of the subject territory for free in favor of the United States of America would clearly cause injury to the Government, and provide said country with “unwarranted benefits, advantage or preference” through “manifest partiality.” The USA is not the only country with whom the Philippines enjoys “continuing harmonious relations.”]

## VI

**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**

**ough Shoals from the Philippine Archipelagic baselines; and converted internal waters into archipelagic waters.**

**Is the petition meritorious? (6%)**

No, the petition is not meritorious for the following reasons –

1. The United Nations Convention on the Law of the Sea (UNCLOS) has nothing to do with the acquisition, enlargement or, as the petitioner claims, any diminution of territory but merely provides for the regulations of sea-use rights or enacting statutes to comply with the treaty's terms to delimit maritime zones and continental shelves.

2. The Kalayaan Islands and the Scarborough Shoal have been constituted under the law as 'Regime[s] of Islands' under the Republic of the Philippines consistent with Article 121 of UNCLOS. They are therefore subject to the continuing authority of the Philippines.

3. Whether referred to as Philippine *internal waters* under Article I of the Constitution or as *archipelagic waters* under UNCLOS III (Article 49 [1]), the Philippines exercises sovereignty over the body of water lying landward of the baselines, including the air space over it and the submarine areas underneath. (UNCLOS III, Article 49) (*Magallona v. Ermita*, G.R. No. 187167, August 16, 2011, 655 SCRA 476)

[Note: The United Nations Convention on the Law of the Seas and its ancillary baselines laws play no role in the acquisition, enlargement or, as the petitioner claims, any diminution of territory but merely provides for the regulations of sea-use rights or enacting statutes to comply with the treaty's terms to delimit maritime zones and continental shelves. Territorial claims to land features are out-

side UNCLOS III, and are instead governed by the rules on general international law.

Had Congress enclosed in the subject law the Kalayaan Islands and the Scarborough Shoal as part of the Philippine archipelago, adverse legal effects would have ensued, *i.e.*, the Philippines would have committed a breach of two provisions of UNCLOS III. *First*, Article 47 (3) of UNCLOS III requires that '[t]he drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.' *Second*, Article 47 (2) of UNCLOS III requires that 'the length of the baselines shall not exceed 100 nautical miles,' save for three per cent (3%) of the total number of baselines which can reach up to 125 nautical miles. Although the Philippines has consistently claimed sovereignty over the KIG and the Scarborough Shoal for several decades, these outlying areas are located at an appreciable distance from the nearest shoreline of the Philippine archipelago, such that any straight baseline loped around them from the nearest basepoint will inevitably depart to an appreciable extent from the general configuration of the archipelago.

Hence, far from surrendering the Philippines' claim over the KIG and the Scarborough Shoal, Congress' decision to classify the KIG and the Scarborough Shoal as 'Regime[s] of Islands' under the Republic of the Philippines consistent with Article 121 of UNCLOS III manifests the Philippine State's responsible observance of its *pacta sunt servanda* obligation under UNCLOS III. Under Article 121 of UNCLOS III, any "naturally formed area of land, surrounded by water, which is above water at high tide, such as portions of the KIG, qualifies under the category of 'regime of islands,' whose islands generate their own applicable maritime zones."

Whether referred to as Philippine *internal waters* under Article I of the Constitution or as *archipelagic waters* under UNCLOS III (Article 49 [1]), the Philippines exercises sovereignty over the body of water lying landward of the baselines, including the air space over it and the submarine areas underneath. (UNCLOS III, Article 49) (*Magallona v. Ermita*, G. R. No. 187167, August 16, 2011, 655 SCRA 476)]

## VII

**As he was entering a bar, Arnold – who was holding an unlit cigarette in his 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? (6%)

No, the court was incorrect in its ruling.

An accused's right to be presumed innocent until the contrary is proved (Constitution, Article III, Section 14 [2]) entitles him to remain silent, or not to testify in his own behalf. It is the responsibility of the prosecution to establish the defendant's guilt beyond reasonable doubt; otherwise, he is entitled to acquittal. Conviction

will depend not on the weakness of his own defense but on the strength of the prosecution. (Cruz and Cruz, Constitutional Law, 2015 Edition, pages 700-702; see *People v. Malilay*, G.R. No. L-27938. April 22, 1975; 63 SCRA 420; *People v. Angus*, G.R. No. 178778, August 3, 2010)

It is submitted that the prosecution's evidence in this case cannot be considered as adequate to establish, with moral certainty, Arnold's guilt, especially in light of the fact that he was able to present witnesses in his behalf to prove that his possession and apprehension had merely been "set-up." Accordingly, his constitutional presumption of innocence entitles him to an acquittal, notwithstanding his silence during the investigation and trial.

[*Acceptable Answer*: Yes, the court correctly convicted Arnold.

It is established that, "although no inference of guilt may be drawn against an accused for his failure to make a statement of any sort," (*People v. Arciaga*, 99 SCRA 1) "after the prosecution has adduced evidence, the constitutional presumption of innocence must yield to what has been so amply and persuasively demonstrated." (*Joseph v. Villaluz*, 89 SCRA, 665; *People v. Sarmiento*, 94 SCRA 944)

Moreover, while an accused has a right to be silent, he runs the risk of an inference of guilt from the non-production of evidence in his behalf. (*People v. Solis*, 128 SCRA 217) As there is no showing that the prosecution's evidence against Arnold was inadequate, it is submitted that the same can serve as valid basis for his conviction, notwithstanding his presentation of his own witnesses to prove that his possession and apprehension had merely been "set-up."

It must be noted that "once the presumption of innocence is overcome, the defense bears the burden of evidence to show reasonable doubt as to the guilt of the accused. Reasonable doubt is that doubt engendered by an investigation of the whole proof and an inability after such investigation to let the mind rest each upon the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict a criminal charge, but moral certainty is required as

to every proposition of proof requisite to constitute the offense.”  
(*People v. Santos*, G.R. No. 175593, October 17, 2007)

## VIII

**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. (6%)**

As counsel for the University, I would invoke the provisions of the Constitution on academic freedom (Constitution, Article XIV, Section 5 [2]), which states that academic freedom shall be enjoyed in all institutions of higher learning, and which necessarily entitles them to prescribe fair, reasonable and equitable admission and academic requirements. (*Ibid.*, Section 5 [4])

The concept of academic freedom “encompasses the freedom to determine for itself on academic grounds: who may teach, what may be taught, how it shall be taught, and who may be admitted to study.” (*Camacho*

*vs. Corresis*, G.R. No. 103142, November 8, 1993, 227 SCRA 591-596)

“It therefore invariably vests in schools the right to maintain a policy of non-readmission to students who fail to meet their reasonable academic standards. A school has no obligation to see every student to graduation no matter what the circumstances.” (*Capitol Medical Center vs. Court of Appeals*, G.R. No. 82499, October 13, 1989)

## IX

**Conrad is widely known in the neighborhood as a drug addict. He is also suspected of being a member of the notorious “Akyat-Condo Gang” that has previously broken into and looted condominium units in the area.**

**Retired Army Colonel Sangre – who is known as an anti-terrorism fighter who disdained human and constitutional rights and has been nicknamed “terror of Mindanao” – is now the Head of Security of Capricorn Land Corporation, the owner and developer of Sagittarius Estates where a series of robberies has recently taken place.**

**On March 1, 2013, Conrad informed his mother, Vannie, that uniformed security guards had invited him for a talk in their office but he refused to come. Later that day, however, Conrad appeared to have relented; he was seen walking into the security office flanked by two security guards. Nobody saw him leave the office afterwards.**

**Conrad did not go home that night and was never seen again. The following week and after a week-long search, Vannie feared the worst because of Col. Sangre's reputation. She thus reported Conrad's disappearance to the police. When nothing concrete resulted from the police investigation, Vannie – at the advice of counsel - filed a petition for a writ of amparo to compel Col. Sangre and the Sagittarius Security Office to produce Conrad and to hold them liable and responsible for Conrad's disappearance.**

**(A) Did Vannie's counsel give the correct legal advice? (6%)**

No, Vannie's counsel did not give the correct legal advice.

Although a writ of *amparo* may lie against a private individual or entity (A.M. No. 07-9-12-SC, Section 1), government involvement in any enforced disappearance remains an indispensable element.

In other words, the disappearance subject of the *amparo* proceedings must be attended by some governmental involvement.

It would appear that only private security guards working for Sagittarius Estates, a private entity, were involved in Conrad's disappearance. It is clear that they did not work for the government and no proof whatsoever had been presented that would link or connect them to some covert police, military or governmental operation. There is no showing that the government was involved in any manner in the disappearance of Conrad. (*Navia v. Pardico*, G.R. No. 184467, June 19, 2012)

**(B) If the petition would prosper, can Col. Sangre be held liable and/or responsible for Conrad's disappearance? (6%)**

On the assumption that the petition would prosper, Colonel Sangre can be held responsible, *not necessarily liable*, for Conrad's disappearance.

It has been ruled that *amparo* proceedings may be instituted for purposes of determining the responsibility of parties in an enforced disappearance. (*Burgos v. President Gloria Macapagal-Arroyo*, G.R. No. 183712, July 5, 2011)

There can be no determination of administrative, civil or criminal liability in *amparo* proceedings, and courts can only go as far as ascertaining responsibility or accountability for the enforced disappearance or extrajudicial killing. (*Razon v. Tagitis*, G.R. No. 182498, 3 December 2009, 606 SCRA 598, cited in *Rodriguez v. Macapagal-Arroyo*, G.R. No. 191805, November 15, 2011)

The Rule on the Writ of *Amparo* explicitly states that the violation of or threat to the right to life, liberty and security may be caused by either an act or an *omission* of a public official. Moreover, in the context of *amparo* proceedings, responsibility may refer to the participation of the respondents, by action or *omission*, in enforced disappearance. Accountability, on the other hand, may attach to respondents who are *imputed with knowledge* relating to the enforced disappearance and who *carry the burden of disclosure*; or those who *carry, but have failed to discharge, the burden of extraordinary diligence in the investigation* of the enforced disappearance. (*Secretary of National Defense v. Manalo*, G.R. No. 180906, 7 October 2008, 568 SCRA 1, 42; see also *Rodriguez v. Macapagal-Arroyo*, G.R. No. 191805, November

15, 2011) Such identification of the responsible and accountable superiors may well be a preliminary determination of criminal liability which, of course, is still subject to further investigation by the appropriate government agency. (*Boac v. Cadapan*, G.R. No. 184461, May 31, 2011)

Moreover, the Supreme Court has held that superior officers, such as the President, as Commander-in-Chief, and, in the context of this case, Colonel Sangre, can be held responsible or accountable for extrajudicial killings and enforced disappearances in the context of *amparo* proceedings on the basis of the *doctrine of command responsibility*, the requisites of which are “a. the existence of a superior-subordinate relationship between the accused as superior and the perpetrator of the crime as his subordinate; b. the superior knew or had reason to know that the crime was about to be or had been committed; and c. the superior failed to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof.” (*Rodriguez v. Macapagal-Arroyo*, G.R. No. 191805, November 15, 2011 see also *In the Matter of the Petition for the Writ of Amparo and the Writ of Habeas Data in Favor of Francis Saez v. Macapagal-Arroyo*, G.R. No. 183533, September 25, 2012, 681 SCRA 678, citing *Gonzales v. Abaya*, G.R. No. 164007, August 10, 2006, 498 SCRA 445)

## X

**The Ambassador of the Republic of Kafiristan 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? (6%)**

Yes, the Embassy may invoke immunity from suit.

While, as a general principle, its execution of its Maintenance Agreement with CBM may be considered as an implied waiver of its sovereign immunity (*Santos v. Santos*, 92 Phil. 281), it has however been ruled that suability would follow only if the contract were executed by it in its proprietary capacity. Governmental or “sovereign” contracts, such as the one subject of this case, which pertains to the maintenance of the Embassy’s elevators, air-conditioning units and electrical facilities, all of which may be considered as vital to its “governmental” operations, do not result in implied waiver of the State from suit. (*USA v. Ruiz*, 136 SCRA 487)

## XI

**In her interview before the Judicial and Bar Council (JBC), Commissioner Annie Amorsolo of the National Labor Relations Commission claims that she should be given credit for judicial service because as NLRC Commissioner, she has the rank of a Justice of the Court of Appeals; she adjudicates cases that are appealable to the Court of Appeals; she is assigned car plate No. 10; and she is, by law, entitled to the rank, benefits and privileges of a Court of Appeals Justice.**

**If you are a member of the JBC, would you give credit to this explanation? (6%)**

Yes, it has been held that, even if the Commissioners of the National Labor Relations Commission (NLRC), which is not a court, are technically not Members of the Judiciary, and they therefore do not have the privilege to use the title of Judge or Justice, they should just the same not be deprived of "credit for judicial service," particularly with respect to their salaries and retirement benefits, considering that various laws regard them, or these executive officials, to be "at par" with their judicial counterparts with respect to said salaries and retirement benefits.

Said laws, which confer upon them the rank and privileges of Justices of the Court of Appeals, provide that their service in the NLRC ought to be credited as judicial service, at least, as stated earlier, in terms of salaries and retirement benefits. (*Re: Letter of Court of Appeals Justice Vicente S. E. Veloso*, Resolution on MR, A.M. No. 12-8-07-CA, July 26, 2016)

[Note: This answer is based on a case which was decided by the Supreme Court after this question was asked in 2013. Thus –

“In conferring upon certain officials in the Executive the same salaries, aside from their rank, as those of their respective judicial counterparts, Congress intended to make the salaries of the former at par with the latter. xxx. Thus, Congress knew, or is presumed to have known, the concept of longevity pay under Section 42 of Batas Pambansa Blg. 129 as part of the total salary of members of the Judiciary when it enacted Republic Act Nos. 9417, 9347, and 10071, which granted certain officials of the OSG, the NLRC, and the NPS, respectively, the same salary as their respective counterparts in the Judiciary. Moreover, armed with that knowledge, Congress is presumed to have intended to adopt the definition of ‘salary’ (as constituting basic monthly salary plus longevity pay) when it enacted Republic Act Nos. 9417, 9347, and 10071, which will be in keeping with the legislative intent to equalize the salary of certain executive officials with members of the Judiciary. To do otherwise will negate the express legislative intent.” (*Re: Letter of Court of Appeals Justice Vicente S. E. Veloso*, Resolution on MR, A.M. No. 12-8-07-CA, July 26, 2016)]

[*Acceptable Answer* (based also on a case decided after this question was asked in 2013):

Commissioner Amorsolo’s claim is untenable.

The NLRC is an agency attached to the Department of Labor and Employment – an adjunct of the Executive Department – albeit for policy and program coordination only. Her past service as NLRC Commissioner cannot be credited as judicial service. Parity in rank and salary does not automatically mean parity in rights. Service in the NLRC, even with the rank of a CA Justice, is not service with the Judiciary. (*Re: Letter of Court of Appeals Justice Vicente S. E. Veloso*, Resolution on MR, A.M. No. 12-8-07-CA, A.M. No. 12-8-07-CA, June 16, 2015 – reversed on Motion for Reconsideration, July 26, 2016)]

[*Acceptable Answer*: Commissioner Amorsolo’s claim is untenable. A statutory grant in favor of an executive official of the privileges of a Member of the Judiciary does not make him a part of the Judiciary and therefore or consequently subject to all powers and laws reserved for such Members. (*Noblejas v. Teehankee*, G.R. No. L-28790, April 29, 1968)]

## XII

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 that a congressman should not actively participate in cases 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? (6%)**

No, the grounds cited for Congressman Abling's disbarment are without merit.

Section 14 of Article VI of the Constitution prohibits legislators from personally appearing as counsel before, among others, any court of justice or quasi-judicial and other administrative bodies.

Congressman Abling does not appear to have violated this provision of the Constitution, which clearly does not cover "labor counselling" or simply accompanying, and not personally appearing as counsel for, workers, who are formally and actually represented by their own retained counsel, in labor cases.

It is submitted that his "passive role" and occasional remarks in support of said retained counsel's statements cannot be considered as a breach of this constitutional proscription, which would also not cover his participation in CBA negotiations, which, again, cannot be considered as personally appearing as counsel before any court or quasi-judicial or administrative proceeding.

**MULTIPLE CHOICE QUESTIONS**

**I. The equal protection clause is violated by \_\_\_\_\_.** (1%)

(A) a law prohibiting motorcycles from plying on limited access highways.

(B) a law granting Value Added Tax exemption to electric cooperatives that sells electricity to the "homeless poor."

(C) a law providing that a policeman shall be preventively suspended until the termination of a criminal case against him.

**(D) a law providing higher salaries to teachers in public schools who are “foreign hires.”**

(E) a law that grants rights to local Filipino workers but denies the same rights to overseas Filipino workers.

**II. Offended by the President’s remarks that the Bureau of Customs is a pit of misfits and the corrupt, the Bureau of Customs Employees Association composed of 3,000 workers seeks your legal advice on how best to protest what it views to be the President’s baseless remarks.**

**A prudent legal advice is that \_\_\_\_\_ . (1%)**

(A) employees can go on mass leave of absence for one week.

(B) employees can march and rally at Mendiola every Monday.

(C) employees can barricade the gates of the Port of Manila at South Harbor and call for the resignation of the incumbent Commissioner of Customs.

**(D) employees can wear black arm bands and pins with the word “UNFAIR” inscribed.**

(E) None of the above can legally be done.

**III. 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? (1%)**

(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 requirement 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.

**IV. What is the legal effect of decisions of the International Court of Justice in cases submitted to it for resolution? (1%)**

(A) The decision is binding on other countries in similar situations.

(B) The decision is not binding on any country, even the countries that are parties to the case.

**(C) The decision is binding only on the parties but only with respect to that particular case.**

(D) The decision is not binding on the parties and is only advisory.

(E) The binding effect on the parties depends on their submission agreement.

**V. Under the UN Convention on the Law of the Sea, the exclusive economic zone refers to an area. (1%)**

(A) that is at least 100 miles from the baselines from which the outer limit of the territorial sea is measured.

(B) that is at least 200 miles but not to exceed 300 miles from the baselines from which the outer limit of the territorial sea is measured.

(C) beyond and adjacent to a country's territorial sea which cannot go beyond 200 nautical miles from the baselines from which the outer limit of the territorial sea is measured.

(D) that can go beyond 3 nautical miles but cannot extend 300 nautical miles from the baselines from which the outer limit of the territorial sea is measured.

(E) None of the above.

**VI. A child born under either the 1973 or the 1987 Constitution, whose father or mother is a Filipino citizen at the time of his birth, is \_\_\_\_\_ . (1%)**

(A) not a Filipino citizen as his father and mother must both be Filipino citizens at the time of his birth.

(B) not a Filipino citizen if his mother is a Filipino citizen but his father is not, at the time of his birth.

**(C) a Filipino citizen no matter where he or she may be born.**

(D) a Filipino citizen provided the child is born in the Philippines.

(E) a Filipino citizen if he or she so elects upon reaching the age of 21.

**VII. Who has control of the expenditure of public funds? (1%)**

**(A) The Office of the President through the Department of Budget and Management.**

(B) The House of Representatives from where all appropriation bills emanate.

(C) The Senate through its Committee on Finance.

(D) The Congress of the Republic of the Philippines.

(E) Both the members of Congress and the President acting jointly, if so provided by the General Appropriations Act.

**VIII. May the power of cities to raise revenues be limited by an executive order of the President? (1%)**

(A) Yes, because local government units are under the administrative control of the President through the Department of Interior and Local Government.

(B) No, because local government units now enjoy full local fiscal autonomy.

**(C) No, because only limitations established by Congress can define and limit the powers of local governments.**

(D) Yes, because the President has the power and authority to impose reasonable restrictions on the power of cities to raise revenues.

(E) Yes, if so provided in a city's charter.

**IX. The provision under the Constitution - that any member who took no part, dissented, or inhibited from a decision or resolution must state the reason for his dissent or non-participation - applies \_\_\_\_\_. (1%)**

(A) only to the Supreme Court.

(B) to both the Supreme Court and the Court of Appeals.

(C) to the Supreme Court, Court of Appeals and the Sandiganbayan.

**(D) to the Supreme Court, the Court of Appeals, the Sandiganbayan and the Court of Tax Appeals.**

(E) to all collegial judicial and quasi-judicial adjudicatory bodies.

**X. Choose the least accurate statement about the independence guaranteed by the 1987 Constitution to the following constitutional bodies: (1%)**

(A) The Constitution guarantees the COMELEC decisional and institutional independence similar to that granted to the Judiciary.

(B) All bodies labeled as “independent” by the Constitution enjoy fiscal autonomy as an attribute of their independence.

**(C) Not all bodies labeled as “independent” by the Constitution were intended to be independent from the Executive branch of government.**

(D) The Constitution guarantees various degrees of independence from the other branches of government when it labels bodies as “independent”.

(E) The COMELEC, the COA, and the CSC enjoy the same degree of independence.

**XI. At the Senate impeachment trial of Justice Pablo P. San Quintin, Hon. Emilio A. Tan, Congressman and Impeachment Panel Manager, wrote the Supreme Court requesting that the prosecutors be allowed to examine the court records of Stewards Association of the Philippines, Inc. (SAP) v. Filipinas Air, et al., G.R. No. 987654, a case that is still pending. The High Court \_\_\_\_\_ . (1%)**

(A) may grant the request by reason of inter-departmental courtesy.

(B) may grant the request as the records of the Filipinas Air case are public records.

**(C) should deny the request since records of cases that are pending for decision are privileged except only for pleadings, or-**

**ders and resolutions that are available to the public.**

(D) should deny the request because it violates the Court's independence and the doctrine of separation of powers.

(E) should grant the request because of the *sui generis* nature of the power of impeachment, provided that the Bill of Rights is not violated.

[Note: (B) can also be considered as an acceptable answer.]

**XII. Mr. Sinco sued the government for damages. After trial, the court ruled in his favor and awarded damages amounting to P50 million against the government. To satisfy the judgment against the government, which valid option is available to Mr. Sinco? (1%)**

(A) Garnish the government funds deposited at the Land Bank.

(B) File a claim with the Commission on Audit (COA) pursuant to Commonwealth Act 327, as amended by Presidential Decree 1445.

(C) Make representations with the Congress to appropriate the amount to satisfy the judgment.

(D) File a petition for mandamus in court to compel Congress to appropriate P50 million to satisfy the judgment.

(E) Proceed to execute the judgment as provided by the Rules of Court because the State allowed itself to be sued.

**XIII. Which of the following provisions of the Constitution does not confer rights that can be enforced in the courts but only provides guidelines for legislative or executive action? (1%)**

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

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

**(C) The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.**

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

**(E) All the above only provide guidelines and are not self-executing.**

[Note: (A), (B) and (C) are all acceptable answers because they all refer to non-self-executing provisions of the Constitution.]

**XIV. The President entered into an executive agreement with Vietnam for the supply to the Philippines of animal feeds not to exceed 40,000 tons in any one year. The Association of Animal Feed Sellers of the Philippines questioned the executive agreement for being contrary to R.A. 462 which prohibits the importation of animal feeds from Asian countries. Is the challenge correct? (1%)**

**(A) Yes, the executive agreement is contrary to an existing domestic law.**

(B) No, the President is solely in charge of foreign relations and all his actions in this role form part of the law of the land.

(C) No, international agreements are *sui generis* and stand independently of our domestic laws.

(D) Yes, the executive agreement is actually a treaty which does not take effect without ratification by the Senate.

(E) Yes, the challenge is correct because there is no law empowering the President to undertake the importation.

**XV. The separation of Church and State is most clearly violated when \_\_\_\_\_. (1%)**

(A) the State funds a road project whose effect is to make a church more accessible to its adherents.

(B) the State declares the birthplace of a founder of a religious sect as a national historical site.

(C) the State expropriates church property in order to construct an expressway that, among others, provides easy access to the Church's main cathedral.

**(D) the State gives vehicles to bishops to assist them in church-related charitable projects.**

(E) the State allows prayers in schools for minor children without securing the prior consent of their parents.

**XVI. Patricio was elected member of the House of Representative in the May 2010 Elections. His opponent Jose questioned Patricio's victory before the House of Representatives Electoral Tribunal and later with the Supreme Court.**

**In a decision promulgated in November 2011, the Court ruled in Jose's favor; thus, Patricio was ousted from his seat in Congress. Within a year from that decision, the President can appoint Patricio \_\_\_\_\_. (1%)**

**(A) only as a member of the board of directors of any government owned and controlled corporation.**

(B) only as a deputy Ombudsman.

(C) only as a Commissioner of the Civil Service Commission.

(D) only as Chairman of the Commission on Elections.

(E) to any position as no prohibition applies to Patricio.

**XVII. Senator GSC proposed a bill increasing excise taxes on tobacco and alcohol products. The generated incremental revenues shall be used for the universal health care program for all Filipinos and for tobacco farmers' livelihood. After the Senate passed the bill on third reading, it was transmitted to the House of Representatives which approved the bill in toto. The President eventually signed it into law. Atty. JFC filed a petition before the Supreme Court, questioning the constitutionality of the new law.**

**Is the law constitutional? (1%)**

(A) The law is constitutional because it is for a public purpose and has duly satisfied the three-readings-on-separate-days rule in both Houses.

(B) The law is unconstitutional because it violates the equal protection clause of the Constitution; it is limited only to alcohol and liquor products.

(C) It is constitutional because of the Enrolled Bill Theory.

(D) It is constitutional because it is valid in form and substance and complied with the required lawmaking procedures.

**(E) None of the above is correct.**

**XVIII. Which of the following statements is correct? (1%)**

(A) The President, with the concurrence of the Monetary Board, can guarantee a foreign loan on behalf of the Republic of the Philippines.

**(B) Congress may, by law, provide limitations on the President's power to contract or guarantee foreign loans on behalf of the Republic of the Philippines.**

(C) In order to be valid and effective, treaties and executive agreements must be concurred in by at least two-thirds of all the Members of the Senate.

(D) The President shall, at the end of every quarter of the calendar year, submit to Congress a complete report of the loans contracted or guaranteed by the Government or government-owned and controlled corporations.

(E) All the above choices are defective in some respects.

**XIX. Candida has been administratively charged of immorality for openly living with Manuel, a married man. Candida argues that her conjugal arrangement with Manuel fully conforms with their religious beliefs and with the teachings of their church.**

**In resolving whether Candida should be administratively penalized, which is the best test to apply? (1%)**

(A) Clear and Present Danger Test

- (B) Compelling State Interest Test**
- (C) Balancing of interests Test
- (D) Conscientious Objector Test
- (E) Dangerous Tendency Test

**XX. Rafael questioned the qualifications of Carlos as congressman of the Third District of Manila on the ground that Carlos is a citizen of the USA. The decision disqualifying Carlos for being a US citizen came only in March 2010, i.e., after the adjournment of the session of Congress on the 3'd year of the position's three-year term.**

**What was Carlos' status during his incumbency as congressman? (1%)**

(A) He was a *de jure* officer, having been duly elected and proclaimed.

(B) He was not a public officer because he effectively was not entitled to be a congressman.

(C) He was a *de jure* officer since he completed the service of his term before he was disqualified.

**(D) He was a de facto officer since he had served and was only disqualified later.**

(E) He neither possesses *de jure* nor *de facto* status as such determination is pointless.

**2014****I**

**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 party-list 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 of 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? (5%)**

No, the proposals were not validly adopted because only ten of the twenty-four Senators approved the proposed amendments.

Section 1 of Article XVII requires a vote of three-fourths of all of the Members of the Congress for the validity of the adoption of such proposals.

Although not expressly required under said provision, it is submitted that this three-fourths vote must be done by each of the chambers of the Congress separately, *i.e.*, there must be a three-fourths vote in the House of Representatives and a separate three-fourths vote in the Senate.

This procedure finds justification in, first, the fact that the Congress is a bicameral body, and each of the two chambers must necessarily have the competence to make independent determinations and decisions with respect to this constituent act of initiating the first step toward changing the Constitution, and, second, the practical reason that, if bills, done by the Congress in its purely legislative capacity, are required under the Constitution to be separately deliberated and decided upon by each chamber, then, with greater reason, there must be as well the competence for each of the chambers to make such independent deliberation and decision on the constituent and therefore greater or more important task of proposing constitutional amendments.

It may be added that many specific actions of the Congress, such as the declaration of the existence of a state of war (Article VI, Section 23 [1]) and the proclamation of the winning presidential candidate (Article VII, Section 4) are required under the Constitution to be done through the separate votes of the two chambers. It is only in the revocation of a declaration of martial law or suspension of the privilege of the writ of *habeas corpus* that a joint majority vote is prescribed. (Article VII, Section 18)

## II

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? (4%)

I would advise them to proceed with their intention to file a petition for initiative for purposes of providing for a law prohibiting political dynasties.

This can be done on the basis of and following the procedure prescribed in R.A. No. 6735, which implements Section 32 of Article VI of the Constitution. It will be recalled that the procedure for said initiative on national legislation, as prescribed in said law, has been upheld as a valid enabling law with respect to initiatives on national and local legislation by the Supreme Court in *Santiago v. Commission on Elections*.

I will further advise them not to pursue or file a petition for initiative on amendment of the Constitution because, in the same case of *Santiago v. Commission on Elections*, the Supreme Court considered said enabling law, or R.A. No. 6735, as inadequate for purposes of implementing Section 2 of Article XVII of the Constitution, with respect to initiatives for amendment of the Constitution. Accordingly, there exists no valid or enforceable enabling law which can implement said constitutional provision.

The claim that *Lambino v. Commission on Elections* has reversed that part of the ruling in *Santiago v. Commission on Elections*, *i.e.*, on the inadequacy of R.A. No. 6735 by reason of its failure to provide for an effective procedure for petitions for initiative on amendment of the Constitution, is baseless or untenable.

It will be recalled that the Supreme Court did not even consider *Santiago* as an issue in said *Lambino* case, and dismissed the *Lambino* petition on other grounds, *i.e.*, the insufficiency of the petition for initiative filed by the petitioners in said case.

It is submitted that there can be no reversal of a doctrine by implication, especially in a case where said doctrine was not even considered as among the legal issues.

### III

**In *Serrano v. Gallant Maritime Services, Inc.*, 582 SCRA 254 (2009), the Supreme Court declared as violative of the Equal Protection Clause the 5th paragraph of §10 R.A. No. 8042 (Migrant Workers and Overseas Filipinos Act of 1995) for discriminating against illegally dismissed OFWs who still**

had more than a year to their contract compared to those who only had less than a year remaining. The next year, Congress enacted R.A. No 10222, an amendment to the Migrant Workers and Overseas Filipinos Act, which practically reinstated the provision struck down in Serrano.

Seamacho, an overseas seafarer who still had two years remaining on his contract when he was illegally terminated, and who would only be entitled to a maximum of six-month's pay under the reinstated provision, engages you as his counsel. How are you to argue that the new law is invalid insofar as it brings back to the statute books a provision that has already been struck down by the Court? (5%)

When a law or a provision of law is null because it is inconsistent with the Constitution, the nullity cannot be cured by reincorporation or reenactment of the same or a similar law or provision.

A law or provision of law that was already declared unconstitutional remains as such unless circumstances have so changed as to warrant a reverse conclusion. (*Sameer Overseas Placement Agency, Inc. v. Cabiles*, G.R. No. 170139, August 5, 2014)

#### IV

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? (4%)

Beauty's argument is untenable.

The COMELEC properly had jurisdiction over her disqualification case, and its decision providing for her disqualification had indeed become final in June.

Her claim that it is the House of Representatives Electoral Tribunal (HRET) which may properly exercise jurisdiction over her is without merit.

It is established that the jurisdiction of the HRET is limited only to Members of the House of Representatives. For one to be considered as such, "there must be a concurrence of the following requisites: (a) a valid proclamation, (b) a proper oath, and (c) assumption of office." A "proper oath" is one taken before the Speaker of the House of Representatives "in open session," consistent with the provisions of Section 6 of Rule II (Membership) of the Rules of the House of Representatives. (*Reyes v. COMELEC*, G.R. No. 207264, June 25, 2013)

It is clear that Beauty, upon the finality of the COMELEC decision on her disqualification had yet to become such a Member, because while she may then already have been proclaimed as the winning candidate, it is clear that she is yet to take her “proper oath” and assume office.

## V

**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? (4%)**

The observations of Bluebean are not valid.

Greenpeas can be considered as qualified to a party-list seat notwithstanding its having obtained only 1.99 percent of the votes cast under the party-list system. Party-list groups or organizations garnering less than 2% of the party-list votes may yet qualify for a seat in the allocation of additional seats. (*BANAT v. COMELEC*, G.R. No. 179271, April 21, 2009, 592 SCRA 294, cited in *Philippine Guardians v. COMELEC*, G.R. No. 190529, April 29, 2010)

Neither should Greenpeas be considered as disqualified because, as alleged by Blueban, "it does not represent any of the marginalized and underrepresented sectors of society."

It still can be considered as a sectoral party, which refers to any organized group of citizens belonging to any of the sectors enumerated in the law, Section 5 of R.A. No. 7941, whose principal advocacy pertains to the special interest and concerns of their sector.

The sectors mentioned in Section 5 are not all necessarily "marginalized and underrepresented." It would be enough if a sectoral party's principal advocacy pertains to the special interest and concerns of its sector, as in the case of Greenpeas, which is an ideology-based political party fighting for environmental causes. (*Atong Paglaum, Inc. v. Commission on Elections*, G.R. No. 203766, April 2, 2013, 694 SCRA 477)

## VI

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 the assumption 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? (4%)**

Although the senators are correct in declaring that the Senate, as an institution, is a continuing body (*Arnault v. Nazareno*, G.R. No. L-3820, July 18, 1950, 87 Phil. 29; *Neri v. Senate Committee on Accountability of Public Officers*, G.R. No. 180643, September 4, 2008, 564 SCRA 152), it is also established that, in the conduct of its day-to-day business, the Senate of each Congress acts separately and independently of the Senate of the Congress before it. Accordingly, all pending matters and proceedings, *i.e.*, unpassed bills and even legislative investigations, of the Senate of a particular Congress are considered terminated upon the expiration of that Congress and it is merely optional on the Senate of the succeeding Congress to take up such unfinished matters, not in the same status, but as if presented for the first time. (*Neri v. Senate Committee on Accountability of Public Officers and Investigations*, G.R. No. 180643, March 25, 2008, 549 SCRA 77, cited in *Garcillano v. House of Representatives*, G.R. No. 170338, December 23, 2008 575 SCRA 170)

Accordingly, it has been held that the period of imprisonment under the inherent power of contempt by the Senate during inquiries in aid of legislation should only last until the termination of the legislative inquiry under which the said power is invoked, *i.e.*, upon the approval or disapproval of the Committee Report, or

upon the expiration of one Congress which necessarily results in the termination of the legislative inquiry of the Senate. As the legislative inquiry ends upon that expiration, the imprisonment of the detained witnesses likewise ends. (*Balag v. Senate*, G.R. No. 234608, July 3, 2018)

[Note: This answer is based on a case which was decided after this question was asked in 2014.]

[*Acceptable Answer*: The senators are correct in declaring that the Senate, as an institution, is a continuing body (*Arnault v. Nazareno*, G.R. No. L-3820, July 18, 1950, 87 Phil. 29; *Neri v. Senate Committee on Accountability of Public Officers*, G.R. No. 180643, September 4, 2008, 564 SCRA 152). Accordingly, Stornngwill can be detained despite the adjournment of the Senate, provided that his detention should not be for a period which can be considered as violative of his right to due process. (*Arnault v. Nazareno*, G.R. No. L-3820, July 18, 1950, 87 Phil. 29)]

[*Acceptable Answer*: Although the senators are correct in declaring that the Senate, as an institution, is a continuing body (*Arnault v. Nazareno*, G.R. No. L-3820, July 18, 1950, 87 Phil. 29; *Neri v. Senate Committee on Accountability of Public Officers*, G.R. No. 180643, September 4, 2008, 564 SCRA 152), it is also established that, in the conduct of its day-to-day business, the Senate of each Congress acts separately and independently of the Senate of the Congress before it. Accordingly, all pending matters and proceedings, *i.e.*, unpassed bills and even legislative investigations, of the Senate of a particular Congress are considered terminated upon the expiration of that Congress. This should necessarily include the continued detention of those it may have cited for contempt and punished with detention, such as Strongwill, in connection with its exercise of its power of legislative inquiry. (*Neri v. Senate Committee on Accountability of Public Officers and Investigations*, G.R. No. 180643, March 25, 2008, 549 SCRA 77, cited in *Garcillano v. House of Representatives*, G.R. No. 170338, December 23, 2008 575 SCRA 170)]

## VII

**Margie has been in the judiciary for a long time, starting from the lowest court. Twenty (20) years from her first year in the judiciary, she was nominated as a Justice in the Court of Appeals. Margie also happens to be a first-degree cousin of the President. The Judicial and Bar Council included her in the short-list submitted to the President whose term of office was about to end – it was a month before the next presidential elections. Can the President still make appointments to the judiciary during the so-called midnight appointment ban period? Assuming that he can still make appointments, could he appoint Margie, his cousin? (4%)**

Yes, he can still make appointments to the judiciary during the so-called midnight appointment ban period because the prohibition against such, which is found in Section 15 of Article VII of the Constitution, covers only appointments to executive positions.

The prohibition against the President or Acting President making appointments within two months before the next presidential elections and up to the end of the President's or Acting President's term does not refer to the Members of the Supreme Court. Section 15, Article VII does not apply as well to all *other* appointments in the Judiciary. (*De Castro v. Judicial and Bar Council*, G.R. No. 191002, March 17, 2010)

It is submitted that the president can likewise validly appoint his cousin, Margie, as a Justice in the Court of Appeals, because the special rule against nepotism

with respect to appointments which may be made by the president does not cover appointments to the judiciary.

Thus, it is there provided that “the spouse and relatives by consanguinity or affinity within the fourth civil degree of the President shall not during his tenure be appointed as members of the Constitutional Commissions, or the Office of the Ombudsman, or as Secretaries, Undersecretaries, chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries.”

### VIII

**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 as unnecessary since there was an old bridge near the proposed bridge which was still functional – should be scrapped. Does the President have such authority? (4%)**

It is submitted that the president does not have such authority.

Although it is established that, in keeping with his duty to faithfully execute the laws, the president has sufficient discretion during the execution of the budget

to adapt the budget to changes in the country's economic situation, said discretion being justified as a measure indicative of his fiscal autonomy and the principle of separation of powers (*Bengzon v. Drilon*, G.R. No. 103524, April 15, 1992, 208 SCRA 133), it is nevertheless submitted that his decision not to release, and therefore not spend, the subject funds can be considered as impoundment, which if not statutorily authorized, should be considered as unlawful or unconstitutional.

Impoundment refers to a refusal by the president, for whatever reason, to spend funds made available by Congress. It is the failure, as in this case, to spend or obligate budget authority of any type.

To allow him to do this, without prior or express legislative authorization, would be to, in effect, permit him to repeal a law, in this case, the pertinent appropriation measure, or to exercise a power which he does not have. This should be considered as violative of the principle of separation of powers. (*Philippine Constitution Association v. Enriquez*, G.R. No. 113105, August 19, 1994, 235 SCRA 506, cited in *Araullo v. Aquino*, G.R. No. 209287, July 1, 2014)

## IX

**Gerrymandering refers to the practice of:**  
**(1%)**

**(A) creating or dividing congressional districts in a manner intended to favor a particular party or candidate.**

(B) truancy as applied to Members of Congress.

(C) loafing among members of Congress.

(D) coming up with guessing game when it comes to legislation.

(E) commandeering large chunks of the budget for favoured congressional districts.

## X

**The void-for-vagueness doctrine is a concept which means that: (1%)**

(A) if a law is vague, then it must be void.

(B) any law which could not be understood by laymen is a nullity.

**(C) if a law is incomprehensible to ordinary people such that they do not really know what is required or prohibited, then the law must be struck down.**

(D) a government regulation that lacks clear standards is nonsensical and useless as a guide for human conduct.

(E) clarity in legal language is a mandate of due process.

*[Acceptable Answer: (A)]*

## XI

**In keeping with the modern age of instant and incessant information and transformation, Congress passed Cybercrime Prevention Act to regulate access to and use of the amenities of the cyberspace. While ostensibly the law is intended to protect the interests of society, some of its pro-**

visions 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 but 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 therefore, there is no actual case or controversy to speak of, aside from the fact 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? (4%)

Yes, the Supreme Court can decide the case even if the law has not yet become effective.

It is established that, upon the mere enactment of the questioned law or the approval of the challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt act. "Indeed, even a singular violation of the Constitution and/or the law is enough to awaken judicial duty." (*Tañada v. Angara*, G.R. No. 118295, May 2, 1997, 272 SCRA 18, cited in *Pimentel v. Aguirre*, G.R. No. 132988, July 19, 2000, 336 SCRA 201)

## XII

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. (6%)

(A) Was the announced 8-7 decision already validly promulgated and thus not subject to recall?

The press release on the subject decision cannot be considered as a valid promulgation of said judgment which may thus be recalled.

It is established that an *unpromulgated* decision is no decision at all. A decision becomes binding only after it is validly promulgated. (*Limkaichong v. COMELEC*, G.R. Nos. 178831-32, July 30, 2009 Resolution on the Motion for Reconsideration)

Until such operative act occurs, there is really no decision to speak of, even if some or all of the Justices have already affixed their signatures thereto. During the intervening period from the time of signing until the promulgation of the decision, anyone who took part in the deliberation and had signed the decision may, for a reason, validly withdraw one's vote, thereby preserving one's freedom of action. (*Limkaichong v. COMELEC*, G.R. Nos. 178831-32, July 30, 2009 Resolution on the Motion for Reconsideration)

**(B) If the decision was not yet finalized at the time when the justice died, could it still be promulgated?**

It is submitted that, considering that one of the justices which voted for the majority had died before the actual promulgation of the subject judgment, said decision can no longer be promulgated, as the resultant vote (of 7-7) would not be determinative of the case.

This would be consistent with the established rule that judgments must be duly signed and promulgated during the incumbency of those, or the judges, who signed them. (*People vs. So*, 101 Phil. 1257; *People vs. Court of Appeals and Domaloan*, 99 Phil. 786; *Jimenez vs. Republic*, L-24529, February 17, 1968, 22 SCRA 622;

*Piazon vs. Judge of the CFI of Cotabato*, L-29354, January 27, 1969, 26 SCRA 664; *Sons vs. Court of Appeals*, L-29777-83, March 26, 1971, 38 SCRA 53)

**(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?**

It is submitted that the Court should not release both the majority decision and the separate opinions prior to their valid promulgation. These should be considered as parts of the confidential internal deliberations of the Court which must not be released to the public. (*Limkaichong v. COMELEC*, G.R. Nos. 178831-32, July 30, 2009 Resolution on the Motion for Reconsideration)

### XIII

**Congress may increase the appellate jurisdiction of the Supreme Court: (1%)**

- (A) anytime it wants.
- (B) if requested by the Supreme Court.
- (C) upon recommendation of the President.
- (D) only with the advice and concurrence of the Supreme Court.**
- (E) whenever it deems it appropriate, advisable or necessary.

**XIV**

**The guarantee of freedom of expression signifies: (1%)**

- (A) absolute freedom to express oneself.
- (B) **freedom from prior restraint.**
- (C) right to freely speak on anything without limitations.
- (D) the right of the government to regulate speech.
- (E) the right of broadcast stations to air any program.

**XV**

**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 the guaranty 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? (4%)**

I would rule in favor of DeepThroat.

He is correct in complaining against the prohibition and correctly considered it as a heckler's veto, which generally occurs when an acting party's right to freedom of speech is curtailed or restricted by the government in order to prevent a reacting party's behaviour, as in this case.

Government regulations partaking of the nature of a heckler's veto have been considered as unconstitutional. (*Hill v. Colorado* (530 US 703); see Constitutional Law, Cruz and Cruz, 2015 Edition, pages 513-515)

## XVI

**The overbreadth doctrine posits that the government: (1%)**

(A) must know the extent of its power.

(B) when it exercises too much power it is like someone with bad breath – it is not healthy to society.

(C) can enact laws which can reach outside its borders, like long-arm statutes.

**(D) the government is prohibited in banning unprotected speech if a substantial amount of protected speech is restrained or chilled in the process.**

## XVII

**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? (4%)**

COA is entitled to receive the rest of its appropriations, the release of which cannot be conditioned on its prior compliance with the DBM’s “no report, no release policy.” This cannot be made to apply to the COA because of its fiscal autonomy which is guaranteed under the Constitution. (Article IX-A, Section 5)

This is not to say that the COA, though vested with fiscal autonomy, has no reporting responsibility at all to the DBM. It is established that constitutional commissions clothed with fiscal autonomy may submit reports

relative to its appropriation for records purposes only. (*Civil Service Commission v. Department of Budget and Management*, G.R. No. 158791, July 22, 2005)

### XVIII

**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? (4%)**

No, they may not be so compelled.

A prohibition against mall owners from collecting parking fees from their customers who use their parking lots has been considered as a “taking” within the context of the power of eminent domain, and cannot be justified as a valid exercise of the police power. In totally prohibiting respondents from collecting parking fees from the public for the use of the mall parking facilities, the State would be acting beyond the bounds of police power.

Police power does not involve the taking or confiscation of property, with the exception of a few cases

where there is a necessity to confiscate private property in order to destroy it for the purpose of protecting peace and order and of promoting the general welfare; for instance, the confiscation of an illegally possessed article, such as opium and firearms. When there is a taking or confiscation of private property for public use, the State is no longer exercising police power, but another of its inherent powers, namely, eminent domain.

Although in the present case, title to and/or possession of the parking facilities remain/s with the mall owners, the prohibition against their collection of parking fees from the public, for the use of said facilities, is already tantamount to a taking or confiscation of their properties. The State is not only requiring that respondents devote a portion of the latter's properties for use as parking spaces, but is also mandating that they give the public access to said parking spaces for free. Such is already an excessive intrusion into the property rights of respondents. Not only are they being deprived of the right to use a portion of their properties as they wish, they are further prohibited from profiting from its use or even just recovering therefrom the expenses for the maintenance and operation of the required parking facilities, (*Office of the Solicitor General v. Ayala Land, Inc.*, G.R. No. 177056, September 18, 2009, 600 SCRA 617)

## XIX

**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? (4%)**

Yes, its petition is meritorious.

Survey results constitute protected speech and cannot be subjected to prior restraint or subsequent punishment without a showing of any clear and present danger. (*Schenck v. US*, 249 U.S. 97; *Social Weather Station v. Commission on Elections*, G.R. No. 147571, May 5, 2001)

## XX

**Under the so-called doctrine of qualified political agency, (1%)**

(A) civil servants must first qualify before they could be appointed to office.

(B) all employees in the government are merely agents of the people.

(C) the acts of subordinates presumptively of those of the heads of offices disapproves them. (*sic*)

(D) members of the Cabinet must have the absolute trust and confidence of the President.

[Note: (C) appears to be the best answer despite the evident typographical errors. It would appear that it should, properly, read – (C) the acts of subordinates are presumptively those of the heads of offices who may disapprove them.]

## XXI

**Constituent power refers to the authority (1%)**

(A) of public officials to command respect.

(B) given to Congress to enact police power measures.

**(C) to propose constitutional amendments or revisions.**

(D) of the people to take back the power entrusted to those in government.

(E) of the President to call out the armed forces to suppress lawless violence.

## XXII

**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? (4%)

I would file an action for payment of just compensation and contend that the same cannot be considered as prescribed.

The establishment of the subject transmission lines constitutes taking in the context of the power of eminent domain, for which just compensation must be paid. (*National Power Corporation v. Heirs of Sangkay*, G.R. No. 165828, August 24, 2011, 656 SCRA 60; *National Power Corporation v. Court of Appeals*, G.R. No. 113194, March 11, 1996, 254 SCRA 577; *National Power Corporation v. Santa Loro Vda. De Capin*, G.R. No. 175176, October 17, 2008, 569 SCRA 648; *Vergara v. Melencio*, G.R. No. 185638, August 10, 2016)

The action, which would partake of the nature of an inverse condemnation proceeding (*National Power Corporation v. Heirs of Sangkay*, G.R. No. 165828, August 24, 2011, 656 SCRA 60) or a “reversed eminent domain” (*National Power Corporation v. Santa Loro Vda. De*

*Capin*, G.R. No. 175176, October 17, 2008, 569 SCRA 648), considering the failure of the NPC to institute the appropriate expropriation proceedings, would clearly be justified or warranted under the circumstances and should not be considered as prescribed. (*Republic v. Court of Appeals*, G.R. No. 147245, March 31, 2005, 454 SCRA 520)

### XXIII

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? (4%)**

If I were the judge, I would consider the confession as inadmissible because he was not, prior to his admission, properly advised of his so-called Miranda rights.

It bears stressing that, when he was questioned, Edward was already considered by the police as a suspect, the witnesses who saw the killing having pointed him out to them. Under said circumstances, the questioning done by the police then and there can be considered as partaking of the nature of a custodial investigation.

A custodial investigation commences when a person is taken into custody and is singled out as a suspect in the commission of a crime under investigation and the police officers begin to ask questions on the suspect's participation therein and which tend to elicit an admission. (*Miranda vs. Arizona* 384 US 436; *People v. Marra*, G.R. No. 108494, September 20, 1994, *People v. Cabanada*, G.R. No. 221424, July 19, 2017)

#### XXIV

**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? (4%)**

Yes, her right against self-incrimination with regard to the penal laws in her home state may be invoked by her even if she were abroad, or in another country.

This would be consistent with the rule prescribed in the International Covenant on Civil and Political Rights which makes said right available to everyone. (Article 14 [3])

## XXV

**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? (4%)**

Rosebud, a dual citizen, can be considered as not qualified on the ground of citizenship.

Her marriage to Rockold did not necessarily result in her loss of her natural-born Philippine citizenship status, as it is provided in Section 4 of Article IV of the Constitution that 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. There is no showing that Rosebud has done any act or omission which, under said constitutional provision, can lead to her being considered as having renounced her natural-born Philippine citizenship status. She therefore remains as a natural-born Philippine citizen.

It is established though that dual citizens who wish to run for elective office must renounce their foreign citizenship prior to or upon filing of their certificates of candidacy. There is nothing to indicate that she has made such a renunciation. Absent such a renunciation, she should be considered as ineligible for election on the ground of citizenship, because it is equally established that, for purposes of appointment or election to public office, sole Philippine citizenship is required. (*Mercado v. Manzano*, G.R. No. 135083, May 26, 1999; *Valles v. Commission on Elections*, G.R. No. 137000, August 9, 2000; *Cordora v. Commission on Elections*, G.R. No. 176947, February 19, 2009)

[Acceptable Answer: Rosebud is not necessarily disqualified on the basis of citizenship.]

Her marriage to Rockold did not necessarily result in her loss of her natural-born Philippine citizenship status, as it is provided in Section 4 of Article IV of the Constitution that 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. There is no showing that Rosebud has done any act or omission which, under said constitutional provision, can lead to her being considered as having renounced her natural-born Philippine citizenship status.

It is significant that she became a dual citizen not by reason of the provisions of R.A. No. 9225 but because of her marriage to Rockold which *ipso facto* made her, under the laws of Frozen, a citizen thereof. Accordingly, the renunciation of foreign citizenship prescribed under said law for eligibility for elective or appointive office cannot be made to apply to her.]

## XXVI

**The one-year-bar rule in impeachment proceedings is to be reckoned from the time the (1%)**

(A) first impeachment complaint is filed.

**(B) impeachment complaint is referred to the Committee on Justice.**

(C) House of Representatives vote on the impeachment complaint.

(D) House of Representatives endorses the Articles of Impeachment to the Senate.

## XXVII

**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? (4%)**

Said law is unconstitutional for being violative of the principle of separation of powers, constituting as it does as an encroachment by the Congress into the rule-making power of the Supreme Court, and as an impairment of its fiscal autonomy. (*Re: Petition for Recognition of the Exemption of the Government Service Insurance System (GSIS) for Payment of Legal Fees*, A.M. No. 08-2-01-0, February 11, 2010; see *Re: Exemption of the NPC from Payment of Filing/Docket Fees*, A.M. No. 05-10-20-SC, March 10, 2010, 615 SCRA 1)

Fiscal autonomy recognizes the power and authority of the Court to levy, assess and collect fees (*Bengzon v. Drilon*, G.R. No. 103524, 15 April 1992, 208 SCRA 133, 150), including legal fees. The payment of legal fees under Rule 141 of the Rules of Court is an integral part of the rules promulgated by this Court pursuant to its rule-making power under Section 5(5), Article VIII of the Constitution. (*Re: Petition for Recognition of the Exemption of the Government Service Insurance System (GSIS) for Payment of Legal Fees*, A.M. No. 08-2-01-0, February 11, 2010)

Any exemption from the payment of legal fees granted by Congress to government-owned or controlled corporations and local government units will necessarily

reduce the JDF and the SAJF and impair the Court's guaranteed fiscal autonomy and erode its independence. (*In the Matter of Clarification of Exemption from Payment of All Court and Sheriff's Fees*, A.M. No. 12-2-03-0, March 13, 2012)

## XXVIII

**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? (4%)**

The contention of the proponents is more tenable.

While Juan may be generally correct in his contention that the subject law did not comply with the requirement on territory, as specified in the Local Government Code, the exemption of the Wideland from the 2,000 square kilometres requirement thereunder, consisting as it does of several islands, is nevertheless pro-

vided for in the LGC-IRR, which has been acknowledged by the Supreme Court as amounting to “both executive and legislative construction of the LGC.”

Thus, in the case of *Navarro v. Ermita* (G.R. No. 180050, April 12, 2011), the Court ruled that the Congress, in promulgating the law creating a province similarly consisting of several islands had, in effect, affirmed said provision in the LGC-IRR, as and by way of amendment of the Local Government Code, which, concededly, did not provide for an exemption of provinces comprised of islands from said territory requirement.

### XXIX

**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? (4%)**

No.

This claim would be inconsistent with Article 31 (1) of the Vienna Convention of Diplomatic Relations, which generally provides that a diplomatic agent, such as Ambassador Gaylor, shall enjoy immunity from the criminal jurisdiction only of the receiving state. It bears

emphasis that he is Juvenus' diplomatic representative to State Hinterlands, which is to be considered as his receiving state, and not State Paradise, where he was, when arrested, present as a mere tourist.

It is significant that he cannot claim diplomatic immunity in State Paradise, where he was arrested, also because he was there only as a tourist, and was not there because he was passing through to take up or return to his diplomatic post, or to return to his country. If either of these were the case, then he would have been entitled to diplomatic immunity under the provisions of Article 40 (1) of the Vienna Convention of Diplomatic Relations.

### XXX

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? (4%)**

I would assail the provisions of the subject law authorizing the Board 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 on the ground of academic freedom, guaranteed under the provisions of Article XIV, Section 5 (2) of the Constitution, which consists of four essential freedoms to determine for itself on academic grounds: (1) who may teach; (2) what may be taught; (3) how it shall be taught; and (4) who may be admitted to study. (*Camacho vs. Corresis*, G.R. No. 103142, November 8, 1993, 227 SCRA 591)

The authority given to the Board 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 for lawyers, or those who have already been admitted to the practice of law, can be considered as an encroachment of the rule-making power of the Supreme Court under Article VII, Section 5 (5) of the Constitution, under which, it has the sole authority to promulgate rules concerning the practice of law. (*Pimentel v. Executive Secretary and Legal Education Board*, G.R. No. 230642, September 10, 2019)

**2015****I**

**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. (4%)**

Only the first Executive Agreement regarding the establishment of the embassy of Kroi Sha need not be submitted to the Senate for its concurrence, following the general rule that Executive Agreements need not be submitted to the Senate for its concurrence, under the

provisions of Section 21 of Article VII of the Constitution. (*Bayan Muna v. Romulo*, G.R. No. 159618, February 1, 2011, 641 SCRA 244)

The second Executive Agreement which allows the Republic of Kroi Sha to bring to the Philippines its military complement, warships, and armaments from time to time should be considered as subject to the provisions of Section 25 of Article XVIII of the Constitution, which requires 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 other contracting state.” (*Saguisag v. Executive Secretary*, G.R. No. 212426, January 12, 2016)

It should be noted that, under the Constitution, the Senate merely provides its concurrence to, and does not ratify, treaties. It is the President who ratifies treaties. (*Pimentel v. Executive Secretary*, G.R. No. 15808, July 16, 2008, 462 SCRA 622)

## II

**(1) 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 territo-**

**rial sea. Do you agree or not with the said objection? Explain. (3%)**

I do not agree.

UNCLOS does not define the internal and territorial waters of states but merely “prescribes the water-land ratio, length, and contour of baselines of archipelagic States like the Philippines.”

UNCLOS has nothing to do with the acquisition (or loss) of territory. It is a multilateral treaty regulating, among others, sea-use rights over maritime zones, *i.e.*, the territorial waters (12 nautical miles from the baselines), contiguous zone (24 nautical miles from the baselines), exclusive economic zone (200 nautical miles from the baselines), and continental shelves that UNCLOS III delimits. (*Magallona v. Ermita*, G.R. No. 187167, August 16, 2011, 655 SCRA 476)

[Note: “UNCLOS III and its ancillary baselines laws play no role in the acquisition, enlargement or, as petitioners claim, diminution of territory. Under traditional international law typology, States acquire (or conversely, lose) territory through occupation, accretion, cession and prescription, not by executing multilateral treaties or the regulations of sea-use rights or enacting statutes to comply with the treaty’s terms to delimit maritime zones and continental shelves. Territorial claims to land features are outside UNCLOS III, and are instead governed by the rules on general international law.” (*Magallona v. Ermita*, G.R. No. 187167, August 16, 2011, 655 SCRA 476)

“The UNCLOS is a product of international negotiation that seeks to balance State sovereignty (*mare clausum*) and the principle of freedom of the high seas (*mare liberum*). The freedom to use the world’s marine waters is one of the oldest customary principles of international law. The UNCLOS gives to the coastal State sovereign rights in varying degrees over the different zones of the sea which are: 1) internal waters, 2) territorial sea, 3) contiguous zone, 4) exclusive economic zone, and 5) the high seas. It also gives coastal States more or less jurisdiction over foreign vessels depending on where the vessel is located. Insofar as the internal waters and terri-

torial sea is concerned, the Coastal State exercises sovereignty, subject to the UNCLOS and other rules of international law. Such sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil." (*Arigo v. Swift*, G.R. No. 206510, September 16, 2014)]

**(2) Describe the following maritime regimes under UNCLOS (4%)**

**(a) Territorial sea**

Under the UNCLOS, every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention. (Article 3) The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea. (Article 4)

**(b) Contiguous zone**

Under Article 33 of the UNCLOS, the contiguous zone of a state may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured. The coastal state may, within said zone, exercise the control necessary to prevent infringement of its customs, fiscal, immigration or sanitary laws, rules or regulations within its territory or territorial sea, and punish infringement of said laws and regulations committed within its territory or territorial sea.

**(c) Exclusive economic zone**

Under Article 57 of the UNCLOS, the exclusive economic zone of a state, over which it may assert exclu-

sive jurisdiction and ownership over all living and non-living resources found therein, shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

#### **(d) Continental shelf**

The continental shelf of states 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. (UNCLOS III, Article 77)

### **III**

**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 cannot be accused of receiving double compensation. Is the argument of the professor valid? Explain. (4%)**

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.

[Note: It is submitted though 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 specifies 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."]

#### IV.

**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. (3%)**

A facial challenge is allowed to assail the validity of statutes concerning not only protected speech, but also all other rights covered thereunder, including religious freedom, freedom of the press, and the right of the people to peaceably assemble, and to petition the Government for a redress of grievances. (*Imbong v. Ochoa*, G.R. No. 204819, April 8, 2014, 721 SCRA 146)

#### V

**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 11, 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 Php20.00 per share. Decide. (5%)**

It is submitted that the equity structure in PTC after the sale by BDTI of 1,000 of its common (voting) shares in favor of AT, an Australian corporation, can be considered as violative of the 60-40 ownership requirement in favor of Filipino citizens decreed in Section 11, Article XII of the 1987 Constitution.

The rule is that the term “capital” in Section 11, Article XII of the Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares, and not to the total outstanding capital stock comprising both common and non-voting preferred shares. (*Gamboa v. Finance Secretary*, G.R. No. 176579, June 28, 2011)

Moreover, it is likewise established that mere legal title is insufficient to meet the 60 percent Filipino-owned “capital” required in the Constitution. Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is required. The legal and beneficial ownership of 60 per-

cent of the outstanding capital stock must rest in the hands of Filipino nationals in accordance with the constitutional mandate. Otherwise, the corporation is “considered as non-Philippine national[s].” To construe broadly the term “capital” as the total outstanding capital stock, including both common and *non-voting* preferred shares, grossly contravenes the intent and letter of the Constitution that the “State shall develop a self-reliant and independent national economy *effectively controlled* by Filipinos.” A broad definition unjustifiably disregards who owns the all-important voting stock, which necessarily equates to control of the public utility. (*Gamboa v. Finance Secretary*, G.R. No. 176579, June 28, 2011)

Thus, although Filipino stockholders may be recorded as owning 70% of PTC, though with only 1,000 common voting shares, the fact remains that the corporation would be actually “controlled” by AT, by reason of its greater number of common or voting shares, *i.e.*, 2,000 common voting shares.

Applying the control test, which is the prevailing mode of determining whether or not a corporation is Filipino, and which prescribes that shares belonging to corporations or partnerships at least 60% of the capital of which is owned by Filipino citizens shall be considered as of Philippine nationality, it becomes clear that AT, an Australian corporation, controls PTC. (*Narra Nickel Mining and Development, Corp. v. Redmont Consolidated Mines, Corp.*, G.R. No. 195580, April 21, 2014; *Querubin v. Commission on Elections*, G.R. No. 218787, December 8, 2015)

## VI

**(1) Distinguish the President's authority to declare a state of rebellion from the authority to proclaim a state of national emergency. (2%)**

While both the power to declare a *state of rebellion* and the power to proclaim a *state of national emergency* may be justified under the President's general Ordinance Powers under the provisions of the Administrative Code (Chapter 2, Book III of Executive Order No. 292, Administrative Code of 1987), the *power to declare a state of rebellion* springs from the President's so-called "calling out power" under Section 18 of Article VII of the Constitution, which provides that "whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion," (*Sanlakas v. Executive Secretary*, G.R. No. 159085, February 3, 2004, 421 SCRA 656), while the *power to proclaim a state of national emergency* can be said to be based primarily on his duty to enforce the laws as well as to formulate policies to be embodied in existing laws, consistent with the provisions of Section 17 of Article VII of the Constitution.

Under said provision, the President "sees to it that all laws are enforced by the officials and employees of his department." Moreover, "in the exercise of such function, the President, if needed, may employ the powers attached to his office as the Commander-in-Chief of all the armed forces of the country, including the Philippine National Police under the Department of Interior and Local Government." (*David v. Arroyo*, G.R. No. 171396, May 3, 2006)

It must be noted though, that without a law promulgated pursuant to the provisions of Section 23 (2) of

Article VI, and Section 17 of Article XII, both of which authorize the statutory delegation of emergency powers in favor of the President, he is limited to the exercise of his calling-out power under Section 18 of Article VII of the Constitution, and may not exercise emergency powers. (*David v. Arroyo*, G.R. No. 171396, May 3, 2006)

**(2) What are the limitations, if any, to the pardoning power of the President? (3%)**

The 1987 Constitution, specifically Section 19 of Article VII and Section 5 of Article IX-C, provides that the President of the Philippines possesses the power to grant pardons, along with other acts of executive clemency, to wit:

Section 19. Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment.

He shall also have the power to grant amnesty with the concurrence of a majority of all the Members of the Congress. (Article VII)

Section 5. No pardon, amnesty, parole, or suspension of sentence for violation of election laws, rules, and regulations shall be granted by the President without the favorable recommendation of the Commission. (Article IX-C)

“It is apparent from the foregoing constitutional provisions that the only instances in which the President may not extend pardon remain to be in: (1) im-

peachment cases; (2) cases that have not yet resulted in a final conviction; and (3) cases involving violations of election laws, rules and regulations in which there was no favorable recommendation coming from the COMELEC.” (*Risos-Vidal v. COMELEC*, G.R. No. 206666, January 21, 2015)

It may be added that pardons may not be extended to a person convicted of legislative contempt, as this would violate the doctrine of separation of powers, or of civil contempt since this would involve the benefit not of the State itself but of the private litigant whose rights have been violated by the contemner. Pardon cannot also be extended for purposes of absolving the pardonee of civil liability, including judicial costs, since, again, the interest that is remitted does not belong to the State but to the private litigant. (Philippine Political Law, Cruz and Cruz, 2014 Edition, page 445)

## VII

**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. (4%)**

The Senator's contention is untenable. He can be validly preventively suspended under the Plunder Law.

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 16 (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." (*Ceferino Paredes, Jr. vs. Sandiganbayan, et al.*, G.R. No. 118364, August 8, 1995, cited in *Santiago v. Sandiganbayan*, G.R. No. 128055, April 18, 2001)

## VIII

**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. (4%)**

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.

It should be noted though that 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, they were acting as 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)

## IX

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. (5%)

The subject Executive Order is unconstitutional.

Paragraph 3 of said Executive Order virtually provides that, once the head of office determines that a

certain information is privileged, such determination is presumed to bear the President's authority and has the effect of prohibiting the official from appearing before Congress, subject only to the express pronouncement of the President that it is allowing the appearance of such official. These provisions thus allow the President to authorize claims of privilege by mere silence.

Such presumptive authorization, however, is contrary to the exceptional nature of the privilege, which is recognized with respect to information the confidential nature of which is *crucial* to the fulfillment of the unique role and responsibilities of the executive branch, or in those instances where exemption from disclosure is *necessary* to the discharge of *highly important* executive responsibilities. The doctrine of executive privilege is thus premised on the fact that certain information must, as a matter of necessity, be kept confidential in pursuit of the public interest. The privilege being, by definition, an exemption from the obligation to disclose information, in this case to Congress, the necessity must be of such high degree as to outweigh the public interest in enforcing that obligation in a particular case. (*Senate v. Ermita*, G.R. No. 169777, April 20, 2006, 488 SCRA 1)

## X

**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 un-**

**reasonable 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. (4%)**

I will not grant the motion.

The subject Memorandum Circular No. 123-15 was issued by the Department of Environment and Natural Resources in its quasi-legislative or regulatory capacity, and not pursuant its quasi-judicial competence. Accordingly, the doctrine of exhaustion of administrative remedies may not be invoked for purposes of dismissing the constitutional challenge. (See *Monetary Board v. Philippine Veterans Bank*, G.R. No. 189571, January 21, 2015; see also *Securities and Exchange Commission v. Universal Rightfield Property Holding, Inc.*, G.R. No. 181381, July 20, 2015)

Moreover, the issue involves merely a question of law, as the contention is that the subject regulation violates the non-impairment clause. "Said question at best could be resolved only tentatively by the administrative authorities. The final decision on the matter rests not with them but with the courts of justice. Exhaustion of administrative remedies does not apply, because nothing of an administrative nature is to be or can be done." (*United Overseas Bank of the Philippines v. The Board of Commissioners-HLURB*, No. 182133, June 23, 2015)

**XI****(1) What is the concept of expanded judicial review under the 1987 Constitution? (3%)**

The concept of “expanded judicial power” is specified in the second paragraph of Section 1 of Article VIII of the Constitution where it is provided that 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.”

**(2) Differentiate the rule-making power or the power of the Supreme Court to promulgate rules under Section 5, Article VIII of the 1987 Constitution and judicial legislation. (2%)**

The rule-making power of the Supreme Court is based on Section 5 (5) of Article VIII of the Constitution, which confers upon it the authority to “promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.”

This power would not entitle it to engage in judicial legislation, which would essentially allow it to “amend” laws, as this would be “abjured by the *trias politica*

principle” (*Mendoza v. People*, G.R. No. 183891, October 19, 2011, 659 SCRA 681), or the principle of separation of powers.

It is to be noted in this connection that the rules that the Supreme Court may promulgate under Section 5 (5) of Article VIII of the Constitution “shall not diminish, increase, or modify substantive rights.”

## XII

**Discuss the evolution of the principle of *jus sanguinis* as basis of Filipino citizenship under the 1935, 1973, and 1987 Constitutions. (3%)**

It was under the 1935 Constitution that reference was first made to parentage, or the principle of *jus sanguinis*, as a mode of determining citizenship in our jurisdiction.

Thus, under said Constitution, those whose fathers are citizens of the Philippines (Article 4, Section 3) and those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship (Article IV, Section 4) are, under the *jus sanguinis* principle, which confers citizenship upon a person on the basis of blood relations, considered natural-born citizens of the Philippines.

Thereafter, Section 2 of Article III of the 1973 Constitution provided that those whose fathers and mothers are citizens of the Philippine shall be considered as natural-born Filipino citizens, or citizens of the Philippines from birth without having to perform any act to acquire or perfect his Philippine citizenship. (Article III, Section 4, 1973)

Under Section 1 (2) of the 1987 Constitution, it is provided that those whose fathers or mothers are citizens of the Philippines shall be considered as natural-born citizens of the Philippines, following the *jus sanguinis* principle.

In turn, Section 1 (3), in relation to Section 2, of the same Constitution, provides that those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority, shall be likewise be deemed natural-born citizens, also following the *jus sanguinis* principle. It is similarly provided in Section 2 thereof that natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. (See *David v. Senate Electoral Tribunal*, G.R. No. 221538, September 20, 2016)

### XIII

**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. (4%)**

The claim of Piolo Cruz that R.A. No. 1234 is incorrect. There is no need for a plebiscite prior to the implementation of R.A. No. 1234.

The division of the lone district of the City of Pangrap did not involve any change in its existing territory. "(W)here no new territory or no change in an existing territory is made under a law, and only a reapportionment or the creation of an additional legislative district is done, no such plebiscite would be necessary." (*Bagabuyo v. COMELEC*, G.R. No. 176970, December 8, 2008, 573 SCRA 290)

#### XIV

Congress enacted R.A. No. 14344 creating the City of Masuwerte which took effect on September 25, 2014. Section 23 of the law specifically exempts the City of Masuwerte from the payment of legal fees in the cases that it would file and/or prosecute in the courts of law. In two (2) cases that it filed, the City of Masuwerte was assessed legal fees by the clerk of court pursuant to Rule

**141 (Legal Fees) of the Rules of Court. The City of Masuwerte questions the assessment claiming that it is exempt from paying legal fees under Section 23 of its charter. Is the claim of exemption tenable? Explain. (4%)**

The claim of exemption from legal fees is untenable.

The payment of legal fees is a vital component of the rules promulgated by the Supreme Court concerning pleading, practice and procedure. It cannot be validly annulled, changed or modified by Congress. To allow the Congress to do so would be to permit its encroachment upon the exclusive rule-making authority of the Supreme Court as well as to impair its fiscal autonomy and judicial independence. (*Re: Petition for Recognition of the Exemption of the Government Service Insurance System (GSIS) for Payment of Legal Fees*, A.M. No. 08-2-01-0, February 11, 2010, 612 SCRA 193; see also *In Re: Exemption of the National Power Corporation from Payment of Filing/Docket Fees*, A.M. No. 05-10-20-SC, March 10, 2010; *In the Matter of Clarification of Exemption from Payment of All Court and Sheriff's Fees*, A.M. No. 12-2-03-0, March 13, 2012; *Emnace v. Court of Appeals*, 422 Phil. 10, 22, cited in *Bank of Commerce v. Planters Development Bank*, G.R. Nos. 154470-71, September 24, 2012)

## XV

**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. (4%)

It is submitted that the constitutional challenge will succeed. Commissioner Marikit’s promotional appointment is unconstitutional.

The rule is that, while a “reappointment” found in Sec. 1(2), Art. IX (D) means a movement to one and the same office (Commissioner to Commissioner or Chairman to Chairman), an appointment involving a movement to a different position or office (Commissioner to

Chairman) would constitute a new appointment and, hence, not, in the strict legal sense, a reappointment barred under the Constitution.

Accordingly, the promotion of Commissioner Marikit to the position of Chairman of the COMELEC to replace Chairman Ty would appear to be not covered under said prohibition against reappointments in the Constitutional Commissions.

Moreover, consistent with jurisprudence on the matter, it would seem that said promotional appointment may be considered valid by reason of the fact that the vacancy in Chairman Ty's office arose from his early retirement or resignation, and not the expiration of his term.

However, considering that such promotional appointments to vacancies resulting from certain causes (death, resignation, disability or impeachment) are required to only be for the unexpired portion of the term of the predecessor, and considering that, under the terms of his promotional appointment, Commissioner Marikit would be allowed to serve as Chairman of the COMELEC beyond the expiration of the original term of Chairman Ty in 2018 (as, under his promotional appointment, Commissioner Marikit would be allowed to serve until the expiration of his original term as Associate Commissioner in 2021), it is clear that his promotional appointment from Associate Commissioner to Chairman of the COMELEC is invalid. (*Funa v. The Chairman, Commission on Audit*, G.R. No. 192791, April 24, 2012)

## XVI

(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. (5%)

**Pasyo Maagap** would be entitled to occupy the position of Mayor upon the 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, when a candidate is disqualified on the ground of ineligibility under Section 78 of the Omnibus Election Code, his certificate of candidacy shall by reason thereof be considered as void *ab initio*. A cancelled certificate of candidacy void *ab initio* cannot give rise to a valid candidacy, and much less to valid votes (*Bautista v. Commission on Elections*, 359 Phil. 1, 16 [1998]. See *Miranda v. Abaya*, 370 Phil. 642 [1999]; *Gador v. Commission on Elections*, 184 Phil. 395 [1980], cited in *Aratea v. Commission on Elections*, G.R. No. 195229, October 9, 2012) Even without a petition under Section 78 of the Omnibus Election Code, the COMELEC is under a legal duty to cancel the certificate of candidacy of anyone suffering from perpetual special disqualification to run for public office by virtue of a final judgment of conviction. (*Aratea v. Commission on Elections*, G.R. No. 195229, October 9, 2012)

Gandang Bai should therefore be considered as never having been a candidate at all precisely because of his disqualification on the basis of the petition under Section 78 of the Omnibus Election Code on the ground of his perpetual disqualification by reason of his crime involving moral turpitude.

Accordingly, Gandang Bai, being a non-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. (*Aratea v. Commission on Elections*, G.R. No. 195229, October 9, 2012; *Maquiling v. Commission on Elections*, G.R. No. 195649, April 16, 2013)

**(2) How do you differentiate the petition filed under Section 68 from the petition filed un-**

**der Section 78, both of the Omnibus Election Code? (3%)**

In addition to the rule cited above that 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 disqualifications under Section 68 of the Omnibus Election Code, which would give rise to the *de jure* officership of the disqualified candidate up to his point of disqualification), the other basic distinctions between petitions for the disqualification of candidates and petitions to reject or cancel certificates of candidacy are as follows –

Under Section 68 of the Omnibus Election Code, a candidate may be disqualified if he commits any of the election offenses or “prohibited acts” specified therein, or if he is a 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 misrepresentations as to *age, residence, citizenship or non-possession of natural-born status, registration as a voter, 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 basis 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 certificates of candidacy but not later than the candidate's proclamation 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 at any time not later than twenty-five 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 a 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.

## XVII

**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 GBTYA espouses immorality which offends religious dogmas. GBTYA challenges the denial of its application based on moral grounds because it violates its right to equal protection of the law.**

**(1) What are the three (3) levels of test that are applied in equal protection cases? Explain. (3%)**

The three levels of tests that may be applied in equal protection cases are as follows: the *strict scrutiny* test, for laws dealing with freedom of the mind or restricting the political process; the *rational basis standard* for the review of economic legislation; and *heightened or immediate scrutiny* for evaluating classifications based on gender and legitimacy. (*Mosqueda v. Pilipino Banana Growers and Exporters Association, Inc.*, G.R. No. 189185, August 16, 2016; *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, G.R. No. 225442, August 8, 2017)

**(2) Which of the three (3) levels of test should be applied to the present case? Explain. (3%)**

It is submitted that the *strict scrutiny test* should be applied in this case because the challenged classification restricts the political process. (*Kabataan Party-List v. Commission on Elections*, G.R. No. 221318, December 16, 2015; see *Ang Ladlad LGBT Party v. Commission on Elections*, G.R. No. 190582, April 8, 2010)

## XVIII

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. (5%)**

Hades is correct. He must be exonerated.

There was neither probable cause nor valid consent to be searched which would justify the warrantless search and seizure resulting in the discovery of the shabu hidden under banana leaves in his open delivery van.

The rule is that a valid warrantless search may generally be justified on the basis of a prior valid warrantless arrest, which would be allowed in this case if Hades had been caught committing a crime in *flagrante delicto*. It must be noted that, when the team of police officers, who were merely on routine patrol, approached Hades' van, the same was merely parked and Hades was then not committing any crime. Accordingly, said police officers cannot be said to have then validly arrested him without a warrant, as there could have been no probable cause for the same. (*Antiquera v. People*, G.R. No. 180661, December 11, 2013, 712 SCRA 339)

Neither can the warrantless search be justified on the basis of Hades' alleged consent, precisely because, when the police officers asked if they could search his van, Hades merely gave the officers "a blank stare" and "did not make any reply." This hardly constitutes the consent required to make valid warrantless searches and seizures. Said consent to be searched, to justify a warrantless search and seizure, must be made or given voluntarily, categorically and unequivocally. (*People v. Aruta*, G.R. No. 120915. April 3, 1998, 288 SCRA 626)

## XIX

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. (4%)

The claim of PSALM is correct.

Foreign ownership of a hydropower facility is not prohibited under existing laws. The construction, rehabilitation and development of hydropower plants are among those infrastructure projects which even wholly-owned foreign corporations are allowed to undertake under the Amended Build-Operate-Transfer (Amended BOT) Law (R.A. No. 7718). (*Initiatives for Dialogue and Empowerment through Alternative Legal Services, Inc. v. Power Sector Assets and Liabilities Management Corporation*, G.R. No. 192088, October 9, 2012)

## XX

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. (4%)**

The action of the provincial governor is not correct.

A provincial governor, may not validly issue a proclamation calling upon the Philippine National Police and the Armed Forces of the Philippines to *“set up checkpoints and choke points, conduct general search and seizures including arrests, and other actions necessary to ensure public safety,”* by reason of the typhoon, and on the basis merely of a general provision in the Local Government Code entitling him *“to carry out 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.”* It is only the President who is authorized to exercise the calling-out power. (*Kulayan v. Tan*, G.R. No. 187298, July 3, 2012)

**XXI**

**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? (4%)**

Yes, the PMP can join the party-list system without violating the Constitution and the provisions of R.A. No. 7941.

Political parties can participate in party-list elections provided they register under the party-list system and do not field candidates in legislative district elections. A political party, whether major or not, that fields candidates in legislative district elections can participate in party-list elections only through its sectoral wing that can separately register under the party-list system. The sectoral wing is by itself an independent sectoral party, and is linked to a political party through a coalition. (*Atong Paglaum, Inc. v. Commission on Elections*, G.R. No. 203766, April 2, 2013)

**XXII**

**The President appoints Emilio Melchor as Chairperson of the Civil Service Commission.**

Upon confirmation of Melchor's appointment, the President issues an executive order including him as Ex-Officio member of the Board of Trustees of the Government Service Insurance System (GSIS), Employees Compensation Commission (ECC), and the Board of Directors of the Philippine Health Insurance Corporation (PHILHEALTH). Allegedly, this is based on the Administrative Code of 1997 (E.O. No. 292), particularly Section 14, Chapter 3, Title I-A, Book V. This provision reads: "The chairman of the CSC shall be a member of the Board of Directors of other governing bodies of government entities whose functions affect the career development, employment, status, rights, privileges, and welfare of government officials and employees..." A taxpayer questions the designation of Melchor as ex-officio member of the said corporations before the Supreme Court based on two (2) grounds, to wit: (1) it violates the constitutional prohibition on members of the Constitutional Commissions to hold any other office or employment during his tenure; and (2) it impairs the independence of the CSC. Will the petition prosper? Explain. (4%)

The petition should be granted. The Executive Order is unconstitutional.

It is violative of the strict prohibition under Section 2, Article IX-A of the 1987 Constitution, which prescribes that no Member of a Constitutional Commission shall, during his tenure, hold any other office or employment.

Apart from violating this prohibition against holding multiple offices, Melchor's designation as a member

of the governing Boards of the GSIS, PHILHEALTH and the ECC impairs the independence of the Civil Service Commission.

Under Section 17, Article VII of the Constitution, the President exercises control over all government offices in the Executive Branch. An office that is legally not under the control of the President is not part of the Executive Branch. (*Funa v. The Chairman, Civil Service Commission*, G.R. No. 191672, November 25, 2014)

## 2016

### I

The contents of the vault of ABC company consisting of cash and documents were stolen. Paulyn, the treasurer of ABC, was invited by the Makati City Police Department to shed light on the amount of cash stolen and the details of the missing documents. Paulyn obliged and volunteered the information asked. Later, Paulyn was charged with qualified theft together with other suspects. Paulyn claims her rights under the Constitution and pertinent laws were blatantly violated. The police explained that they were just gathering evidence when Paulyn was invited for a conference and she was not a suspect at that time. Rule on her defense. (5%)

Her defense is tenable.

She can be considered as having made admissions without being informed of her rights to be informed of her right to remain silent and to have competent and independent counsel during a custodial investigation.

According to R.A. 7438, "custodial investigation shall include the practice of issuing an 'invitation' to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the 'inviting officer' for any violation of the law." (Section 2)

The circumstances surrounding Paulyn's questioning, and her eventual admission made, at the police station fall within this definition of custodial investiga-

tion. It can be said and considered that she would not have been invited to the police station if she had not been suspected of committing the theft. (*Lopez v. People*, G.R. No. 212186, June 29, 2016)

[*Acceptable Answer*: Her defense is untenable. She was not under “custodial investigation” when she “volunteered” the subject information. Her admissions can be accepted as evidence.

A custodial investigation is generally understood as “any questioning initiated by law enforcement authorities after a person is taken into custody or otherwise deprived of his freedom of action in any significant manner. It begins when there is no longer a general inquiry into an unsolved crime and the investigation has started to focus on a particular person as a suspect, *i.e.*, when the police investigator starts interrogating or exacting a confession from the suspect in connection with an alleged offense.” (*People v. Morial*, 415 Phil. 310, 329 [2001]; see *People v. Lara*, G.R. No. 199877, August 13, 2012),

This presupposes that he is suspected of having committed a crime and that the investigator is trying to elicit information or a confession from him. The rule begins to operate at once, as soon as the investigation ceases to be a general inquiry into an unsolved crime, and direction is aimed upon a particular suspect who has been taken into custody and to whom the police would then direct interrogatory questions which tend to elicit incriminating statements. Accordingly, it has been ruled that this right may not be invoked in situations where the statements are spontaneously made, as when it was the accused himself who went to the police station and voluntarily made the statement eventually used as evidence against him at his trial. (*Jesalva v. People*, G.R. No. 187725, January 19, 2011)]

## II

**Sec. 11, Art. XII of the Constitution, provides:**  
**“No franchise, certificate or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized**

**under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens xxx.” Does the term “capital” mentioned in the cited section refer to the total common shares only, or to the total outstanding capital stock, or to both or “separately to each class of shares, whether common, preferred non-voting, preferred voting or any class of shares?” Explain your answer. (5%)**

The term “capital” in Section 11, Article XII of the Constitution refers only to shares of stock entitled to vote in the election of directors, and thus only to common shares, and not to the total outstanding capital stock comprising both common and non-voting preferred shares. (*Gamboa v. Finance Secretary*, G.R. No. 176579, June 28, 2011)

Since the constitutional requirement of at least 60 percent Filipino ownership applies not only to voting control of the corporation *but also to the beneficial ownership of the corporation*, it is therefore imperative that such requirement apply uniformly and across the board to all classes of shares, regardless of nomenclature and category, comprising the capital of a corporation.

The Constitution expressly declares as State policy the development of an economy “effectively controlled” by Filipinos. Consistent with such State policy, the Constitution explicitly reserves the ownership and operation of public utilities to Philippine nationals, who are defined in the Foreign Investments Act of 1991 as Filipino citizens, or corporations or associations at least 60 percent of whose capital with voting rights belongs to Filipinos. (*Heirs of Wilson Gamboa v. Finance Secretary*, G.R. No. 176579, October 9, 2012; see *Roy v. Herbosa*, G.R. No. 207246, November 22, 2016)

### III

**A law converted the component city of Malumanay, Laguna into a highly urbanized city. The Local Government Code (LGC) provides that the conversion “shall take effect only after it is approved by the majority of votes cast in a plebiscite to be held in the political units directly affected.”**

**Before the COMELEC, Mayor Xenon of Malumanay City insists that only the registered voters of the city should vote in the plebiscite because the city is the only political unit directly affected by the conversion. Governor Yuri asserts that all the registered voters of the entire province of Laguna should participate in the plebiscite, because when the LGC speaks of the “qualified voters therein,” it means all the voters of all the political units affected by such conversion, and that includes all the voters of the entire province. He argues that the income, population and area of Laguna will be reduced. Who, between Mayor Xenon and Governor Yuri, is correct? Explain your answer. (5%)**

Governor Yuri is correct. The registered voters of the entire province of Laguna should participate in the plebiscite.

In identifying the LGU or LGUs that should be allowed to take part in the plebiscite, what should primarily be determined is whether or not the unit or units that desire to participate will be “directly affected” by the change. (*Tan v. COMELEC*, No. L-73155, July 11, 1986, 142 SCRA 727; *Padilla v. COMELEC*, G.R. No. 103328, October 19, 1992, 214 SCRA 735)

In view of the changes in the economic and political rights of the province of Laguna and its residents, the entire province certainly stands to be directly affected by the conversion of Malumanay City into a highly urbanized city.

Among such changes would be that it shall no longer be subject to provincial oversight because the complex and varied problems in a highly urbanized city due to a bigger population and greater economic activity require greater autonomy and it will also result in the reduction of the Internal Revenue Allotment (IRA) to the province based on Sec. 285 of the LGC.

Accordingly, all the qualified registered voters of Laguna should then be allowed to participate in the plebiscite called for that purpose. (*Umali v. Commission on Elections*, G.R. No. 203974, April 22, 2014)

#### IV

Several concerned residents of the areas fronting Manila Bay, among them a group of students who are minors, filed a suit against the Metro Manila Development Authority (MMDA), the Department of Environment and Natural Resources (DENR), the Department of Health (DOH), the Department of Agriculture (DA), the Department of Education (DepEd), the Department of Interior and Local Government (DILG), and a number of other executive agencies, asking the court to order them to perform their duties relating to the cleanup, rehabilitation and protection of Manila Bay. The complaint alleges that the continued neglect by defendants and their failure to prevent and abate pollution in Manila Bay consti-

**tute a violation of the petitioners' constitutional right to life, health and a balanced ecology.**

**(a) If the defendants assert that the students/petitioners who are minors do not have *locus standi* to file the action, is the assertion correct? Explain your answer. (2.5%)**

The assertion would not be correct.

As held by the Supreme Court in *Oposa v. Factoran* (G.R. No. 101083 July 30, 1993), petitioners, though they be or are minors, can, for themselves, and even for others of their generation and for the succeeding generations, file the suit. Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned.

**(b) In its decision which attained finality, the Court ordered the defendants to clean up, rehabilitate and sanitize Manila Bay within eighteen (18) months, and to submit to the Court periodic reports of their accomplishment, so that the Court can monitor and oversee the activities undertaken by the agencies in compliance with the Court's directives. Subsequently, a resolution was issued extending the time periods within which the agencies should comply with the directives covered by the final decision. A view was raised that the Court's continued intervention after the case has been decided violates the doctrine of separation of powers considering that the government agencies all belong to the Executive Department and are**

**under the control of the President. Is this contention correct? Why or why not? (2.5%)**

The contention is not correct. The court's intervention after the case has been decided does not violate the doctrine of separation of powers.

Judicial power covers as well the continuing authority of the Supreme Court to enforce its final decisions because the execution of its decisions is but an integral part of its adjudicative function. Accordingly, it may issue a writ of continuing *mandamus* to ensure compliance with its decision. (*MMDA v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48, February 15, 2011; see also *Boracay Foundation, Inc. v. The Province of Aklan*, G.R. No. 196870, June 26, 2012)

The issuance of subsequent resolutions by the Court is simply an exercise of judicial power under Art. VIII of the Constitution, because the execution of the Decision is but an integral part of the adjudicative function of the Court. With the final and executory judgment in *MMDA*, the *writ of continuing mandamus* issued in *MMDA* means that until petitioner-agencies have shown full compliance with the Court's orders, the Court exercises continuing jurisdiction over them until full execution of the judgment. (*MMDA v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48, February 15, 2011)

The writ of continuing *mandamus* "permits the court to retain jurisdiction after judgment in order to ensure the successful implementation of the reliefs mandated under the court's decision" and, in order to do this, "the court may compel the submission of compliance reports from the respondent government agencies as well as avail of other means to monitor compliance

with its decision.” (*Boracay Foundation, Inc. v. The Province of Aklan*, G.R. No. 196870, June 26, 2012)

## V

**Section 8 of P.D. No. 910, entitled “Creating an Energy Development Board, defining its powers and functions, providing funds therefor and for other purposes,” provides that: “All fees, revenues and receipts of the Board from any and all sources xxx shall form part of a Special Fund to be used to finance energy resource development and exploitation programs and projects of the government and for such other purposes as may be hereafter directed by the President.”**

The Malampaya NGO contends that the provision constitutes an undue delegation of legislative power since the phrase “and for such other purposes as may be hereafter directed by the President” gives the President unbridled discretion to determine the purpose for which the funds will be used. On the other hand, the government urges the application of *ejusdem generis*.

**(a) Explain the “completeness test” and “sufficient standard test.” (2.5%)**

The *completeness test* requires the law to be complete in all its terms and conditions when it leaves the legislature so that when it reaches the delegate, it will have nothing to do but enforce it.

Under the *sufficient standard test*, the law must specify the limits of the delegate’s authority. The legislative policy must be announced and specify the condi-

tions under which it is to be implemented. (*Abakada Guro Party List v. Ermita*, G.R. No. 168056, September 1, 2005, 469 SCRA 1; Cruz, Philippine Administrative Law, 2016 Edition, pages 48-49)

**(b) Does the assailed portion of section 8 of PD 910 hurdle the two (2) tests? (2.5%)**

No, the assailed portion of section 8 of PD 910 cannot be considered as compliant with both tests.

The phrase “and for such other purposes as may be hereafter directed by the President” under Section 8 of PD 910 constitutes an undue delegation of legislative power insofar as it does not lay down a sufficient standard to adequately determine the limits of the President’s authority with respect to the purpose for which the Malampaya Funds may be used. (*Belgica v. Executive Secretary*, G.R. No. 208566, November 19, 2013)

## VI

**Pornographic materials in the form of tabloids, magazines and other printed materials, proliferate and are being sold openly in the streets of Masaya City. The City Mayor organized a task force which confiscated these materials. He then ordered that the materials be burned in public. Dominador, publisher of the magazine, “Plaything”, filed a suit, raising the following constitutional issues: (a) the confiscation of the materials constituted an illegal search and seizure, because the same was done without a valid search warrant; and (b) the confiscation, as well as the proposed destruction of the materials, is a denial of the right to disseminate information, and thus,**

**violates the constitutional right to freedom of expression. Is either or both contentions proper? Explain your answer. (5%)**

The contention regarding the need for a valid search warrant is proper.

The summary confiscation of the subject materials could not have been done summarily. A search warrant must have first been issued after a judge shall have been convinced of the existence of probable cause that the materials sought to be seized were indeed obscene. (*Pita v. Court of Appeals*, 178 SCRA 362)

On the assumption, however, that the seizure of said materials was lawfully done, the proposed destruction of the subject materials may be allowed in accordance with the provisions of Section 2 of Presidential decree No. 969, which authorize the forfeiture and destruction of pornographic materials involved in the violation of Article 201 of the Revised Penal Code and would not constitute a violation of the constitutional right to freedom of expression. (*Nogales v. People*, G.R. No. 191080, November 21, 2011)

[*Acceptable Answer* (re destruction of materials): Absent a clear showing that the subject materials are pornographic, and considering that they were illegally seized, the same may not be destroyed. This would be violative of the owner's constitutional right to freedom of expression.]

## VII

**Ernesto, a minor, while driving a motor vehicle, was stopped at a mobile checkpoint. Noticing that Ernesto is a minor, SPO1 Jojo asked Ernesto to exhibit his driver's license but Ernesto failed to**

produce it. SPO1 Jojo requested Ernesto to alight from the vehicle and the latter acceded. Upon observing a bulge in the pants of Ernesto, the policeman frisked him and found an unlicensed .22-caliber pistol inside Ernesto's right pocket. Ernesto was arrested, detained and charged. At the trial, Ernesto, through his lawyer, argued that, policemen at mobile checkpoints are empowered to conduct nothing more than a "visual search." They cannot order the persons riding the vehicle to alight. They cannot frisk, or conduct a body search of the driver or the passengers of the vehicle.

Ernesto's lawyer thus posited that:

(a) The search conducted in violation of the Constitution and established jurisprudence was an illegal search; thus, the gun which was seized in the course of an illegal search is the "fruit of the poisonous tree" and is inadmissible in evidence. (2.5%)

(b) The arrest made as a consequence of the invalid search was likewise illegal, because an unlawful act (the search) cannot be made the basis of a lawful arrest. (2.5%)

**Rule on the correctness of the foregoing arguments, with reasons.**

(a) The search was unlawful having been made in connection with an unlawful arrest based on a simple traffic violation, *i.e.*, non-possession of a driver's license. Under R.A. 4136, or the Land Transportation and Traffic Code, the general procedure for dealing with a traffic

violation is not the arrest of the offender. (*Luz v. People*, G.R. No. 197788, February 29, 2012, 667 SCRA 421)

It is established that there can be a valid warrantless search incidental to an arrest only if the warrantless were, to begin with, lawful. (*People v. Chua Ho San*, 308 SCRA 432; *People v. Aruta*, G.R. No. 120915, April 3, 1998; *People v. Delos Reyes*, G.R. No. 174774, August 31, 2011, 656 SCRA 417; *People v. Manago*, G.R. No. 212340, August 17, 2016; *Miguel v. People*, G.R. No. 227038, July 31, 2017)

[*Acceptable Answer: (a)* The search was lawful, having been made pursuant to an *in flagrante delicto* arrest for driving without a license. It can further be justified as a valid “stop and frisk” search. Accordingly, the gun seized from Ernesto is admissible in evidence against him.]

(b) The arrest was unlawful because it was made after the unlawful search. “There must first be a lawful arrest before a search can be made – the process cannot be reversed.” (*People v. Chua Ho San*, 308 SCRA 432)

[*Acceptable Answer: (b)* The arrest was lawful. As previously stated, it was an *in flagrante delicto* arrest made during a proper inspection made at a mobile checkpoint. It was not made prior to an “invalid” search. Also as previously stated, the search was lawful.]

## VIII

**A law is passed intended to protect women and children from all forms of violence. When a woman perceives an act to be an act of violence or a threat of violence against her, she may apply for a Barangay Protection Order (BPO) to be issued by the Barangay Chairman, which shall have the force and effect of law. Conrado, against whom a BPO had been issued on petition of his wife, went**

**to court to challenge the constitutionality of the law. He raises the following grounds:**

**(a) The law violates the equal protection clause because, while it extends protection to women who may be victims of violence by their husbands, it does not extend the same protection to husbands who may be battered by their wives. (2.5%)**

**(b) The grant of authority to the Barangay Chairman to issue a Barangay Protection Order (BPO) constitutes an undue delegation of judicial power, because obviously, the issuance of the BPO entails the exercise of judicial power. (2.5%)**

**Rule on the validity of the grounds raised by Conrado, with reasons.**

(a) The law is based on a valid classification. It does not violate the equal protection clause by favoring women over men as victims of violence and abuse to whom the State extends its protection because the “unequal power relationship between women and men; the fact that women are more likely than men to be victims of violence; and the widespread gender bias and prejudice against women all make for real differences justifying the classification under the law.” (*Garcia v. Drilon*, G.R. No. 179267, June 25, 2013, 699 SCRA 352)

(b) The issuance of a Barangay Protection Order by the *Punong Barangay* or, in his unavailability, by any available Barangay Kagawad, merely orders the perpetrator to desist from (a) causing physical harm to the woman or her child; and (2) threatening to cause the

woman or her child physical harm. Such function of the Punong Barangay is, thus, purely executive in nature, in pursuance of his duty under the Local Government Code to “enforce all laws and ordinances,” and to “maintain public order in the barangay. It is not violative of the principle of delegation.” (*Garcia v. Drilon*, G. R. No. 179267, June 25, 2013, 699 SCRA 352; *Tua v. Mangro-bang*, G.R. No. 170701, January 22, 2014)

## IX

**The Government, through Secretary Toogood of the Department of Transportation (DOTr), filed a complaint for eminent domain to acquire a 1,000- hectare property in Bulacan, owned by Baldomero. The court granted the expropriation, fixed the amount of just compensation, and installed the Government in full possession of the property.**

**(a) If the Government does not immediately pay the amount fixed by the court as just compensation, can Baldomero successfully demand the return of the property to him? Explain your answer. (2.5%)**

Baldomero cannot be allowed to demand the return of the property.

The non-filing of the case for expropriation or delayed payment of just compensation will not necessarily lead to the return of the property to the landowner. What is left to the landowner is the right of compensation. (See *Forfom Development Corporation v. Philippine National Railways*, G.R. No. 124795, December 10, 2008, 573 SCRA 341.)

**(b) If the Government paid full compensation but after two years it abandoned its plan to build an airport on the property, can Baldomero compel the Government to re-sell the property back to him? Explain your answer. (2.5%)**

Yes, it may be “obliged to reconvey” the property it had expropriated but never used on condition that the landowners would return the just compensation they received, plus interest. (*Mactan Cebu International Airport Authority v. Tudtud*, G.R. No. 174012, November 14, 2008, 571 SCRA 165)

## X

The Philippines entered into an international agreement with members of the international community creating the International Economic Organization (IEO) which will serve as a forum to address economic issues between States, create standards, encourage greater volume of trade between its members, and settle economic disputes. After the Philippine President signed the agreement, the Philippine Senate demanded that the international agreement be submitted to it for its ratification. The President refused, arguing that it is an executive agreement that merely created an international organization and it dwells mainly on addressing economic issues among States.

**Is the international agreement creating the IEO a treaty or an executive agreement? Explain. (5%)**

It is submitted that the international agreement creating the International Economic Organization can be considered as an executive agreement, which therefore need not be submitted to the Senate for its concurrence.

There are no hard and fast rules on the propriety of entering, on a given subject, into a treaty or an executive agreement as an instrument of international relations. The primary consideration in the choice of the form of agreement is the parties' intent and desire to craft an international agreement in the form they so wish to further their respective interests. Verily, the matter of form takes a back seat when it comes to effectiveness and binding effect of the enforcement of a treaty or an executive agreement, as the parties in either international agreement each labor under the *pacta sunt servanda* principle. Save for the situation and matters contemplated in Sec. 25, Art. XVIII of the Constitution when a treaty is required, the Constitution does not classify any subject, like that involving political issues, to be in the form of, and ratified as, a treaty.

What the Constitution merely prescribes is that treaties need the concurrence of the Senate by a vote defined therein to complete the ratification process. "The right of the Executive to enter into binding agreements without the necessity of subsequent Congressional approval has been confirmed by long usage. From the earliest days of our history, we have entered executive agreements covering such subjects as commercial and consular relations, most favored-nation rights, patent rights, trademark and copyright protection, postal and navigation arrangements and the settlement of claims. The validity of these has never been seriously questioned by our courts." (*Bayan Muna v. Romulo*, G.R. No. 159618, February 1, 2011)

*[Acceptable Answer:* It is submitted that the international agreement creating the International Economic Organization can be considered as an executive agreement, which therefore need not be submitted to the Senate for its concurrence.

The power of the President to enter into binding executive agreements without Senate concurrence is already well-established in this jurisdiction. That power has been alluded to in our present and past Constitutions, in various statutes, in Supreme Court decisions, and during the deliberations of the Constitutional Commission. They cover a wide array of subjects with varying scopes and purposes, including those that involve the presence of foreign military forces in the country. xxx. No court can tell the President to desist from choosing an executive agreement over a treaty to embody an international agreement, unless the case falls squarely within Article VIII, Section 25. (*Saguisag v. Executive Secretary*, G. R. No. 212426, January 12, 2016)]

## XI

The *USS Liberty*, a warship of the United States (U.S.), entered Philippine archipelagic waters on its way to Australia. Because of the negligence of the naval officials on board, the vessel ran aground off the island of Palawan, damaging coral reefs and other marine resources in the area. Officials of Palawan filed a suit for damages against the naval officials for their negligence, and against the U.S., based on Articles 30 and 31 of the United Nations Convention on the Law of the Sea (UNCLOS). Article 31 provides that the Flag State shall bear international responsibility for any loss or damage to the Coastal State resulting from noncompliance by a warship with the laws and regulations of the coastal State concerning passage through the territorial sea. The U.S. Government raised the defenses that:

**(a) The Philippine courts cannot exercise jurisdiction over another sovereign State, including its warship and naval officials. (2.5%)**

**(b) The United States is not a signatory to UNCLOS and thus cannot be bound by its provisions. (2.5%)**

**Rule on the validity of the defenses raised by the U.S., with reasons.**

(a) The defense that the Philippine courts cannot exercise jurisdiction over another sovereign State, including its warship and naval officials, is not entirely valid.

Although it may be considered as immune from suits for damages, like the one presented in the problem, the Visiting Forces Agreement, which is an agreement which defines the treatment of United States troops and personnel visiting the Philippines to promote “common security interests” between the US and the Philippines in the region, provides for a waiver of immunity with respect to our exercise of our criminal jurisdiction. (*Arigo v. Swift*, G.R. No. 206510, September 16, 2014)

(b) It is submitted that the United States can be considered as bound by the provisions of the UNCLOS despite the fact that it is not a signatory to the same.

Although the US to date has not ratified the UNCLOS, as a matter of long-standing policy, the US considers itself bound by customary international rules on the “traditional uses of the oceans” as codified in UNCLOS. Said customary international rules can, because

of their nature, be considered as binding upon all states.  
(*Arigo v. Swift*, G.R. No. 206510, September 16, 2014)

## XII

**Paragraphs c, d and f of Section 36 of Republic Act No. 9165 provide:**

**“Sec. 36. Authorized drug testing. xxx The following shall be subjected to undergo drug testing: xxx**

**c. Students of secondary and tertiary schools xxx;**

**d. Officers and employees of public and private offices xxx;**

**f. All persons charged before the prosecutor’s office with a criminal offense having an imposable imprisonment of not less than 6 years and 1 day;”**

**Petitioners contend that the assailed portions of Sec. 36 are unconstitutional for violating the right to privacy, the right against unreasonable searches and seizures and the equal protection clause. Decide if the assailed provisions are unconstitutional. (5%)**

The law, as applied to students and employees, is constitutional but unconstitutional as applied to persons charged before the public prosecutor’s office with criminal offenses punishable with six (6) years and one (1) day imprisonment.

Students essentially waive their right to privacy when they enroll in a school. Indeed, it is within the

prerogative of educational institutions to require, as a condition for admission, compliance with reasonable school rules and regulations and policies. Authorities are agreed though that the right to privacy yields to certain paramount rights of the public and defers to the state's exercise of police power.

Employees have also been considered as having a "a reduced expectation of privacy." Based on the compelling state concern likely to be met by the search, and the well-defined limits set forth in the law to properly guide authorities in the conduct of the random testing, the challenged drug test requirement is, under the limited context of the case, reasonable and, ergo, constitutional. Moreover, civil servants, are, by constitutional command, required to be accountable at all times to the people and to serve them with utmost responsibility and efficiency.

However, with respect to persons charged before the public prosecutor's office with criminal offenses punishable with six (6) years and one (1) day imprisonment, a mandatory drug testing can never be *random* or *suspicionless*. The ideas of randomness and being suspicionless are antithetical to their being made defendants in a criminal complaint. They are not randomly picked; neither are they beyond suspicion. When persons suspected of committing a crime are charged, they are singled out and are impleaded against their will. The persons thus charged, by the bare fact of being haled before the prosecutor's office and peaceably submitting themselves to drug testing, if that be the case, do not necessarily consent to the procedure, let alone waive their right to privacy. To impose mandatory drug testing on the accused is a blatant attempt to harness a medical test as a tool for criminal prosecution, contrary to the stated objectives of RA 9165. Drug testing in this case

would violate a persons' right to privacy guaranteed under Sec. 2, Art. III of the Constitution. Worse still, the accused persons are veritably forced to *incriminate themselves*. (*Social Justice Society v. Dangerous Drugs Board*, G.R. No. 157870, November 3, 2008, 570 SCRA 410; see also *Office of the Court Administrator v. Reyes*, A.M. No. P-08-2535, June 23, 2010, 621 SCRA 511)

### XIII

While Congress was not in session, the President appointed Antero as Secretary of the Department of Tourism (DOT), Benito as Commissioner of the Bureau of Immigration (BI), Clodualdo as Chairman of the Civil Service Commission (CSC), Dexter as Chairman of the Commission on Human Rights (CHR), and Emmanuel as Philippine Ambassador to Cameroon. The following day, all the appointees took their oath before the President, and commenced to perform the functions of their respective offices.

(a) Characterize the appointments, whether permanent or temporary; and whether regular or interim, with reasons. (2.5%)

The appointments of Antero as Secretary of the Department of Tourism, Clodualdo as Chairman of the Civil Service Commission, and Emmanuel as Philippine ambassador to Cameroon are *ad interim* and permanent. (See *Matibag v. Benipayo*, G.R. No. 149036, April 2, 2002, 429 Phil. 554; Constitution, Article VII, Section 16)

The appointments of Benito as Commissioner of Bureau of Immigration and Dexter as Chairman of the Commission on Human Rights are permanent and regular. (*Sarmiento and Arcilla v. Mison*, 156 SCRA 549; *Bautista v. Salonga*, 172 SCRA 169; Constitution, Article VII, Section 16)

**(b) A civil society group, the Volunteers Against Misguided Politics (VAMP), files suit, contesting the legality of the acts of the appointees and claiming that the appointees should not have entered into the performance of the functions of their respective offices, because their appointments had not yet been confirmed by the Commission on Appointments. Is this claim of VAMP correct? Why or why not? (2.5%)**

The claim or contention of VAMP is not correct.

*Ad interim* appointments are immediately effective and continue to be effective upon approval, or until disapproval by the Commission on Appointments or until the next adjournment of the Congress. (Constitution, Article 7, Section 16)

The appointments of Benito as Commissioner of Bureau of Immigration and Dexter as Chairman of the Commission on Human Rights being permanent and regular, they could have validly assumed their offices immediately, as their appointments are not required to be confirmed by the Commission on Appointments. (*Sarmiento and Arcilla v. Mison*, 156 SCRA 549; *Bautista v. Salonga*, 172 SCRA 169; Constitution, Article VII, Section 16)

#### XIV

Onofre, a natural born Filipino citizen, arrived in the United States in 1985. In 1990, he married Salvacion, a Mexican, and together they applied for and obtained American citizenship in 2001. In 2015, the couple and their children — Alfred, 21 years of age, Robert, 16, and Marie, 14, who were all born in the U.S. — returned to the Philippines on June 1, 2015. On June 15, 2015, informed that he could reacquire Philippine citizenship without losing his American citizenship, Onofre went home to the Philippines and took the oath of allegiance prescribed under R.A. No. 9225. On October 28, 2015, he filed a Certificate of Candidacy to run in the May 9, 2016 elections for the position of Congressman in his home province of Pala wan, running against re-electionist Congressman Profundo.

(a) Did Onofre's reacquisition of Philippine citizenship benefit his wife, Salvacion, and their minor children and confer upon them Filipino citizenship? Explain your answer. (2.5%)

It is submitted that Salvacion can be considered as a Filipino citizen pursuant to the provisions of Section 15 of C.A. No. 473. (See Answer to Question IX (b), 2009 Examination, pages 20-23.)

Robert and Marie, Onofre's minor children, can be considered as having been conferred with Philippine citizenship. This would be consistent with Section 4 of R.A. No. 9225, which provides that the unmarried child, whether, legitimate, illegitimate or adopted, below

eighteen years of age, of those who re-acquire Philippine citizenship shall likewise be deemed citizens of the Philippines.

**(b) Before the May 9, 2016 elections, Profundo's lawyer filed a Petition to Deny Due Course or to Cancel the Certificate of Candidacy against Onofre. What grounds can he raise in his Petition to support it? Explain your answer. (2.5%)**

The Petition to Deny Due Course or to Cancel the Certificate of Candidacy against Onofre can be based on the ground of his having deliberately made a false material misrepresentation as to his eligibility to be such a candidate with respect to his residence, as it would appear that he re-established his residence in the Philippines only on June 1, 2015, and cannot be considered as having resided here for at least a year when he filed his certificate of candidacy some five months later on October 28, 2015. (*Caballero v. Commission on Elections*, G.R. No. 209835, September 22, 2015)

A second ground on which said Petition can be based would be his having deliberately made a false material misrepresentation as to his eligibility to be such a candidate with respect to his citizenship. While he may have taken his oath of allegiance prescribed under R.A. No. 9225, it does not appear that he had renounced his American citizenship, which he retained despite that oath of allegiance. He is therefore a dual citizen and would not be eligible for election as a Congressman, consistent with the provisions of Article VI, Section 6 of the Constitution, which requires natural-born citizenship for members of the House of Representatives, and Section 18 of Article XI of the Constitution,

which provides that public officers and employees owe the State and the Constitution allegiance at all times. (*Jacot v. Dal*, G.R. No. 179848, November 27, 2008; *Sobjana-Codon v. Commission on Elections*, G.R. No. 198742, August 10, 2012)

## XV

Congress passed a bill appropriating P100-billion. Part of the money is to be used for the purchase of a 200-hectare property in Antipolo. The rest shall be spent for the development of the area and the construction of the Universal Temple for All the World's Faiths (UTAW-F). When completed, the site will be open, free of charge, to all religions, beliefs, and faiths, where each devotee or believer shall be accommodated and treated in a fair and equal manner, without distinction, favor, or prejudice. There will also be individual segments or zones in the area which can be used for the conduct of whatever rituals, services, sacraments, or ceremonials that may be required by the customs or practices of each particular religion. The President approved the bill, happy in the thought that this could start the healing process of our wounded country and encourage people of varied and often conflicting faiths to live together in harmony and in peace.

If the law is questioned on the ground that it violates Sec. 5, Article III of the Constitution that "no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof," how will you resolve the challenge? Explain. (5%)

I will consider the law as violative of Section 5 of Article III of the Constitution.

The “establishment clause principally prohibits the State from sponsoring any religion or favoring any religion as against other religions. It mandates a strict neutrality in affairs among religious groups. Essentially, it prohibits the establishment of a state religion and the use of public resources for the support or prohibition of a religion.” (*Imbong v. Ochoa*, G.R. No. 204819, April 8, 2014, 721 SCRA 146)

“The state cannot set up a church; nor pass laws which aid one religion, aid all religion, or prefer one religion over another.” (*Everson v. Board of Education*, 330 U.S. 1)

[*Acceptable Answer*: The law can be upheld or justified as religious accommodation and therefore not unconstitutional. It merely provides for the establishment of a temple which can be used for religious purposes and by all faiths “in a fair and equal manner, without distinction, favor, or prejudice.” It can be said that, in its minimal sense, what the non-establishment clause provides is that the state cannot establish or sponsor an official religion. It cannot be said that the construction of the subject temple is by way of sponsorship or establishment of a religion. (*Re: Letter of Tony Q. Valenciano*, A.M. No. 10-4-19-SC, March 7, 2017)]

## XVI

**Jojo filed a criminal complaint against Art for theft of a backpack worth P150.00 with the Office of the City Prosecutor of Manila. The crime is punishable with *arresto mayor* to *prision correccional* in its minimum period, or not to exceed 4 years and 2 months. The case was assigned to Prosecutor Tristan and he applied Sec. 8(a) of Rule 112 which reads: “(a) If filed with the prose-**

**utor. - If the complaint is filed directly with the prosecutor involving an offense punishable by imprisonment of less than four (4) years, two (2) months and one (1) day, the procedure outlined in Sec. 3(a) of this Rule shall be observed. The Prosecutor shall act on the complaint within ten (10) days from its filing.”**

**On the other hand, Sec. 3(a) of Rule 112 provides: “(a) The complaint shall state the address of the respondent and shall be accompanied by affidavits of the complainant and his witnesses as well as other supporting documents to establish probable cause. xxx”**

**Since Sec. 8(a) authorizes the Prosecutor to decide the complaint on the basis of the affidavits and other supporting documents submitted by the complainant, Prosecutor Tristan did not notify Art nor require him to submit a counter-affidavit. He proceeded to file the Information against Art with the Metropolitan Trial Court. Art vehemently assails Sec. 8(a) of Rule 112 as unconstitutional and violative of due process and his rights as an accused under the Constitution for he was not informed of the complaint nor was he given the opportunity to raise his defenses thereto before the Information was filed. Rule on the constitutionality of Sec. 8(a) of Rule 112. Explain. (5%)**

**It is submitted that Sec. 8(a) of Rule 112 is constitutional.**

**The constitutional due process requirements are not applicable to preliminary investigations which are creations of statutory law giving rise to mere statutory rights. A law can even abolish preliminary investiga-**

tions without running afoul with the constitutional requirements of due process. (*Estrada v. Office of the Ombudsman*, G.R. Nos. 212140-41, January 21, 2015)

## XVII

**(a) Define the archipelagic doctrine of national territory, state its rationale; and explain how it is implemented through the straight baseline method. (2.5%)**

The Archipelago Doctrine provides that the outermost points of an archipelago are connected with straight baselines and all waters enclosed thereby are to be considered as internal waters. The entire archipelago is regarded as one integrated unit instead of being fragmented into so many thousand islands. Under our Constitution, it is provided that “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.” (Article I, Section 1; Cruz and Cruz, *International Law*, 2020 Edition, pages 174-175)

**(b) Section 2 of RA 9522 declared the Kalayaan Island Group (KIG) and Scarborough Shoal as “Regimes of Islands.” Professor Agaton contends that since the law did not enclose said islands, then the Philippines lost its sovereignty and jurisdiction over them. Is his contention correct? Explain. (2.5%)**

His contention is not correct.

The Kalayaan Islands and the Scarborough Shoal have been constituted under the subject law as ‘Re-

gime[s] of Islands' under the Republic of the Philippines consistent with Article 121 of UNCLOS. They are therefore subject to the continuing authority, or sovereignty and jurisdiction, of the Philippines.

[Note: "Had Congress in RA 9522 enclosed the KIG and the Scarborough Shoal as part of the Philippine archipelago, adverse legal effects would have ensued. The Philippines would have committed a breach of two provisions of UNCLOS III. *First*, Article 47 (3) of UNCLOS III requires that the drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago. *Second*, Article 47 (2) of UNCLOS III requires that 'the length of the baselines shall not exceed 100 nautical miles,' save for three per cent (3%) of the total number of baselines which can reach up to 125 nautical miles.

"Although the Philippines has consistently claimed sovereignty over the KIG and the Scarborough Shoal for several decades, these outlying areas are located at an appreciable distance from the nearest shoreline of the Philippine archipelago, such that any straight baseline loped around them from the nearest basepoint will inevitably 'depart to an appreciable extent from the general configuration of the archipelago.'

"Hence, far from surrendering the Philippines' claim over the KIG and the Scarborough Shoal, Congress' decision to classify the KIG and the Scarborough Shoal as 'Regime[s] of Islands' under the Republic of the Philippines consistent with Article 121 of UNCLOS III manifests the Philippine State's responsible observance of its *pacta sunt servanda* obligation under UNCLOS III. Under Article 121 of UNCLOS III, any 'naturally formed area of land, surrounded by water, which is above water at high tide,' such as portions of the KIG, qualifies under the category of 'regime of islands,' whose islands generate their own applicable maritime zones." (*Magallona v. Ermita*, G.R. No. 187167, August 16, 2011, 658 SCRA 476)

## XVIII

**Sec. 8, Article X of the 1987 Constitution provides that no elective official shall serve for more than three (3) consecutive terms. Rule and explain briefly the reason if the official is prohibited**

**to run for another term in each of the following situations: (a) if the official is a Vice-Mayor who assumed the position of Mayor for the unexpired term under the Local Government Code; (b) if the official has served for three consecutive terms and did not seek a 4th term but who won in a recall election; (c) if the position of Mayor of a town is abolished due to conversion of the town to a city; (d) if the official is preventively suspended during his term but was exonerated; and (e) if the official is proclaimed as winner and assumes office but loses in an election protest. (5%)**

(a) The three-term limit rule is inapplicable to the Vice-Mayor because the interruption in his term when he assumed the position of Mayor would be involuntary. (*Montebon v. Commission on Elections*, G.R. No. 180444, April 8, 2005, 551 SCRA 50)

(b) The three-term limit rule is likewise inapplicable to the official who has served for three consecutive terms and did not seek a 4<sup>th</sup> term but won in a recall election because there would have been an involuntary interruption in his terms after his third term (*Adormeo v. Commission on Elections*, G.R. No. 147927, February 4, 2002, 376 SCRA 90 and *Socrates v. Commission on Elections*, G.R. No. 154512, November 12, 2002, 391 SCRA 457), and a recall term is not a full term (*Mendoza v. COMELEC*, G.R. No. 149736, December 17, 2002).

(c) The three-term limit rule would be applicable against the Mayor of a town which is abolished due to the conversion of the town to a city because the abolition of an elective office due to the conversion of a municipality to a city does not, by itself, work to interrupt the

incumbent official's continuity of service. (*Latasa v. Commission on Elections*, G.R. No. 154829, December 10, 2003, 417 SCRA 601)

(d) The three-term limit rule is also inapplicable to the official who has been placed under preventive suspension during his term because a preventive suspension is not an interruption. (*Aldovino v. COMELEC*, G.R. No. 184836, December 23, 2009, 603 SCRA 234)

(e) The three-term limit rule is finally inapplicable to the official who is proclaimed as winner and assumes office but loses in an election contest because his term is interrupted when he loses said election protest and is ousted from office, thus disenabling him from serving what would otherwise be the unexpired portion of his term had the protest been dismissed. (*Lonzanida v. Commission on Elections*, G.R. No. 135150, July 28, 1999, 311 SCRA 602)

## XIX

**Fernando filed an administrative complaint against his co-teacher, Amelia, claiming that the latter is living with a married man who is not her husband. Fernando charged Amelia with committing "disgraceful and immoral conduct" in violation of the Revised Administrative Code and, thus, should not be allowed to remain employed in the government. Amelia, on the other hand, claims that she and her partner are members of a religious sect that allows members of the congregation who have been abandoned by their respective spouses to enter marital relations under a "Declaration of Pledging Faithfulness." Having made such Declaration, she argues that she can-**

**not be charged with committing immoral conduct for she is entitled to free exercise of religion under the Constitution.**

**(a) Is Amelia administratively liable? State your reasons briefly. (2.5%)**

Amelia is not administratively liable.

Her conjugal arrangement cannot be penalized as she has made out a case for exemption from the law based on her fundamental right to freedom of religion. (*Estrada v. Escritor*, A.M. No. P-02-1651, June 22, 2006, 492 SCRA 1; see also *Estrada v. Escritor*, A.M. No. P-02-1651, August 4, 2003, 455 Phil. 411, 506 [2003])

**(b) Briefly explain the concept of “benevolent neutrality.” (2.5%)**

The concept of *benevolent neutrality* gives room for accommodation of religious exercises as required by the Free Exercise Clause. It could allow for accommodation of morality based on religion, provided it does not offend compelling state interests. (*Estrada v. Escritor*, A.M. No. P-02-1651, June 22, 2006, 492 SCRA 1; see also *Estrada v. Escritor*, A.M. No. P-02-1651, August 4, 2003, 455 Phil. 411, 506 [2003])

## XX

**Under Sec. 5, Article VIII of the Constitution, the Supreme Court shall have the power to “promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts xxx.” Section**

**23 of R.A. No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 provides that “any person charged under any provision of this Act regardless of the imposable penalty shall not be allowed to avail of the provision on plea-bargaining.” Patricio, a user who was charged with alleged sale of shabu but who wants to enter a plea of guilty to a charge of possession, questions the constitutionality of Sec. 23 on the ground that Congress encroached on the rule-making power of the Supreme Court under Sec. 5, Article VIII. He argues that plea-bargaining is procedural in nature and is within the exclusive constitutional power of the Court. Is Patricio correct? Explain your answer. (5%)**

It is submitted that Patricio is correct.

Said Section 23 of R.A. No. 9165 is unconstitutional, constituting as it does an unlawful encroachment by the Congress into the exclusive rule-making authority of the Supreme Court under Article VIII, Section 5 (5) of the Constitution.

The Supreme Court’s sole prerogative to issue, amend, or repeal procedural rules is limited to the preservation of substantive rights, *i.e.*, the former should not diminish, increase or modify the latter. “Substantive law is that part of the law which creates, defines and regulates rights, or which regulates the right and duties which give rise to a cause of action; that part of the law which courts are established to administer; as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtain redress for their invasions.”

Plea bargaining has been defined as “a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval.” The rules on plea bargaining neither create a right nor take away a vested right. Instead, it operates as a means to implement an existing right by regulating the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for a disregard or infraction of them.

It is therefore within the exclusive rule-making power of the Supreme Court. (*Estipona v. Lobrigo*, G.R. No. 226679, August 15, 2017)

## 2017

### I

**A priority thrust of the Administration is the change of the form of government from unitary to federal. The change can be effected only through constitutional amendment or revision.**

**(a) What are the methods of amending the Constitution? Explain briefly each method. (3%)**

Under Article XVII of the Constitution, proposals to amend or revise the Constitution may be done or approved by the Congress, acting in its constituent capacity, upon a vote of three-fourths of all its Members or by a constitutional convention (Section 1) created by the Congress, also in a constituent capacity, by a vote of two-thirds of all its Members. The question or matter of calling such a convention may be submitted by the Congress to the electorate by a majority vote of all its Members. (Section 3)

Amendments to the Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve per centum of the total number of registered voters, of which every legislative district must be represented by at least three per centum of the registered voters therein. (Section 2)

Any amendment to, or revision of, this Constitution under Section 1 shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than sixty days nor later than ninety days after the approval of such amendment or revision.

Any amendment under Section 2 shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than sixty days nor later than ninety days after the certification by the Commission on Elections of the sufficiency of the petition. (Section 4)

**(b) Cite at least three provisions of the Constitution that need to be amended or revised to effect the change from unitary to federal, and briefly explain why? (3%)**

Among the provisions in the Constitution that would need to be amended or revised to effect the change from unitary to federal would be the Preamble, for purposes of introducing the concept of federalism and providing for a declaration to the effect that its attainment shall be among the aims of the provisions of said document; the provisions on the Executive, Legislative and Judicial Departments, to provide for conferments of and limitations on the powers of each of said branches for purposes of precisely providing for a federal system of government, and the provisions on Local Government, which, at present, merely prescribe for the autonomy of local government units.

*[Acceptable Answer:* If the Congress or a constitutional convention would be foolish enough to propose the revision of the Constitution to provide for a federal system of government, among the provisions in the Constitution that would need to be amended or revised to effect the change from unitary to federal would be the Preamble, for purposes of introducing the concept of federalism and providing for a declaration to the effect that its attainment shall be among the aims of the provisions of said document; the provisions on the Executive, Legislative and Judicial Departments, to provide for conferments of and limitations on the powers of each of said branches for purposes of precisely providing for a federal system of government,

and the provisions on Local Government, which, at present, merely prescribe for the autonomy of local government units.]

[Note: Bar examination questions should be limited to concepts actually taught, and ought not to include concepts which are not discussed and are not based on existing laws or on the Constitution.]

## II

### A.

**Under the doctrine of immunity from suit, the State cannot be sued without its consent. How may the consent be given by the State? Explain your answer. (3%)**

Consent to be sued may be *expressly* made, which may be done with a *general law*, e.g. CA 327, as amended (on money claims against government to be filed with the Commission on Audit) or a *special law*, as in the case of *Merritt v. Government of the Philippine Islands* (43 Phil. 311), where a special law allowed a person to sue the Philippine Government for injuries he sustained when his motorcycle collided with a government ambulance.

Consent may also be *impliedly* made, when the State *institutes a complaint*, as in *Froilan v. Pan Oriental Shipping Co.* (G.R. No. L-6060, September 30, 1950), where the government was held to have impliedly allowed itself to be sued when it filed a complaint in intervention for the purpose of asserting a claim against the plaintiff, to wit, the recovery of a vessel (but not where the complaint (in intervention) is filed precisely "to join the defendant in invoking the doctrine of State immunity to secure the dismissal of the action" or to resist the claim, as in *Lim v. Brownell* (107 Phil. 345); or

when it enters into *proprietary contracts*, as in *USA v. Guinto* (182 SCRA 644), which referred to the operation of restaurants and barber shops, but not when it enters into governmental contracts, such as in *USA v. Ruiz* (136 SCRA 487), which involved the repair of wharves. (Cruz and Cruz, *Philippine Political Law*, 2014 Edition, pages 59-70)

### B.

**The doctrine of immunity from suit in favor of the State extends to public officials in the performance of their official duties. May such officials be sued nonetheless to prevent or to undo their oppressive or illegal acts, or to compel them to act? Explain your answer. (3%)**

Yes, an officer of the state may be sued without involving the State, as in a claim for recovery of taxes unlawfully assessed or collected (*Houston v. Houston*, 252 U.S. 569); in a claim for recovery only of title to or possession of property (*Syquia v. Almeda Lopez*, 84 Phil. 312); in a suit against the Director of Public Works, who took over without authority property belonging to the plaintiff and constructed thereon an irrigation canal (*Festejo v. Fernando*, 50 O.G. 1556); and in a suit for the recovery of the value of property which had been converted into public streets without payment of just compensation, which can prosper even without previously filing a claim with the Auditor General. (*Amigable v. Cuenca*, 43 SCRA 360)

The doctrine of sovereign immunity cannot be successfully invoked to defeat a valid claim for compensation arising from the taking without just compensation and without the proper expropriation proceedings being

first resorted to of the plaintiffs' property. (*Republic v. Sandiganbayan*, 204 SCRA 212; *Ministerio v. Court of First Instance of Cebu*, 40 SCRA 464; *Santiago v. Republic*, 87 SCRA 294)

The doctrine of sovereign immunity is not an instrument for perpetrating any injustice on a citizen. (*De los Santos v. Intermediate Appellate Court*, 223 SCRA 1; *Air Transportation Office v. Ramos*, 644 SCRA 36; Cruz, Notes on the Constitution, Volume I, 2016 Edition, pages 140-141)

### C.

**Do government-owned or -controlled corporations also enjoy the immunity of the State from suit? Explain your answer. (3%)**

It is established that, if the government agency is *incorporated*, the test of its suability is found in its charter. The simple rule is that it is suable if its charter says so, and this is true regardless of the functions it is performing. (*Bermoy v. Philippine Normal College*, G.R. No. L-8670, May 18, 1956; Cruz and Cruz, Philippine Political Law, 2014 Edition, pages 70-75)

Accordingly, it can be said that government-owned or -controlled corporations do not enjoy immunity from suit, provided their charters expressly prescribe that they can sue and be sued. (*Arcega v. Court of Appeals*, G.R. No. L-8760, May 18, 1956)

## III

**State A and State B, two sovereign states, enter into a 10-year mutual defense treaty. After five years, State A finds that the more progressive State B did not go to the aid of State A when it was threatened by its strong neighbor State C. State B reasoned that it had to be prudent and deliberate in reacting to State C because of their existing trade treaties.**

**(a) May State A now unilaterally withdraw from its mutual defense treaty with State B? Explain your answer. (2.5%)**

Yes, State A may unilaterally withdraw from said treaty by reason of State B's clear breach of the same.

This would be in consonance with the provisions of Article 60 of the Vienna Convention on the Law of Treaties, which prescribes that a material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part

**(b) What is the difference between the principles of *pacta sunt servanda* and *rebus sic stantibus* in international law? (2.5%)**

Article 26 of the Vienna Convention on the Law of Treaties provides for concept of *pacta sunt servanda* and declares that every treaty in force is binding upon the parties to it and must be performed by them in good faith. Moreover, Article 13 of the Declaration of Rights and Duties of States adopted by the International Law Commission in 1949 provides that every State has the

duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty. (*Bayan v. Zamora*, G.R. No. 138570, October 10, 2000)

*Rebus sic stantibus* is considered as “the equivalent exception to the maxim *pacta sunt servanda*.” The doctrine “constitutes an attempt to formulate a legal principle which would justify non-performance of a treaty obligation if the conditions with relation to which the parties contracted have changed so materially and so unexpectedly as to create a situation in which the exaction of performance would be unreasonable.” (Jessup, 150, cited in Cruz and Cruz, *International Law*, 2020 Edition, pages 313-314)

**(c) Are the principles of *pacta sunt servanda* and *rebus sic stantibus* relevant in the treaty relations between State A and State B? What about in the treaty relations between State B and State C? Explain your answer. (2.5%)**

Yes, under the principle of *pacta sunt servanda*, both States were clearly bound to comply with their obligations under the subject treaty in good faith.

It is however submitted that State B may not invoke the doctrine of *rebus sic stantibus* as justification for its non-compliance with its obligations to aid State A simply because of the threats of State C regarding their existing trade treaties.

It bears emphasis that among the limitations on a valid application of said doctrine of *rebus sic stantibus* is that the vital change in circumstances must have been

unforeseen or unforeseeable and should not have been caused by the party invoking it. It is submitted that this element is not present in this case. (Article 62, Vienna Convention on the Law of Treaties; Kelsen, 358-368; Fenwick, 354-355; Wilson and Tucker, 222; Brierly, 245, cited in Cruz and Cruz, International Law, 2020 Edition, pages 315)

[*Acceptable Answer:* Yes, under the principle of *pacta sunt servanda*, both States were clearly bound to comply with their obligations under the subject treaty in good faith.

State B may invoke the doctrine of *rebus sic stantibus* as justification for its non-compliance with its obligations to aid State A because of the threats of State C regarding their existing trade treaties, considering that these threats in relation to their trade treaties can be considered as unforeseen or unforeseeable and were not intentionally caused by it.]

## IV

### A.

**What is the pardoning power of the President under Art. VIII, Sec. 19 of the Constitution?**

**Is the exercise of the power absolute? (4%)**

Under Article VII, Section 19 of the Constitution, except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations and pardons, and remit fines and forfeitures, after conviction by final judgment. He shall also have the power to grant amnesty with the concurrence of a majority of all the Members of the Congress.

It can be considered as not absolute in the sense that its exercise is subject to the foregoing constitutional limitations, as well as to the limitation in Section 5 of Article IX-C of the Constitution, which provides that no pardon, amnesty, parole, or suspension of sentence for violation of election laws, rules, and regulations shall be granted by the President without the favorable recommendation of the Commission.

It should be added though that the exercise of the *pardoning power* is discretionary in the President, and may not be controlled by legislature or reversed by the courts, save only when it contravenes the recognized limitations. (Cruz and Cruz, *Philippine Political Law*, 2014 Edition, page 443) The pardoning power of the President cannot be limited by legislative action. (*Risos-Vidal v. Commission on Elections*, G.R. No. 206666, January 21, 2015)

## B.

### **Distinguish pardon from amnesty. (4%)**

The distinctions between an *amnesty* and a *pardon* are —

(1) Amnesty is usually addressed to crimes against the sovereignty of the State, to political offenses, forgiveness being deemed more expedient for the public welfare than prosecution and punishment; pardon condones infractions of the peace of the State.

(2) Amnesty is usually generally addressed to classes or even communities of persons; pardon is usually addressed to an individual.

(3) In amnesty, there may or may not be distinct acts of acceptance, so that if other rights are dependent upon it and are asserted, there is affirmative evidence of acceptance; in pardon, there must be distinct acts of acceptance.

(4) Pardon does not require the concurrence of the Congress; amnesty requires such concurrence.

(5) Pardon is a private act of the President which must be pleaded and proved because the courts do not take judicial notice of it; amnesty is a public act of which the courts take judicial notice.

(6) Pardon looks forward and relieves the offender from the consequences of the offense of which he has been convicted; while amnesty looks backward and abolishes and puts into oblivion the offense itself; it so overlooks and obliterates the offense with which he is charged that the person released by amnesty stands before the law precisely as though he had committed no offense. (*Burdick v. United States*, 235 U.S. 476; Cruz and Cruz, *Philippine Political Law*, 2014 Edition, pages 454-455)

## V

**(a) What is the right of legation, and how is it undertaken between states? Explain your answer. (2%)**

The right of legation, which is considered as one of the most effective ways of facilitating and promoting intercourse among states, pertains to their active right to send diplomatic representatives and their passive right of receiving them to enable them to deal more directly and closely with each other in the improvement of their mutual interests. (Cruz and Cruz, International Law, 2020 Edition, page 242)

**(b) Under this right, may a country like Malaysia insist that the Philippines establish a consulate in Sabah to look after the welfare of the Filipino migrants in the area? Explain your answer. (2%)**

No.

Being purely consensual, the maintenance of diplomatic relations is not a demandable right on the part of either the sending or the receiving state. (Cruz and Cruz, International Law, 2020 Edition, page 242)

## VI

### A.

**The President appoints the Vice President as his Administration's Housing Czar, a position that requires the appointee to sit in the Cabinet. Although the appointment of the members of the**

**Cabinet requires confirmation by the Commission on Appointment (CA), the Office of the President does not submit the appointment to the CA. May the Vice President validly sit in the Cabinet? (2.5%)**

Yes, the Vice President may validly sit in the Cabinet as the President's Housing Czar.

Under Section 3 of Article VII of the Constitution, the Vice-President may be appointed as a Member of the Cabinet. Such appointment requires no confirmation.

## **B.**

**The Executive Department has accumulated substantial savings from its appropriations. Needing P3,000,000.00 for the conduct of a plebiscite for the creation of a new city but has no funds appropriated soon by the Congress for the purpose, the COMELEC requests the President to transfer funds from the savings of the Executive Department in order to avoid a delay in the holding of the plebiscite.**

**May the President validly exercise his power under the 1987 Constitution to transfer funds from the savings of the Executive Department, and make a cross-border transfer of P3,000,000.00 to the COMELEC by way of augmentation? Is your answer the same if the transfer is treated as aid to the COMELEC? Explain your answer. (4%)**

No, the President may not validly transfer funds from the savings of the Executive Department in favor of the COMELEC by way of augmentation. Neither can

this be considered as lawful even if it is to be treated as aid to the COMELEC.

Under Section 25 (5) of Article VI of the Constitution, the President, and the other officials mentioned therein, may be allowed or authorized by law to transfer from appropriations for their offices to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.

It is therefore clear that said savings from the appropriations for his office can be lawfully transferred to augment any item in the general appropriations law but only to any office within his office, or the executive branch. Therefore, the transfer of said savings requested by the COMELEC in its favor, being a cross-border transaction, would be violative of the aforementioned constitutional provision as well as of the principle of separation of powers. (*Araullo v. Aquino*, G.R. No. 209287, July 1, 2014)

## VII

**Give the limitations on the power of the Congress to enact the General Appropriations Act? Explain your answer. (5%)**

The following are the limitations on the power of the Congress to enact the General Appropriations Act –

1. No money shall be paid out of the Treasury except in pursuance of an appropriation made by law. (Constitution, Article VI, Section 29 [1])

2. No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect,

church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium. (*Ibid.*, Section 29 [2])

3. All appropriations bills shall originate exclusively in the House of Representatives (but the Senate may propose or concur with amendments) (*Ibid.*, Section 24), and must be based on a budget of expenditures and sources of financing, including receipts from existing and proposed revenue measures, submitted to it by the President (within thirty days from the opening of every regular session). (*Ibid.*, Article VII, Section 22)

4. The Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget. The form, content, and manner of preparation of the budget shall be prescribed by law. (*Ibid.*, Article VI, Section 25 [1])

5. No provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein. Any such provision or enactment shall be limited in its operation to the appropriation to which it relates. (*Ibid.*, Article VI, Section 25 [2])

6. The procedure in approving appropriations for the Congress shall strictly follow the procedure for approving appropriations for other departments and agencies. (*Ibid.*, Article VI, Section 25 [3])

7. No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and

the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations. (*Ibid.*, Article VI, Section 25 [5])

8. Discretionary funds appropriated for particular officials shall be disbursed only for public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law. (*Ibid.*, Article VI, Section 25 [6])

9. 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 re-enacted and shall remain in force and effect until the general appropriations bill is passed by the Congress. (*Ibid.*, Article VI, Section 25 [7])

### VIII

A bank acquired a large tract of land as the highest bidder in the foreclosure sale of the mortgaged assets of its borrower. It appears that the land has been originally registered under the Torrens system in 1922 pursuant to the provisions of the Philippine Bill of 1902, the organic act of the Philippine Islands as a colony of the USA. Sec. 21 of the Philippine Bill of 1902 provided that "*all valuable mineral deposits in public lands in the Philippine Islands, both surveyed and unsurveyed, are hereby declared to be free and open to exploration, occupation and purchase, and the land in which they are found to occupation and purchase, by citizens of the United States, or of said Is-*

**lands.” Sec. 27 of the law declared that a holder of the mineral claim so located was entitled to all the minerals that lie within his claim, but he could not mine outside the boundary lines of his claim.**

**The 1935 Constitution expressly prohibited the alienation of natural resources except agricultural lands. Sec. 2, Art. XII of the 1987 Constitution contains a similar prohibition, and proclaims that all lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. This provision enunciates the Regalian Doctrine.**

**May the Government, on the basis of the Regalian Doctrine enunciated in the constitutional provisions, deny the bank its right as owner to the mineral resources underneath the surface of its property as recognized under the Philippine Bill of 1902? Explain your answer. (5%)**

No.

The provisions of the Constitution should be given only a prospective application unless the contrary is clearly intended. Were the rule otherwise, rights already acquired or vested might be unduly disturbed or withdrawn even in the absence of an unmistakable intention to place them within the scope of the Constitution.

Accordingly, the mining claim under consideration no longer formed part of the public domain when the provisions of Article XII of the 1987 Constitution be-

came effective, or even upon the effectivity of the 1935 Constitution, which provided for a similar limitation.

Mining rights acquired under the Philippine Bill of 1902 and subsisting prior to the effectivity of the 1935 and 1987 Constitutions should be considered as vested rights that could not be impaired even by the Government. (*Republic v. Court of Appeals*, Nos. L-43938, L-44081, L-44092, April 15, 1988, 160 SCRA 228, cited in *Yinlu Bicol Mining Corporation v. Trans-Asia Oil and Energy Development Corporation*, G.R. No. 207942, January 12, 2015)

## IX

### A.

**Ambassador Robert of State Alpha committed a very serious crime while he headed his foreign mission in the Philippines. Is he subject to arrest by Philippine authorities? Explain your answer. (3%)**

It is submitted that he may not be subject to arrest for his “very serious crime.”

This would be consistent with Article 31 of the Diplomatic Convention, which provides that “a diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving state.”

It is a generally accepted principle of international law that the diplomatic agent shall be immune from such jurisdiction of the receiving state. This does not mean that he can violate the local laws with impunity; on the contrary, he is expected to observe them meticulously as befits a person of his rank and prestige. If he does not, he may not be punished for his offense by the

receiving state, but it can and usually will ask for his recall. (Cruz and Cruz, International Law, 2020 Edition, pages 251-252)

## B.

**Extradition is the process pursuant to a treaty between two State parties for the surrender by the requested State to the custody of the requesting State of a fugitive criminal residing in the former. However, extradition depends on the application of two principles – the *principle of specialty* and the *dual criminality principle*. Explain these principles. (4%)**

Under the principle of specialty, a fugitive who is extradited may be tried only for the crime specified in the request for extradition and included in the list of offenses in the extradition treaty. (*U.S. v. Rauscher*, 119 U.S. 407, cited in Cruz and Cruz, International Law, 2020 Edition, page 368) Under this rule in international law, a Requested State shall surrender to a Requesting State a person to be tried only for a criminal offense specified in their treaty of extradition. (*Government of Hongkong Special Administrative Region v. Muñoz*, G.R. No. 207342, November 7, 2017)

On the other hand, the dual criminality principle requires that the act for which the extradition is sought must be punishable in both the requesting and the requested state. (Cruz and Cruz, International Law, 2020 Edition, page 370; *Government of Hongkong Special Administrative Region v. Muñoz*, G.R. No. 207342, November 7, 2017)

**C.**

The President signs an agreement with his counterpart in another country involving reciprocity in the treatment of each country's nationals residing in the other's territory. However, he does not submit the agreement to the Senate for concurrence.

Sec. 21, Art. VII of the Constitution provides that no treaty or international agreement shall be valid and effective without such concurrence.

Is the agreement signed by the President effective despite the lack of Senate concurrence? Explain your answer. (4%)

Yes, said agreement can be considered as an executive agreement, which would therefore not require the concurrence of the Senate for its validity or effectivity. (*Bayan Muna v. Romulo*, G.R. No. 159618, 1 February 2011, 641 SCRA 258-259; *Saguisag v. Executive Secretary*, G.R. No. 212426, January 12, 2016)

**X**

**A.**

Under the *enrolled bill doctrine*, the signing of a bill by both the Speaker of the House of Representatives and the President of the Senate and the certification by the secretaries of both Houses of Congress that the bill was passed on a certain date are conclusive on the bill's due enactment. Assuming there is a conflict between the enrolled bill and the legislative journal, to the effect that

**the enrolled bill signed by the Senate President and eventually approved by the President turned out to be different from what the Senate actually passed as reflected in the legislative journal,**

**(a) May the Senate President disregard the *enrolled bill doctrine* and consider his signature as invalid and of no effect? (2.5%)**

No.

Under the Enrolled Bill Theory, the contents of an enrolled bill shall prevail over those of the journal in case of conflict. This is justified under the principle of separation of powers. (*Mabanag v. Lopez Vito*, G.R. No. L-1123, March 5, 1947, 78 Phil. 1; *Astorga v. Villegas*, G.R. No. L-23475, April 30, 1974, 56 SCRA 714) An enrolled bill is conclusive not only of its provisions but also of its due enactment. (*Tolentino v. Secretary of Finance*, G.R. No. 115455, October 30, 1995, 235 SCRA 630; *Abakada Guro Party List v. Ermita*, G.R. No. 168056 September 1, 2005)

It bears emphasis that the subject bill had already been “approved” by the President. Said approval has transformed the same into a law which therefore cannot be changed (or amended or repealed) with or by the mere withdrawal of the signature by the Senate President. To change it would require an amendment (or repeal) of said law. (*Casco Chemical Co. v. Gimenez*, G.R. No. L-17931, February 28, 1963, 7 SCRA 374)

**(b) May the President thereafter withdraw his signature? Explain your answer. (2.5%)**

No.

Under Section 27 (1) of Article VI of the Constitution, every bill passed by the Congress shall, when approved and signed by the President upon presentment of the same to him, be considered as, by reason of said approval and signing, having become a law, subject only to the requirement of publication for its effectivity.

Accordingly, the President may not thereafter nullify the same by mere withdrawal of his signature. To allow him to do this would be violative of the principle of separation of powers.

As earlier stated, to change it would require an amendment (or repeal) of said law. (*Casco Chemical Co. v. Gimenez*, G.R. No. L-17931, February 28, 1963, 7 SCRA 374)

## B.

**Sec. 26(2), Art. VI of the Constitution provides that no bill passed by either House of Congress shall become a law unless it has passed three readings on separate days and printed copies of it in its final form have been distributed to the Members of the House three days before its passage.**

**Is there an exception to the provision? Explain your answer. (3%)**

Yes.

The exception is found in Section 26 (2) of Article VI of the Constitution, which prescribes that said requirements may be dispensed with when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency. (*Tolentino v. Sec-*

*retary of Finance*, G.R. No. 115455, October 30, 1995, 235 SCRA 630)

## XI

**Sec. 17, Art. VI of the Constitution establishes an Electoral Tribunal for each of the Houses of Congress, and makes each Electoral Tribunal “the sole judge of all contests relating to the election, returns, and qualifications of their respective Members.” On the other hand, Sec. 2(1), C (Commission on Elections), Art. IX of the Constitution grants to the COMELEC the power to enforce and administer all laws and regulations “relative to the conduct of an election, plebiscite, initiative, referendum, and recall.”**

**Considering that there is no concurrence of jurisdiction between the Electoral Tribunals and the COMELEC, state when the jurisdiction of the Electoral Tribunals begins, and the COMELEC’s jurisdiction ends. Explain your answer. (4%)**

It is established that, once a winning candidate has been proclaimed, taken his proper oath, and assumed office as a Member of the House of Representatives or of the Senate, the jurisdiction of the House of Representatives Electoral Tribunal and of the Senate Electoral Tribunal begins over election contests relating to his election, returns, and qualifications. Consequently, it would be at this point that the jurisdiction of the COMELEC to enforce and administer all laws and regulations “relative to the conduct of an election” ends. (*Limkaichong v. COMELEC*, G.R. Nos. 178831-32, April 1, 2009, 583 SCRA 1; *Reyes v. COMELEC*, G.R. No.

207264, June 25, 2013; *Lico v. Commission on Elections*, G.R. No. 205505, September 29, 2015)

## XII

The Congress establishes by law Philippine Funds, Inc., a private corporation, to receive foreign donations coming from abroad during national and local calamities and disasters, and to enable the unhampered and speedy disbursements of the donations through the mere action of its Board of Directors. Thereby, delays in the release of the donated funds occasioned by the stringent rules of procurement would be avoided. Also, the releases would not come under the jurisdiction of the Commission on Audit (COA).

(a) Is the law establishing Philippine Funds, Inc. constitutional? Explain your answer. (3%)

It is submitted that said law is unconstitutional.

Said law creating the subject private corporation would be violative of the provisions of Section 16 of Article XII of the Constitution, which prescribes that the Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. (*Liban v. Gordon*, G.R. No. 175352, January 18, 2011, July 15, 2009)

The purposes for the creation of this private corporation by the Congress, *i.e.*, to receive and administer foreign donations coming from abroad during national and local calamities and disasters, cannot be invoked for

purposes of allowing this breach of this constitutional prohibition.

**(b) Can the Congress pass the law that would exempt the foreign grants from the jurisdiction of the COA? Explain your answer. (3%)**

No, it cannot.

This would be violative of the provisions of Section 3 of Article IX-D of the Constitution, which prescribes that no law shall be passed exempting any entity of the Government or its subsidiary in any guise whatever, or any investment of public funds, from the jurisdiction of the Commission on Audit.

### XIII

***Command responsibility* pertains to the responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflicts. The doctrine has now found application in civil actions for human rights abuses, and in proceedings seeking the privilege of the writ of *amparo*.**

**(a) What are the elements to be established in order to hold the superior or commander liable under the doctrine of *command responsibility*? (4%)**

The requisites of the *doctrine of command responsibility* are "a. the existence of a superior-subordinate relationship between the accused as superior and the

perpetrator of the crime as his subordinate; b. the superior knew or had reason to know that the crime was about to be or had been committed; and c. the superior failed to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof.” (*Rodriguez v. Macapagal-Arroyo*, G.R. No. 191805, November 15, 2011; see also *In the Matter of the Petition for the Writ of Amparo and the Writ of Habeas Data in Favor of Francis Saez v. Macapagal-Arroyo*, G.R. No. 183533, September 25, 2012, 681 SCRA 678, citing *Gonzales v. Abaya*, G.R. No. 164007, August 10, 2006, 498 SCRA 445)

**(b) May the doctrine of *command responsibility* apply to the President for the abuses of the armed forces (AFP and PNP) given his unique role as the commander-in-chief of all the armed forces? Explain your answer. (4%)**

Pursuant to the doctrine of command responsibility, the President, as the Commander-in-Chief of the AFP, can be held liable for affront against the petitioner’s rights to life, liberty and security as long as substantial evidence exist to show that he or she had exhibited involvement in or can be imputed with knowledge of the violations, or had failed to exercise necessary and reasonable diligence in conducting the necessary investigations required under the rules. Presidential immunity from suit exists only in concurrence with the president’s incumbency. (*Rodriguez v. Macapagal Arroyo*, G.R. No. 191805, November 15, 2011, citing *Estrada v. Desierto*, G.R. Nos. 146710-15, 146738, March 2, 2001, 353 SCRA 452)

The President, as Commander-in-Chief, can be held responsible or accountable for extrajudicial killings and enforced disappearances in the context of *amparo* proceedings on the basis of the *doctrine of command responsibility*. The President, being the commander-in-chief of all the armed forces, is to be considered as necessarily possessing control over the military that qualifies him as a superior within the purview of the doctrine. Moreover, he can be presumed to have knowledge of the commission of irregularities, crimes or offenses pertinent to said extrajudicial killings and enforced disappearances. “Meanwhile, as to the issue of failure to prevent or punish, it is important to note that as the commander-in-chief of the armed forces, the president has the power to effectively command, control and discipline the military.” (*Rodriguez v. Macapagal-Arroyo*, G.R. No. 191805, November 15, 2011; see also *In the Matter of the Petition for the Writ of Amparo and the Writ of Habeas Data in Favor of Francis Saez v. Macapagal-Arroyo*, G.R. No. 183533, September 25, 2012, 681 SCRA 678, citing *Gonzales v. Abaya*, G.R. No. 164007, August 10, 2006, 498 SCRA 445)

In *amparo* proceedings, “commanders may therefore be impleaded—not actually on the basis of command responsibility—but rather on the ground of their responsibility, or at least accountability.” (*Balao v. Macapagal-Arroyo*, G.R. No. 186050, December 13, 2011, 662 SCRA 312)

#### XIV

**To fulfill a campaign promise to the poor folk in a far-flung area in Mindanao, the President requested his friend, Pastor Roy, to devote his ministry to them. The President would pay Pastor**

**Roy a monthly stipend of P50,000.00 from his discretionary fund, and would also erect a modest house of worship in the locality in an area of the latter's choice.**

**Does the President thereby violate any provisions of the Constitution? Explain your answer. (3%)**

It is submitted that this act of the President would be violative of Section 29 (2) of the Constitution, which provides that no public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.

## **XV**

### **A.**

**According to Sec. 3, Art. VIII of the Constitution, the Judiciary shall enjoy fiscal autonomy. What does the term *fiscal autonomy* signify? Explain your answer. (3%)**

Fiscal autonomy contemplates a guarantee on full flexibility to allocate and utilize their resources with the wisdom and dispatch that their needs require. It recognizes the power and authority to levy, assess and collect fees, fix rates of compensation not exceeding the highest rates authorized by law for compensation and pay plans

of the government and allocate and disburse such sums as may be provided by law or prescribed by them in the course of the discharge of their functions.

Fiscal autonomy means freedom from outside control.

It vests in those expressly conferred with this prerogative the independence and flexibility needed in the discharge of their constitutional duties. The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only of the express mandate of the Constitution but, especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based. (*Bengzon v. Drilon*, G.R. No. 103524, April 15, 1992, 208 SCRA 133)

## B.

**May a complaint for disbarment against the Ombudsman prosper during her incumbency? Explain your answer. (3%)**

No.

The rule is established that an impeachable officer who is a member of the Bar cannot be disbarred without first being impeached. (*Marcoleta v. Borra*, A.C. No. 7732, March 30, 2009; *Jarque v. Ombudsman*, A.C. No. 4509, December 5, 1995, 250 SCRA xi, *In Re: Raul M. Gonzales*, A.M. No. 88-4-5433, April 15, 1988, 160 SCRA 771; *Cuenco v. Fernan*; A.C. No. 3135, February 17, 1988, 158 SCRA 29)

To grant such a complaint for disbarment would in effect be to circumvent and hence to run afoul of the constitutional mandate that impeachable officers, such as the Ombudsman, who are constitutionally required to be lawyers, may be removed from office only by impeachment for and conviction of certain offenses listed in Article XI (2) of the Constitution. (*Cuenco v. Fernan*; A.C. No. 3135, February 17, 1988, 158 SCRA 29)

### C.

**Sec. 3, Art. XI of the Constitution states that “[n]o impeachment proceedings shall be initiated against the same official more than once within a period of one year.”**

**What constitutes initiation of impeachment proceedings under the provision? (3%)**

“Initiation of impeachment proceedings takes place by the act of filing of the impeachment complaint and referral to the House of Committee on Justice.” (*Francisco v. House of Representatives*, G.R. No. 160261, November 10, 2003; *Gutierrez v. The House of Representatives*, G.R. No. 193459, February 15, 2011)

**2018****I**

**Congress enacted a law to provide Filipinos, especially the poor and the marginalized, access and information to a full range of modern family planning methods, including contraceptives, intrauterine devices, injectibles, non-abortifacient hormonal contraceptives, and family planning products and supplies, but expressly prohibited abortion. To ensure its objectives, the law made it mandatory for health providers to provide information on the full range of modern family planning methods, supplies and services, for schools to provide reproductive health education, for non-governmental medical practitioners to render mandatory 48 hours pro bono reproductive health services as a condition to Philhealth accreditation, and for couples desiring to marry to attend a family planning seminar prior to the issuance of a marriage license. It also punishes certain acts of refusals to carry out its mandates. The spouses Aguiluz, both Roman Catholics, filed a petition to declare the law as unconstitutional based on, among others, the following grounds:**

**(a) It violates the right to life, since it practically sanctions abortion. Despite express terms prohibiting abortion, petitioners claim that the family planning products and supplies oppose the initiation of life, which is a fundamental human right, and the sanction of contraceptive use contravenes natural law and is an affront to the dignity of man.**

**(b) It violates the constitutional prohibition against involuntary servitude because it requires medical practitioners to render 48 hours of pro bono reproductive health services which may be against their will.**

**(c) It violates the Freedom of Religion, since petitioners' religious beliefs prevent them from using contraceptives, and that any State-sponsored procurement of contraceptives, funded by taxes, violates the guarantee of religious freedom.**

**Rule on each of the above objections. (2.5% each)**

(a) The framers of the Constitution did not intend to ban all contraceptives. Only contraceptives and devices that kill or destroy the fertilized ovum should be deemed as an abortive and thus prohibited, since life starts from conception or upon fertilization. Conversely, contraceptives and devices that actually prevent the union of the sperm and the ovum, and those that similarly take place prior to fertilization should be deemed non-abortive and constitutionally permissible.

(b) The notion of involuntary servitude connotes the presence of force, threats, intimidation, or other means of coercion and compulsion. The assailed provision only encourages private reproductive healthcare service providers to render *pro bono* services. Other than non-accreditation with Philhealth, no penalty is imposed. These health service providers also enjoy the liberty to choose which kind of health service they wish to provide. Clearly, there is no compulsion, force or threat upon them to render the pro bono services against their will.

(c) What is prohibited in the Constitution is the establishment of a state religion. While the establishment clause in the Constitution restricts what the government can do with religion, it also limits what religious sects can or cannot do with the government. They can neither cause the government to adopt their particular doctrine as policy for everyone, nor can they cause the government to restrict other groups. To do so would cause the State to adhere to a particular religion, and thus establish a state religion. (*Imbong v. Ochoa*, G.R. No. 204819, April 8, 2014.)

## II

Agnes was allegedly picked up by a group of military men headed by Gen. Altamirano, and was brought to several military camps where she was interrogated, beaten, mauled, tortured, and threatened with death if she would not confess her membership in the New People's Army (NPA) and point to the location of NPA camps. She suffered for several days until she was released after she signed a document saying that she was a surrenderee, and was not abducted or harmed by the military. After she was released, and alleging that her rights to life, liberty and security had been violated and continued to be threatened by violation of such rights, she filed with the Supreme Court (the Court) a Petition for the Writs of *Amparo* and *Habeas Data* with prayers for Temporary Protection Orders, Inspection of Place, and Production of Documents and Personal Properties. The case was filed against President Amoyo (who was the President of the Philippines when the abduction, beating, mauling and life

threats were committed), General Altamirano, and several military men whom Agnes was able to recognize during her ordeal. The Court, after finding the petition to be in order, issued the writ of *amparo* and the writ of *habeas data* and directed the respondents to file a verified return on the writs, and directed the Court of Appeals (CA) to hear the petition. The respondents duly filed their return on the writs and produced the documents in their possession. After hearing, the CA ruled that there was no more need to issue the temporary protection orders since the writ of *amparo* had already been issued, and dismissed the petition against President Amoyo on the ground that he was immune from suit during his incumbency as President. Agnes appealed the CA ruling to the Court. The appeal was lodged after President Amoyo's term had ended.

(a) Was the CA correct in saying that the writ of *amparo* rendered unnecessary the issuance of the temporary protection order? (2.5%)

Yes.

The writ of *amparo* is an extraordinary and independent remedy that provides rapid judicial relief, as it partakes of a summary proceeding and requires only substantial evidence to make the appropriate interim and permanent reliefs to the petitioner. It serves both preventive and curative reliefs in addressing extrajudicial abduction and torture. Temporary protection orders are merely intended to assist the Court before it can arrive at a judicious determination of the *amparo* petition. A temporary protection order, being an interim

relief, can only be granted before final adjudication on the *amparo* case is made. The privilege of the writ of *amparo*, once granted, already entails the protection of the aggrieved party. Thus, since the writ of *amparo* was already granted and issued, there is no more need to issue a temporary protection order. (*Yano v. Sanchez*, G.R. No. 186640, February 11, 2010; *Rodriguez v. Macapagal-Arroyo*, G.R. Nos. 191805 & 193160, November 15, 2011)

**(b) Will the President's immunity from suit continue even after his term has ended, considering that the events covered by the Petition took place during his term? (2.5%)**

No. The presidential immunity from suit exists only in concurrence with the President's incumbency. A non-sitting President cannot claim immunity even if the acts complained of were committed while he was still a sitting President. The reason for this is that if the immunity is not granted while he is in office, he might be spending all his time in attending to litigations. After his term, he can already attend to them. (*Estrada v. Desierto*, G.R. Nos. 146710-15, 146738, April 3, 2001; *Rodriguez v. Macapagal-Arroyo*, G.R. Nos. 191805 & 193160, November 15, 2011)

### III

**What and whose vote is required for the following acts: (2% each)**

**(a) the repeal of a tax exemption law;**

A majority of all the members of Congress. (Article VI, Section 28, 4)

[*Acceptable Answer:* A simple majority vote of all of the members of the Congress considering the principle to the effect that tax exemptions are to be strictly construed.]

**(b) a declaration of the existence of a state of war;**

Two-thirds of all members of Congress, voting separately. (Article VI, Section 23, 1)

**(c) the amendment of a constitutional provision through a constituent assembly;**

The approval of the constitutional amendment can be effected with a majority of the votes cast in a plebiscite. (Article XVII, Section 1, 1) The approval of the proposal to amend would be valid upon a vote of three-fourths of all the Members of the Congress. (Article XVII, Section 4)

**(d) the resolution of a tie in a presidential election; and**

A majority of all the members of both Houses of Congress, voting separately. (Article VII, Section 4)

**(e) the extension of the period for the suspension of the privilege of the writ of habeas corpus?**

The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session. (Article VII, Section 18)

## IV

**The Province of Amaya is one of the smallest provinces in the Philippines with only one legislative district composed of four municipalities: Uno, Dos, Tres, and Cuatro.**

**Andres, a resident and registered voter of Cuatro municipality, ran and was elected as member of the Sangguniang Panlalawigan (SP) of Amaya in the 2010 and 2013 local elections.**

**While Andres was serving his second term as SP member, a law was enacted re-apportioning the four towns of Amaya into two legislative districts: Uno and Dos comprising the First District, and Tres and Cuatro comprising the Second District.**

**In the 2016 local elections, Andres ran and was elected as member of the SP of Amaya representing the Second District.**

**Andres seeks your legal advice regarding his intention to run as a member of the SP of Amaya for the Second District in the next local elections in 2019. What will you advise Andres? (2.5%)**

He is not eligible. This involves a question of the application of the three-term limit rule upon local elective officials in renamed and/or reapportioned districts. A provincial board member cannot be elected and serve for more than three consecutive terms. The clear intent of the framers of the Constitution was to limit the term to three consecutive elections to the same position. (*Naval v. COMELEC*, G.R. No. 207851, July 8, 2014).

V

**State whether or not the following acts are constitutional: (2% each)**

**(a) A law prescribing as qualifications for appointment to any court lower than the Supreme Court, Philippine citizenship, whether natural-born or naturalized, 35 years of age on the date of appointment, and at least eight years as a member of the Philippine Bar;**

The law prescribing as a qualification for appointment to any lower court mere Philippine citizenship, whether natural-born or naturalized, would be unconstitutional with respect to appointments to collegiate courts (CA, CTA, Sandiganbayan) because all appointees to these courts must be natural-born citizens. (Constitution, Article VIII, Section 7)

**(b) A law requiring all candidates for national or local elective offices to be college degree holders;**

The law requiring all candidates for national or local elective offices to be college degree holders should be considered as unconstitutional with respect to national elective offices because it is not one of the qualifications specifically required for these offices. The qualifications for these positions under the Constitution are exclusive in character and the Congress would be incompetent to prescribe this requirement as an additional qualification for candidates for national elective office. This additional requirement would, however, be valid with re-

spect to candidates for local elective posts. (*Social Justice Society v. Dangerous Drugs Board*, 570 SCRA 410)

**(c) The designation by the President of an acting Associate Commissioner of the Civil Service Commission;**

Such designation is unconstitutional because the Constitution provides that no person shall be appointed or designated in any of the constitutional commissions in a temporary or acting capacity. (Articles IX-B, Section 1(2), IX-C, Section 1(2) and IX-D, Section 1(2))

**(d) The appointment by the President as Deputy Ombudsman of a lawyer who has been engaged in the practice of law for five years; and**

The appointment can be upheld because only the Ombudsman is required under the Constitution to have been engaged in the practice of law for at least ten years prior to his appointment. (Article XI, Section 8)

**(e) The nomination by a national party-list of a person who is not one of its *bona fide* members.**

The nomination is invalid because nominees of national parties must be *bona fide* members of such parties (*Atong Paglaum v. Commission on Elections*, 694 SCRA 477)

## VI

**Ang Araw, a multi-sectoral party-list organization duly registered as such with the Commis-**

sion on Elections (Comelec), was proclaimed as one of the winning party-list groups in the last national elections. Its first nominee, Alejandro, assumed office as the party-list representative.

About one year after Alejandro assumed office, the Interim Central Committee of Ang Araw expelled Alejandro from the party for disloyalty and replaced him with Andoy, its second nominee. Alejandro questioned before the Comelec his expulsion and replacement by Andoy.

The Comelec considered Alejandro's petition as an intra-party dispute which it could resolve as an incident of its power to register political parties; it proceeded to uphold the expulsion.

**Is the Comelec's ruling correct? (5%)**

No, the Commission on Elections is not correct. It should dismiss Alejandro's petition for lack of jurisdiction.

The petition questioning Alejandro's expulsion and the succession of the second nominee as party-list representative is a disqualification case because it relates to the question of unseating Alejandro, who is already a Member of the House of Representatives.

Section 17, Article VI of the 1987 Constitution endows the HRET with jurisdiction to resolve questions on the qualification of members of Congress. In the case of party-list representatives, the HRET acquires jurisdiction over a disqualification case upon proclamation of the winning party-list group, oath of the nominee, and assumption of office as member of the House of Representatives. In this case, the COMELEC proclaimed Ang Araw as a winning party-list group; Alejandro took his

oath and he assumed office in the House of Representatives. Thus, it is the HRET, and not the COMELEC, that has jurisdiction over this disqualification case. (See *Lico vs. Commission on Elections*, G.R. No. 205505, September 29, 2015)

## VII

**The 2016 mayoralty race in the City of Arda-**  
**nia included Arnaldo and Anacleto as contenders.**

**Arnaldo filed a petition with the Comelec to cancel Anacleto's Certificate of Candidacy (CoC) for misrepresenting himself as a Filipino citizen. Arnaldo presented as evidence a copy of Anacleto's Spanish passport and a certification from the Bureau of Immigration (BI) showing that Anacleto used the same passport several times to travel to and from Manila and Madrid or Barcelona.**

**In his Comment, Anacleto claimed that, a year prior to filing his CoC, he had complied with all the requirements of R.A. No. 9225 (Citizenship Retention and Re-acquisition Act of 2003) to reacquire his Philippine citizenship by taking an oath of allegiance and executing a sworn renunciation of his Spanish citizenship. He defended the use of his Spanish passport subsequent to taking his oath of allegiance to the Philippines as a practical necessity since he had yet to obtain his Philippine passport despite reacquiring his Philippine citizenship. Even after he secured his Philippine passport, he said he had to wait for the issuance of a Schengen visa to allow him to travel to Spain to visit his wife and minor children.**

**(a) Based on the allegations of the parties, is there sufficient ground to cancel Anacleto's CoC? (2.5%)**

The sole act of using a foreign passport does not divest Anacleto of his Filipino citizenship which he acquired by repatriation. However, by representing himself as a Spanish citizen, Anacleto voluntarily and effectively reverted to his earlier status as a dual citizen. Such reversion was not retroactive; it took place the instant Anacleto represented himself as a Spanish citizen by using his Spanish passport. He is thus disqualified for being a dual citizen, and his CoC should be cancelled. (*Macquiling v Comelec*, G.R. No. 195649, April 16, 2013)

**(b) In case Anacleto's CoC is properly cancelled, who should serve as mayor of Arдания City: Arnaldo, who obtained the second highest number votes, or Andrea, the duly-elected Vice Mayor of the City? (2.5%)**

The rule on succession would not apply if the permanent vacancy was caused by one whose certificate of candidacy was void *ab initio*. Specifically with respect to dual citizens, their certificates of candidacy are void *ab initio* because they possess "a substantive [disqualifying circumstance] ... [existing] prior to the filing of their certificate of candidacy." Legally, they should not even be considered candidates. The votes cast for them should be considered stray and should not be counted.

In cases of vacancies caused by those with void *ab initio* certificates of candidacy, the person legally entitled to the vacant position would be the candidate who garnered the next highest number of votes among those

eligible; in this case, it was Arnaldo. (*Chua v Comelec*, G.R. No. 216607, April 5, 2016)

## VIII

Two petitions for the cancellation of Certificate of Candidacy (CoC)/Denial of Due Course were filed with the Comelec against two candidates running as municipal mayors of different towns.

The first petition was against Anselmo. Years ago, Anselmo was charged and convicted of the crime of rape by final judgment, and was sentenced to suffer the principal penalty of *reclusion perpetua* which carried the accessory penalty of perpetual absolute disqualification. While Anselmo was in prison, the President commuted his sentence and he was discharged from prison.

The second petition was against Ambrosio. Ambrosio's residency was questioned because he was allegedly a "green card holder," *i.e.*, a permanent resident of the US, as evidenced by a certification to this effect from the US Embassy.

Acting on the recommendations of its Law Department, the Comelec *en banc motu proprio* issued two resolutions granting the petitions against Anselmo and Ambrosio.

Both Anselmo and Ambrosio filed separate petitions with the Supreme Court assailing the resolutions cancelling their respective CoCs. Both claimed that the Comelec *en banc* acted with grave abuse of discretion amounting to lack or excess of jurisdiction because the petitions should

**have first been heard and resolved by one of the Comelec's Divisions.**

**Are Anselmo and Ambrosio correct? (5%)**

Anselmo is incorrect.

While it may be true that Section 3, Article IX-C of the 1987 Philippine Constitution requires cases filed with the Commission on Elections to be first "heard and decided in division," and that only motions for reconsideration of said decisions shall be decided by the Commission *en banc*, said constitutional provision, requiring a motion for reconsideration before the COMELEC *en banc* may take action, is confined only to cases where the COMELEC exercises its quasi-judicial power. It finds no application in matters concerning the COMELEC's exercise of administrative functions.

While the denial of due course to and/or cancellation of one's CoC generally necessitates the exercise of the COMELEC's quasi-judicial functions commenced through a petition based on either Sections 1220 or 7821 of the Omnibus Election Code (OEC), or Section 4022 of the LGC, when the grounds therefor are rendered conclusive on account of final and executory judgments – as when a candidate's disqualification to run for public office is based on a final conviction – such exercise falls within the COMELEC's administrative functions, as in this case. The Comelec merely performed its duty to enforce and administer election laws in canceling petitioner's CoC on the basis of his perpetual absolute disqualification, the fact of which had already been established by his final conviction. In this regard, the COMELEC *en banc* was exercising its administrative functions, dispensing with the need for a motion for reconsideration of a division ruling under Section 3,

Article IX-C of the Constitution, the same being required only in quasi-judicial proceedings. (*Jalosjos vs. Commission on Elections*, G.R. No. 205033, June 18, 2013)

On the other hand, Ambrosio is correct that the petition for the cancellation of his CoC should have been first heard and resolved by the Comelec Division. Cancellation proceedings involve the COMELEC's quasi-judicial functions. The Constitution mandates the COMELEC, in the exercise of its adjudicatory or quasi-judicial powers, to hear and decide cases first by division and, upon motion for reconsideration, by the COMELEC *en banc*. (*Bautista v Comelec*, G.R. Nos. 154796-97, October 23, 2003)

## IX

**In 1990, Agripina migrated to Canada and acquired Canadian citizenship.**

**In 2008, Agripina retired and returned to the Philippines to permanently reside in her hometown of Angeles, Pampanga. A month after returning to the Philippines, Agripina took her oath of allegiance and executed a sworn renunciation of her Canadian citizenship in accordance with R.A. No. 9225.**

**In 2009, Agripina filed her certificate of candidacy for Congress for the 2010 elections. Agripina's political rivals lost no time in causing the filing of various actions to question her candidacy. They questioned her eligibility to run as member of Congress. Since Agripina had to take an oath under R.A. No. 9225, it meant that she**

**needed to perform an act to perfect her Philippine citizenship.**

**Hence, they claimed that Agripina could not be considered a natural-born citizen. Agripina raised the defense that, having complied with the requirements of R.A. No. 9225, she had reacquired, and was deemed never to have lost, her Philippine citizenship.**

**Is Agripina disqualified to run for Congress for failing to meet the citizenship requirement? (2.5%)**

Agripina is eligible to run as member of Congress. Repatriation results in the recovery of a person's original nationality. This means that a naturalized Filipino who lost his citizenship will be restored to his prior status as a Filipino citizen. If she were originally a natural-born citizen before she lost her Philippine citizenship, she would be restored to her former status as a natural-born Filipino. (*Bengson III vs. HRET*, 409 Phil. 633; see also *Parreno vs. Commission on Audit*, 551 Phil. 368, and *Tabasa vs. Commission on Elections*, G.R. Nos. 221697 & 221698-700, March 8, 2016)

RA 9225 makes a distinction between those natural-born Filipinos who became foreign citizens before and after the effectivity of RA No. 9225. For those who were naturalized in a foreign country, they shall be deemed to have reacquired their Philippine citizenship which was lost pursuant to CA 63. In the case of those who became foreign citizens after RA 9225 took effect, they shall retain Philippine citizenship despite having acquired foreign citizenship provided they take the oath of allegiance under the new law.

Considering that petitioner was naturalized as a Canadian citizen prior to the effectivity of RA 9225, she belongs to the first category of natural-born Filipinos who lost their Philippine citizenship by naturalization in a foreign country, under the first paragraph of Section 3. As the new law allows dual citizenship, she was able to **reacquire** her Philippine citizenship by taking the required oath of allegiance (*David vs. Agbay*, G.R. No. 199113).

## X

**Ascertain the constitutionality of the following acts: (2.5% each)**

**(a) An investigation conducted by the Ombudsman against a Commissioner of the Commission on Audit for serious misconduct.**

The act is constitutional. Although a Commissioner of any of the Constitutional Commissions is removable only through impeachment, this rule does not preclude the Ombudsman from conducting an investigation into the alleged serious misconduct committed by impeachable officials for the purpose of filing a verified complaint for impeachment. (Section 22, RA 6770; *Carpio-Morales v. CA*, G.R. Nos. 217126-27, November 10, 2015)

**(b) A law prohibiting any court, other than the Supreme Court, from issuing a writ of injunction against an investigation being conducted by the Ombudsman.**

The law is unconstitutional. The power to issue injunctive writs is part of judicial power. The rules gov-

erning the exercise of this power are within the powers of the Supreme Court to promulgate. The law therefore is an encroachment into the Court's rule-making power. (*Carpio-Morales v CA*, G.R. Nos. 217126-27, November 10, 2015)

**(c) A law prohibiting any appeal from the decision or final order of the Ombudsman in an administrative proceeding, except through a petition for review on certiorari filed before the Supreme Court.**

The law is unconstitutional. In *Fabian v. Desierto* (G.R. No. 129742, September 16, 1998), the Court invalidated Section 27 of R.A. No. 6770 insofar as it provided for appeal by certiorari under Rule 45 from the decisions or orders of the Ombudsman in administrative cases. Section 27 of R.A. No. 6770 had the effect, not only of increasing the appellate jurisdiction of this Court without its advice and concurrence in violation of Section 30, Article VI of the Constitution, it was also inconsistent with Section 1, Rule 45 of the Rules of Court which provides that a petition for review on certiorari shall apply only to a review of "judgments or final orders of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court, or other courts authorized by law." In the absence of concurrence by the Supreme Court, such a law would be unconstitutional.

## XI

**Under Section 6 of Article V (on Criminal Jurisdiction) of the Visiting Forces Agreement (VFA), the custody of a United States (US) personnel who becomes subject to criminal prosecu-**

tion before a Philippine court shall be with the US military authorities, if the latter so requests. The custody shall begin from the commission of the offense until the completion of all judicial proceedings. However, when requested, the US military authorities shall make the US personnel available to Philippine authorities for any investigative or judicial proceeding relating to the offense with which the person has been charged. In the event that the Philippine judicial proceedings are not completed within one year, the US shall be relieved of any obligation under Section 6.

The constitutionality of Section 6, Article V of the VFA is challenged on two grounds: (1) it nullifies the exclusive power of the Supreme Court to adopt rules of procedure for all courts in the Philippines; and (2) it violates the equal protection clause to the extent that it allows the transfer of the custody of an accused to a foreign power as providing a different rule of procedure for that accused.

**Rule on the challenge. (5%)**

The challenge is without merit.

The rule in international law is that foreign armed forces allowed to enter one's territory are immune from local jurisdiction, except to the extent agreed upon. As a result, the situation involved is not one in which the power of the Supreme Court to adopt rules of procedure is curtailed or violated. Rather, it is one in which, as is normally encountered around the world, the laws (including rules of procedure) of one State do not extend or apply except to the extent agreed upon, to subjects of another State due to the recognition of extraterritorial

immunity given to such bodies as visiting foreign armed forces.

Nothing in the Constitution prohibits such agreements recognizing immunity from jurisdiction or some aspects of jurisdiction (such as custody), in relation to long-recognized subjects of such immunity like Heads of State, diplomats and members of the armed forces contingents of a foreign State allowed to enter another State's territory. On the contrary, the Constitution states that the Philippines adopts the generally accepted principles of international law as part of the law of the land. (Art. II, Sec. 2)

Neither is the equal protection clause violated because there is a substantial basis for a different treatment of foreign military armed forces allowed to enter our territory and all other accused. (*Nicolas vs. Romulo*, G.R. No. 175888, February 11, 2009)

## XII

**Section 9 of P.D. No. 1606, as amended, provides that the Sandiganbayan may adopt internal rules governing the allotment of cases among its divisions, the rotation of justices among them, and other matters relating to the internal operations of the court.**

**Section 6 of Article IX-A of the Constitution allows each of the Constitutional Commissions "en banc [to] promulgate its own rules concerning pleadings and practice before it or before any of its offices. Such rules however shall not diminish, increase, or modify substantive rights."**

**Section 16(3) of Article VI of the Constitution states that “Each House may determine the rules of its proceedings.” Section 21, Article VI of the Constitution further provides that “The Senate or the House of Representatives or any of its respective committees may conduct inquiries... in accordance with its duly published rules of procedure.”**

**Finally, Section 3(8) of Article XI of the Constitution declares that “The Congress shall promulgate its rules on impeachment to effectively carry out the purposes of this section.”**

**Are the rules promulgated pursuant to these provisions subject to review and disapproval by the Supreme Court? (5%)**

Section 5[5] of Article VIII of the Constitution clearly provides that the “Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.” Accordingly, it is clear that the Supreme Court may review and reverse the rules of procedure of the Sandiganbayan and the Constitutional Commissions.

With respect to the rules of procedure of Congress in its proceedings, legislative inquiries and on impeachment, while these rules may be generally considered as political questions, when questioned before the courts in a proper case, they would nevertheless be subject to the power of judicial review under the second paragraph of Section 1, Article VIII of the Constitution, which authorizes it to review and annul all acts of any branch or instrumentality of the government which may be tainted with grave abuse of discretion amounting to lack or excess of jurisdiction

### XIII

**PO1 Adrian Andal is known to have taken bribes from apprehended motorists who have violated traffic rules. The National Bureau of Investigation conducted an entrapment operation where PO1 Adrian was caught red-handed demanding and taking PhP500.00 from a motorist who supposedly beat a red light.**

**After he was apprehended, PO1 Adrian was required to submit a sample of his urine. The drug test showed that he was positive for dangerous drugs. Hence, PO1 Adrian was charged with violation of Section 15, Article II of R.A. No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.**

**PO1 Adrian argues against the admissibility of the urine test results and seeks its exclusion. He claims that the mandatory drug test under R.A. No. 9165 is a violation of the accused's right to privacy and right against self-incrimination.**

**Are PO1 Adrian's contentions correct? (2.5%)**

**PO1 Adrian is correct that his rights to privacy and against self-incrimination have been violated. The results of the "confirmatory" urine test should therefore be rejected as evidence against him.**

**It should be noted that RA 9165 allows the conduct of urine tests only for persons arrested for acts prohibited under said law, such as, among others, the manufacturing, sale, use or possession of illegal drugs, and not for any unlawful act, like extortion, for which PO1 Adrian was arrested. (*De la Cruz vs. People*, G.R. No. 200748, July 23, 2014)**

## XIV

**Amoroso was charged with treason before a military court martial. He was acquitted.**

**He was later charged with the same offense before a Regional Trial Court. He asks that the information be quashed on the ground of double jeopardy.**

**The prosecution objects, contending that for purposes of double jeopardy, the military court martial cannot be considered as a "competent court."**

**Should the Regional Trial Court grant Amoroso's motion to quash on the ground of double jeopardy? (2.5%)**

**Yes, the Motion to Dismiss should be granted.**

**A defendant, having been acquitted of a crime by a court martial of competent jurisdiction proceeding under lawful authority cannot be subsequently tried for the same offense in a civil court.**

**It appearing that the offense charged in the Court Martial and in the Regional Trial Court is the same, that the military court had jurisdiction to try the case and that both courts derived their powers from one sovereignty, the acquittal by the military court should be a bar to Amoroso's further prosecution for the same offense in the Regional Trial Court. (*Crisologo vs. People*, G.R. No. L-6277, February 26, 1954)**

## XV

**Annika sued the Republic of the Philippines, represented by the Director of the Bureau of Plant Industry, and asked for the revocation of a deed of donation executed by her in favor of said Bureau. She alleged that, contrary to the terms of the donation, the donee failed to install lighting facilities and a water system on the property donated, and to build an office building and parking lot thereon, which should have been constructed and made ready for occupancy on or before the date fixed in the deed of donation.**

**The Republic invoked state immunity and moved for the dismissal of the case on the ground that it had not consented to be sued. Should the Republic's motion be granted? (2.5%)**

The motion should be denied.

The doctrine of governmental immunity from suit cannot serve as an instrument for perpetrating an injustice on a citizen. Here, the alleged failure to abide by the conditions under which a donation was given should not prove an insuperable obstacle to a civil action, the consent likewise being presumed when the State entered into a contract. Under the circumstances, the fundamental postulate of non-suability of the state cannot stand in the way. (*Santiago vs. Republic*, G.R. No. L-48214, December 19, 1978)

## XVI

**Five foreign nationals arrived at the NAIA from Hong Kong. After retrieving their checked-in**

**luggage, they placed all their bags in one pushcart and proceeded to Express Lane 5. They were instructed to place their luggage on the examiner's table for inspection.**

**The examiner found brown-colored boxes, similar in size to powdered milk boxes, underneath the clothes inside the foreigners' bags. The examiner discovered white crystalline substances inside the boxes that he inspected and proceeded to bundle all of the boxes by putting masking tape around them. He thereafter handed the boxes over to Bureau of Customs agents. The agents called out the names of the foreigners one by one and ordered them to sign their names on the masking tape placed on the boxes recovered from their respective bags. The contents of the boxes were thereafter subjected to tests which confirmed that the substance was shabu.**

**Can the shabu found inside the boxes be admitted in evidence against the five foreigners for the charge of illegal possession of drugs in violation of the Comprehensive Dangerous Drugs Act of 2002? (2.5%)**

**No, those boxes containing the shabu are inadmissible in evidence against them.**

**The signatures of the accused on the boxes constitute tacit admissions of the crime charged and are tantamount to uncounselled extra-judicial confessions which are not sanctioned by the Bill of Rights (Section 12[1] and [3], Article III, 1987 Constitution). They are, therefore, inadmissible as evidence for any admission wrung from them in violation of their constitutional rights is inadmissible against them. The fact that all**

accused were foreign nationals does not preclude application of the exclusionary rule because the constitutional guarantees embodied in the Bill of Rights are given and extend to all persons, both aliens and citizens. (*People vs. Wong Chuen Ming*, G.R. Nos. 112801-11, April 12, 1996)

## XVII

The police served a warrant of arrest on Ariston who was suspected of raping and killing a female high school student. While on the way to the police station, one of the police officers who served the warrant asked Ariston in the local dialect if he really raped and killed the student, and Ariston nodded and said, "Opo." Upon arriving at the police station, Ariston saw the City Mayor, whom he approached and asked if they could talk privately. The Mayor led Ariston to his office and, while there in conversation with the Mayor, Ariston broke down and admitted that he raped and killed the student. The Mayor thereafter opened the door of the room to let the public and media representatives witness Ariston's confession. In the presence of the Mayor, the police and the media, and in response to questions asked by some members of the media, Ariston sorrowfully confessed his guilt and sought forgiveness for his actions.

Which of these extrajudicial confessions, if any, would you consider as admissible in evidence against Ariston? (5%)

Ariston was already under custodial investigation when he confessed to the police. It is admitted that the

police failed to inform him of his constitutional rights when he was investigated and interrogated. His confession to the police is therefore inadmissible in evidence.

However, his confession before the mayor is admissible. While it may be true that a mayor has “operational supervision and control” over the local police and may arguably be deemed a law enforcement officer for purposes of applying Section 12(1) and (3) of Article III of the Constitution, Ariston’s confession to the mayor, as described in the problem, was not made in response to any interrogation by the latter. In fact, the mayor did not appear as having questioned Ariston at all. No police authority ordered Ariston to talk to the mayor. It was he himself who spontaneously, freely and voluntarily sought the mayor for a private meeting. The mayor did not know that he was going to confess his guilt to him. When he talked with the mayor as a confidant and not as a law enforcement officer, his uncounselled confession to the Mayor did not violate his constitutional rights.

His confession to the media can likewise be properly admitted. The confessions were made in response to questions by news reporters, not by the police or any other investigating officer. Statements spontaneously made by suspects to news reporters during televised interviews are deemed voluntary and are admissible in evidence. (*People vs. Andan*, G.R. No. 116437, March 3, 1997)

## XVIII

**Two police teams monitored the payment of ransom in a kidnapping case.**

The bag containing the ransom money was placed inside an unlocked trunk of a car which was parked at the Angola Commercial Center in Mandaluyong City.

The first police team, stationed in an area near where the car was parked, witnessed the retrieval by the kidnappers of the bag from the unlocked trunk. The kidnappers thereafter boarded their car and proceeded toward the direction of Amorsolo St. in Makati City where the second police team was waiting.

Upon confirmation by radio report from the first police team that the kidnappers were heading towards their direction, the second police team proceeded to conduct surveillance on the car of the kidnappers, eventually saw it enter Ayala Commercial Center in Makati City, and the police team finally blocked it when it slowed down. The members of the second police team approached the vehicle and proceeded to arrest the kidnappers.

**Is the warrantless arrest of the kidnappers by the second police team lawful? (5%)**

The warrantless arrest is lawful.

There are two requirements before a warrantless arrest can be effected under Section 5(b), Rule 113, Rules of Court: (1) an offense has just been committed, and (2) the person making the arrest has personal knowledge of facts indicating that the person to be arrested has committed it.

Both requirements are present in the instant case. The first police team present in the Angola Commercial

Center was able to witness the pay-off which effectively consummated the crime of kidnapping. Its team members all saw the kidnappers take the money from the car trunk. Such knowledge was then relayed to the other police officers comprising the second police team stationed in Amorsolo St. where the kidnappers were expected to pass.

It is sufficient for the arresting team that they were monitoring the pay-off for a number of hours long enough for them to be informed as to who the kidnappers were. This is equivalent to personal knowledge based on probable cause. (*People vs. Uyboco*, G.R. No. 178039, January 19, 2011)

## XIX

**President Alfredo died during his third year in office. In accordance with the Constitution, Vice President Anastasia succeeded him. President Anastasia then nominated the late President Alfredo's Executive Secretary, Anna Maria, as her replacement as Vice President. The nomination was confirmed by a majority of all the Members of the House of Representatives and the Senate, voting separately.**

**(a) Is Anna Maria's assumption as Vice President valid? (2.5%)**

No, Anna Maria's assumption is unconstitutional because only a member of the Senate or House of Representatives may be nominated by a successor-President as Vice President. (Article VII, Section 9)

**(b) Can Anastasia run as President in the next election? (2.5%)**

Yes, Anastasia can still run as President in the next election since she has served for less than four years. Section 4, Article VII of the Constitution provides that “no person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.”

**XX**

**Andreas and Aristotle are foreign nationals working with the Asian Development Bank (ADS) in its headquarters in Manila. Both were charged with criminal acts before the local trial courts.**

**Andreas was caught importing illegal drugs into the country as part of his “personal effects” and was thus charged with violation of Comprehensive Dangerous Drugs Act of 2002. Before the criminal proceedings could commence, the President had him deported as an undesirable alien. Aristotle was charged with grave oral defamation for uttering defamatory words against a colleague at work. In his defense, Aristotle claimed diplomatic immunity. He presented as proof a communication from the Department of Foreign Affairs stating that, pursuant to the Agreement between the Philippine Government and the ADS, the bank’s officers and staff are immune from legal processes with respect to acts performed by them in their official capacity.**

**(a) Can the President's act of deporting an undesirable alien be subject to judicial review? (2.5%)**

The power to deport aliens is an act of State, an act done by or under the authority of the sovereign power. It is a police measure against undesirable aliens whose continued presence in the country is found to be injurious to the public good and the domestic tranquility of the people. (*Rosas vs. Montor*, G.R. No. 204105, October 14, 2015). An act of State is one done by the sovereign power of a country, or by its delegate, within the limits of the power vested in him. An act of State cannot be questioned or made the subject of legal proceedings in a court of law (Black's Law Dictionary, 4<sup>th</sup> ed., 44). With particular reference to Political Law, an act of State is an act done by the political departments of the government and not subject to judicial review.

**(b) Is Aristotle's claim of diplomatic immunity proper? (2.5%)**

The claim of diplomatic immunity is improper. Courts cannot blindly adhere to and take on its face the communication from the DFA that Aristotle is covered by immunity. The DFA's determination that a certain person is covered by immunity is only preliminary and has no binding effect on courts. Besides, slandering a person cannot possibly be covered by the immunity agreement because our laws do not allow the commission of a crime, such as defamation, under the guise of official duty. Under the Vienna Convention on Diplomatic Relations, a diplomatic agent enjoys immunity from criminal jurisdiction of the receiving state except in the case of an action relating to any professional or commercial activity exercised by the diplomatic agent

outside his official functions in the receiving state. The commission of a crime is not part of official duty. (*Liang vs. People*, G.R. No. 125865, January 28, 2000).

**2019****PART I****A.1.**

**Define the following terms:**

**(a) *Jus cogens* (2%)**

*Jus cogens* means the “compelling law.”

“A *jus cogens* norm holds the highest hierarchical position among all other customary norms and principles.” As a result, *jus cogens* norms are deemed “peremptory and non-derogable.” (*Bayan Muna v. Romulo*, G.R. No. 159618, February 1, 2011)

Under Article 53 of the Vienna Convention on the Law of Treaties, it is “a peremptory 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.”

**(b) Principle of double criminality (2%)**

Under the double or dual criminality principle, the act for which the extradition is sought must be punishable in both the requesting and the requested state. (Cruz and Cruz, *International Law*, 2020 Edition, page 370; *Government of Hongkong Special Administrative Region v. Muñoz*, G.R. No. 207342, November 7, 2017)

**(c) Act of State doctrine (2%)**

An act of state is an act done by the sovereign power of a country, or by its delegate, within the limits of the power vested in him. An act of State cannot be questioned or made the subject of legal proceedings in a court of law. (Black's Law Dictionary, 4<sup>th</sup> Edition, page 44) It is an act done by or under the authority of the sovereign power. (*Rosas v. Montor*, G.R. No. 204105, October 14, 2015)

With particular reference to Political Law, an act of State is an act done by the political departments of the government and not subject to judicial review. (Cruz and Cruz, Philippine Political Law, 2014 Edition, page 47)

**(d) Precautionary principle (2%)**

Under the so-called *precautionary principle*, in order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation. (The Cartagena Protocol on Biosafety to the Convention on Biological Diversity, based on Principle 15, The Rio Declaration on Environment and Development, 1992 United Nations Conference on Environment and Development, cited in *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*, G.R. No. 209271, December 8, 2015)

**A.2.**

**Under the United Nations Convention on the Law of the Sea (UNCLOS), what are the rights of the Philippines within the following areas:**

**(a) Contiguous zone (2%)**

Under Article 33 of the UNCLOS III, the contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured. In "a zone contiguous to its territorial sea, described as the contiguous zone, the coastal State may exercise the control necessary to: (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea; (b) punish infringement of the above laws and regulations committed within its territory or territorial sea."

**(b) Exclusive economic zone (2%)**

The exclusive economic zone of a coastal State shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. (UNCLOS, Article 57)

UNCLOS III provides that in the exclusive economic zone, the coastal State has: (a) 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; (b) jurisdiction as provided

for in the relevant provisions of this Convention with regard to: (i) the establishment and use of artificial islands, installations and structures; (ii) marine scientific research; (iii) the protection and preservation of the marine environment; (c) other rights and duties provided for in this Convention. 2. (Article 56 [1]).

In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention. (Article 56 [2])

### A.3.

The Humanitarian Services Society (HSS), an international non-government organization, assisted the displaced families of Tribe X who had to flee their home country in order to escape the systematic persecution conducted against them by their country's ruling regime based on their cultural and religious beliefs. Fearing for their lives, some of these displaced families, with the help of HSS, were able to sail out into the sea on a boat with 15 passengers. An affiliate of HSS in the Philippines intervened on behalf of these displaced families, claiming that they are refugees under international law and hence, should not be expelled from our territory.

May the displaced families of Tribe X be considered as "refugees" under international law? Explain. (3%)

Yes, their consideration as refugees under international law would be consistent with the provisions of the 1951 Convention Relating to the Statute of Refugees, Article 1 (A), paragraph 2 of which defines a refugee as one who, owing to a well-founded fear of being persecuted for reasons of, among others, race or religion, such as the displaced families of Tribe X, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or one who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

#### A.4.

Mrs. W supplied the Philippine National Police (PNP) with uniforms every year. Last month, she and two (2) other officers of the PNP conspired to execute a “ghost purchase” covered by five (5) checks amounting to P200,000.00 each, or a total of P1,000,000.00. An investigating committee within the PNP, which was constituted to look into it, invited Mrs. W, among others, for an inquiry regarding the anomalous transaction. Mrs. W accepted the invitation but during the committee hearing, she stated that she will not answer any question unless she be provided with the assistance of a counsel. The PNP officials denied her request; hence, she no longer participated in the investigation.

(a) What is a custodial investigation?  
Under the 1987 Constitution, what are the

**rights of a person during custodial investigation? (3%)**

A custodial investigation has been understood to refer to any questioning by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. (*Miranda v. Arizona*, 384 US 436) Custodial investigation commences when a person is taken into custody and is singled out as a suspect in the commission of a crime under investigation and the police officers begin to ask questions on the suspect's participation therein and which tend to elicit an admission. (*People v. Cabanada*, G.R. No. 221424, July 19, 2017)

Section 12 of Article III of the Constitution provides for the rights of a person under custodial investigation. Thus —

(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

**(b) Was the PNP's denial of Mrs. W's request violative of her right to counsel in the proceedings conducted by the PNP? Explain.**

It is submitted that the PNP's denial of Mrs. W's request that she be provided with the assistance of counsel is not violative of her right to counsel, which is available only during so-called custodial investigations.

It is established that mere administrative investigations are not considered as covered by Section 12, which is limited to criminal investigations. (*Remolona v. Civil Service Commission*, 414 Phil. 590, 599 [2001]; *Carbonel v. Civil Service Commission*, G.R. No. 187689, September 7, 2010, 630 SCRA 202)

#### **A.5.**

**At about 5:30 A.M. of September 15, 2019, Police Senior Inspector Officer A of the Manila Police District Station received a text message from an unidentified civilian informer that one Mr. Z would be meeting up later that morning with two (2) potential sellers of drugs at a nearby restaurant. As such, Officer A decided to hang around the said place immediately.**

**At about 9:15 A.M., two (2) male passengers, named X and Y, who were each carrying a traveling bag, alighted from a bus in front of the restaurant. A transport barker, serving as a lookout**

for Officer A, signaled to the latter that X and Y were “suspicious-looking.” As the two were about to enter the restaurant, Officer A stopped them and asked about the contents of their bags. Dissatisfied with their response that the bags contained only clothes, Officer A proceeded to search the bags and found packs of *shabu* therein. Thus, X and Y were arrested, and the drugs were seized from them. According to Officer A, a warrantless search was validly made pursuant to the stop and frisk rule; hence, the consequent seizure of the drugs was likewise valid.

(a) What is the stop and frisk rule? (2.5%)

The stop and frisk rule, which is acknowledged as among the exceptions to the rules against warrantless searches and seizures, is generally recognized as “a protective seizure and search for weapons” or a “limited protective search of outer clothing for weapons.” (*Terry v. Ohio*, 392 US 1)

While probable cause is not required to conduct a “stop and frisk,” it nevertheless holds that mere suspicion or a hunch will not validate a “stop and frisk.” A genuine reason must exist, in light of the police officer’s experience and surrounding conditions, to warrant the belief that the person may be stopped and frisked. (*Malacat v. Court of Appeals*, 347 Phil. 462 [1997], cited in *People v. Comprado*, G.R. No. 213225, April 4, 2018)

[Note: Under this rule, a police officer who observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where

nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled [to] the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. (*Terry v. Ohio*, 392 US 1)

**(b) Was the stop and frisk rule validly invoked by Officer A? If not, what is the effect on the drugs seized as evidence? Explain. (2.5%)**

It is submitted that Officer A could not have validly conducted a valid stop and frisk search.

It bears emphasis that he approached X and Y, both of whom had just alighted from the bus and were about to enter the restaurant, simply by reason of a "signal" from the lookout, the barker, to the effect that they were "suspicious-looking." There is no showing that Officer A actually found them to be such, or suspicious-looking. It is clear that, insofar as Officer A was concerned, there was no observable manifestation that could have aroused his suspicion as to cause him to stop and frisk X and Y. To reiterate, the latter were merely entering a restaurant after they got off the bus when they were stopped by Officer A. (*People v. Aruta*, G.R. No. 120915, April 3, 1998)

#### **A.6.**

**A committee of the Senate invited Mr. X and Mr. Y, the Secretary of Foreign Affairs and Secretary of Energy, respectively, as resource speakers for an inquiry in aid of legislation. Mr. X refused to attend, arguing that the Senate, not its committee, has the power to compel attendance. Mean-**

while, Mr. Y attended the committee hearing but upon being asked about discussions made during a closed-door cabinet meeting, he refused to answer invoking executive privilege. The committee members insisted that Mr. Y answer the question pursuant to the right of Congress to information from the executive branch.

**(a) Based on his argument, is Mr. X's non-appearance permissible? Explain. (2.5%)**

No, X's non-appearance is not permissible.

The power to conduct legislative inquiries in aid of legislation, which entails or includes coercive authority to compel the attendance of witnesses, or resource persons, such as Mr. X, under pain of contempt (*Arnault v. Nazareno*, G.R. No. L-3820, July 18, 1950), can be exercised by either chamber of the Congress, or by any of its respective committees. (Constitution, Article VI, Section 21)

**(b) Is Mr. Y's refusal to answer based on executive privilege valid? Explain. (2.5%)**

No, Mr. Y may not be allowed to refuse to answer on the ground of executive privilege.

While information pertinent to closed-door cabinet meetings can generally be recognized as privileged (*Chavez v. Presidential Commission on Good Government*, G.R. No. 130716, 9 December 1998), it must be remembered that executive privilege is available only to the President, or to a delegate or subordinate, who may be allowed to invoke it but only upon prior express authorization of the President. (*Senate v. Ermita*, G.R. No. 169777, April 20, 2006)

Moreover, while it has also been held that, although executive privilege is properly invoked in relation to specific categories of information, not to categories of persons (*Senate v. Ermita*, G.R. No. 169777, April 20, 2006; *Sereno v. Committee on Trade and Related Matters of the NEDA*, G.R. No. 175210, February 1, 2016), it must still be remembered that for a mere subordinate, such as Mr. Y, to be allowed to invoke it, he must clearly assert it “by specifying the grounds for the exemption. In case of denial of access to the information, it is the government agency concerned that has the burden of showing that the information sought to be obtained is not a matter of public concern, or that the same is exempted from the coverage of the constitutional guarantee.” (*Sereno v. Committee on Trade and Related Matters of the NEDA*, G.R. No. 175210, February 1, 2016)

It is submitted that Mr. Y, who merely refused to answer and merely invoked executive privilege did not properly discharge this burden.

[Note: A claim of privilege, being a claim of exemption from an obligation to disclose information, must, therefore, be clearly asserted, and not merely implied. In light of this highly exceptional nature of the privilege, the Court finds it essential to limit to the President the power to invoke the privilege. She may of course authorize the Executive Secretary to invoke the privilege on her behalf, in which case the Executive Secretary must state that the authority is “By order of the President,” which means that he personally consulted with her. The privilege being an extraordinary power, it must be wielded only by the highest official in the executive hierarchy. In other words, the President may not authorize her subordinates to exercise such power. (*Senate v. Ermita*, G.R. No. 169777, April 20, 2006, 488 SCRA 1)]

**A.7.**

The continuing threat to the security of the State in various parts of the country prompted the National Security Adviser of the President to adopt a “Comprehensive National Security Strategy (CNSS)” with the following components:

**Component 1:** During a state of emergency, the President, in the exercise of his power of general supervision, may delegate to the heads of local government units (LOUs), through an administrative issuance, the power to call-out the Armed Forces of the Philippines (AFP) for a more effective and immediate response to the ground situation; and

**Component 2:** In declaring Martial Law, the President, in a preemptive action and without waiting for the recommendation of the Secretary of National Defense and the AFP, may rely upon any intelligence information he may have gathered through other sources.

Disturbed by the strategy’s supposed infirmities, a concerned citizens’ organization raised the constitutionality of the two (2) components of the CNSS before the Supreme Court.

**(a) Is component 1 of the CNSS constitutional? Explain. (2.5%)**

No, it is not constitutional.

Under the Constitution, it is only the President who may exercise military powers under Section 18 of its Article VII. This may not be delegated by him, as in this case, to heads of local government units. (*Jamar M. Kulayan, et al. vs. Gov. Abdusakur M. Tan etc., et al.*, G.R. No. 187298, July 3, 2012)

[Note: There is one repository of executive powers, and that is the President of the Republic. xxx. Corollarily, it is only the President, as Executive, who is authorized to exercise emergency powers as provided under Section 23, Article VI, of the Constitution, as well as what became known as the calling-out powers under Section 7, Article VII thereof. (*Jamar M. Kulayan, et al. vs. Gov. Abdusakur M. Tan etc., et al.*, G.R. No. 187298, July 3, 2012)]

**(b) Is component 2 of the CNSS constitutional? Explain. (2.5%)**

Yes, Component 2 of the CNSS is not unconstitutional.

The only pertinent conditions prescribed under the Constitution for his exercise of the power to declare martial law are, among others, it must be on the ground of invasion or rebellion, when the public safety requires it. (Article VII, Section 18)

Prior recommendations from the Secretary of National Defense and the AFP are not among the conditions prescribed under the Constitution for his exercise of said power.

It has been held that since these extraordinary military powers are conferred by the Constitution with the President as Commander-in-Chief, it therefore necessarily follows that the power and prerogative to determine whether the situation warrants his declaration of martial law also lies exclusively, or at least initially, with him. Accordingly, it has been ruled that, so long as

there exists factual basis which leads him to believe that there is probable cause as to the existence of any of the grounds for his declaration of martial law, such determination must be respected. (*Lagman v. Medialdea*, G.R. No. 231658, July 4, 2017)

**A.8.**

Mayor X and his City Administrator, Y, are political buddies who assumed their respective offices in 2010. Sometime in January 2012, Y proposed to Mayor X the entry into a P5,000,000.00 loan agreement with ABC Foundation, a non-stock and non-profit organization in which the two had a long-standing personal involvement. The loan agreement was duly executed in the same year but was never authorized and approved by the *Sangguniang Panlungsod*. It was further found that the same constituted a fraudulent scheme to defraud the City Government.

Meanwhile, Mayor X won another term during the May 2013 Elections and Y continued on as his City Administrator. A year after, or in May 2014, administrative charges for grave misconduct, serious dishonesty, and conduct prejudicial to the best interest of the service were filed against them before the Office of the Ombudsman. In defense, Mayor X argued that his subsequent re-election in May 2013 absolved him from any administrative liability for any alleged anomalous activity during his first term in office. Y raised the same defense of condonation, having been retained by Mayor X as City Administrator for a second term.

**On December 10, 2015, the Ombudsman rendered its ruling in the case, finding both Mayor X and Y administratively liable. Citing the Supreme Court's Decision in *Carpio-Morales v. Court of Appeals* (G.R. Nos. 217126-27), which was initially promulgated on November 10, 2015, the Ombudsman rejected their defense of condonation. With the motions for reconsideration of Mayor X and Y having been denied by the Ombudsman on March 10, 2016, they elevated the matter to the Court of Appeals.**

**(a) Did the Ombudsman err in not giving credence to the defense of condonation as raised by Mayor X? Explain. (2%)**

It is submitted that the Ombudsman erred in rejecting Mayor X's defense of condonation.

As held in the *Carpio* case, the abandonment of the condonation doctrine should be prospective in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines.

Since the administrative case against Mayor X was based on acts committed by him before the promulgation of the *Carpio* decision, or prior to November 10, 2015, said administrative case should properly be considered as barred by reason of his re-election in 2013. Said re-election, according to the doctrine, should be considered as a condonation of whatever administrative offenses he may have committed prior to the same.

[Note: Clearly then, the rule is that a public official cannot be removed for administrative misconduct committed during a prior

term, since his re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor. (*Aguinaldo v. Santos*, G.R. No. 94115 August 21, 1992)]

[Note: We sustain the insistence of the OMB. The ruling promulgated in *Morales v. Court of Appeals* on the abandonment of the doctrine of condonation had, indeed, become final only on April 12, 2016, and thus the abandonment should be reckoned from April 12, 2016. (*Crebello v. Office of the Ombudsman*, G.R. No. 232325, April 10, 2019)]

[Note: To reiterate, the condonation doctrine is no longer an available defense to a public official who is reelected on or after April 12, 2016. In other words, the reelection of a public official on or after April 12, 2016 would no longer absolve him or her from any administrative liability arising from a previous misconduct that he or she had committed during a prior term. (*Gaudan v. Degamo*, G.R. Nos. 226935, 228238 & 228325, February 9, 2021)]

[Note: Based on these considerations, the Court deems it proper to declare the Ombudsman's Office Circular No. 17 dated May 11, 2016 null and void, pursuant to the above-discussed ruling in *Madreo*. As it stands, the condonation doctrine is still considered as "good law" in all administrative cases involving public officials whose reelections occurred before April 12, 2016, regardless of the dates of filing of the administrative cases against them or the status of said cases when the *Carpio-Morales* ruling attained finality. (*Gaudan v. Degamo*, G.R. Nos. 226935, 228238 & 228325, February 9, 2021)]

[Note: Contrary to Gaudan's assertion, the fact that Degamo was elected as a Provincial Board Member and not as Governor of the Province in the May 2010 elections is of no consequence.

In *Office of the Ombudsman v. Mayor Vergara*, the Court explained that a public official need not be reelected to the same position in the immediately succeeding election for the condonation doctrine to be an available defense for him or her in an administrative proceeding. Otherwise stated, "the doctrine can be applied to a public officer who was elected to a different position, provided that it is shown that the body politic electing the person to another office is the same." (*Gaudan v. Degamo*, G.R. Nos. 226935, 228238 & 228325, February 9, 2021)]

**(b) How about Y? Can he validly invoke the condonation doctrine to absolve him of the charge? Explain. (3%)**

No, he cannot.

The condonation doctrine does not apply to appointive officials. It only applies to elective officials. (*Civil Service Commission v. Sojor*, 577 Phil. 52, 72 [2008], cited in *Carpio-Morales v. Court of Appeals*, G.R. No. 217126-27, November 10, 2015)

#### **A.9.**

**The unabated rise of criminality and the reported identification of delinquent children loitering in the wee hours of the night prompted City Z to implement a curfew ordinance. Minors unaccompanied or unsupervised on the streets by their parents or guardians between 10:00 P.M. to 5:00 A.M. may be apprehended by law enforcers subject to certain exclusive exceptions. These exceptions are: 1. minors running lawful errands, such as buying of medicines, using of telecommunications facilities for emergency purposes and the like; 2. night school students; and 3. minors working at night. Minors apprehended for violation of the curfew ordinance shall be required to undergo counseling, accompanied by their parents/guardians.**

**(a) Does the curfew ordinance violate the primary right and duty of parents to rear their children? Explain. (2.5%)**

No, the Curfew Ordinances are but examples of legal restrictions designed to aid parents in their role of promoting their children's well-being.

They may be validly imposed by the State as *parens patriae*, and be considered as its inherent right and duty to aid parents in the moral development of their children, and, thus, assumes a supporting role for parents to fulfill their parental obligations. Under the Constitution, the State can properly conclude that parents and others, teachers for example, who have the primary responsibility for children's well-being, are entitled to the support of the laws designed to aid discharge of that responsibility. (*SPARK v. Quezon City*, G.R. No. 225442, August 8, 2017)

**(b) Does the curfew ordinance infringe any of the minors' fundamental rights? Explain. (2.5%)**

The subject ordinances can be considered as unduly impairing minors' reasonable exercise of their rights of association, free exercise of religion, rights to peaceably assemble, and of free expression, among others.

Their freedom of association and right to peaceful assembly can be considered as effectively curtailed because they are hindered from participating in legitimate activities during certain hours of the day, like political rallies or school meetings, as they may be apprehended if they are caught out on the streets at the specified hours, even if they would be just on their way to or returning from said legitimate activities. This hindrance necessarily includes a suppression of their religious freedom as they would be, by reason of said curfew ordinance, effectively be prevented from attending religious

activities during the specified hours. Needless to state, all of these prohibitions constitute curtailments on their freedom of expression. (*SPARK v. Quezon City*, G.R. No. 225442, August 8, 2017)

### A.10.

An Information for *Estafa* was filed against the accused, Mr. D. During the course of the trial, Mr. D filed a motion to dismiss for failure to prosecute the case for a reasonable length of time. Opposing the motion, the prosecution argued that its failure to present its witnesses was due to circumstances beyond its control. Eventually, the trial court dismissed the case with finality on the ground that Mr. D's right to speedy trial was violated.

A month after, the same criminal case for *Estafa* was re-filed against Mr. D, prompting him to file a motion to dismiss invoking his right against double jeopardy. The prosecution opposed the motion, arguing that the first criminal case for *Estafa* was dismissed with the express consent of the accused as it was, in fact, upon his own motion. Moreover, it was already able to secure the commitments of its witnesses to appear; hence, it would be prejudicial for the State if the case were to be dismissed without trial.

(a) For double jeopardy to attach, what requisites must exist? (2%)

The rule is that 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. (Constitution, Article III, Section 21)

Accordingly, double jeopardy attaches when the following elements concur: (1) the accused is charged under a complaint or information sufficient in form and substance to sustain their conviction; (2) the court has jurisdiction; (3) the accused has been arraigned and has pleaded; and (4) he/she is convicted or acquitted, or the case is dismissed without his/her consent. (*David v. Marquez*, G.R. No. 209859, June 5, 2017)

**(b) Rule on Mr. D's present motion. (3%)**

Mr. D's motion to dismiss should be granted.

The second case for the same offense is barred by double jeopardy.

It is established that a dismissal, even if with the express consent of the accused, will give rise to double jeopardy if the same is based on a violation of the right of the accused to a speedy trial. (*People v. Anano*, 97 Phil. 28, *Villareal v. People*, G.R. No. 151258, February 1, 2012) Under said ground, the dismissal would be tantamount to an acquittal. (*Tan v. People*, G.R. No. 173637, April 21, 2009)

**PART II****B.11.**

**Atty. G ran for Governor of the Province of Pampanga, while his close friend, Atty. M, ran for Mayor of the Municipality of Guagua, Pampanga. They both won convincingly. Eventually, the losing candidates timely filed election protests. The losing gubernatorial candidate, Mr. A, filed his protest before the Regional Trial Court of Pampanga (RTC), whereas the losing mayoralty candidate, Mr. B, filed his protest before the Municipal Trial Court of Guagua, Pampanga (MTC).**

**(a) What are the term limits for the positions of Atty. G and Atty. M? (1%)**

Being local elective officials, their terms limits are basically governed by Section 8 of Article X of the Constitution, which prescribes that the term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

Moreover, under Section 43 of the Local Government Code, the term of office of all local elective officials elected shall be three (3) years and no local elective official shall serve for more than three (3) consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered

as an interruption in the continuity of service for the full term for which the elective official concerned was elected.

**(b) Does the RTC have jurisdiction over the case filed by Mr. A? Explain. (2%)**

No, the RTC does not have jurisdiction over the case filed by Mr. A because gubernatorial election contests are cognizable by the Commission on Elections, which has exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials. (Constitution, Article IX-C, Section 2 [2])

**(c) Does the MTC have jurisdiction over the case filed by Mr. B? Explain. (2%)**

No, the MTC, which is considered as a court of limited jurisdiction, does not have jurisdiction over the case filed by Mr. A because mayoralty election contests are cognizable by trial courts of general jurisdiction (Constitution, Article IX-C, Section 2 [2])

It is therefore the RTC which has jurisdiction over the same.

**B.12.**

**W, the incumbent Congressman of the Province of Albay, decided to run for Governor. He filed his certificate of candidacy (CoC) for Governor without resigning from his post and continued exercising his duties as Congressman, such as attending plenary sessions and committee hearings in the House of Representatives. One of W's**

fiercest critics, X, claimed that W should not be dispensing the functions of a Congressman since he is deemed *ipso facto* resigned as such upon his filing of a CoC for Governor of Albay.

(a) Is X's argument correct? Explain. (2.5%)

No, his argument is not correct.

Pursuant to Section 14 of RA 9006 or the Fair Election Act, which repealed Section 67 of the Omnibus Election Code and rendered ineffective Section 11 of R.A. 8436 insofar as it considered an elected official as resigned only upon the start of the campaign period corresponding to the positions for which they are running, an elected official is not deemed to have resigned from his office upon the filing of his certificate of candidacy for the same or any other elected office or position. In fine, an elected official may run for another position without forfeiting his seat. (*Quinto v. Commission on Elections*, G.R. No. 189698, February 22, 2010)

(b) Assuming that W is instead, an incumbent Undersecretary of the Department of National Defense, what is the effect of the filing of his CoC for the position of Governor of Albay to said post? Explain. (2.5%)

He shall be considered as *ipso facto* resigned from his office upon the filing of his certificate of candidacy for the position of Governor.

Under Section 13 of RA 9369, which reiterates Section 66 of the Omnibus Election Code, any person holding a public appointive office or position, including active members of the Armed Forces of the Philippines,

and officers and employees in government-owned or -controlled corporations, shall be considered *ipso facto* resigned from his office upon the filing of his certificate of candidacy. (*Quinto v. Commission on Elections*, G.R. No. 189698, February 22, 2010)

### B.13.

**Who are the impeachable officers under the 1987 Constitution? Briefly explain the process of impeaching them thereunder. (5%)**

Under the 1987 Constitution, the impeachable officers are the President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman. (Article XI, Section 2)

The process prescribed in the Constitution for impeachment is indicated in Section 3 of Article XI, which provides –

- (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.
- (2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution or endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The reso-

lution shall be calendared for consideration by the House within ten session days from receipt thereof.

(3) A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each Member shall be recorded.

(4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.

(5) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

(6) The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.

(7) Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment, according to law.

**B.14.**

**A proposal to change a provision of the 1987 Constitution has been put forth as follows:**

**Original Text:** “The Philippines is a democratic and republican State. Sovereignty resides in the people and all government authority emanates from them.”

**Proposed Text:** “The Philippines is a democratic and socialist State. Sovereignty resides in the party and all government authority emanates from it.”

**(a) Is this an amendment or a revision? Explain. (2.5%)**

The proposed text constitutes a revision.

A revision broadly implies a change that alters a basic principle in the constitution, like altering the principle of separation of powers or the system of checks-and-balances. (*Lambino v. COMELEC*, G.R. No. 174153, October 25, 2006)

It is submitted that the proposals to convert the Philippines into a socialist state and to make sovereignty reside in the party would serve to alter a basic principle to the effect that sovereignty resides in the people.

**(b) Briefly explain the process to revise the 1987 Constitution. (2.5%)**

The process of revising the Constitution would necessarily entail two steps, to wit, the making of the proposal and the ratification.

Under Section 1 of Article XVII of the Constitution, a proposal to revise the Constitution may be made or done by the Congress, upon a vote of three-fourths of all its Members; or by a constitutional convention, which under Section 3 thereof, may be established by the Congress, which may call the same by a vote of two-thirds of all its Members, or by a majority vote of all its Members, submit to the electorate the question of calling such a convention.

Any proposal to revise or any revision of the Constitution shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than sixty days nor later than ninety days after the approval of such revision. (Constitution, Article XVII, Section 4)

### **B.15.**

**R was elected as Municipal Councilor for three (3) consecutive terms. Before the end of the third term, Vice Mayor S died, rendering his post vacant. Since R was the highest-ranking Municipal Councilor, he assumed the office of the Vice Mayor. One of his constituents, T, assailed R's assumption of office, arguing that elections should have been conducted to fill in the vacancy following the death of Vice Mayor S.**

- (a) Is T's contention correct? Explain.  
(2.5%)**

No, T's contention is not correct, because there would be no need for elections. Instead, the rules on succession should be made to apply.

Accordingly, under Section 44 of the Local Government Code, if a permanent vacancy occurs in the office of Mayor, the vice-mayor concerned shall become the Mayor. If a permanent vacancy occurs in the offices of the Mayor, or vice-mayor, the highest ranking Sanggunian member or, in case of his permanent inability, the second highest ranking Sanggunian member, shall become the Mayor or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other Sanggunian members according to their ranking as defined herein.

Therefore, it was proper for R to have assumed the office of Vice Mayor. This would be consistent with the aforecited rule on succession under the Local Government Code.

**(b) Assuming that R validly assumed S's post, at the end of R's term as Vice Mayor, may he run, once more, for the position of Municipal Councilor? Or is he proscribed to do so under the Local Government Code? Explain. (2.5<sup>ct</sup>)**

R can run again for the position of Municipal Councilor.

This would be consistent with the rule that, when a permanent vacancy occurs in an elective position and the official merely assumed the position pursuant to the rules on succession under the Local Government Code, as in this case, then his service for the unexpired portion of the term of the replaced official cannot be treated

as one full term as contemplated under the subject constitutional and statutory provision that that service cannot be counted in the application of any term limit (*Borja, Jr. v. Commission on Elections and Jose T. Capco, Jr.*, G.R. No. 133495, September 3, 1998, 295 SCRA 157 [1998])). If the official runs again for the same position he held prior to his assumption of the higher office, then his succession to said position is by operation of law and is considered an involuntary severance or interruption (*Montebon v. Commission on Elections*, G.R. No. 180444, April 8, 2008, 551 SCRA 50 [2008]).

### B.16.

**Under the 1987 Constitution, to whom does each duty/power/privilege/prohibition/disqualification apply:**

**(a) The authority to keep the general accounts of the Government and for such period provided by law, preserve the vouchers and other supporting documents pertaining thereto. (1%)**

The Commission on Audit. (Constitution, Article IX-D, Section 2 [1])

**(b) The power to allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons. (1%)**

The Congress. (Constitution, Article XII, Section 2, 3<sup>rd</sup> paragraph)

**(c) The authority to provide for the standardization of compensation of government officials and employees. (1%)**

The Congress. (Constitution, Article IX-B, Section 5)

**(d) The sole power to declare the existence of a state of war. (1%)**

The Congress, in joint session assembled, upon a vote of two-thirds of both Houses, voting separately. (Constitution, Article VI, Section 23 [1])

**(e) The power to ratify treaties and international agreements. (1%)**

The President. (*Bayan v. Zamora*, G.R. No. 138570, October 10, 2000; *Pimentel v. Office of the Executive Secretary*, G.R. No. 158088, July 6, 2005)

### **B.17.**

In 2014, Congress enacted an appropriation law containing a provision that gives individual legislators the discretion to determine, post-enactment, how much funds would go to a specific project or beneficiary which they themselves also determine. Consequently, disbursements were made in the interim pursuant thereto.

Eventually, Mr. Z filed a petition questioning the constitutionality of the statutory provision on

**the ground that it violates the separation of powers principle. On the other hand, certain Congressmen argued that there was nothing wrong with the provision because, after all, the power to appropriate belongs to Congress.**

**(a) Rule on the arguments of the parties. (2.5%)**

Mr. Z's petition must be upheld.

The questioned law constitutes a violation of the principle of separation of powers, following the rule that, once a bill has become a law, the Congress, or any of its individual members, may not have any participation in its actual enforcement, which lies in the exclusive domain of the Executive Department. (*Belgica v. Executive Secretary*, G.R. 208566, Nov. 19, 2013)

**(b) Assuming that the provision is declared unconstitutional, should the disbursements made pursuant thereto be returned, in light of the doctrine of operative fact? Explain. (2.5%)**

No, the disbursements need not be returned. (*Araullo v. Aquino*, G.R. No. 29287, July 1, 2014)

The doctrine of operative fact is applicable.

Under this doctrine, the law is recognized as unconstitutional but the effects of the unconstitutional law, prior to its declaration of nullity, may be left undisturbed as a matter of equity and fair play. In fact, the invocation of the operative fact doctrine is an admission that the law is unconstitutional. The operative fact doctrine is a rule of equity. As such, it must be applied as

an exception to the general rule that an unconstitutional law produces no effects. It can never be invoked to validate as constitutional an unconstitutional act. In short, the operative fact doctrine affects or modifies only the effects of the unconstitutional law, not the unconstitutional law itself. (*League of Cities of the Philippines v. COMELEC*, G.R. No. 176951, August 24, 2010)

**B.18.**

A was appointed by the President as a Commissioner of the Commission on Elections (COMELEC) while Congress was not in session. Pending confirmation of his appointment by the Commission on Appointments, A started to perform his official functions in the COMELEC, such as attending *en banc* sessions, hearing election protests, signing Resolutions, issuing Orders, and appearing before Congress during budget hearings. Atty. B questioned before the Supreme Court the exercise of official functions by A, stating that his *ad interim* appointment is not a permanent appointment but a temporary one pending confirmation by the Commission on Appointments, and thus prohibited under Article IX-C of the 1987 Constitution which states that “[i]n no case shall any Member [of the COMELEC] be appointed or designated in a temporary or acting capacity.”

(a) Is Atty. B’s contention correct? Explain. (2.5%)

No, B’s contention is not correct.

An *ad interim* appointment is a permanent appointment because it takes effect immediately and can

no longer be withdrawn by the President once the appointee has qualified into office. The fact that it is subject to confirmation by the Commission on Appointments does not alter its permanent character. The Constitution itself makes an *ad interim* appointment permanent in character by making it effective until disapproved by the Commission on Appointments or until the next adjournment of Congress. (*Matibag v. Benipayo*, G.R. No. 149036, April 2, 2002; *Pamantasan ng Lungsod ng Maynila v. Intermediate Appellate Court*, G.R. No. L-65439, November 13, 1985, 140 SCRA 22)

Accordingly, A's *ad interim* appointment as Commissioner of the Commission on Elections cannot or should not be considered as a temporary or acting appointments prohibited by Section 1 (2), Article IX-C of the Constitution. (*Matibag v. Benipayo*, G.R. No. 149036, April 2, 2002)

**(b) If the Commission on Appointments by-passed the confirmation of A, can he still be reappointed by the President? Explain. (2.5%)**

Yes, the President can reappoint A.

There is nothing in the Constitution, or in any existing law for that matter, which prohibits such a reappointment.

An *ad interim* appointment that has lapsed by inaction of the Commission on Appointments does not constitute a term of office. The period from the time the *ad interim* appointment is made to the time it lapses is neither a fixed term nor an unexpired term. (*Fetalino v. Commission on Elections*, G.R. No. 191890, December 4, 2012)

Accordingly, A's reappointment should not or cannot be considered as covered by the general constitutional prohibition against reappointments in the Constitutional Commissions.

**B.19.**

**Candidate X, a naturalized Filipino citizen, ran for Congressman for the Lone District of Batanes. After a close electoral contest, he won by a slim margin of 500 votes. His sole opponent, Y, filed an election protest before the Commission on Elections (COMELEC), claiming that X should be disqualified to run for said position because he is not a natural-born citizen. While the case was pending, X was proclaimed by the Provincial Election Supervisor of Batanes as the duly elected Congressman of the province.**

**(a) Distinguish between natural-born and naturalized citizens under the 1987 Constitution. (2%)**

Under Article IV of the Constitution, natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship (Section 2) and those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority (Section 2, in relation to Section 1 [3])

In turn, naturalized citizens are those who acquire Philippine citizenship either through judicial naturalization under the provisions of C.A. No. 473, as amended, or on the basis of the Administrative Naturalization Law (R.A. 9139). It should be noted that both

laws also provide for naturalization through derivative mode.

[Note: Under Section 15 of Commonwealth Act No. 473, any woman who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines. Minor children of persons naturalized under this law who have been born in the Philippines shall be considered citizens thereof. A foreign-born minor child, if dwelling in the Philippines at the time of the naturalization of the parent, shall automatically become a Philippine citizen, and a foreign-born minor child, who is not in the Philippines at the time the parent is naturalized, shall be deemed a Philippine citizen only during his minority, unless he begins to reside permanently in the Philippines when still a minor, in which case, he will continue to be a Philippine citizen even after becoming of age. A child born outside of the Philippines after the naturalization of his parent, shall be considered a Philippine citizen, unless within one year after reaching the age of majority, he fails to register himself as a Philippine citizen at the country where he resides, and to take the necessary oath of allegiance.]

[Note: Under Section 11 of Republic Act No. 9139, known as the Administrative Naturalization Law of 2000, after the approval of the petition for administrative naturalization in cancellation of applicant's alien certificate of registration, applicant's alien lawful wife and minor children may file a petition for cancellation of their alien certificates of registration with the Committee subject to the payment of the filing fee(s)...]

[Note: R.A. No. 9225 provides – Section 4. *Derivative Citizenship* – The unmarried child, whether legitimate, illegitimate or adopted, below eighteen (18) years of age, of those who re-acquire Philippine citizenship upon effectivity of this Act shall be deemed citizenship of the Philippines.]

**(b) Is X qualified to run for Congress?  
Explain. (1%)**

No, X, being a naturalized Filipino citizen, is not qualified to run for Congress because, under the Constitution, no person shall be a Member of the House of

Representatives unless he is a natural-born citizen of the Philippines (Article VI, Section 6)

**(c) Did X's proclamation divest the COMELEC of its jurisdiction to decide the case and vest the House of Representatives Electoral Tribunal (HRET) jurisdiction to hear the case? Explain. (2%)**

No, the proclamation of X does not serve to divest the COMELEC of its jurisdiction over the case. It may still decide the same despite said proclamation.

The rule is that the COMELEC will be divested of said jurisdiction, and the House of Representatives Electoral Tribunal shall exercise sole jurisdiction over the case, only after it is shown that X would have been proclaimed as the winning candidate, taken his proper oath and assumed office. (*Reyes v. COMELEC*, G.R. No. 207264, October 22, 2013)

Although X may have been proclaimed, it is clear that he is yet to take his proper oath and assume office. The COMELEC therefore retains its jurisdiction over his case.

## **B.20.**

**H, a naturalized American citizen who later became a dual citizen under Republic Act No. 9225 (the Citizenship Retention and Reacquisition Act), decided to run for Congress and thus filed a certificate of candidacy (CoC). A citizen argued that H is ineligible for the position because of his status as a dual citizen. H responded that his act of filing a CoC amounted to his renunciation of**

**foreign citizenship, rendering him eligible for the position.**

**(a) Was H's filing of a CoC sufficient to renounce foreign citizenship? Explain. (2.5%)**

No, H's filing of a CoC cannot be considered as sufficient to renounce foreign citizenship.

Under Section 5 of R.A. No. 9225, on the basis of which he became a dual citizen, those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenships before any public officer authorized to administer an oath. It must be noted that, upon taking said second oath, the citizen ceases to be a dual citizen. (*Lopez v. COMELEC*, G.R. No. 182701, July 23, 2008; *Jacot v. Dal*, G.R. No. 179848, November 27, 2008, 572 SCRA 295; see *Sobejana-Condon v. Commission on Elections*, G.R. No. 198742, August 10, 2012)

**(b) Assuming that H is a dual citizen because his parents are Filipino citizens and he was born in California, USA, was the his filing of a CoC sufficient to renounce his foreign citizenship? Explain. (2.5%)**

It is submitted that his filing of his CoC can be considered as sufficient for purposes of his renunciation of his foreign or American citizenship.

As held in *Mercado v. Manzano* (G.R. No. 135083, May 26, 1999), a dual citizen by reason of the concurrent application of the *jus soli* and *jus sanguinis* princi-

ples, as in the case of H, can be considered as solely a natural-born Philippine citizen upon his filing of a certificate of candidacy for a position which requires natural-born citizenship as a qualification.

By declaring in his certificate of candidacy that he is a Filipino citizen; that he is not a permanent resident or immigrant of another country; that he will defend and support the Constitution of the Philippines and bear true faith and allegiance thereto and that he does so without mental reservation, he can, as far as the laws of this country are concerned, be considered as having effectively repudiated his American citizenship and anything which he may have said before as a dual citizen. (*Valles v. Commission on Elections*, G.R. No. 137000, August 9, 2000; *Cordova v. Commission on Elections*, G.R. No. 176947, February 19, 2009)

## 2020-2021

**1. Can a charismatic and effective 30-year-old former mayor of a chartered city in Metro Manila legally run for President of the Republic of the Philippines in the 2022 elections? Explain briefly.**

No.

He is not qualified because he is only thirty years old.

Under the Constitution, no person may be elected President unless he is at least forty years of age on the day of the election. (Article VII, Section 2)

**2. A law is passed penalizing any criticism of any sitting Member of the Supreme Court on any media platform. The penalty is higher when the criticism is made through social media.**

**Is this law constitutional? Explain briefly.**

No, it is not.

It constitutes impermissible prior restraint and is therefore an undue and unconstitutional abridgement of freedom of expression, which allows criticism by citizens of public officers (*US v. Bustos*, 37 Phil. 731), including Members of the Supreme Court, provided that the same, with respect to the latter, should be made respectfully (*People v. Godoy*, 243 SCRA 64) and cannot cover *sub judice* matters (*People v. Alarcon*, 69 Phil. 265).

**3. A law is passed which provides that when the Department of Public Works and Highways expropriates property for the government infrastructure projects, it will have the sole and exclusive authority to determine the price to be paid as compensation to the landowner, which amount shall be no more than the assessed value of the property used for real property taxation.**

**Is this provision of law valid? Explain briefly.**

No, it is not. The subject law is invalid.

It is established that the valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies. (*Land Bank of the Philippines v. Escaro*, G.R. No. 204526, February 10, 2021; see *Republic v. Spouses Mirandilla*, G.R. No. 233516, January 13, 2021; *Land Bank of the Philippines v. Barili Agro Development Corp.*, G.R. No. 231812 (Notice), April 28, 2021; *Land Bank of the Philippines v. St. Louis Realty Corp.*, G.R. Nos. 209498, 209503 & 217895 (Notice), May 14, 2021)

Accordingly, the subject law which vests “sole and exclusive authority to determine the price to be paid as compensation” upon the Department of Public Works and Highways constitutes impermissible encroachment on judicial prerogative and is, accordingly, unconstitutional. (*Export Processing Zone v. Dulay*, 149 SCRA 305; *National Power Corporation v. Ileta*, G.R. No. 169957, July 11, 2012; *National Power Corporation v. Sps. Zabala*, G.R. No. 173520, January 30, 2013)

**4. A provincial ordinance was passed setting a province-wide curfew for all minors. This was challenged through a suit filed before the Regional Trial Court having territorial jurisdiction over the province.**

**The provincial legal officer sought the case's dismissal on the lone ground that the Supreme Court has sole and exclusive jurisdiction to determine the constitutionality of a treaty, law, or ordinance.**

**Should the provincial legal officer's prayer for dismissal be granted? Explain briefly.**

No, it should not be granted.

Jurisdiction to determine the constitutionality of treaties, laws and ordinances is not exclusive to the Supreme Court. Regional Trial Courts have as well jurisdiction to pass upon the constitutionality of those measures. (*Planters Products, Inc. v. Fertiphil Corporation*, G.R. No. 166006, March 14, 2008)

This can be gleaned from and is acknowledged in the provision in the Constitution which assigns appellate jurisdiction to the Supreme Court over decisions of lower courts, including Regional Trial Courts, on, among others, all cases in which the constitutionality of those measures is in question. (Article VIII, Section 5 [2])

Accordingly, the provincial legal officer's prayer in the subject motion to dismiss should be denied.

**5. Both the House of Representatives and the Senate passed a bill which: (a) increases the number of Supreme Court Justices from 15 to 20; (b) assigns the five most senior Justices, including the Chief Justice, exclusively to a Special Division that will tackle only constitutional cases; and (c) removes from the Supreme Court *En Banc* the power to hear and decide cases involving alleged violations of the Constitution.**

**The Chief Presidential Legal Counsel advises the President to veto the bill, arguing that the law is unconstitutional because its contents should be the subject of constitutional amendment rather than of legislation.**

**Is the Chief Presidential Legal Counsel's argument constitutionally sound? Explain briefly.**

Yes.

The bill actually seeks to alter fixed and self-executing provisions of the Constitution which may not be changed or altered except by amendment of the Constitution.

Any change that adds to, reduces, or deletes any of such provisions of the Constitution can be done only through amendment or revision of the same, and not through simple legislation. (Constitution, Article XVII; See Philippine Political Law, Cruz and Cruz, 2014 Edition, page 805; *Lambino v. Commission on Elections*, 505 SCRA 160)

This would be true with respect to the proposals in the bill to increase the number of Supreme Court Justices which, under the Constitution, is fixed at fifteen

(Article VIII, Section 4 [1]), and to remove from the Supreme Court *En Banc* the power to hear and decide cases involving alleged violations of the Constitution, which is expressly assigned to it under the Constitution. (Article VIII, Section 4 [2])

*[Acceptable Additional Answer:* It may be added that the proposal in the bill for the assignment of the five most senior Justices, including the Chief Justice, exclusively to a Special Division that will tackle only constitutional cases constitutes an unlawful encroachment into the rule-making authority of the Supreme Court, on the basis of which it may exclusively determine its procedures and processes. (Constitution, Article VIII, Sections 4 [2] and 5 [5])]

**6. To contain the spread of a virus, and in line with the World Health Organization's declaration of a pandemic, the President declared martial law throughout the entire Philippine archipelago. As an additional justification, the Proclamation declaring martial law cited the possibility that health protocols might not be followed.**

**A law student filed a petition before the Supreme Court questioning the sufficiency of the constitutional and factual bases for the martial law declaration.**

**Does the law student have standing to file this action? Explain briefly.**

Yes.

Under the Constitution, any citizen may file an appropriate proceeding questioning the sufficiency of the factual basis for any proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*. (Article VII, Section 18, 3<sup>rd</sup> paragraph; *Lagman v. Medialdea*, G.R. No. 231658, July 4, 2017)

**7. The Executive Judge of a Regional Trial Court prohibited the conduct of daily prayers for Muslims inside any room of the Hall of Justice even during break time.**

Among Muslims, five daily prayers (salah) are mandatory. In all these daily prayers, Muslims need to face the qiblah. There is a noontime prayer (Zhuhr) and an afternoon prayer (Asr). But unlike the other three prayers, these two can be recited silently, but still on a prayer mat and with body movements.

There is a Supreme Court Resolution that allows Catholic masses to be held during break time inside the Halls of Justice. There was only one dissent to this Resolution on the ground of strict separation of Church and State in relation to acts of worship.

The Executive Judge is a member of a Catholic institution perceived to be conservative.

Did the Executive Judge violate the equal protection clause of the Constitution? Explain briefly.

Yes.

Under the Constitution, the free exercise of religious profession and worship, without discrimination or preference, shall forever be allowed. (Article III, Section 5)

The Executive Judge's prohibition is clearly based on an invalid classification.

There can be no substantial distinction, which is among the requisites for a valid classification in the context of the equal protection clause, between Catholics and Muslims in their free exercise of their religious profession and worship.

The subject prohibition unduly discriminates against Muslims who would not be allowed by reason thereof to pray in their offices, and during their office breaks. Moreover, the implementation of said prohibition against Muslims would necessarily result in the giving of preferential treatment in favor of Catholics whose constitutional right to pray in their offices, and during their office breaks is, as stated, allowed as a measure of religious accommodation.

Accordingly, said prohibition should be considered as an undue and therefore unconstitutional discrimination against Muslims. It is thus a breach of the equal protection clause, in addition to being a violation of the Supreme Court's policy on religious accommodation as pronounced in its Resolution cited in the question. (*Re: Letter of Tony Valenciano*, A.M. No. 10-4-19-SC, March 7, 2017)

**8. A news agency incorporated under Philippine laws won two international awards for its stand on freedom of expression. One of its founding directors even won the Nobel Peace Prize. For championing free expression, it received a substantial investment offer from a British philanthropist.**

**The investment offer comes in the form of funds which can cover at least 80% of the news agency's operations, both in print and online. In**

exchange, however, the British philanthropist would acquire 51% of the news agency's outstanding common and voting stocks, as well as get a seat for the philanthropist's nominee in the news agency's governing board.

**Are the conditions of the investment constitutional? Explain briefly.**

No, they are not.

They are violative of the provision in the Constitution which requires all mass media establishments, including the subject news agency, to be wholly-owned and managed (or 100 per cent owned and managed) by Philippine citizens, or by corporations, cooperatives or associations wholly-owned and managed by such citizens. (Article XVI, Section 11)

*[Acceptable Additional Answer: It is to be additionally noted that among the conditions of the investment offer is the conferment of control over the news agency in favor of the British philanthropist by reason of his acquisition of 51% of the news agency's outstanding common and voting stocks of the same. This is a clear indication of the violation of the aforesaid constitutional prohibition.]*

**9. As a car driver was getting into their car inside the parking area of a mall in Makati, two individuals suddenly came from behind them. One pointed a gun to the car driver's head while the other grabbed the car keys in the driver's hand. The two then sped away with the car.**

After recovering from the initial shock, the driver took their smartphone and opened the app "Find My Car", "Find My Car" is an app that tracks in real time the movement and location of

**a car through a Global Positioning System (GPS) device installed in the car.**

**The driver then went to the nearest police station and showed the officers the current location of the car as shown on their smartphone. The car appeared to stop at a spot in Novaliches, Quezon City.**

**Six hours after the car had been stolen, a combined team of elite police officers from the Highway Patrol Group and the Criminal Investigation Detection Group, by force and without a warrant, searched a private home in Novaliches, Quezon City. The private home was pinpointed by the car's GPS tracker as displayed on the driver's phone.**

**The private home is enclosed by a gate and is equipped with security cameras.**

**In the private home's garage, the police officers found the driver's car, along with two other cars which matched police records of previously stolen motor vehicles. The officers seized and impounded all three cars. Right then and there, they also arrested the owner of the private home, who was subsequently charged with carjacking.**

**Are the seized cars admissible in evidence? Explain briefly.**

**No, they are not.**

**The warrantless search was invalid. The act of the police officers barging into or, with force, entering the private home where the cars were found based purely on**

the information obtained from the subject app but only with respect to the owner's car, and after six hours from the commission of the alleged crime, cannot be considered as falling within the coverage of any of the permissible warrantless searches, which includes searches incidental to a lawful arrest. (See *People v. Alberto II*, G.R. No. 247906, February 10, 2021; see *Pagigan v. People*, G.R. No. 252003, February 10, 2021; *Liwanag v. People*, G.R. No. 249125, April 26, 2021)

The subject warrantless search preceded the warrantless arrest. This is not allowed. It is established that, although a warrantless search and seizure may be allowed as an incident to a valid warrantless arrest, the latter must precede the search and seizure. The process cannot be reversed. (*People v. Chua Ho San*, 308 SCRA 432; *People v. Aruta*, G.R. No. 120915, April 3, 1998; *Dionisio v. People*, G.R. No. 249880, February 17, 2021)

Moreover, it cannot be said that said warrantless arrest was valid, not being either an *in flagrant delicto* arrest or an arrest based on a hot pursuit. (Rules of Court, Rule 113, Section 5) The information that was relayed to the police officers by the owner of the car based on the aforementioned app cannot be considered under the rules as probable cause for either type of warrantless arrests. This constitutes additional reason for the invalidity of the subject warrantless search and seizure, which, to reiterate, could or may have been allowed under the circumstances only if there had been a prior lawful warrantless arrest.

Accordingly, their seizure was unlawful.

They are therefore inadmissible in evidence, following the rule in the Constitution to the effect that any evidence obtained in violation of the rules against un-

reasonable searches and seizures shall be inadmissible for any purpose in any proceeding. (Article III, Section 3 [2], in relation to Section 2)

[Note: The requirements for a valid *in flagrante delicto* arrest are: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer. (Rules of Court, Rule 113, Section 5 (a); *Bocuya v. People*, G.R. No. 241801 (Notice), February 10, 2021)]

[Note: The requisites for a lawful warrantless arrest known as hot pursuit are: (1) an offense has just been committed; and (2) the person making the arrest has personal knowledge of facts indicating that the person to be arrested has committed it. Personal knowledge of facts must be based on probable cause, which means an actual belief or reasonable grounds of suspicion. (Rules of Court, Rule 113, Section 5 (b); *Dionisio v. People*, G.R. No. 249880, February 17, 2021)]

[*Acceptable Additional Answer*: Neither can the search and seizure be justified on the basis of the plain view doctrine, which is usually applied where a police officer is not searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object. It is clear in this case that the police officers were, based on the information given to them by the owner of the car, actually searching for the subject car. Hence, the inapplicability of the plain view doctrine to justify this warrantless search and seizure of the car subject of the app, as well as of the two other cars. (*Liwanag y Liwanag v. People*, G.R. No. 249125 (Notice), April 26, 2021)]

[Note: Under this doctrine, objects falling in the "plain view" of the police officer who has a right to be in the position to have that view, are subject to seizure and may be presented as evidence. It applies when the following requisites concur: 1) the police officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; 2) the discovery of the evidence in plain view is inadvertent; and 3) it is immediately apparent to the police officer that the item he observes may be an evidence of a crime, contraband, or otherwise subject to seizure. (*Pagigan y Dela Peña v. People*, G.R. No. 252003 (Notice), February

10, 2021; *Liwanag y Liwanag v. People*, G.R. No. 249125 (Notice), April 26, 2021)]

[*Acceptable Additional Answer*: It is submitted that, upon receipt of the information derived from the subject app as relayed to the police officers by the owner of the stolen car, which can be considered as probable cause for a search warrant, the police officers ought to or could have applied for such a warrant instead of proceeding to effect a warrantless search and arrest. (See *People v. Martinez*, G.R. No. 191366, December 13, 2010)]

**10. Disappointed that both Houses of Congress are seriously debating a bill seeking to enable absolute divorce, a citizen filed a petition asking the Supreme Court to order Congressional deliberations to stop.**

**Should the petition prosper? Explain briefly.**

No, the petition should not prosper. It cannot be allowed.

It is established that the filing of bills is within the legislative power of Congress and is not subject to judicial restraint. (*In The Matter of Save the Supreme Court Judicial Independence and Fiscal Autonomy Movement v. Abolition of Judiciary Development Fund (JDF) And Reduction of Fiscal Autonomy*, UDK-15143, January 21, 2015; see also *National Food Authority v. Masda Security Agency, Inc.*, G.R. No. 163448, March 8, 2005, cited in *Hacienda Luisita Incorporated v. Luisita Industrial Park Corporation*, G.R. No. 171101, July 5, 2011)

**11. A Senator filed a petition for mandamus to compel a newly elected President to sign, approve, and transmit to the Senate for its ratification the treaty creating the International Criminal Court.**

**Should this petition prosper? Explain briefly.**

No.

The President may not be compelled to submit the treaty to the Senate for its concurrence.

It is within the authority of the President to refuse to submit a treaty to the Senate or, having secured its consent for its ratification, refuse to ratify it. The refusal of a state to ratify a treaty which has been signed in its behalf is a decision which is within the competence of the President alone, which cannot be encroached upon by the courts *via* a writ of *mandamus*. Courts have no jurisdiction over actions seeking to enjoin the President in the performance of his official duties. The writ of *mandamus* prayed for by the petitioners cannot prosper or be granted as it is beyond the jurisdiction of courts to compel the executive branch of the government to transmit the signed text of the treaty to the Senate. (*Pimentel v. Executive Secretary*, G.R. No. 158088, July 16, 2008, 462 SCRA 622, cited in *Pangilinan v. Cayetano*, G.R. Nos. 238875, 239483 & 240954, March 16, 2021)

[Note: Ratification is generally held to be an executive act, undertaken by the head of the state or of the government, as the case may be, through which the formal acceptance of the treaty is proclaimed. (Gerhard von Glahn, *Law Among Nations, An Introduction to Public International Law*, 4th Ed., p. 486) xxx. In our jurisdiction, the power to ratify is vested in the President and not, as commonly believed, in the legislature. The role of the Senate is limited only to

giving or withholding its consent, or concurrence, to the ratification. (Cruz, Isagani, *International Law*, 1985 Ed., p. 175) (*Bayan v. Zamora*, G.R. No. 138570, October 10, 2000, 342 SCRA 449; *Pimentel v. Executive Secretary*, 501 Phil. 303 (2005), cited in *Pangilinan v. Cayetano*, G.R. Nos. 238875, 239483 & 240954, March 16, 2021)]

**12. The United Nations General Assembly unanimously passed a Resolution expressing the commitment of its members to pass law and related policies that would provide incentives for all citizens of the planet to change their lifestyles so that the impending disasters brought about by climate change can be avoided or mitigated.**

**As the principal legal adviser of the Secretary of Foreign Affairs, you are asked this query: Is this General Assembly Resolution a valid source of State obligation under international law? Explain briefly.**

Yes, it can be considered as a valid source of State obligation under international law.

It is to be noted that the subject resolution unanimously approved by the United Nations General Assembly covers only a basic commitment to pass laws and related policies, which may differ or vary in each state, to avoid impending disasters that may be brought about by climate change. This general commitment would be consistent with the universally acknowledged right of all persons and all states to have a balanced and healthful ecology.

This unanimously approved resolution expressing this general commitment can be said to partake of the nature of an international convention establishing a rule, *i.e.*, on the general avoidance of impending disasters that may be brought about by climate change, and

also, by virtue of its unanimous approval, as a generally accepted principle of international law. It is established that such are among the recognized sources of State obligation under international law. (Statute of the International Court of Justice, Article 38)

[Note: The general rule, though, is that the treaty, to be considered a direct source of international law, must be concluded by a sizable number of states and thus reflect the will or at least the consensus of the family of nations. The treaty need not be entered into at the outset by a majority of the states forming the international community. Even if originally agreed upon only by a few states, the treaty may become binding upon the whole world if it is intended to lay down rules for observance by all and it is subsequently signed or acceded to by other states which thereby submit to its provisions. (International Law, Cruz and Cruz, 2020 Edition, page 37)]

[Note: The Rome Statute of the International Criminal Court was adopted by 120 members of the United Nations (UN) on 17 July 1998. It entered into force on 1 July 2002, after 60 States became party to the Statute through ratification or accession. The adoption of the Rome Statute fulfilled the international community's long-time dream of creating a permanent international tribunal to try serious international crimes. The Rome Statute, which established an international criminal court and formally declared genocide, war crimes and other crimes against humanity as serious international crimes, codified generally accepted principles of international law, including customary international laws. The principles of law embodied in the Rome Statute were already generally accepted principles of international law even prior to the adoption of the Statute. Subsequently, the Rome Statute itself has been widely accepted and, as of November 2010, it has been ratified by 114 states, 113 of which are members of the UN.

There are at present 192 members of the UN. Since 113 member states have already ratified the Rome Statute, more than a majority of all the UN members have now adopted the Rome Statute as part of their municipal laws. Thus, the Rome Statute itself is generally accepted by the community of nations as constituting a body of generally accepted principles of international law. The principles of law found in the Rome Statute constitute generally accepted

principles of international law enforceable in the Philippines under the Philippine Constitution. The principles of law embodied in the Rome Statute are binding on the Philippines even if the Statute has yet to be ratified by the Philippine Senate. In short, the principles of law enunciated in the Rome Statute are now part of Philippine domestic law pursuant to Section 2, Article II of the 1987 Philippine Constitution. (J. Carpio, Dissenting Opinion in *Bayan Muna v. Romulo*, 656 Phil. 246, 325-329 (2011) [Per J. Velasco, Jr., En Banc], cited in *Pangilinan v. Cayetano*, G.R. Nos. 238875, 239483 & 240954, March 16, 2021)

[Note: In *Razon, Jr. v. Tagitis*, the Court applied the generally accepted principles of international law and adopted the International Convention for the Protection of All Persons from Enforced Disappearances in defining the phrase “enforced disappearances.”

In 1992, in response to the reality that the insidious practice of enforced disappearance had become a global phenomenon, the UN General Assembly adopted the Declaration on the Protection of All Persons from Enforced Disappearance (Declaration). This Declaration, for the first time, provided in its third preambular clause a working description of enforced disappearance, as follows:

Deeply concerned that in many countries, often in a persistent manner, enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.

Fourteen years after (or on December 20, 2006), the UN General Assembly adopted the International Convention for the Protection of All Persons from Enforced Disappearance (Convention). The Convention was opened for signature in Paris, France on February 6, 2007. Article 2 of the Convention defined enforced disappearance as follows:

For the purposes of this Convention, “enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

The Convention is the first universal human rights instrument to assert that there is a right not to be subject to enforced disappearance and that this right is non-derogable. It provides that no one shall be subjected to enforced disappearance under any circumstances, be it a state of war, internal political instability, or any other public emergency. It obliges State Parties to codify enforced disappearance as an offense punishable with appropriate penalties under their criminal law. It also recognizes the right of relatives of the disappeared persons and of the society as a whole to know the truth on the fate and whereabouts of the disappeared and on the progress and results of the investigation. Lastly, it classifies enforced disappearance as a continuing offense, such that statutes of limitations shall not apply until the fate and whereabouts of the victim are established. (International Law, Cruz and Cruz, 2020 Edition, page 37)]

[Note: While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation — aptly and fittingly stressed by the petitioners — the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and

protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come — generations which stand to inherit nothing but parched earth incapable of sustaining life. The right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment. (*Oposa v. Factoran*, G.R. No. 101083 July 30, 1993]

[*Acceptable Answer*: No, it cannot be considered as a source of State obligation under International Law because it is a mere resolution of the United Nations General Assembly and cannot be said to be among any of the acknowledged sources of international law, which are international conventions, international custom, general principles of international law and judicial decisions and the teachings of the most highly qualified publicists. (Statute of the International Court of Justice, Article 38)]

**2022**

1. A police officer saw Harvey urinating in public. A local ordinance imposes a Php500.00 fine for urinating in public. The police officer shouted at Harvey: *“That is against the law!”* Harvey sarcastically answered: *“No, this is against the wall!”* Then and there, the police officer arrested him and brought him to the police station. At the police station, Harvey was frisked and was found in possession of an unlicensed .38 caliber revolver loaded with five live ammunition. He was subsequently charged with Qualified Illegal Possession of Firearms. When the prosecution offered in evidence the unlicensed firearm and ammunition, the defense objected on the ground that the pieces of evidence are products of an illegal search and seizure. The prosecution contended that the pieces of evidence were lawfully seized after a valid warrantless search incidental to a lawful arrest.

**Was the search and seizure valid? Explain briefly. (5 points)**

Yes, the subject warrantless search and the seizure of the unlicensed revolver were valid because they were done after a prior lawful warrantless arrest.

Harvey was seen, or caught and arrested, by the police officer in the act of violating a local ordinance prohibiting and punishing urinating in public. This can be considered as a valid *in flagrante delicto* arrest for said crime on the basis of Harvey’s overt act of “urinating in public” done in the presence or within the view of

the arresting officer. (Section 5, Rule 113 of the Revised Rules of Criminal Procedure; see *Miguel v. People*, G.R. No. 227038, July 31, 2017; see *Luz v. People*, G.R. No. 197788, February 29, 2012, 667 SCRA 421, 429; *Homar v. People*, G.R. No. 182534, September 2, 2015)

It is established that a search incidental to a lawful arrest is valid. (*People v. Belocura*, G.R. No. 173474, August 29, 2012; *Valdez v. People*, G.R. No. 170180, November 23, 2007)

[Note: In *Miguel v. People* (G.R. No. 227038, July 31, 2017), which significantly also involves “urinating in public,” the accused was arrested by police officers who “simply responded to a purported report of a man showing off his private parts,” on the basis of which, the “the *Bantay Bayan* operatives chanced upon him” as he “went out to the street to urinate.” Thus –

“On the basis of the foregoing testimonies, the Court is inclined to believe that at around past 12 o'clock in the early morning of May 24, 2010, petitioner went out to the street to urinate when the *Bantay Bayan* operatives chanced upon him. The latter then approached and questioned petitioner, and thereafter, went on to search his person, which purportedly yielded the marijuana seized from him. Verily, the prosecution's claim that petitioner was showing off his private parts was belied by the aforesaid testimonies. Clearly, these circumstances do not justify the conduct of an *in flagrante delicto* arrest, considering that there was no overt act constituting a crime committed by petitioner in the presence or within the view of the arresting officer. Neither do these circumstances necessitate a ‘*hot pursuit*’ warrantless arrest as the arresting *Bantay Bayan* operatives do not have any personal knowledge of facts that petitioner had just committed an offense.”

In other words, the police officers sought out the accused based on the “purported report of a man showing off his private parts,” but did not arrest him for “showing off his private parts” or for *actually* urinating in public.

Accordingly, the Court ruled –

“More importantly, the Court simply finds highly implausible the prosecution's claim that a valid warrantless arrest was made on petitioner on account of the alleged public display of his private parts because if it was indeed the case, then the proper charge should have been filed against him. However, records are bereft of any showing that such charge was filed aside from the instant criminal charge for illegal possession of dangerous drugs - thereby strengthening the view that no prior arrest was made on petitioner which led to a search incidental thereto. As stressed earlier, there must first be a lawful arrest before a search can be made and that such process cannot be reversed.”]

**2. Pedro was the accused in a rape case. During the trial, the private complainant testified that on the night of the incident, she was walking home when Pedro, who was her neighbor, suddenly grabbed her and brought her to his house. There, Pedro forcibly had carnal knowledge of her. After the prosecution rested its case, Pedro testified that the sexual intercourse between him and the private complainant was consensual. Eventually, the trial court acquitted Pedro on reasonable doubt and found that the element of force was not established.**

**The People filed a Rule 65 petition for *certiorari* with the Court of Appeals (CA), alleging that the trial court's decision was rendered with grave abuse of discretion because the private complainant's testimony clearly established that Pedro had carnal knowledge of her through force and without her consent. In his comment, Pedro sought to dismiss the petition on the ground of violation of his right against double jeopardy.**

**As the CA, how would you rule on the petition? Explain briefly. (5 points)**

The petition should be dismissed.

Double jeopardy has set in.

A judgment of acquittal is final and is no longer reviewable. (*People v. Terrado*, G.R. No. 148226, July 14, 2008; *Lejano v. People*, G.R. No. 176389, January 18, 2011) A verdict of acquittal is immediately final and a reexamination of the merits of such acquittal, even in the appellate courts, will put the accused in jeopardy for the same offense. (*People v. Court of Appeals*, G.R. No. 159261, February 21, 2007, cited in *People v. Banig*, G.R. No. 177137, August 23, 2012)

The only instance when an accused can be barred from invoking his right against double jeopardy is when it can be demonstrated that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, such as where the prosecution was not allowed the opportunity to make its case against the accused or where the trial was a sham. (*Bangayan v. Bangayan*, G.R. No. 172777, October 19, 2011; *People v. Laguio*, G.R. No. 128587, March 16, 2007)

It is evident that the prosecution's Rule 65 petition for *certiorari* is premised only on the allegation that the trial court erred in its finding that "the element of force was not established," and actually only seeks "a reexamination of the merits" of the subject acquittal.

It is submitted that this cannot be considered as grave abuse of discretion which can be allowed to provide for a review of said acquittal.

**3. A city ordinance was passed providing for the removal, at the owner's expense, of: (i) all outdoor advertising materials displayed or exposed**

to the public in designated regulated areas such as residential zones, bridges, and along main city streets; and (ii) billboards of substandard materials, or which obstruct road signs and traffic signals. Failure to comply with said ordinance authorizes the mayor, assisted by the police, to implement the removal of the non-compliant materials. ABC Ad Agency, owner of the billboards removed by the city, filed a complaint because, considering the nature of its business, the removal of its billboards amounted to taking of private property without just compensation.

**Will the complaint prosper? Explain briefly. (5 points)**

No, the complaint will and should not prosper.

It should be dismissed.

The removal under the ordinance of the subject billboards does not amount to taking of private property under eminent domain which cannot be done or allowed without just compensation.

The ordinance partakes of the nature of a properly delegated and valid exercise of the police power, clearly intended to promote the general welfare based on lawful means which can be considered as reasonably necessary for the accomplishment of said purpose and not unduly oppressive upon individuals. (*Evasco v. Montanez*, G.R. No. 199172, February 21, 2018)

Accordingly, the removal of said billboards provided for under the ordinance constitutes a valid taking under the city's police power.

It is established that a taking of private property under the police power does not require the payment of just compensation. (Constitutional Law, Cruz and Cruz, 2015 Edition, page 81; *Southern Luzon Drug Corporation v. The Department of Social Welfare and Development*, G.R. No. 199669, April 25, 2017, citing *Manila Memorial Park, Inc. v. Secretary of the Department of Social Welfare and Development*, G.R. No. 175356, December 3, 2013)

**4. [This item has two questions.] As a reaction to China's occupation of the Spratly Islands, a rally was organized by various civil society agrupations at a vacant private lot. Before the event could even start, the police ordered the organizers not to proceed with the program because of security reasons and the fact that the group did not have a mayor's permit. When the organizers still proceeded with the rally, the police dispersed the crowd and arrested the leaders of the group.**

**(a) Did the actions of the police constitute a violation of the group's constitutional right to peacefully assemble? Explain briefly.**

Yes, the actions of the police constituted a violation of the group's constitutional right to peacefully assemble considering that the rally was at a vacant private lot. Accordingly, a mayor's permit for the same was not necessary. (B.P. Blg. 880, Section 4; *Bayan v. Ermita*, G.R. No. 169838, April 25, 2006, 488 SCRA 226)

[*Acceptable Additional Answer*: Indeed, the use of public places for public meetings or rallies can only be reasonably regulated, and not absolutely prohibited. The clear and present danger rule should be applied in allowing said regulations or prohibitions. (See *Primitias v. Fugoso*, 80 Phil. 71 and *Reyes v. Bagatsing*, 125 SCRA 553)]

**(b) Would your answer be the same if the rally was held at a freedom park? Explain briefly. (5 points)**

Yes, the actions of the police would similarly constitute a violation of the group's constitutional right to peacefully assemble if the rally were held at a freedom park.

Section 4 of B.P. Blg. 880 also provides that a mayor's permit is or would not be necessary if a rally were to be held in a freedom park, which is required under Section 15 of said law to be established or designated by every municipality or city.

**5. The K-12 Law was passed with the objective to enhance the Philippine educational system by strengthening its curriculum and adding two years of high school. Parents of students in a science high school sought to have the law declared unconstitutional citing the equal protection clause of the Constitution. As well, the parents averred that the law should not apply to their children because the latter belong to a distinct class, being gifted and advanced for their age, with the capability to learn better and faster compared to other high school students.**

**Is the contention of the parents tenable? Explain briefly. (5 points)**

No, the contention of the parents is not tenable.

The K-12 Law is not violative of the equal protection clause.

The equal protection clause, which is directed principally against undue favor and individual or class privilege, is not intended to prohibit legislation which is limited to the object to which it is directed or by the territory in which it is to operate. It does not require absolute equality, but merely that all persons be treated alike under like conditions both as to privileges conferred and liabilities imposed. The equal protection clause of the Constitution does not forbid classification for so long as such classification is based on real and substantial differences having a reasonable relation to the subject of the particular legislation. If classification is germane to the purpose of the law, concerns all members of the class, and applies equally to present and future conditions, the classification does not violate the equal protection guarantee. (*JMM Promotion and Management, Inc. v. Court of Appeals*, 329 Phil. 87 [1996], cited in *Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education*, G.R. No. 216930, October 9, 2018)

Valid classifications require *real* and *substantial* differences to justify the variance of treatment between the classes. The students of the science high school cannot not offer any substantial basis for the recognition of a valid classification between them and the rest of the high school students in the Philippines. Otherwise stated, the equal protection clause would, in fact, be violated if the assailed law treated the science high school students differently from the rest of the high school students in the country. (*Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education*, G.R. No. 216930, October 9, 2018)

**6. President Hidalgo, who wanted the Philippines to be part of the International Criminal Court once again, signed the Philippines' ratification of the Rome Statute. A copy of the treaty, along with the ratification, was sent to the Senate for its concurrence. Senator Dalisay filed a proposed "Resolution" for the Senate to concur with the Philippines' ratification. The proposed "Resolution" was read three times on three separate days. Three days before the third reading, printed copies of the proposed "Resolution" in its final form were distributed to all the Senators. The Senators then unanimously approved the "Resolution", and the Senate expressed its concurrence with the treaty's ratification. A civil society group filed a petition before the Supreme Court questioning the validity of the Senate's concurrence on the ground that the "Resolution" was void because only a "bill" becomes a law.**

**Rule on the petition. Explain briefly. (5 points)**

The petition should be dismissed.

Pursuant to Article VII, Section 21 of the Constitution, treaties become valid and effective upon the Senate's concurrence. Upon such concurrence, the treaty becomes legally effective and binding by transformation. It then has the force and effect of a statute enacted by Congress. (*Pharmaceutical and Health Care Association of the Philippines v. Duque III, et al.*, G.R. No. 173034, October 9, 2007, cited in *Pangilinan v. Cayetano*, G.R. Nos. 238875, 239483 & 240954, March 16, 2021)

Considering that the Senate had duly concurred in the subject treaty, the same can therefore be properly considered as law.

[*Acceptable Additional Answer*: Concurring in a treaty or international agreement is essentially legislative in character. (*Bayan v. Zamora*, G.R. No. 138570, October 10, 2000, cited in *Pangilinan v. Cayetano*, G.R. Nos. 238875, 239483 & 240954, March 16, 2021)]

[Note: Under the last sentence of Article VI, Section 23 (2) of the Constitution, the resolution of the Congress withdrawing a law conferring upon or delegating in favor of the President emergency powers in times of war or other national emergency can also be considered as a law, because it would have the effect of repealing said prior emergency powers law.]

**7. After Martial Law was declared over Mindanao, police officers arrested Jose Maria without any warrant while shopping for groceries at a supermarket in Mindanao. Jose Maria questioned the validity of the arrest as he had no pending case and was not committing any crime at the time of his arrest. The police officers countered that the declaration of Martial Law suspended the privilege of the writ of *habeas corpus*, and as a result, they could effect warrantless arrests.**

**Is the contention of the police officers correct? Explain briefly. (5 points)**

No, it is not.

Under Section 18 of Article VII of the Constitution, a state of martial law does not automatically suspend the privilege of the writ of *habeas corpus*. A separate or concurrent proclamation by the President would be necessary for such suspension.

Accordingly, the police officers cannot justify their warrantless arrests on this basis.

8. A law was passed exempting the Land Bank of the Philippines (LBP) from the payment of filing fees in collection cases on loans granted by LBP to its borrowers. The Office of the Court Administrator (OCA) of the Supreme Court issued a Memorandum requiring all courts to continue to collect filing fees in collection cases filed by LBP, stating that only the Supreme Court can decide on exemptions from payment of filing fees. LBP assails the OCA Memorandum, arguing that the exemption found in the law is within the plenary power of Congress to enact legislation. Moreover, the law was approved by the President. Thus, LBP argues that the act of the OCA violates the principle of separation of powers.

**Is LBP correct? Explain briefly. (5 points)**

No, LBP is not correct.

It is the law, and not the Memorandum of the Office of the Court Administrator, which is violative of the principle of separation of powers.

The Judiciary's fiscal autonomy under Section 3 of Article VIII of the Constitution entitles it to levy, assess and collect fees. (*Bengzon v. Drilon*, G.R. No. 103524 April 15, 1992) Any law which provides for an exemption from said fees (as, for instance, in favor of government-owned or controlled corporations and local government units) would be "constitutionally infirm for it impairs the Court's guaranteed fiscal autonomy and erodes its independence." (*Re: Petition for Recognition of*

*the Exemption of the Government Service Insurance System (GSIS) for Payment of Legal Fees*, A.M. No. 08-2-01-0, 11 February 2010, 612 SCRA 193, at 209, cited in *In the Matter of Clarification of Exemption from Payment of All Court and Sheriff's Fees*, A.M. No. 12-2-03-0, March 13, 2012; see also *In Re: Exemption of the National Power Corporation From Payment of Filing/Docket Fees*, A.M. No. 05-10-20-SC, March 10, 2010)

**9. During a press conference, President Acosta explained that the Executive Department can temporarily take over the operation of any privately owned public utility or business affected with public interest to address the shortage of hospital beds occasioned by the COVID-19 pandemic. She invokes Article XII, Section 17 of the 1987 Philippine Constitution, which provides that: "In times of national emergency, when the public interest so requires, the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest."**

**Is President Acosta correct? Explain briefly. (5 points)**

No, she is not correct.

Although the President may proclaim a state of emergency, as this is among her recognized ordinance powers under the general provisions of the Administrative Code, she cannot, without a prior law, exercise emergency powers. Said powers can be exercised by her only on the basis of a prior valid delegation of the same in her favor under either Section 23 (2) of Article VI or

Section 17 of Article XII of the Constitution. (*David v. Arroyo*, G.R. No. 171396, May 3, 2006)

**10. Lemuel was born in 1988 to a Filipino mother and an American father, as shown in his birth certificate. His parents, however, were not married to each other. Subsequently, his father petitioned for him, as a result of which Lemuel received a certificate of American citizenship and an American passport. In 2022, Lemuel filed a certificate of candidacy to run as Representative of the lone district of Batanes. Ayla, a Filipino citizen and resident of Batanes, filed a petition for disqualification with the Commission on Elections alleging that Lemuel is ineligible to run for public office in the Philippines as Lemuel is an American citizen.**

**Is Ayla correct? Explain briefly. (5 points)**

Ayla is not correct.

Lemuel, whose mother is a Filipina, is a natural-born Filipino citizen (Constitution, Article IV, Section 1 [2], in relation to Section 2)

He is eligible to run as Representative of the lone district of Batanes.

A dual citizen, as in the case of Lemuel, by reason of his having received, upon petition of his American father, a certificate of American citizenship and an American passport, and not having renounced his Philippine citizenship, can be considered as solely a natural-born Philippine citizen upon his filing of a certificate of candidacy for a position which requires natural-born

citizenship as a qualification. (*Mercado v. Manzano*, G.R. No. 135083, May 26, 1999)

By declaring in his certificate of candidacy that he is a Filipino citizen; that he is not a permanent resident or immigrant of another country; that he will defend and support the Constitution of the Philippines and bear true faith and allegiance thereto and that he does so without mental reservation, he can, as far as the laws of this country are concerned, be considered as having effectively repudiated his American citizenship and anything which he may have said before as a dual citizen. (*Valles v. Commission on Elections*, G.R. No. 137000, August 9, 2000; *Cordora v. Commission on Elections*, G.R. No. 176947, February 19, 2009)

[Note:...the cited portions of the INA, which refers to automatic citizenship of a child upon the application of his or her American citizen parent, even supports the conclusion that, if, indeed, some positive acts were performed in the acquisition of petitioner's US citizenship, the same could not have been performed by her but rather, by her American parent. Notably, the records are bereft of any evidence which would indicate to the slightest degree that petitioner petitioned to acquire her US citizenship or that she went through the pertinent naturalization process. x x x.

Black's Law Dictionary defines naturalization as "the act of adopting a foreigner and clothing him [or her] the privileges of a native citizen." In *Garcia v. Recio*, the Court defined naturalization as a legal act of adopting an alien and clothing him [or her] with the political and civil rights belonging to a citizen. It implies the renunciation of a former nationality and the fact of entrance into a similar relation towards a new body politic. Therefore, naturalization is a process through which a State confers an outsider, *i.e.*, a non-citizen/alien/foreigner, with rights enjoyed by its citizens. Based on the definition of naturalization, an insider, *i.e.*, a citizen, is disqualified from undergoing naturalization proceedings. In this regard, the Court recognizes that naturalization is superfluous for persons who are already citizens of a particular State and that it is absurd for a State to issue a certificate of naturalization to its own citizens.

Thus, the Court finds that petitioner, as shown by evidence, never underwent such process. The CRBA document itself, which was used by the COMELEC *En Banc* as basis to declare that petitioner was a naturalized dual citizen, actually proves the opposite. Interestingly, this CRBA was presented before, and was considered by, the COMELEC, yet the latter chose to ignore the literal contents of the same. (*Gana-Carait v. Commission on Elections*, G.R. No. 257453, August 9, 2022)]

[Note: Indeed, R.A. 9225 covers only natural-born Filipinos who personally and voluntarily become naturalized foreign citizens, thereby possessing simultaneously two or more citizenships and allegiances. It is not concerned with dual citizenships acquired upon birth or due to the circumstances of one's birth, which are involuntary and a product of the concurrent application of different laws of two or more states. Indeed, in *Cordora*, although Tambunting's American father performed the positive act of petitioning Tambunting under American laws, the Court nevertheless held that he did not acquire his foreign citizenship through naturalization and, thus, R.A. 9225 does not apply to him. (*Gana-Carait v. Commission on Elections*, G.R. No. 257453, August 9, 2022)]

**11. The Commission on Higher Education (CHED) directed higher education institutions to remove materials “that contain pervasive ideologies of Communist-Terrorist Groups” from their libraries. According to the CHED, the materials need to be removed because these would radicalize students against the government.**

**Is the CHED directive a violation of the institutions' academic freedom? Explain briefly. (5 points)**

Yes, the CHED directive which provides for the removal of all materials pertinent to communist-terrorist groups can be considered as violative of academic freedom, which covers the fundamental competence of educational institutions to determine for them-

selves, among others, what may be taught, and how they shall teach. (*Miriam College Foundation v. Court of Appeals*, 348 SCRA 265, December 15, 2000; *Garcia v. the Faculty Admission Committee, Loyola School of Theology*, 68 SCRA 277, November 28, 1975; *Regino vs. Pangasinan Colleges of Science and Technology*, G.R. No. 156109, November 18, 2004)

**12. The Congress passed a law prohibiting the sale and distribution of alcoholic drinks within 100 meters from religious and educational institutions. A city enacted an ordinance increasing the coverage of the prohibition to 150 meters from any religious and educational institution.**

**Is the city ordinance valid? Explain briefly. (5 points)**

No, the ordinance is not valid because it amends or expands (as it increases to 150 meters) the coverage of the law, which limits and prohibits the sale and distribution of alcoholic drinks to only within 100 meters from religious and educational institutions. (*Batangas CATV, Inc. v. Court of Appeals*, G.R. No. 138810, September 29, 2004; *Magtajas v. Pryce Properties Corp., Inc., the Sangguniang Panlungsod of Cagayan de Oro City*, G.R. No. 111097, July 20, 1994)

For an ordinance to be a valid exercise of the city's police power under Section 16 of the Local Government Code, known as the *general welfare clause*, it must not only be within its corporate powers to enact and be passed according to the procedure prescribed by law, but must also conform to the following substantive requirements: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must

not be partial or discriminatory; (4) must not prohibit but may regulate trade; (5) must be general and consistent with public policy and (6) must not be unreasonable. (*Social Justice Society v. Atienza*, G.R. No. 156052, February 13, 2008)

**13. Pursuant to a law ordering the fixing of “just and reasonable standards, classifications, regulations, practices, or services to be furnished, observed and imposed by operators of public utility vehicles,” the Land Transportation Franchise and Regulatory Board (LTFRB) promulgated and published a regulation that “no car beyond six years shall be operated as a taxi.” Taxi operators assailed the validity of the regulation contending that procedural due process was violated because position papers were not asked of them and no notice was given to them prior to the issuance of the regulation.**

**Were the taxi operators denied procedural due process? Explain briefly. (5 points)**

No, they were not denied procedural due process.

Previous notice and hearing, including the submission of position papers, are not essential to the validity of general administrative rules or regulation, unless the law provides otherwise. (*Central Bank vs. Hon. Cloribel and Banco Filipino*, 44 SCRA 307, cited in *Taxi Cab Operators Association v. Board of Transportation*, G.R. No. L-59234, September 30, 1982; see *Abella v. Civil Service Commission*, G.R. No. 152574, November 17, 2004, 442 SCRA 507; *Dagan v. Philippine Racing Commission*, G.R. No. 175220, February 12, 2009)

[Note: The penalty for failure on the part of the government to consult could only be reflected in the ballot box and would not nullify government action. (*Council of Teachers and Staff of Colleges and Universities of the Philippines v. Secretary of Education*, G.R. No. 216930, October 9, 2018, citing *Anak Mindanao Party-List Group v. Ermita*, G.R. No. 166052, August 29, 2007, 558 Phil. 338, 363)]

[*Acceptable Answer*: Yes, their right to procedural due process was violated because they were not given a real opportunity to present their views or position papers on the regulation.]

Procedural due process means compliance with the procedures or steps, even periods, prescribed by the statute, in conformity with the standard of fair play and without arbitrariness on the part of those who are called upon to administer it. (*Tatad v. Sandiganbayan*, 242 Phil. 563, 575-576 [1988], cited in *Alliance for the Family Foundation, Philippines, Inc. v. Garin*, G.R. No. 217872, August 24, 2016)

It is provided under the Administrative Code (Bk. VII, Ch. 2, § 9) that before a legislative rule is adopted, interested parties are required to be given the opportunity to submit their views prior to its adoption. (See *Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary*, G.R. No. 108524, November 10, 1994, 238 SCRA 63)]

**14. A foreign commercial ship was spotted by the Philippine Coast Guard dumping garbage and toxic waste 20 nautical miles from Nasugbu, Batangas, the nearest coastline of the Philippines. The officers of the ship were arrested and charged in the Regional Trial Court (RTC) of Batangas for violation of environmental laws of the Philippines. The officers of the ship filed a motion to dismiss the case on the ground that Philippine courts do not have territorial jurisdiction over the case since the vessel was sailing outside the territorial sea of the Philippines when the arrest was made.**

**Is the ground to dismiss correct? Explain briefly. (5 points)**

No, it is not correct.

It is provided under Article 33 of the United Nations Convention on the Law of the Sea that, in a zone contiguous to its territorial sea, extending up to 24 nautical miles from the baselines from which the breadth of the territorial sea is measured, and described as the contiguous zone, the coastal State may exercise the control necessary to: (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea; (b) punish infringement of the above laws and regulations committed within its territory or territorial sea. (See *Magallona v. Ermita*, G.R. No. 187167, August 16, 2011)

Accordingly, the environmental act or offense committed 20 nautical miles from the nearest coastline of the Philippines, or within its contiguous zone, is well within its territorial or protective jurisdiction.

**15. [This item has two questions.] Philippine Medical Center (PMC) is a government hospital created by law to provide healthcare to the general public, especially the less fortunate. To enable PMC to perform its mandate, the national government provided the initial capital, land, buildings, and equipment to PMC. PMC's charter also authorized it, acting through its Board of Trustees: to acquire property; to enter into contracts; to mortgage, encumber, lease, sell, convey, or dispose of its properties; and to do other acts necessary to accomplish its purposes and objectives.**

**Among the properties of PMC are five lands and buildings located in Quezon City. The Quezon City assessor issued notices of assessment for real property taxes (RPT) against PMC's properties that are being leased to private concessionaires. According to the city assessor, PMC's properties leased to private entities are subject to RPT because these properties are not being exclusively used for charitable purposes. PMC, on the other hand, claims that, as a government instrumentality imbued with corporate powers, it is exempt from RPT.**

**(a) Is PMC liable for the assessed RPT over the leased properties? Explain briefly.**

Yes, it is liable for real property taxes.

Even if it were a government hospital basically established as a charitable institution, those portions of its real property that are leased to private entities are not exempt from real property taxes as these are not actually, directly and exclusively used for charitable purposes. (*Lung Center of the Philippines v. Quezon City*, G.R. No. 144104, June 29, 2004)

**(b) Supposing PMC is correct that it is not liable for RPT, may the city assessor assess the lessees for the RPT due on PMC's leased properties? Explain briefly. (5 points)**

Yes, the lessees may be so assessed by the city assessor.

Section 234 (a) of RA 7160 exempts real property owned by the Republic from real property taxes except

when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person. A government instrumentality, though vested with corporate powers, is exempt from real property tax but the exemption shall not extend to taxable private entities to whom the beneficial use of the government instrumentality's properties has been vested. (See *Philippine Heart Center v. Local Government of Quezon City*, G.R. No. 225409, March 11, 2020, citing *Lung Center of the Philippines v. Quezon City*, G.R. No. 144104, June 29, 2004; *Government Service Insurance System v. City Treasurer and City Assessor of the City of Manila*, 623 Phil. 964 [2009]; *Metropolitan Waterworks and Sewerage System (MWSS) v. Local Government of Quezon*, G.R. No. 194388, November 7, 2018; see *Light Rail Transit Authority v. City of Pasay*, G.R. No. 211299, June 28, 2022)

## 2023

1) As an incentive for Filipino nurses to remain or be employed in the Philippines, the “*Ang Nars Incentives Act of 2023*” was approved by the President. The law allows children of any nurse to be enrolled in any private tertiary institution without need of taking any entrance examination provided the child maintains the required passing average grade each year. A 70% tuition waiver for each child shall be extended by the institution and 50% of the tuition waiver may be creditable to any national taxes owed by the institution to the government. Is the law constitutional? Explain briefly.

The law is unconstitutional. It is an invalid exercise of the police power.

While it may be considered as compliant with the first requisite for the validity of a police power measure, in that it promotes the interests of the public in general, as opposed to those of a particular class, considering that it encourages enrollment in tertiary courses and promotes education, it however fails the second requisite.

The means employed cannot be considered as reasonably necessary for the attainment of the intended purpose of the law. Enrollment of the children of nurses in any tertiary school, even for nursing courses, cannot be tenably considered a guarantee that their parents who are nurses will remain or be employed here; that those who may obtain nursing degrees will pass the licensure examinations for them to become such, or that they will thereafter stay or remain and work in our country to join or increase our nursing work force.

Moreover, the prescribed 70% tuition discount is unduly oppressive upon the tertiary, including nursing, educational

institutions, even if one-half of said discount would be allowed to be converted into tax credits. It unreasonably deprives them of a reasonable return on their investments or in terms of profits.

The law, which requires admission for enrollment the children of professional nurses, can also be considered as an unlawful impairment of the academic freedom of tertiary, including nursing, schools which would be deprived of their prerogative to choose who they may accept for enrollment in their schools based on their enrollment standards.

[*Acceptable Answer:* The law is unconstitutional for being violative of the equal protection clause.

The segregation of the children of “any nurse” for purposes of exempting them from entrance examinations “in any private tertiary institution” (apparently for enrollment in any course, and not only for purposes of obtaining a degree in nursing) and the provision for the prescribed “tuition waiver” constitutes an invalid classification for the following reasons:

There is or can be no substantial distinction between said children of nurses and other children seeking tertiary education. This is applicable as well to the giving of the prescribed tuition discount.

Moreover, these benefits, *i.e.*, exemption from entrance examinations and tuition discount provided for in the law, cannot be said to be relevant or germane to the announced purpose of the law, which is to provide “an incentive for Filipino nurses to remain or be employed in the Philippines.” The exemption from entrance examinations and tuition discount under the law cannot be reasonably related to any assurance for said children of nurses to remain and work in the country, particularly as nurses, after they would have obtained their tertiary degrees.]

2) Sulu Second District Representative Alfonso died during the second year of his term. House Speaker Rodil then designated Sulu First District Representative Midas as the legislative caretaker for the remaining period of the term of Alfonso. Upon the prodding of majority of the constituents of the Sulu Second District who are invoking their right to representation, the members of the party of Alfonso filed a petition before the Supreme Court for the issuance of a writ of *mandamus* to compel Rodil to call for a special election in their district. Will the petition prosper? Explain.

No, the petition will not prosper.

The petitioners are not proper parties, which is among the requisites for judicial review. They cannot be considered as possessing the requisite *locus standi* to file and pursue said petition, having a mere generalized interest in the special election prayed for in their petition. (See *Lozada v. Commission on Elections*, G.R. No. L-59068 January 27, 1983.) They therefore cannot properly maintain that they have a clear right to the writ of *mandamus* prayed for by them in their petition. (See *De Leon v. Duterte*, G.R. No. 252118, May 8, 2020.)

While there may be a law mandating the conduct of special elections to fill vacancies in the Congress, the same still cannot be insisted upon without a prior or the requisite resolution from the Congress or, in this case, the House of Representatives, which must be thereafter properly sent to the Commission on Elections. Rodil, the Speaker, is, under the law, allowed to issue a certification on the vacancy only when the House is in recess. It is submitted that the promulgation by the House of said resolution, and the issuance by Rodil of the certification on the vacancy if the House is in recess are, not being ministerial duties, not compellable by *mandamus*.

Moreover, the holding of the special election prayed for by the petitioners would obviously require appropriations, which can be provided only by law, or by the Congress. "The power to appropriate is the sole and exclusive prerogative of the legislative body, the exercise of which may not be compelled through a petition for *mandamus*." (See *Lozada v. Commission on Elections*, G.R. No. L-59068 January 27, 1983; see also *In The Matter of Save the Supreme Court Judicial Independence and Fiscal Autonomy Movement v. Abolition of Judiciary Development Fund (JDF) And Reduction of Fiscal Autonomy*, UDK-15143, January 21, 2015; see also *National Food Authority v. Masda Security Agency, Inc.*, G.R. No. 163448, March 8, 2005, cited in *Hacienda Luisita Incorporated v. Luisita Industrial Park Corporation*, G.R. No. 171101, July 5, 2011.)

[Note: "As voters, neither have petitioners the requisite interest or personality to qualify them to maintain and prosecute the present petition. The unchallenged rule is that the person who impugns the validity of a statute must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement. In the case before Us, the alleged inaction of the COMELEC to call a special election to fill-up the existing vacancies in the Batasan Pambansa, standing alone, would adversely affect only the generalized interest of all citizens. Petitioners' standing to sue may not be predicated upon an interest of the kind alleged here, which is held in common by all members of the public because of the necessarily abstract nature of the injury supposedly shared by all citizens. Concrete injury, whether actual or threatened, is that indispensable element of a dispute which serves in part to cast it in a form traditionally capable of judicial resolution. When the asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction." (*Lozada v. Commission on Elections*, G.R. No. L-59068 January 27, 1983, citing *Schlesigner vs. Reservist Comm. to Stop the War*, 418 U.S. 208, 94 S Ct. 2925, 41 F Ed. 2d 706)]

[Note: “As taxpayers, petitioners may not file the instant petition, for nowhere therein is it alleged that tax money is being illegally spent. The act complained of is the inaction of the COMELEC to call a special election, as is allegedly its ministerial duty under the constitutional provision above cited, and therefore, involves no expenditure of public funds. It is only when an act complained of, which may include a legislative enactment or statute, involves the illegal expenditure of public money that the so-called taxpayer suit may be allowed. What the case at bar seeks is one that entails expenditure of public funds which may be illegal because it would be spent for a purpose that of calling a special election which, as will be shown, has no authority either in the Constitution or a statute.” (*Lozada v. Commission on Elections*, G.R. No. L-59068 January 27, 1983)]

[Note: “Mandamus will not lie against the legislative body, its members, or its officers, to compel the performance of duties purely legislative in their character which therefore pertain to their legislative functions and over which they have exclusive control. The courts cannot dictate action in this respect without a gross usurpation of power.” (*Vera v. Avelino*, G. R. No. L-543. August 31, 1946, where the Supreme Court applied this principle on a matter pertaining to the membership of the Congress.)]

[*Acceptable Answer*: Yes, the petition should prosper.]

Under Section 1 of Republic Act No. 6645, “in case a vacancy arises in the Senate at least eighteen (18) months or in the House of Representatives at least (1) year before the next regular election for Members of Congress, the Commission on Elections, upon receipt of a resolution of the Senate or the House of Representatives, as the case may be, certifying the existence of such vacancy and calling for a special election, shall hold a special election to fill such vacancy. If Congress is in recess, an official communication on the existence of the vacancy and call for a special election by the President of the Senate or by the Speaker of the House of Representatives, as the case may be, shall be sufficient for such purpose. The Senator or Member of the House of Representatives thus elected shall serve only for the unexpired term.”

Because the acts indicated in this provision are couched in mandatory language, it is submitted that they are ministerial and therefore compellable duties, which may make for a valid issuance of a writ of *mandamus* directing their performance.]

**3) In the 2022 elections, the formidable tandem of Priscilla and Teodoro ran for and won as President and Vice-President, respectively, of the Republic of the Philippines. On her 15th month in office, President Priscilla suddenly resigned due to health reasons, paving the way for Vice-President Teodoro to assume office as President. President Teodoro then nominated incumbent Senator Angel, who was President of the Philippines from 2010 to 2016, to take his place as Vice-President. Voting separately and by the vote of a majority of all the members of both Houses of the Congress, Senator Angel was confirmed, and henceforth assumed office as the Vice-President. In the coming 2028 elections, may both President Teodoro and Vice-President Angel legally run for President of the Philippines? Explain your answer briefly.**

No they may not.

Teodoro is ineligible because he served as the successor president for more than four years. The Constitution provides that any vice-president, or no person, “who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.”

Angel, who was the President from 2010-2016, also may not run for President because the Constitution provides that anyone who has been the president “shall not be eligible for any reelection.” (Article VII, Section 4)

4) In a fresh attempt by the President to seek a just and lasting peace with the *Kapisanan ng Malayang Pilipinas (KMP)*, a Government Negotiating Panel (GNP) was constituted to explore options to end the internal armed conflict in the country. After months of negotiations, the GNP and KMP leadership agreed on the crucial provision in the chapter on Transitional Justice of the Agreed Framework, which states: “*The Parties hereby recognize the need to arrive at genuine criminal justice. Towards this end, the GNP shall make the appropriate representation with the Senate and House of Representatives aimed at the passage of an amnesty law.*” The Philippine Constitution Association questioned the provision as unconstitutional for encroaching on the clemency power of the President. On the other hand, the Office of the Solicitor General argued that the present case does not present a justiciable controversy. Who is correct? Explain your answer.

The Philippine Constitution Association and the Office of the Solicitor General are both correct.

The objection of the Philippine Constitution Association against the subject provision can be considered as having proper basis because the Congress is without constitutional power or authority to provide by law for any grant or decree of amnesty. This is covered by the pardoning power which, under the Constitution, is exclusive, or pertains solely, to the President. The Congress is limited only to providing its concurrence for the effectivity of any amnesty that may be granted by the President. (Constitution, Article VII, Section 19) It is established that “the exercise of the pardoning power is discretionary in the President and may not be interfered with by Congress or the Court, except only when it exceeds the limits provided for by the Constitution.” (*Risos-Vidal v. Commission on Elections*, G.R. No. 206666, January 21, 2015) “The pardoning power cannot be restricted or controlled

by legislative action." (*Cristobal v. Labrador*, 252 Phil. 192, 207; *Pelobello v. Palatino*, 72 Phil. 441) Accordingly, it is submitted that the competence given under the subject agreement to the GNP to submit to the Congress such a proposal leading to an amnesty "law" may, in itself, as well be considered as unconstitutional, or without proper constitutional basis, because such "representation" can be considered as potentially leading toward an encroachment upon the pardoning power of the President.

However, the Office of the Solicitor General is also correct because the subject of the petition, on the authority of the GNP to make "the appropriate representation" with the Congress for the "passage of an amnesty law," and which would at best allow or involve only the submission to the Congress of a proposal for such a law, "does not present a justiciable controversy," which has been held as referring to "an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory." (*Republic of the Philippines v. Roque*, G.R. No. 204603, September 24, 2013)

[*Acceptable Answer*: The Philippine Constitution Association is wrong. The Office of the Solicitor General is correct.

While the objection of the Philippine Constitution Association against the subject provision can be considered as having proper basis because the Congress is without constitutional power or authority to provide by law for any grant or decree of amnesty, its power with respect to the same being limited only to providing its concurrence for the effectivity of any amnesty that may be granted by the President (Constitution, Article VII, Section 19), the subject provision in the proposed agreement merely entitles the GNP to "make the appropriate representation" with the Congress for the "passage of an amnesty law." Such a proposal therefore cannot, on its own, have any effect whatsoever. Accordingly, it cannot be considered as an encroachment "upon the clemency power of the President."

The Office of the Solicitor General is however correct because the subject of the petition, or the authority of the GNP to make “the appropriate representation” with the Congress for the “passage of an amnesty law,” which would at best allow or involve only the submission to the Congress of a proposal for such a law, “does not present a justiciable controversy,” which has been held as referring to “an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory.” (*Republic of the Philippines v. Roque*, G.R. No. 204603, September 24, 2013)

[Note: “The President may not, of course, unilaterally implement the solutions that she considers viable, but she may not be prevented from submitting them as recommendations to Congress, xxx. While the President does not possess constituent powers xxx she may submit proposals xxx in a manner that does not involve the arrogation of constituent powers.” (*The Province of North Cotabato v. The Government of the Republic of the Philippines*, G.R. No. 183591, October 14, 2008)]

[*Additional Acceptable Answer on the Position Taken by the Office of the Solicitor General*: The contention of the Office of the Solicitor General that the petition of the Philippine Constitution Association does not present a justiciable controversy can be considered as incorrect because the subject of the same, *i.e.*, the authority of the GNP to make “the appropriate representation” with the Congress for the “passage of an amnesty law,” can be considered as covered by the recognized exceptions to the rule that a judicial controversy is “an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory” (*Republic of the Philippines v. Roque*, G.R. No. 204603, September 24, 2013), to wit, “the exceptional character of the situation and the paramount public interest is involved.” It is submitted that the matter of legislative encroachment into the President’s pardoning power can be considered as an issue of “paramount public interest.” In addition, it can also be maintained that such a law based on said proposal of the GNP can be considered as (or potentially) a “grave violation of the Constitution,” for evidently being inconsistent with the same. (See *David v. Arroyo*, G.R. No. 171396, May 3, 2006) Indeed, it has been held “that the

law or act in question is not yet effective does not negate ripeness,” and “when an act of a branch of government is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute.” (*The Province of North Cotabato v. The Government of the Republic of the Philippines*, G.R. No. 183591, October 14, 2008)]

**5) Section 1, Article IV on Bangsamoro Parliament Electoral Tribunal of the Proposed Electoral Code of the Bangsamoro Autonomous Region for Muslim Mindanao states:**

***“Section 1. Creation and Jurisdiction. – The Bangsamoro***

***Parliament shall have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of the members of the Parliament.”***

**Is the proposed provision constitutional? Explain.**

No, it is not.

The proposed provision is unconstitutional because it removes from the Commission on Elections its “exclusive original jurisdiction” under the Constitution “over all contests pertaining to the election, returns and qualifications of all elective regional, provincial and city officials.” These would necessarily include the *Bangsamoro* elective officials, who are regional elective officials. (Constitution, Article IX-C, Section 2 [2])

**6) Hector, a government employee, asked Ignacio to take the Police Officer I Examination in his behalf. Upon investigation, the Civil Service Commission (CSC) observed that the picture of Hector and signature in the application form and seat plan were not identical with those found in his Personal Data Sheet. Thus, the**

**CSC concluded that Hector conspired with Ignacio by allowing the latter to impersonate him and found him guilty of dishonesty, meting out the penalty of dismissal. Hector appealed his dismissal to the Court of Appeals. He argued that the CSC has been divested of its authority and jurisdiction to conduct investigations and render administrative decisions based on alleged anomalies in police entrance and promotional examinations after the effectivity of Republic Act No. 8551 or the Philippine National Police Reform and Reorganization Act. The law transferred the power to administer and conduct entrance and promotional examinations to police officers from the CSC to the National Police Commission based on the standards set by the latter. Is Hector correct? Explain.**

Hector is incorrect.

The transfer by law to the National Police Commission of the power to conduct and administer entrance and promotional examinations for police officers cannot be considered as providing for the removal from the Civil Service Commission, as the central personnel agency of the government, of its continuing constitutional authority to ensure integrity in the civil service, and of its jurisdiction to discipline civil servants, such as Hector, for dishonesty.

[Note: "Furthermore, despite the fact that the CSC had no authority to administer entrance and promotional examinations for police officers, this did not divest the CSC of its jurisdiction to investigate on the veracity of the facts stated by a civil servant in his or her PDS. It is true that the NPC has the power and authority to administer entrance and promotional examinations for police officer and senior police officer positions and consequently, investigate on the anomalies and irregularities committed during said examinations. However, as the central personnel agency, the CSC has the original disciplinary jurisdiction over the act of petitioner in order to protect the integrity of the civil service system

which is an integral part of the CSC's duty, authority and power as provided in Article IX-B, Section 3 of the Constitution by removing from its roster of eligibles those who falsified their qualifications. This should be distinguished from ordinary proceedings intended to discipline a *bona fide* member of the system, for acts or omissions that constitute violations of the law or the rules of service. Clearly, the NPC has no jurisdiction concerning matters involving the integrity of the civil service system.

"Based on the foregoing, the CSC properly investigated the act of the petitioner of making false statements in his PDS, that is, his claim that he possesses the necessary civil service eligibility to be appointed in a police officer position as well as the discrepancy in his signatures in the PDS, in the application form and picture-seat plan of the Police Officer I Examination dated March 29, 1998. As held by this Court in *Inting v. Tanodbayan* (G.R. Nos. 52446-48, 15 May 1980, 97 SCRA 494), 'the accomplishment of the Personal Data Sheet, being a requirement under the Civil Service Rules and Regulations in connection with employment in the government, the making of an untruthful statement therein was, therefore, intimately connected with such employment xxx.'" (*San Felix v. Civil Service Commission*, G.R. No. 198404, October 14, 2019)]

**7) Professor Chiara, a natural-born Filipino citizen, is a resident expert on global military affairs at the National Defense College where she taught for 12 years. In 2017, she was tenured as a faculty member at the leading military academy in the United Kingdom (UK). In April 2022, she was granted British citizenship. Having learned of the renowned expertise of Professor Chiara, the President invited her to return to the Philippines to be appointed as National Security Adviser. Upon her appointment, Professor Chiara took her oath of allegiance to the Philippines and renounced her allegiance to the UK. Not satisfied with these actions, Ramon, the spokesperson of a non-government organization monitoring national security affairs, demanded that Professor Chiara renounce her British citizenship. Is Ramon correct? Explain.**

Ramon is incorrect.

Professor Chiara's renunciation of her allegiance to the United Kingdom coupled with her swearing of her allegiance to the Republic of the Philippines, can be considered as an effective renunciation of her British citizenship, thus making her solely a natural-born Philippine citizen and therefore eligible for appointment as the National Security Adviser.

It is established that the requirement of renunciation of foreign citizenship applies only to those with dual allegiance such as dual citizens whose foreign citizenship was acquired through naturalization or at their own volition. (*Gana-Carait v. Commission on Elections*, G.R. No. 257453, August 9, 2022) Only dual citizens by naturalization are required to take not only the Oath of Allegiance to the Republic of the Philippines but also to personally renounce foreign citizenship in order to terminate their dual citizenship. This would be particularly required for dual citizens who seek election to public office. (*Macquiling v. Commission on Elections*, G.R. No. 195649, July 2, 2013)

With respect to dual citizens who became such through processes other than naturalization in another country or abroad or of their own volition, such as Professor Chiara who was merely "granted British citizenship" without her applying for the same, the swearing of allegiance to the Philippines constitutes an effective renunciation of any other citizenship or terminates dual citizenship. (See *Mercado v. Manzano*, G.R. No. 135083 May 26, 1999) It is to be noted that, in this case, Professor Chiara not only swore allegiance to the Republic of the Philippines but also "renounced her allegiance to the UK." Said swearing of allegiance to the Philippines and renunciation of her allegiance to the United Kingdom necessarily terminated her status as a dual citizen, and entitled her to be considered eligible for the subject appointment. (See *Mercado v. Manzano*, *ibid.*)

8) A public transport bus was stopped by the police at a checkpoint. All male passengers were asked to disembark while all female passengers were requested to remain seated. Paul, a police officer, then boarded the bus and upon cursory inspection, noticed a suspicious bulging black bag at the rear of the bus. Paul lifted the bag and found it to be heavy for its size. Severino, the owner of the bag and a non-paying passenger, consented to have it opened and it was revealed that the bag contained a firearm and a live grenade. When Severino failed to produce proof of his authority to carry firearms and explosives, he was arrested and eventually charged with Illegal Possession of Firearms and Explosives. Severino now contends that the search was unreasonable and unconstitutional as it was done without a search warrant. Is Severino correct? Explain.

No, Severino is incorrect.

The inspection at the military checkpoint of the public transport bus, where the passengers can be considered as having a reduced expectation of privacy, and which, as shown in the facts, was done in a minimally intrusive manner, especially considering that Severino's bag was opened only after or upon his prior consent, can be considered as or was a reasonable search. (See *Saluday v. People*, G.R. No. 215305, April 3, 2018.)

[Note: "In view of the foregoing, the bus inspection conducted by Task Force Davao at a military checkpoint constitutes a reasonable search. Bus No. 66 of Davao Metro Shuttle was a vehicle of public transportation where passengers have a reduced expectation of privacy. Further, SCAA Buco merely lifted petitioner's bag. This visual and minimally intrusive inspection was even less than the standard x-ray and physical inspections done at the airport and seaport terminals where passengers may further be required to open their bags and luggages (*sic*). Considering the reasonableness of the bus search, Section 2, Article III of

the Constitution finds no application, thereby precluding the necessity for a warrant.” (*Saluday v. People*, G.R. No. 215305, April 3, 2018)]

[Note: “Concededly, a bus, a hotel and beach resort, and a shopping mall are all private property whose owners have every right to exclude anyone from entering. At the same time, however, because these private premises are accessible to the public, the State, much like the owner, can impose non-intrusive security measures and filter those going in. The only difference in the imposition of security measures by an owner and the State is, the former emanates from the attributes of ownership under Article 429 of the Civil Code, while the latter stems from the exercise of police power for the promotion of public safety. Necessarily, a person’s expectation of privacy is diminished whenever he or she enters private premises that are accessible to the public.” (*Saluday v. People*, G.R. No. 215305, April 3, 2018)]

[Note: “As regards the warrantless inspection of petitioner’s bag, the OSG argues that petitioner consented to the search, thereby making the seized items admissible in evidence. Petitioner contends otherwise and insists that his failure to object cannot be construed as an implied waiver.

“Petitioner is wrong.

“Doubtless, the constitutional immunity against unreasonable searches and seizures is a personal right, which may be waived. However, to be valid, the consent must be voluntary such that it is unequivocal, specific, and intelligently given, uncontaminated by any duress or coercion. Relevant to this determination of voluntariness are the following characteristics of the person giving consent and the environment in which consent is given: (a) the age of the consenting party; (b) whether he or she was in a public or secluded location; (c) whether he or she objected to the search or passively looked on; (d) his or her education and intelligence; (e) the presence of coercive police procedures; (f) the belief that no incriminating evidence will be found; (g) the nature of the police questioning; (h) the environment in which the

questioning took place; and (i) the possibly vulnerable subjective state of the person consenting.” (*Saluday v. People*, G.R. No. 215305, April 3, 2018)]

**9) For purposes of the investigation of work-related misconduct, the Presidential Management Staff (PMS), searched the office computer of its employee, Zenaida, without the consent of the latter and without a search warrant. The personal files of Zenaida stored in the computer, which were seized during the search, were eventually used by the PMS as evidence of misconduct. Zenaida was accordingly dismissed from service. Zenaida now comes to you for advice claiming that the search was unconstitutional for being violative of her right to privacy and right against unreasonable searches and seizures. Provide your legal advice with reasons.**

I will tell her that her claim that her right to privacy with respect to the “office computer” assigned to her was violated is not tenable, because she could not, under the circumstances, maintain a reasonable expectation of privacy “either in (her) office or government-issued computer which contained (her) personal files.” The search done on said office computer was a lawful or reasonable search.

It is established that a search by a government employer of an employee’s office is justified at inception when there are reasonable grounds for suspecting that it will turn up evidence that the employee is guilty of work-related misconduct. (See *Pollo v. Constantino-David*, G.R. No. 181881, October 18, 2011)

Accordingly, the search done on said office computer should be considered as “a reasonable exercise of the managerial prerogative of the Commission as an employer aimed at ensuring its operational effectiveness and efficiency by going after the work-related misfeasance of its employees. Consequently, the evidence derived from the questioned search are deemed

admissible.” (*Pollo v. Constantino-David*, G.R. No. 181881, October 18, 2011)

**10) The Secretary of the Department of Education (DepEd) issued Department Order (DO) No. 35 providing guidelines for teaching good manners and right conduct in all primary educational institutions. As part of the materials to be used during the sessions, the handbook for instructors contains a chapter on “Values from Religious Traditions and Indigenous Cultures”. The DepEd will provide the handbooks, but educational institutions shall be free to adapt the contents of the handbook in accordance with their respective mission and vision. Attendance at the sessions shall be compulsory for all students. Concerned parents and teachers questioned DO No. 35 before the Supreme Court as being violative of the establishment clause and their primary right and duty to rear their children. Are the parents and teachers correct? Explain briefly.**

No, they are not correct.

DO No. 35, which includes the subject handbook containing a chapter on values derived from religious traditions and indigenous cultures, is a valid police power measure and is not violative of the establishment clause because the references to values or the information therein can or should be considered as relevant to the lawful objective of the Department of Education to provide guidelines for “teaching good manners and right conduct in all primary educational institutions.”

Said establishment clause does not necessarily or absolutely preclude a confluence of secular and sectarian interests. It has been consistently held that “there will be no violation of the establishment clause if, *first*, the statute has a secular legislative purpose; *second*, its principal or primary effect is one that neither advances nor inhibits religion; and

*third*, it does not foster an excessive government entanglement with religion.” (*In re Letter of Tony Q. Valenciano*, A.M. No. 10-4-19-SC, March 7, 2017, citing *Lemon v. Kurtzman*, 403 U.S. 602A)

It is submitted that these conditions or factors which would allow a confluence of secular and sectarian concerns are met in the use of the subject handbook which, as indicated, has references to values founded on religious traditions.

Neither should the compulsory attendance at the sessions provided for in DO No. 35 be considered as unreasonable or violative of the parents’ primary right and duty to rear their children. All that the measure requires is attendance. Those who attend are not compelled to accept the information given to them, which they can reject if they find them unacceptable. (See *Imbong v. Ochoa*, G.R. No. 204819, April 8, 2014)

[Note: It has been declared with regard to the presence of religion in state matters that, “in so far as it instills into the minds the purest principles of morality, its influence is deeply felt and highly appreciated.” (*Aglipay v. Ruiz*, G.R. No. L-45459, March 13, 1937)]

**11) The property of Anne was expropriated by the government for public use more than ten years ago without proper expropriation proceedings and without payment of just compensation. Since then, the value of the Philippine peso has greatly depreciated, while the inflation rate has substantially increased. Anne now contends that in the interest of justice and fair play, the inflation rate and the depreciated value of the peso should be taken into consideration in the computation and payment of her long-delayed just compensation. Is Anne correct? Explain briefly.**

Anne is incorrect.

The payment of just compensation in eminent domain cases is an obligation that arises from law, independent of contract. (*Commissioner of Public Highways v. Burgos*, G.R. No. L-36706, March 31, 1980, 96 SCRA 831) Accordingly, the valuation of the land for purposes of determining just compensation should not include the inflation rate of the Philippine Peso because the delay in payment of the price of expropriated land is sufficiently recompensed through payment of interest on the market value of the land as of the time of taking from the landowner. (*National Power Corporation v. Manalastas and Castillo*, G.R. No. 196140, January 27, 2016, *Land Bank of the Philippines v. Phil-Agro Industrial Corporation*, G.R. No. 193987, March 13, 2017)

12) Ricardo, a third-year law student, was subjected to custodial investigation for the crime of Rape. He was duly informed by the police of his right to remain silent and his right to have counsel of his choice if he could afford one, and if not, he could be provided with one. Ricardo proudly informed the arresting officer that he is perfectly aware of his rights, being a law student, and that he is voluntarily waiving them. He then proceeded to issue a written statement truthfully detailing his participation in the crime of Rape. During trial, his written statement was presented as the primary evidence of his guilt. Atty. Alexander, counsel for Ricardo, promptly and vociferously objected to the presentation and admissibility of his written statement on the ground that Ricardo executed it without assistance of counsel. Is the objection justified and tenable? Explain briefly.

Atty. Alexander's "vociferous" objection, even if gently offered, should be sustained for being both justified and tenable.

Ricardo's written confession was obtained or given without the assistance of a lawyer or counsel, as expressly required under Section 12 (1) of Article III of the Constitution.

His claim or announcement that he was aware of his rights during his custodial investigation because he is a third year law student cannot serve to preclude the strict observance of this constitutional requirement.

It is therefore inadmissible in evidence, as prescribed in paragraph 3 (2) of the same provision.

**13) Maasikaso Water Company (MWC), a private concessionaire, entered into a 25-year concession agreement in 2009 with the Metropolitan Waterworks and Sewerage System (MWSS) for the delivery of water supply, wastewater, and sanitation services in the City of Manila. In 2019, residents of Manila filed a complaint against MWC with the Department of Environment and Natural Resources Pollution Adjudication Board for violation of the Clean Water Act (CWA). The residents alleged that the severe flooding in Manila and worsening pollution in Manila Bay had been due to the failure of MWC to provide for adequate sewage and/or septage treatment facilities, as mandated under the concession agreement. MWC countered that the primary duty to construct sewage and/or septage treatment facilities rests upon the local government unit (LGU) under Section 7 of the CWA, which states: “*Each LGU shall appropriate the necessary land, including rights-of-way/road access to the land for construction of the sewage and/or septage treatment facilities*”. MWC thus maintained that it must be absolved from any form of liability considering that the City of Manila clearly failed to comply with Section 7 of the CWA. Is MWC correct? Explain.**

No, the MWC is incorrect.

It has been held that said Section 7 of the Clean Water Act is not a “condition precedent” for the performance by the MWC of its obligation “to provide for adequate sewage and/or

sewage treatment facilities, as mandated under the concession agreement;” that its duty “to connect the existing sewerage lines is mandatory and unconditional,” and that the “obligatory force” of said contractual commitment “becomes immediate and can be enforced against petitioners without subordination to the happening of a future and uncertain event after the expiration of the stipulated compliance period.” (*Maynilad Water Services, Inc. v. The Secretary of the Department of Environment and Natural Resources*, G.R. No. 202897, August 6, 2019; see also *Resolution on the Motion for Reconsideration*, July 19, 2022)

**14) Lorenzo was re-elected as Mayor of Roxas City for his third consecutive term in the 2022 local elections. In 2023, Lorenzo was administratively charged before the Office of the Ombudsman (OMB) for acts committed during his second term. Lorenzo moved to dismiss the complaint before the OMB on the ground that his re-election to a third term effectively exonerated him from the administrative charge pursuant to the condonation doctrine. Is Lorenzo correct? Explain briefly.**

No, he is not correct.

It is established that his defense or ground for his motion for the dismissal of the complaint against him, the condonation doctrine, which basically calls for the dismissal of administrative charges upon re-election, can be availed of by respondents in administrative disciplinary cases only up to April 12, 2016 (*Crebello v. Office of the Ombudsman*, G.R. No. 232325, April 10, 2019), and covers only administrative liabilities and cases, and re-elections which would have occurred or arisen prior to said date. It may further be applied or can be properly invoked only in “open and pending administrative cases” before said date.

It is clear that Lorenzo was re-elected and administratively charged after said date. He therefore cannot rely on said

doctrine to support his plea for the dismissal of the administrative complaint. (*Office of the Ombudsman v. Malapitan*, G.R. No. 229811, April 28, 2021)

**15. Filed before the House of Representatives were Articles of Impeachment against Chief Justice Urduja for corruption, betrayal of public trust, and culpable violation of the Constitution. After a heavily publicized trial, the Senate, sitting as Impeachment Court, rendered a judgment removing Urduja from her position, with the additional penalty of disqualification to hold any other public office. However, during the pendency of the criminal, administrative, and civil cases subsequently filed against her, Urduja died due to health complications. The heirs of Urduja filed a petition before the Supreme Court for the release of her accrued retirement benefits and other gratuities as a member of the Judiciary. Senate President Francisco opined that the petition of the heirs of Urduja should be denied in view of her removal by impeachment. Is Francisco correct? Decide with reasons.**

No, Francisco is incorrect.

It has been held that a judgment of or conviction upon impeachment results only in removal from office and is entirely “separate, distinct and independent” from any liability for any “actionable wrong or cause of action” which may serve as basis for a forfeiture of post-employment or retirement benefits. The demise of Urduja during the pendency of the criminal, administrative and civil cases against her necessarily foreclosed any determination by a proper tribunal of such liability. Accordingly, her heirs “cannot be deprived of xxx retirement benefits on the sole ground of (her) removal.” (*Re: Letter of Mrs. Ma. Cristina Roco Corona Requesting the Grant of Retirement and other Benefits to the Late Former Chief Justice Renato C. Corona and her Claim for Survivorship*)

*Pension as his Wife Under Republic Act No. 9946, A.M. No. 20-07-10-SC, January 12, 2021)*

[Note: “However, whether criminal, civil, or administrative, no court imposed any such liability upon the late Chief Justice. Impeachment is only preparatory to liability. Since a removal by impeachment does not explicitly provide for forfeiture as a consequence thereof, as opposed to a criminal conviction carrying the penalty of perpetual or absolute disqualification, an impeached official, like former Chief Justice Corona, cannot be deprived of his retirement benefits on the sole ground of his removal. Such forfeiture could have been imposed upon criminal conviction which, however, was pre-empted by his death. Viewing it from another angle, a judgment of liability in a separate legal proceeding is a resolatory condition after a verdict of ouster by impeachment has been rendered, in that the impeached official retains all the post-employment privileges already earned unless otherwise declared by the competent tribunals. Until his liability under the law is so established before the courts of law, retirement eligibility and benefits have properly accrued to Chief Justice Corona when he was removed by impeachment on May 29, 2012. There being no such determination of liability, his entitlement thereto subsisted.” (*Re: Letter of Mrs. Ma. Cristina Roco Corona Requesting the Grant of Retirement and other Benefits to the Late Former Chief Justice Renato C. Corona and her Claim for Survivorship Pension as his Wife Under Republic Act No. 9946, A.M. No. 20-07-10-SC, January 12, 2021*)]

[Note: Impeachment complaints, and not Articles of Impeachment, are filed with the House of Representatives. Articles of Impeachment are filed by the House of Representatives with the Senate.

SECTION 3. (1) The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

(2) A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee within three session days thereafter. The Committee, after

hearing, and by a majority vote of all its Members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.

(3) A vote of at least one-third of all the Members of the House shall be necessary either to affirm a favorable resolution with the Articles of Impeachment of the Committee, or override its contrary resolution. The vote of each Member shall be recorded.

(4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed. (Constitution, Article XI)

**16) Bea filed a civil case for collection of a sum of money for non-payment by the province of Cagayan of various hospital supplies it purchased from her, as evidenced by invoices duly received and signed by its authorized representatives. After Bea completed the presentation of her evidence, the province moved to dismiss the case on the ground that the primary jurisdiction over her money claim belongs to the Commission on Audit (COA), as it arose from a series of procurement transactions with the province. The trial court dismissed the case on the ground that jurisdiction over the case lies with the COA. Bea argued that the trial court erred since a collection suit is within the jurisdiction of the courts and the province belatedly invoked the doctrine. Is Bea correct? Explain.**

No, Bea is incorrect.

It is the Commission on Audit which has primary jurisdiction over claims for liquidated damages, such as her transactions with the province of Cagayan, which

are based on invoices, (See *Taisei Shimizu Joint Venture v. Commission on Audit*, G.R. No. 238671, June 2, 2020) which “therefore involved compliance with applicable auditing laws and rules on procurement. Such matters are not within the usual area of knowledge, experience and expertise of most judges but within the special competence of COA auditors and accountants. Thus, it was but proper, out of fidelity to the doctrine of primary jurisdiction, for the RTC to dismiss petitioner’s complaint.” (*Euro-Med Laboratories Phil., Inc. v. Province of Batangas*, G.R. NO. 148106, July 17, 2006)

Neither could her claim that “the province belatedly invoked the doctrine” because it was invoked after she had completed her presentation of her evidence be considered as tenable because it is equally established that it, or the application of the doctrine of primary jurisdiction, “cannot be waived by the failure of the parties to argue it as the doctrine exists for the proper distribution of power between judicial and administrative bodies and not for the convenience of the parties.” (*Euro-Med Laboratories Phil., Inc. v. Province of Batangas*, *ibid.*)

17) Congress enacted a law providing for mandatory biometrics voter registration. The Commission on Elections (COMELEC) then issued resolutions implementing said law and further providing that registered voters who fail to submit their biometrics for validation by the last day of filing of application for registration for the May 2025 elections shall be deactivated. Consequently, those who fail to be validated, those without biometrics data, or those who have incomplete biometrics data will be deactivated and shall not be allowed to vote. A petition for *certiorari* and prohibition was filed before the Supreme Court assailing the constitutionality of the law and the COMELEC resolutions, on the ground that biometrics validation constitutes an additional and

**substantial qualification not contemplated by the 1987 Constitution, because non-compliance therewith results in voter deactivation. Will the petition prosper? Explain briefly.**

No, the petition will not prosper. It should be dismissed.

It has been held that registration as a voter “is a mere procedural requirement which does not fall under the limitation under the Constitution that ‘no literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage.” (*Kabataan Party-List v. Commission on Elections*, G.R. No. 221318, December 16, 2015; *AKBAYAN-Youth v. COMELEC*, G.R. No. 147066; March 26, 2001, 407 Phil. 618)

Accordingly, the mandatory biometrics voter registration prescribed under the subject law should not be considered as “an additional and substantial qualification not contemplated by the 1987 Constitution.” It is “conformant to the limitations of the 1987 Constitution and is a mere complement to the existing Voter’s Registration Act of 1996.” (*Kabataan Party-List v. Commission on Elections*, G.R. No. 221318, December 16, 2015)

[Note: “This requirement is not a ‘qualification’ to the exercise of the right of suffrage, but a mere aspect of the registration procedure, of which the State has the right to reasonably regulate.” (*Kabataan Party-List v. Commission on Elections*, G.R. No. 221318, December 16, 2015)]

[Note: “The act of registration is an indispensable precondition to the right of suffrage. For registration is part and parcel of the right to vote and an indispensable element in the election process. xxx. Proceeding from the significance of registration as a necessary requisite to the right to vote, the State undoubtedly, in the exercise of its inherent police power, may then enact laws to safeguard and regulate the act of voter’s registration for the ultimate purpose of conducting honest, orderly and peaceful election, to the incidental yet generally important end, that even pre-election activities could be performed by the duly constituted authorities in a realistic and orderly manner - one which is not indifferent and so

far removed from the pressing order of the day and the prevalent circumstances of the times.” (*AKBAYAN-Youth v. COMELEC*, 407 Phil. 618 [2001], cited in *Kabataan Party-List v. Commission on Elections*, G.R. No. 221318, December 16, 2015)]

**18) Gerardo, a public official, filed a certificate of candidacy for the position of Representative of the lone legislative district of his province. Despite such filing, Gerardo continued to occupy his public office since, according to his lawyer, he can only be considered resigned from public office upon the commencement of the campaign period for local officials. What is the effect of the filing of certificate of candidacy by Gerardo? Explain.**

He would, upon filing of his certificate of candidacy, be considered as *ipso facto* resigned.

This is based on the pertinent laws (Section 13 of RA 9369 and Section 66 of the Omnibus Election Code). They implement Section 2 (4), Article IX-B of the 1987 Constitution, which prohibits civil service officers and employees from engaging in any electioneering or partisan political campaign. (See *Quinto v. Commission on Elections*, G.R. No. 189698, February 22, 2010)

**19) The island of Coron belongs to the province of Palawan. The Bureau of Local Government Finance certified that the average annual income of the island of Coron based on the 1991 constant prices was ₱82,696,433.23. Based on the latest Census of Population and Housing conducted by the Philippine Statistics Authority, the population of Coron is 371,576, while its land area is 802.12 square kilometers as certified by the Land Management Bureau. Republic Act No. 222 was enacted by Congress creating the province of Coron Island and was approved by the President. Thereafter, a plebiscite was held which yielded 69,943 affirmative votes and 63,502 negative**

**votes. Is the creation of the province of Coron Island consistent with the requirements under Section 10, Article X of the 1987 Constitution and Section 461 of the Local Government Code? Explain briefly.**

Yes, it was created in accordance with the cited constitutional and statutory requirements.

Even if its land area is only 802.12 square kilometers, and therefore falls short of the prescribed 2,000 square kilometer contiguous territory requirement under the law, it is nevertheless compliant with the revenue standard and the alternative population requirement for its lawful creation under the provisions of the law, considering that it has been recorded as having a population of more than 250,000.

On the assumption that the plebiscite was participated in (and the law was approved in said plebiscite by a majority of the votes cast) by the registered voters of the entire province of Palawan, and not just the registered voters in the island of Coron, the law creating the province of Coron can be considered as effective.

This would be consistent with rulings to the effect that, with regard to laws such as this, the “political units affected” which must participate in the requisite plebiscite would be or should include the entire province, because of the political and economic effects the removal of the island from the province of Palawan would entail. (See *Umali v. Commission on Elections*, G.R. No. 203974, April 22, 2014)

[*Acceptable Answer*: It is submitted that, while the creation of the island of Palawan as a province may be considered as compliant with the statutory revenue standards and alternative population requirement, it nevertheless cannot be considered as having been lawfully established as it appears that the constitutionally prescribed plebiscite for its effectivity was not properly conducted.

It would seem from the number of votes indicated in the question that only the voters in the island of Coron (with a population of about 372,00) totalling about 134,000 participated in said plebiscite.

This would be inconsistent with the rulings to the effect that, with regard to laws creating provinces within or from existing provinces, the registered voters of the entire province, which has been held as constituting the “political units affected,” must participate in the plebiscite. This would be because of the political and economic effects that such a removal of the island from the province would entail. (See *Umali v. Commission on Elections*, G.R. No. 203974, April 22, 2014)]

[Note: The question does not indicate who participated in the plebiscite, *i.e.*, whether it was the registered voters of the entire Province of Palawan, or just the voters in Coron. Hence, the assumptions in the answers offered above indicating that its creation would be valid if the plebiscite were participated in by the entire Province of Palawan, being the political unit affected, in which case, the creation of Coron as a province would be upheld. This would not be the case if the plebiscite had been participated only by the voters in Coron, as clarified in *Umali v. Commission on Elections*, G.R. No. 203974, April 22, 2014 and *Del Rosario v. Commission on Elections*, G.R. No. 247610, March 10, 2020.]

[Note: “A component city’s conversion into an HUC and its resultant autonomy from the province is a threat to the latter’s economic viability. Noteworthy is that the income criterion for a component city to be converted into an HUC is higher than the income requirement for the creation of a province. The ensuing reduction in income upon separation would clearly leave a crippling effect on the province’s operations as there would be less funding to finance infrastructure projects and to defray overhead costs. Moreover, the quality of services being offered by the province may suffer because of looming austerity measures. These are but a few of the social costs of the decline in the province’s economic performance, which Nueva Ecija is bound to experience once its most progressive city of Cabanatuan attains independence.  
xxx.

“Duties, privileges and obligations appertaining to HUCs will attach to Cabanatuan City if it is converted into an HUC. This includes the right to be outside the general supervision of the province and be under the direct supervision of the President. An HUC is not subject to provincial oversight because the complex and varied problems in an HUC due to a bigger population and greater economic activity require greater autonomy. The provincial government stands to lose the power to ensure that the local government officials of Cabanatuan City act within the scope of its prescribed powers and functions, to review executive orders issued by the city mayor, and to approve resolutions and ordinances enacted by the city council. The province will also be divested of jurisdiction over disciplinary cases concerning the elected city officials of the new HUC, and the appeal process for administrative case decisions against barangay officials of the city will also be modified accordingly. Likewise, the registered voters of the city will no longer be entitled to vote for and be voted upon as provincial officials.

“In cutting the umbilical cord between Cabanatuan City and the province of Nueva Ecija, the city will be separated from the territorial jurisdiction of the province, as earlier explained. The provincial government will no longer be responsible for delivering basic services for the city residents’ benefit. Ordinances and resolutions passed by the provincial council will no longer cover the city. Projects queued by the provincial government to be executed in the city will also be suspended if not scrapped to prevent the LGU from performing functions outside the bounds of its territorial jurisdiction, and from expending its limited resources for ventures that do not cater to its constituents.

“In view of these changes in the economic and political rights of the province of Nueva Ecija and its residents, the entire province certainly stands to be directly affected by the conversion of Cabanatuan City into an HUC. Following the doctrines in *Tan* and *Padilla*, all the qualified registered voters of Nueva Ecija should then be allowed to participate in the plebiscite called for that purpose.” (*Umali v. Commission on Elections*, G.R. No. 203974, April 22, 2014; see *Del Rosario v. Commission on Elections*, G.R. No. 247610, March 10, 2020)]

[*Acceptable Answer:* Yes, it was created in accordance with the cited constitutional and statutory requirements.

Even if its land area is only 802.12 square kilometers (and therefore falls short of the prescribed 2,000 square kilometer contiguous territory requirement under the law), it is nevertheless compliant with the revenue standard and the alternative population requirement for its lawful creation under the provisions of the law, considering that it has been recorded as having a population of more than 250,000.]

[Note: Local Government Code - Section 461. Requisites for Creation.

(a) A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (P20,000,000.00) based on 1991 constant prices and either of the following requisites:

(i) a contiguous territory of at least two thousand (2,000) square kilometers, as certified by the Land Management Bureau; or

(ii) a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office;

Provided, That the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.

(b) The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province.

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, trust funds, transfers and non-recurring income.]

20) Bartolome is the Deputy Chief of Mission of the Embassy of Argentina. One week before the expiry date of the appointment of Bartolome in the Mission, he went on a three-day vacation in Brazil, a country known for its rich biodiversity and abundant natural resources. Determined to carry along a precious gift to his wife, Bartolome packed into his luggage a protected species of orchid found only in Brazil. Sniffing dogs at the Rio de Janeiro International Airport sensed something in his checked-in luggage, drawing the attention of airport officials. When asked to open the luggage, Bartolome presented his diplomatic identification and refused to submit to any inspection. Airport officials informed him of the penal sanctions for transporting illegal items suspected in any luggage. May Bartolome validly invoke diplomatic immunity and inviolability of his personal luggage? Explain briefly.

Yes, he may.

His luggage was inspected at the Rio de Janeiro airport as he was about to embark on a plane to return to his diplomatic post after his vacation in Brazil.

He was, in other words, in a third state, Brazil, where he had just had a vacation and was returning to or was on his way back to Argentina, to return to his diplomatic post

Under the pertinent provisions of the Vienna Convention on Diplomatic Relations, diplomatic immunity applies to all diplomats in third states during their trips to take up or to return to their diplomatic posts. It is specifically provided that, if a diplomatic agent passes through or 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 or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as

may be required to ensure his transit or return. (Article 40 [1])  
It is further provided that, in similar circumstances, third States shall not hinder the passage even of members of the administrative and technical or service staff of a mission, and of members of their families, through their territories. (Article 40 [2])

