

**CONSTITUTIONAL LAW 2**  
Ateneo de Manila University School of Law  
2<sup>nd</sup> Semester, A.Y. 2024-2025

**CHAPTER SUMMARIES**

**Chapter 1: Introduction**

Constitutional law – The study of the maintenance of the proper balance between authority as represented by the three inherent powers of the state and liberty as guaranteed by the Bill of Rights.<sup>1</sup>

The three fundamental powers of the state are:

1. Police power
2. Power of eminent domain
3. Power of taxation

These powers and the rights are not necessarily hostile to each other, but they countercheck each other.

**Chapter 2: The nature of the constitution**

Definitions of a constitution:

1. That body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised (Thomas M. Cooley).
2. The written instrument enacted by direct action of the people by which the fundamental powers of the government are established, limited and defined, and by which those powers are distributed among the several departments for their safe and useful exercise for the benefit of the body politic (Justice George A. Malcolm).

Purposes of a constitution:

1. Prescribe the permanent framework of a system of government
2. Assign to the several departments their respective powers and duties
3. Establish certain first fixed principles on which government is founded<sup>2</sup>

Does the constitution, then, create and bestow the rights enumerated therein?

- No. Certain basic individual rights (e.g., religious freedom) are merely recognized and protected by the constitution. The constitution is not the origin of private rights—it is a consequence of personal and political freedom (sovereignty).

Constitutional supremacy

- The constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer.

Classifications of a constitution:

1. Written or unwritten
2. Evolved or enacted
3. Rigid or flexible

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

Essential qualities of the written constitution

1. Broad – It must embody the past, present and future.
2. Brief – It must confine itself to brief principles to be implemented by legislation.
3. Definite – It must be clear or definite lest ambiguity results in confusion.
  - a. Exception: When constitutional provisions are deliberately vague worded to make them more malleable to judicial interpretation.<sup>3</sup>

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<sup>1</sup> PHIL. CONST. art. III.

<sup>2</sup> See *generally* PHIL. CONST. art. II.

<sup>3</sup> See PHIL. CONST. art. III, § 1. The provision reads: “No person shall be deprived of life, liberty or property without due process of the law, nor shall any person be denied the equal protection of the laws.”

### Essential parts of a written constitution

1. Constitution of liberty – Setting forth the civil and political rights of the citizens, and imposing limitations on the powers of the government.<sup>4</sup>
2. Constitution of government – A series of provisions outlining the organization, powers, and rules of the government, as well as its electorate.<sup>5</sup>
3. Constitution of sovereignty – This is the procedure or mode to brought about formal changes to the constitution.<sup>6</sup>

### Permanence of the constitution

- The constitution's capacity to resist capricious and whimsical change dictated only by passing fancies, temporary passions, or occasional infatuations of the people with ideas or personalities.
- But if the written constitution becomes an impediment from progress, the people may have to resort to a violation of the provisions of the constitution.
  - o If they cannot make a new constitution, they will have to make a revolution.<sup>7</sup>

### Constitutional construction

- It should be interpreted as to give effect to the intent of the framers.
  - o Discoverable either in the document itself (intrinsic), or through the records of the constitutional convention (extrinsic).
- It should be interpreted according to the changes inevitably transpiring in the history of the nation (a living constitution).
- Self-executory (rather than non-self-executing)
- Mandatory (rather than directory)
- Prospective (rather than retrospective)

### Amendment or revision<sup>8</sup>

1. Amendment – Isolated or piecemeal change
2. Revision – A revamp or rewriting of the whole instrument.

### Procedure:

1. Proposal – Usually made either directly by Congress, or by a constitutional convention. A special case is provided for where the proposal may be made directly by the people through initiative.<sup>9</sup>
2. Ratification – Amendments or revisions become valid upon ratification of the majority of the votes cast in a plebiscite which shall be held between 60 to 90 days upon approval of said amendment/revision by Congress, or, in the case of initiative, after the certification by the COMELEC of the sufficiency of the petition.<sup>10</sup>
  - o The ratification may be held alongside a regular election (e.g. a midterm or presidential election).<sup>11</sup>
  - o In the case of revision, the entire proposed constitution or revision must be submitted for ratification at one plebiscite only.<sup>12</sup>

### May the courts review the validity of the adoption of amendments to the constitution?

- Yes. Jurisprudence allows the courts to inquire whether the prescribed procedure for amendment has been observed.<sup>13</sup>

<sup>4</sup> These are found in PHIL. CONST. arts. II-V & XII.

<sup>5</sup> These are found in PHIL. CONST. arts. VI-XI.

<sup>6</sup> See PHIL. CONST. art. XVII.

<sup>7</sup> See Republic v. Sandiganbayan, G.R. No. 104768, July 21, 2003 [Per J. Caprio, *En Banc*].

<sup>8</sup> Lambino v. COMELEC, G.R. No. 174153, October 25, 2006 [Per J. Caprio, *En Banc*]. It discussed the difference between an amendment and a revision. Generally, two tests may be applied: the quantitative and qualitative tests.

<sup>9</sup> PHIL. CONST. art. XVII, §§ 1-3.

<sup>10</sup> PHIL. CONST. art. XVII, § 4.

<sup>11</sup> Gonzales v. COMELEC, G.R. L-28196, November 9, 1967 [Per C.J. Concepcion, *En Banc*] and Occena v. COMELEC, G.R. L-52265, January 28, 1980 [Per J. Antonio, *En Banc*].

<sup>12</sup> Tolentino v. COMELEC, G.R. L-34150, October 16, 1971 [Per J. Barredo, *En Banc*].

<sup>13</sup> Mabanag v. Lopez Vito, G.R. No. L-1123, March 5, 1947 [Per J. Tuason, *En Banc*] and Sanidad v. COMELEC, G.R. No. L-44640 [Per J. Martin, *En Banc*]. See also Tañada v. Cuenco, G.R. No. L-10520, February 28, 1957 [Per J. Concepcion, *En Banc*], which defined political questions.

- Hence, the judiciary may declare invalid a proposal adopted by less than three-fourths of the members of Congress, or a call for a constitutional convention by less than two-thirds of the Congress, or a ratification made by less than a majority of the votes cast, or a plebiscite irregularly held.

### Chapter 3: The constitution and the courts

Requisites of a judicial inquiry:

1. An actual case or controversy
2. The question of constitutionality must be raised by the proper party (*locus standi*)
3. The constitutional question must be raised at the earliest possible opportunity
4. The decision of the constitutional question must be necessary to the determination of the case itself (*lis mota*)

#### (1) Actual case

- Involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution.
  - There must be contrariety of legal rights that can be interpreted and enforced based on existing law and jurisprudence.
  - The controversy must be definite and concrete, real and substantial.
- The issuance of an advisory opinion fails this requirement as the issue raised does not involve any conflict in law.
  - Counseling by the courts is contrary to the doctrine of separation of powers.
- Advisory opinions must be distinguished from declaratory judgment.<sup>14</sup>
- When an act of Congress is seriously alleged to have infringed the constitution, settling the controversy becomes the duty of the Supreme Court.
  - By 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.<sup>15</sup>
- Generally, the court will not take cognizance of moot issues. However, the “moot and academic” principle is not a magical formula that can automatically dissuade the courts in resolving a case. The exceptions to the mootness doctrine are:
  - If there is a grave violation of the constitution
  - The exceptional character of the situation and the paramount public interest is involved
  - When the constitutional issue raised requires the formulation of controlling principles to guide the bench, bar, and public
  - The case is capable of repetition yet evading review<sup>16</sup>

#### (2) Proper party

- A proper party is one who has sustained or is in immediate danger of sustaining an injury because of the act complained of (direct injury test).
  - Until and unless such actual or potential injury is established, the complainant cannot have the legal personality to raise the constitutional question.
- That is the general rule. Jurisprudence, however, has clothed the following with legal standing in particular cases:
  - Taxpayers – When it is established that public funds from taxation have been disbursed in alleged contravention of the law or the constitution.
  - Legislators – When the claims involve that the official action complained of infringes upon their prerogatives as lawmakers.
  - Voters – With respect to the implementation of election laws, provided that there must be a showing of obvious interest in the validity of the election law in question.

<sup>14</sup> 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 63, § 1.

<sup>15</sup> *Pimentel v. Aguirre*, G.R. No. 132988, July 19, 2000 [Per J. Panganiban, *En Banc*], granting the petition for Certiorari and Prohibition assailing AO 372 for violating the autonomy of local governments. See *Tañada v. Angara*, G.R. No. 118295, May 2, 1997 [Per J. Panganiban, *En Banc*].

<sup>16</sup> *David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006 [Per J. Sandoval-Gutierrez, *En Banc*]. The case granted the petition for Certiorari and Prohibition assailing PP 1017, despite the president’s revocation of the same.

- Transcendental importance – When the issue raised is of paramount public interest,<sup>17</sup> of utmost and far-reaching constitutional importance,<sup>18</sup> and the presence of a clear disregard of a constitutional or statutory prohibition.
- Citizens – When the issue concerns a public right, such as the right to information, and the freedom of expression.
  - But in *Francisco v. Fernando*,<sup>19</sup> the court held that a citizen could raise a constitutional question only when:
    1. He can show that he has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government
    2. The injury is fairly traceable to the challenged action
    3. A favorable action will likely redress the injury.
- Laws also confer legal standing, such as:
  - Citizens suit (including minors and generations yet unborn) under the Rules of Procedure for Environmental Cases<sup>20</sup>
  - Any citizen to question the sufficiency of the factual basis for the declaration of martial law and/or the suspension of the privilege of the writ of Habeas Corpus<sup>21</sup>

### (3) *Earliest opportunity*

- General rule: The constitutional question must be raised at the earliest possible opportunity, such that if it is not raised in the pleadings, it cannot be considered at the trial, and if not considered at the trial, it cannot be considered on appeal.
- Exceptions:
  1. Criminal cases: The constitutional question can be raised anytime in the discretion of the court.
  2. Civil cases: The constitutional question can be raised anytime if it is necessary to determination of the case itself.
  3. In every case, the constitutional question may be raised at any stage if it involves the jurisdiction of the court, unless there's estoppel.<sup>22</sup>

### (4) *Necessity of deciding constitutional question*

- This is a policy of constitutional avoidance, rooted in the doctrine of separation of powers because every law<sup>23</sup> is presumed to be constitutional.
  - To doubt (the constitutionality) is to sustain.
- The court will not pass upon a constitutional question if the case can be disposed of on some other ground such as the application of a statute or general law.<sup>24</sup>

### Levels of judicial scrutiny:

1. Rational basis
2. Intermediate scrutiny
3. Strict scrutiny

<sup>17</sup> Kilosbayan v. Guingona, G.R. No. 133375, May 5, 1994 [Per J. Davide, *En Banc*].

<sup>18</sup> Kilosbayan v. Ermita, G.R. No. 177721, July 3, 2007 [Per J. Azcuna, *En Banc*], allowing a group of citizens to assail the appointment of a person as associate justice of the Supreme Court.

<sup>19</sup> G.R. No. 166501, November 16, 2006 [Per J. Carpio, *En Banc*].

<sup>20</sup> 2010 RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, rule 2, § 5.

<sup>21</sup> PHIL. CONST. art. VII, § 18.

<sup>22</sup> The issue of jurisdiction can be raised at any stage of the proceedings, and the court itself can declare that it does not have jurisdiction (*kompetenz-kompetenz*) and is not lost by waiver or estoppel. Nevertheless, a party is estopped from questioning jurisdiction when it does so in an “unjustly belated manner especially when it actively participated during trial.”

<sup>23</sup> As we shall learn later, it's not.

<sup>24</sup> Laurel v. Garcia, G.R. No. 92013, July 25, 1990 [Per J. Gutierrez, *En Banc*], nullifying the Roppongi sale based on the Administrative Code.

These levels of scrutiny are used to **determine the reasonableness** of classification in the court's review of measures from the perspectives of both the equal protection clause and the substantive due process, or the police power.<sup>25</sup>

#### Rational basis scrutiny

- The classification must reasonably relate to the legislative purpose.
- Usually applied to economic or social welfare legislation, or to any other case not involving a suspect class.

#### Intermediate scrutiny

- The law must (1) further an important government interest, (2) be substantially related to that interest, and the justification for the classification must be (3) genuine and must not depend on broad generalization.
- Applied when the classification puts a quasi-suspect class at a disadvantage (e.g. based on gender or illegitimacy).

#### Strict scrutiny

- Applies when a legislative classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar class disadvantage of a suspect class.
- The government carries the burden to prove that the classification is (1) necessary to achieve a compelling state interest, and (2) it is the least restrictive means to protect such interest.

#### Effects of a declaration of unconstitutionality

1. Orthodox view: An unconstitutional act is not a law, it confers no rights, it imposes no duties, it affords no protection, it creates no office, it is in legal contemplation inoperative, as if it had not passed.
2. Modern view: The court does not strike the statute from the statute books; it does not repeal, supersede, revoke, or annul the statute. It simply refuses to recognize it and determines the rights of the parties just as if such statute had no existence.

#### Doctrine of operative fact

- An exception to the general rule (*see above*).
- Applies as a matter of equity and fair play.
- Nullifies the effect of an unconstitutional law by recognizing that the existence of the act prior to a determination of unconstitutionality is an operative fact and may have consequences which cannot be always ignored.
  - o Also applies to executive actions declared unconstitutional<sup>26</sup>

#### Theory of relative constitutionality

- Laid down in *Central Bank Employees Association v. BSP*<sup>27</sup>
- The constitutionality of a statute cannot, in every instance, be determined by a mere comparison of its provisions with applicable provisions of the Constitution, since the statute may be constitutionally valid as applied to one set of facts and invalid in its application to another.
- Hence, Congress cannot reenact a provision that has been previously declared as unconstitutional without any perceived substantial changes in the circumstances.<sup>28</sup>

#### Partial unconstitutionality

- Courts hesitate to declare a law totally unconstitutional and, if possible, it will salvage the valid portions thereof to give effect to the legislative will.
- A partial unconstitutionality is valid only if:

<sup>25</sup> See *White Light Corp. v. City of Manila*, G.R. No. 122846, January 20, 2009 [Per J. Tinga, *En Banc*] & *SPARK v. Quezon City*, G.R. No. 225442, August 8, 2017 [Per J. Perlas-Bernabe, *En Banc*].

<sup>26</sup> *Hacienda Luisita v. Presidential Agrarian Reform Council*, G.R. 171101, July 5, 2011 [Per J. Velasco, *En Banc*], holding that "the operative fact doctrine squarely applies to executive acts."

<sup>27</sup> G.R. 148208, December 15, 2004 [Per J. Puno, *En Banc*], striking down a proviso in R.A. 7653 exempting employees above SG-19 from the Salary Standardization Law as Congress did not provide such a distinction for other government financial institutions when it amended their charters post-R.A. 7653.

<sup>28</sup> *Sameer Overseas Placement Agency Inc. v. Cabiles*, G.R. No. 170139, August 5, 2014 [Per J. Leonen, *En Banc*].

1. The legislature is willing to retain the valid portions even if the rest of the statute is declared illegal;<sup>29</sup> *and*
2. The valid portions can stand independently as a separate statute.

#### Chapter 4: The fundamental powers of the state

1. Police power – Power of the state to regulate liberty and property for the promotion of the general welfare.
2. Power of eminent domain – Enables the state to forcibly acquire private property, upon payment of just compensation, for some intended public use.
3. Power of taxation – The state can demand from the members of society their proportionate share or contribution in the maintenance of the government.

##### Similarities:

1. **Inherent in a state** and does not require an explicit constitutional grant
2. Indispensable to the existence of the state
3. Methods by which the state interferes with private rights
4. All presuppose an equivalent compensation for the private rights interfered with
5. Exercised primarily<sup>30</sup> by the Congress

##### Differences

1. The police power regulates both liberty and property. The powers of eminent domain and taxation affect only property rights.
2. The police power and power of taxation may be exercised only by the government<sup>31</sup>. The power of eminent domain may be exercised by some private entities.
3. The property taken in the exercise of police power is destroyed. While for the powers of eminent domain and taxation, the property taken is intended for a public use or purpose and is, therefore, wholesome.
4. The compensation of the person subjected to police power is the “intangible altruistic feeling that he has contributed to the general welfare.” The compensation involved in the other powers is more concrete, *e.g.*, a full and fair equivalent of the property expropriated or protection and public improvements for the taxes paid.

#### Quiz 1

Discuss the distinctions among the fundamental powers the state in terms of:

1. Their subjects (5%)
2. Who can or may be permitted to exercise them (5%)

#### Chapter 5: The police power

##### Definitions:

1. The power of promoting the public welfare by restraining and regulating the use of liberty and property (Ernst Freund).
2. The inherent power of the state to regulate or to restrain the use of liberty and property for public welfare.
3. The power to regulate the exercise of rights, including all constitutional rights, by prescribing limitations, to promote the health, morals, peace, education, good order or safety, and general welfare of the people.

##### Characteristics:

1. Most pervasive

<sup>29</sup> This may be expressed in a separability clause.

<sup>30</sup> Congress can delegate.

<sup>31</sup> If the generation of revenue is the primary purpose and regulation is *merely incidental*, the imposition is a tax. But if regulation is the primary purpose, the fact that the revenue is incidentally raised does not make the imposition a tax. See *Gerochi v. Department of Energy*, G.R. No. 159796, July 17, 2007 [Per J. Nachura, *En Banc*].

2. Least limitable
3. Most demanding

Some examples of exercise of police power:

1. Impairment of a contract, notwithstanding the nonimpairment clause<sup>32</sup>
2. Superseding of a treaty<sup>33</sup>
3. To minimize certain practices hurtful to public morals<sup>34</sup>
  - a. But this must not invade property rights<sup>35</sup> and individual rights<sup>36</sup>
4. Taxation, when used in a regulatory purpose<sup>37</sup>
5. Eminent domain, when used to effect a governmental policy motivated by police power<sup>38</sup>

Who exercises of police power?

- Lies in the discretion of the legislative department (Congress)
  - o Hence, no Mandamus may lie against the Congress to force it to exercise police power (*i.e.*, to enact laws).
  - o If the Congress decides to act, the law may not be questioned based on the policy's wisdom as that is tantamount to a political question.<sup>39</sup>
- But Congress may, *by law*, delegate<sup>40</sup> it to:
  - o The president and administrative agencies
    - Also known as quasi-legislative or rule-making power. The delegate's action must conform to the **completeness and sufficient standard tests**.<sup>41</sup>
    - Notably, the president, aided by the military, exercises police power to ensure public safety when a state of martial law is declared over a particular area<sup>42</sup>.
  - o Local government units' (LGU) legislative bodies<sup>43</sup>

Tests of police power:

1. The **interests of the public** generally, as distinguished from those of a particular class, require the exercise of the police power; and
2. The means employed are **reasonably necessary** for the accomplishment of the purpose and **not unduly oppressive** upon individuals.

In short, a valid exercise of police power must have a lawful subject and lawful means.

(1) *Lawful subject*

- The activity or property sought to be regulated **affects the public welfare**.

<sup>32</sup> *Stone v. Mississippi*, 101 U.S. 814, holding that "the contracts protected in the constitution are property rights, not governmental rights." This meant that the obligations of contracts may be impaired by police power.

<sup>33</sup> *Compare Pangilinan v. Cayetano*, G.R. No. 238875, March 16, 2021 [Per J. Leonen, *En Banc*], where the court held that "statutes enjoy preeminence over international agreements," and "a treaty cannot amend a statute." The precedential effect of this case is doubtful.

<sup>34</sup> *Ermita-Malate Hotel v. City Mayor of Manila*, G.R. L-24693, July 31, 1967 [Per J. Fernando, *En Banc*].

<sup>35</sup> *City of Manila v. Laguio*, G.R. 118127, April 12, 2005 [Per J. Tinga, *En Banc*].

<sup>36</sup> *White Light Corp. v. City of Manila*, G.R. No. 122846, January 20, 2009 [Per J. Tinga, *En Banc*].

<sup>37</sup> *Lutz v. Araneta*, G.R. No. L-7859, December 22, 1955 [Per J. Reyes, *En Banc*]. *See also Osmeña v. Orbos*, G.R. No. 99886, March 31, 1993 [Per C.J. Narvasa, *En Banc*], *Gaston v. Republic Planters Bank*, G.R. No. 77194, March 15, 1988 [Per J. Melencio-Herrera, *En Banc*] & *Tio v. Videogram Regulatory Board*, G.R. No. 75697, June 18, 1987 [Per J. Melencio-Herrera, *En Banc*].

<sup>38</sup> *Association of Small Landowners v. Secretary of Agrarian Reform*, G.R. No. 78742, July 14, 1989 [Per J. Cruz, *En Banc*], holding that "to the extent that the [comprehensive agrarian reform program] merely prescribe retention limits for landowners, there is an exercise of the police power for the regulation of private property."

<sup>39</sup> Which are off-limits to the judiciary.

<sup>40</sup> The exceptions to the doctrine of nondelegation of legislative power.

<sup>41</sup> *Eastern Shipping Lines Inc. v. Philippine Overseas Employment Administration*, G.R. No. 76633, October 18, 1988 [Per J. Cruz, *First Division*].

<sup>42</sup> *Lagman v. Medialdea*, G.R. No. 231658, July 4, 2017 [Per J. Del Castillo, *En Banc*], declaring the sufficiency of the factual basis over the president's martial law declaration in Mindanao in the aftermath of the Marawi Siege.

<sup>43</sup> An Act Providing for a Local Government Code of 1991 [LOCAL GOV'T CODE], Republic Act No. 7160, § 16 (1991).

- As long as the object is the public welfare and the subject of regulation may be properly related thereto, there is compliance with the first test (which merely requires the primacy of general welfare over the interests of the few).
- Police power cannot be validly asserted over entirely private matters in which the public interest is not at all involved.
- Some examples of lawful subjects for regulation:
  1. Prohibition of billboards offensive to sight or distracting to motorists<sup>44</sup>
  2. Phasing out of taxicabs more than six years old<sup>45</sup>
  3. Prohibiting barber shops from rendering massage in a separate room<sup>46</sup>
  4. Prohibiting heavy vehicles from using public streets on weekends and holidays<sup>47</sup>
  5. Prohibiting the issuance of worthless checks<sup>48</sup>
  6. Disqualifying any person who failed the NMAT thrice from taking it again<sup>49</sup>
  7. A city ordinance opening private roads in a private subdivision<sup>50</sup>
  8. Requiring physicians to indicate the generic name in their prescription<sup>51</sup>
  9. Requiring television and radio stations to give free airtime for broadcasting election information (COMELEC hour)<sup>52</sup>
  10. The power to establish zones for industrial, commercial, and residential uses<sup>53</sup>
  11. A 20-percent discount for senior citizens<sup>54</sup>
  12. A 20-percent discount for persons with disability<sup>55</sup>
  13. Designation and proscription of suspected terrorists<sup>56</sup>

(2) Lawful means/methods

- The restriction must be **reasonably related** to the purpose sought to be accomplished and cannot be considered duly oppressive upon him.
- Some examples of lawful means/methods:
  1. Requiring reasonable working hours or minimum wages<sup>57</sup>
  2. Prohibition of certain nonmotorized vehicles (*e.g.* bicycles and pedicabs) from using the tollway<sup>58</sup>
  3. Prohibiting theaters from overbooking tickets for safety inside the movie house<sup>59</sup>
  4. Requiring at least 6 percent of the total areas of private cemeteries to be set aside for charity burial<sup>60</sup>
- Some examples of laws failing the reasonable means test:

<sup>44</sup> Churchill v. Rafferty, G.R. No. 10572, December 21, 1915 [Per J. Trent, *En Banc*].

<sup>45</sup> Taxicab Operators of Metro Manila v. Board of Transportation, G.R. No. L-59231, September 30, 1982 [Per J. Melencio-Herrera, *En Banc*].

<sup>46</sup> Velasco v. Villegas, G.R. No. 24153, February 14, 1983 [Per C.J. Fernando, *En Banc*].

<sup>47</sup> Bautista v. Junio, G.R. No. L-50908, January 31, 1984 [Per J. Fernando, *En Banc*].

<sup>48</sup> Lozano v. Martinez, G.R. No. L-63419, December 18, 1986 [Per J. Yap, *En Banc*], upholding the constitutionality of the Anti-Bouncing Checks Law (BP 22).

<sup>49</sup> DECS v. San Diego, G.R. 89572, December 21, 1989 [Per J. Cruz, *En Banc*].

<sup>50</sup> Sangalang v. IAC, G.R. 71169, December 22, 1988 [Per J. Sarmiento, *En Banc*].

<sup>51</sup> Del Rosario v. Bengzon, G.R. No. 88265, December 21, 1989 [Per J. Griño-Aquino, *En Banc*].

<sup>52</sup> TELEBAP v. COMELEC, G.R. No. 132922, April 21, 1998 [Per J. Mendoza, *En Banc*], holding that legislative franchises “may reasonably be burdened with the performance by the grantee of some form of public service.”

<sup>53</sup> Social Justice Society v. Atienza, G.R. No. 156052, February 13, 2008 [Per J. Corona, First Division].

<sup>54</sup> Manila Memorial Park v. DSWD Secretary, G.R. No. 175356, December 3, 2013 [Per J. Del Castillo, *En Banc*], citing Carlos Superdrug Corp. v. DSWD, G.R. No. 166494, June 29, 2007 [Per J. Azcuna, *En Banc*], sustaining the validity of the discount because the constitution affords senior citizens a “preferential concern.”

<sup>55</sup> Drugstores Association of the Philippines v. National Council on Disability Affairs, G.R. No. 194561, September 14, 2016 [Per J. Peralta, Third Division], holding that “the concept of public use is no longer confined to the traditional notion of use by the public, but held synonymous with public interest, public benefit, public welfare, and public convenience.”

<sup>56</sup> Calleja v. Executive Secretary, G.R. No. 252578, December 7, 2021 [Per J. Carandang, *En Banc*].

<sup>57</sup> Ramos v. Poblete, G.R. No. 47829, October 8, 1941 [Per J. Ozaeta, *En Banc*].

<sup>58</sup> Mirasol v. DPWH, G.R. 158793, June 8, 2006 [Per J. Carpio, *En Banc*].

<sup>59</sup> People v. Chan, G.R. 45435, June 17, 1938 [Per J. Concepcion, *En Banc*].

<sup>60</sup> City Government of Quezon City v. Ericta, G.R. L-34915, June 24, 1983 [Per J. Gutierrez, First Division].



1. Prohibiting the transport of carabaos across provincial lines to avoid indiscriminate slaughter<sup>61</sup>
2. Requiring malls to offer free parking<sup>62</sup>
3. Prohibiting hotels/motels from offering washroom rates and renting out rooms more than twice a day<sup>63</sup>
4. Prohibition of the operation of sauna parlors, massage parlors, karaoke bars, beerhouses, etc., at certain parts of the city<sup>64</sup>
5. Allowing the government to gather computer data “upon due cause”<sup>65</sup>
6. Requiring plantation owners to shift to a different mode of applying pesticides within a three-month period<sup>66</sup>

#### Overbreadth doctrine

- Applied when a statute needlessly restrains even constitutionally guaranteed rights.
- 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.

#### Void-for-vagueness doctrine

- Applicable when a penal statute encroaches upon the freedom of speech
- A law 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 violates the constitution in two respects:
  - o Due process.
  - o Gives law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the government muscle.

#### Modes of constitutional challenges:

1. Facial challenge – May be mounted by a petitioner, even if he claims no violation of his own rights, when the law involves free speech on the grounds of the overbreadth or vagueness of the law.<sup>67</sup>
2. As-applied challenge – The petitioner who claims a violation *of his own* constitutional right can raise any constitutional ground. He is, however, prohibited from raising violations claimed by a third-party.<sup>68</sup>

### Chapter 6: Eminent domain

#### Definitions:

1. Upon payment of just compensation, the government can forcibly acquire the needed property to devote it to the intended public use.
2. The highest and most exact idea of property remaining in the government that may be acquired for some public purpose through a method in the nature of a compulsory sale to the state.
3. It is the power of a sovereign state to appropriate private property within its territorial sovereignty to promote public welfare.

#### Scope

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<sup>61</sup> Ynot v. IAC, G.R. No. 74457, Mar 20, 1987 [Per J. Cruz, *En Banc*].

<sup>62</sup> Office of the Solicitor General v. Ayala Land Inc., G.R. No. 177056, September 18, 2009 [Per J. Chico-Nazario, Third Division].

<sup>63</sup> *Supra* note 36.

<sup>64</sup> *Supra* note 35.

<sup>65</sup> Disini v. Secretary of Justice, G.R. No. 203335, February 11, 2014 [Per J. Abad, *En Banc*].

<sup>66</sup> Mosqueda v. Pilipino Banana Growers, G.R. No. 189185, August 16, 2016 [Per J. Bersamin, *En Banc*].

<sup>67</sup> The rationale for this exception is to counter the “chilling effect” on protected speech that comes from statutes violating free speech.

<sup>68</sup> This is also a prohibition from mounting a third-party standing.

1. While the power is expressly mentioned in the constitution<sup>69</sup>, this provision is not a grant but a limitation of the power as its negative and restrictive language clearly suggests.
  - a. Hence, this should be construed strictly against the expropriator (state) and liberally in favor of the property owner.
2. It is inalienable and no legislative act or agreement can serve to abrogate the power when public necessity and convenience require its exercise.
3. There are two mandatory requirements before the government may exercise such right:
  - a. That it is for a **particular public purpose**; and
  - b. That **just compensation be paid** to the property owner.

Who may exercise the power of expropriation?

1. The Congress
2. The president
3. The various local legislative bodies
4. Certain public corporations<sup>70</sup>
5. Quasi-public corporations<sup>71</sup>

Essential requisites for the exercise of eminent domain by a local government unit:

1. Ordinance duly enacted by the local legislative body<sup>72</sup>
2. Public use, purpose, or welfare, or for the benefit of the poor and the landless
3. Just compensation
4. Preceded by a valid and definite offer to the owner who rejects the same

Before an LGU may enter into the possession of the property sought to be expropriated, it must:

1. File a complaint for expropriation sufficient in form and substance in the proper court; and
2. Deposit with the said court at least 15 percent of the property's fair market value.

Two stages of expropriation proceedings:

1. Determination of the validity of the expropriation
2. Determination of just compensation

Requirements when expropriation is done by an agent of the state:

1. A valid delegation to a public utility
2. An identified public use, purpose or welfare
3. Previous tender of a valid and definite offer, but which offer is not accepted
4. Payment of just compensation<sup>73</sup>

'Destruction from necessity'

- Is not an exercise of the power of eminent domain.
- The right of necessity arises under the laws of society or society itself.
- Destruction from necessity cannot require the conversion of the property to public use, nor is the payment of just compensation required.

Necessity of exercise

- General rule: Questions of necessity or wisdom are essentially political when decided by the Congress and are usually not subject to judicial review.
- However, when the question of necessity is decided by a delegate (i.e. not Congress), the courts can step in.

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<sup>69</sup> PHIL. CONST. art. III, § 9. It provides that "Private property shall not be taken for public use without just compensation." See also PHIL. CONST. art. XII, § 18, which provides: "The State may, in the interest of national welfare or defense, establish and operate vital industries and, upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the Government."

<sup>70</sup> E.g. the National Housing Authority and water districts.

<sup>71</sup> E.g. the Philippine National Railways, PLDT, and MERALCO.

<sup>72</sup> It cannot be a mere resolution. See *Yusay v. CA*, G.R. No. 156684, April 6, 2011 [Per J. Bersamin, Third Division].

<sup>73</sup> *MORE Electric and Power Corp. v. Panay Electric Company Inc.*, G.R. No. 248061, September 15, 2020 [Per J. Reyes, *En Banc*], citing *City of Manila v. Prieto*, G.R. 221366, July 8, 2019 [Per J. Reyes, Second Division].

- In this case, determination of whether there is a genuine necessity for the exercise is a justiciable question<sup>74</sup>.
- Judicial review of the exercise of the power of eminent domain is limited to the following areas of concern:
  1. Adequacy of the compensation
  2. Necessity of the taking
  3. Public use character of the purpose of the taking.

#### *Private property*

- Anything that can come under the dominion of man is subject to expropriation.
  - This includes real and personal, tangible and intangible property.
    - Hence, the government can force interconnection between and among telecommunications company, upon payment of just compensation<sup>75</sup>.
  - Exceptions: money<sup>76</sup> and choses in action.
- Property already devoted to public use is still subject to expropriation, provided this is done by Congress or under a specific grant of authority to the delegate<sup>77</sup>.
  - This is because the power of eminent domain is not exhausted by use<sup>78</sup>.
- Absent expropriation proceedings and without any evidence that a property has been sold/donated to the government, the property is considered private.
- It is also deemed eminent domain when there is a **practical destruction or material impairment** of the property's value<sup>79</sup>.
- It is also eminent domain when the burden is too cumbersome as to indefinitely restrict the owner from using the property.
  - *Compare with easements*. When the restriction is neither perpetual nor indefinite, a mere easement fee will suffice.
- Hence, the following are not exercise of eminent domain:
  1. The establishment of a buffer zone to minimize the effects of aerial spraying within and near plantations<sup>80</sup>
  2. Discounts for senior citizens/PWD, thereby depriving business their right to profit<sup>81</sup>

#### *Taking*

- A physical dispossession of the owner and is thus deprived of all beneficial use and enjoyment of his property.
- Taking occurs when the landowner is deprived of the use and benefit of his property, such as when the title is transferred to the republic.
- Occurs when there is a practical destruction or material impairment of the value of the property, or when the owner is deprived of the ordinary use thereof.
- Compensable taking includes destruction, restriction, diminution, or interruption of the rights of ownership or of the common and necessary use and enjoyment of the property in a lawful manner, lessening or destroying its value.<sup>82</sup>
- **Requisites of taking** in eminent domain:
  1. The expropriator must enter a private property

<sup>74</sup> A court's determination of just compensation may be set aside if tainted with grave abuse of discretion (a Rule 65 petition). See *Allied Bank v. Land Bank*, G.R. No. 175422 March 13, 2009 [Per J. Chico-Nazario, Third Division].

<sup>75</sup> See *Republic v. PLDT*, G.R. No. L-18841, January 27, 1969 [Per J. Reyes, *En Banc*] & *PLDT v. NTC*, G.R. No. L-88404, October 18, 1990 [Per J. Melencio-Herrera, *En Banc*].

<sup>76</sup> It would be absurd to expropriate money in exchange of ... money.

<sup>77</sup> *MORE Electric and Power Corp. v. Panay Electric Company Inc.*, G.R. No. 248061, March 9, 2021 [Per J. Carandang, *En Banc*], denying the motion for reconsideration.

<sup>78</sup> *Supra* note 73.

<sup>79</sup> *Bartolata v. Republic*, G.R. No. 22334, June 7, 2017 [Per J. Velasco, Third Division].

<sup>80</sup> *Supra* note 66.

<sup>81</sup> *Southern Luzon Drug Corp. v. DSWD*, G.R. 199669, April 25, 2017 [Per J. Reyes, *En Banc*], holding that the right to profit is not a vested right that is eligible for "taking."

<sup>82</sup> *NAPOCOR v. Heirs of Sangkay*, G.R. No. 165828, August 24, 2011 [Per J. Bersamin, First Division].

2. The entry must be for more than a momentary period
  3. The entry must be under warrant or color of legal authority
  4. The property must be devoted to public use or otherwise informally appropriated or injuriously affected<sup>83</sup>
- Examples of taking:
    1. A farmland becoming permanently inundated due to the construction of a dam nearby, preventing the owner from planting<sup>84</sup>
    2. Government plans flying so low as to practically touching the top of the trees thereon<sup>85</sup>
    3. Imposition of an easement over a three-meter strip of a property<sup>86</sup>
    4. Right-of-way easements resulting in the restriction/limitation on property rights over the land traversed by transmission lines<sup>87</sup>
    5. When an exhaust fan installed in a tunnel to clear of it smoke is directed toward a house/property<sup>88</sup>
    6. Construction of a tunnel underneath the ground<sup>89</sup>
    7. The remaining area of a lot that wasn't used in the construction of a road<sup>90</sup>

#### *Public use*

- Any use directly available to the general public as a matter of right and not merely of forbearance or accommodation.
  - o It's also public use though the expropriator is not the state but the purpose is devoted to public services administered by private entities.
- Public use is now synonymous with:
  - o Public interest
  - o Public benefit
  - o Public convenience
- In other words, public use is whatever is beneficially employed for the general welfare.
- It also includes instances which, while not directly available to the public, redound to their indirect advantage or benefit<sup>91</sup>
- Nevertheless, when the taking of private property is no longer for a public purpose, the expropriation complaint should be dismissed by the trial court,<sup>92</sup> unless:
  - o The trial court's decision has already attained finality; or
  - o The expropriation case already prejudiced the owner.
    - Actual or compensatory damages may be awarded, in lieu of the just compensation.

#### *Just compensation*

- The full and fair equivalent of the property taken from the private owner by the expropriator.
  - o "Just" – The amount to be tendered for the property is real, substantial, full, and ample.

<sup>83</sup> Republic v. Vda de. Castellvi, G.R. No. L-20620, August 15, 1974 [Per J. Zaldivar, *En Banc*].

<sup>84</sup> US v. Lynah, 188 U.S. 455. In this case, the owner remains in possession of the property.

<sup>85</sup> US v. Causby, 328 U.S. 256. Nevertheless, the court noted that that property does not extend "ad coelum" (indefinitely upward) but includes the "lower altitude airspace."

<sup>86</sup> Ayala de Roxas v. City of Manila, G.R. No. 3144, November 19, 1907 [Per C.J. Arellano, *En Banc*].

<sup>87</sup> NAPOCOR v. Aguirre-Paderanga, G.R. No. 155065, July 28, 2005 [Per J. Carpio-Morales, Third Division].

<sup>88</sup> Richards v. Washington Terminal, 233 U.S. 546, noting that the individual house/property had a "special injury" over and above sustained by the rest of the community.

<sup>89</sup> NAPOCOR v. Ibrahim, G.R. No. 168732 June 29, 2007 [Per J. Azcuna, First Division].

<sup>90</sup> Republic v. Sps. Regulto, G.R. No. 202051, April 18, 2016 [Per J. Peralta, Third Division], holding that the project materially impaired and affected the integrity of the entire—not just the expropriated part—property.

<sup>91</sup> See Association of Small Landowners v. Secretary of Agrarian Reform, G.R. No. 78742, July 14, 1989 [Per J. Cruz, *En Banc*] (land reform), Province of Camarines Sur v. CA, G.R. No. 103125, May 17, 1993 [Per J. Quiason, First Division] (establishment of a development center), Reyes v. NHA, G.R. No. 147511, January 20, 2003 [Per J. Puno, Third Division] (slum clearance) & Manapat v. CA, G.R. No. 110478, October 15, 2017 [Per J. Nachura, Third Division] (socialized housing program).

<sup>92</sup> See Republic v. Heirs of Borbon, G.R. No. 165354, January 15, 2015 [Per J. Bersamin, First Division], where the retirement of the transmission lines necessarily stripped the expropriation proceedings of the element of public use.

- “Compensation” – A full indemnity or remuneration for the loss or damage sustained by the owner of property taken or injured for public use.
- The property’s fair market value (FMV) at the time of the filing of the complaint, or that sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as price to be given and received therefor.
  - If the FMV is difficult to ascertain, the court may use other just and equitable market methods of valuation.<sup>93</sup>
- Who may be compensated?
  - General rule: All who have lawful interest in the property to be condemned, including a mortgagee, lessee,<sup>94</sup> and a vendee in possession.
- How is just compensation ascertained?
  - The court should determine first the actual or basic value of the property.
  - Zonal valuation is simply one of the indices of the FMV of real estate.
  - The courts enjoy sufficient judicial discretion to determine the classification of the lands to be expropriated.
- What is the role of the courts in determining just compensation?
  - The determination of just compensation is clearly a judicial function.
  - Any determination made by administrative agencies would be at best preliminary and not conclusive.
  - Executive issuances and legislative enactments fixing or providing for the method of computing just compensation are not binding on courts and are mere guidelines.
- What are **consequential damages**?
  - Injuries directly caused on the residue of the private property taken by reason of the expropriation.
    - *Compare:* Consequential benefits – As a result of the expropriation, the property became placed in a better location.
  - It is not paid if the entire area is being expropriated.
  - It is not paid to reimburse the owner of the capital gains tax and other taxes necessary for the transfer of the subject property, but it may be proper<sup>95</sup> to consider such fees and taxes to preserve the compensation awarded to the owner.
- When property is taken, the full compensation must be paid immediately. Otherwise, the state becomes liable for the interest on the unpaid compensation.
  - The interest is paid from the time of taking until the just compensation is fully paid to him. **Interest must be demanded, otherwise, it is deemed waived.**
  - The award of interest is imposed in the nature of damages, which in effect makes the obligation on the part of the government a forbearance.
  - Hence, the just **compensation formula** (simplified) = **FMV + Consequential Damages – Consequential Benefits + Interests** (in case of delay)<sup>96</sup>
- General rule: Just compensation must be paid in legal tender.
  - Exception: Just compensation for land reform follows the scheme in § 18 of the Comprehensive Agrarian Reform Law.<sup>97</sup>
- When is the just compensation reckoned?
  - As of the time of taking, which *usually* coincides with the commencement of the expropriation proceedings.
    - Where the filing of the complaint precedes entry to the property, the just compensation is reckoned upon filing of the complaint.

<sup>93</sup> Such as replacement cost, the kinds and quantities of materials/equipment used, the location, configuration and other physical features of the property, prevailing construction prices, among others.

<sup>94</sup> *Contra* Land Bank v. AMS Farming Corp., G.R. No. 174971, October 15, 2009 [Per J. Chico-Nazario, Third Division], where the court held that lessees are not entitled to just compensation, in the context of the comprehensive agrarian reform program, due to a contractual obligation.

<sup>95</sup> If the court deems it just and equitable. See Republic v. Vda. De Ramos, G.R. No. 211576, February 19, 2020 [Per J. Caguioa, First Division].

<sup>96</sup> Sy v. Local Government of Quezon City, G.R. No. 202690, June 5, 2013 [Per J. Perlas-Bernabe, Second Division].

<sup>97</sup> The payment includes cash payment, shares in stock of GOCCs, tax credits, Land Bank bonds, and a combination thereof. In essence, the law does not provide for a full cash payment upon taking.

- Value is **not** reckoned at the time of the judgment!<sup>98</sup>
- **Damages**, when the owner is entitled:
  - When the government has long occupied the property without the benefit of expropriation
  - When the aggrieved party has suffered some pecuniary loss, which proof cannot be adduced
- **Inverse condemnation** – The action to recover from the state or its delegate, even though no formal exercise of the power of eminent domain has been attempted by the expropriator<sup>99</sup>.
  - Neither laches nor prescription may bar a claim for just compensation for property taken for public use.
  - But if the owner agrees voluntarily to the taking, he waives his right to the institution of a formal expropriation proceeding covering such property.
  - Silence is consent to taking.<sup>100</sup>
    - Owner's only remedy is an action for payment of just compensation and **not** for ejectment or recovery of possession.<sup>101</sup>
- In the context of agrarian reform
  - The agrarian reform process is incomplete without payment of just compensation.
  - The state may not be compelled to acquire the excluded portion of a property, beyond the coverage of CARP, and pay just compensation for the ill-suited land for agriculture.
  - The prescriptive period to file a complaint the judicial determination of just compensation under the CARP is 10 years.
  - Title to the property shall not be transferred until after actual payment of just compensation is made to the owner.

## Chapter 7: Taxation

Taxes – The enforced proportional contributions from persons and property, levied by the state by virtue of its sovereignty, for the support of the government and for all public needs.

- Done to apportion the costs of government among the people according to their ability to pay and on the basis of as scientific a classification as possible.

Nature of taxation

- It is the lifeblood of the government, and it should be collected promptly without hindrance or delay.
- The power of taxation is inherent in the state.
- It is an obligation not based on a contract.
- Paying taxes is a duty imposed upon an individual by the mere fact of his membership in the body politic and his enjoyment of the benefits available therefrom.
- Nonpayment of taxes may be the subject of criminal prosecution and punishment, except only in cases of poll taxes.<sup>102</sup>
- The government isn't also barred by estoppel from collecting taxes.

Taxes vs. licenses

- Taxes are levied to raise revenues, while licenses are imposed for regulatory purposes only (usually in the exercise of police power).
- If revenue generation is the primary purpose and regulation is *merely incidental*, the imposition is a tax, *e.g.*,
  - Motor vehicle registration fee<sup>103</sup>

<sup>98</sup> Gabatin v. Land Bank, G.R. No. 148223, November 25, 2004 [Per J. Chico-Nazario, Second Division].

<sup>99</sup> *Supra* note 82.

<sup>100</sup> Ansaldo v. Tantuico Jr., G.R. No. L-50147, August 3, 1990 [Per J. Narvasa, First Division].

<sup>101</sup> A case filed by a landowner for recovery of possession or ejectment against the expropriator will not prosper. See NAPOCOR v. Bermuda Development Corp., G.R. No. 214782, April 3, 2019 [Per J. Caguioa, Second Division].

<sup>102</sup> PHIL. CONST. art. III, § 20.

<sup>103</sup> Philippine Airlines Inc. v. Edu, G.R. No. L-41383, August 15, 1988 [Per J. Gutierrez, *En Banc*].

- Conversely, if regulation is the primary purpose, the fact that incidentally revenue is also obtained does not make the exaction a tax,<sup>104</sup> *e.g.*,
  - o Building permit fee<sup>105</sup>
  - o Socialized housing tax and garbage fee<sup>106</sup>
  - o Common user service area fee<sup>107</sup>
- As a test to determine if an exaction is a fee or a tax, one must **look into the purpose of its collection.**
  - o If the exaction is made to raise revenue for the government to discharge its principal functions, the exaction is a **tax**.
  - o If the exaction is primarily regulatory, it is a **fee**, even if it incidentally raises revenue, as long as the revenue generated does not exceed the cost of regulation.
    - If the revenue exceeds the regulatory costs, it is a **tax**.<sup>108</sup>

#### Scope of the power

- It is pervasive. Hence, the following are subject to taxes:
  - o All income earned in the taxing state, regardless of nationality
  - o All immovable and tangible personal properties in the territory
  - o Tangible personal property owned by persons domiciled here
  - o Shares of stock issued by a foreign corporation, but “in situs” here<sup>109</sup>
  - o Proceeds from an insurance policy issued abroad<sup>110</sup>
- It is unlimited in its range.
- Taxation cannot be allowed to confiscate or destroy.<sup>111</sup>
  - o Legitimate enterprises enjoy the constitutional protection not to be taxed out of existence.

#### Exercise

- The power of taxation is primarily vested in the Congress.
- It may also be exercised by local legislative bodies, pursuant to a direct authority under the constitution.<sup>112</sup>
  - o There must be a statutory grant for an LGU to impose lawfully a tax, that unit not having the inherent power of taxation,<sup>113</sup> except when the exercise is for the regulatory power of the local government.<sup>114</sup>
- Congress has the discretion to:
  - o Whether or not to tax in the first place
  - o Whom to tax
  - o What to tax
  - o For what purpose is the tax
- Congress’s power of taxation may be reversed if its enactments violate the due process and equal protection clauses,<sup>115</sup> or the constitutional restrictions.<sup>116</sup>

<sup>104</sup> Lim Gaw Jr. v. Commissioner of Internal Revenue, G.R. No. 222837, July 23, 2018 [Per J. Tijam, First Division].

<sup>105</sup> Angeles University Foundation v. City of Angeles, G.R. No. 189999, June 27, 2012 [Per J. Villarama, First Division].

<sup>106</sup> Ferrer v. Bautista, G.R. 210551, June 30, 2015 [Per J. Peralta, *En Banc*].

<sup>107</sup> Subic Bay Metropolitan Authority v. Subic Bay Marine Exploratorium Inc., G.R. No. 237591, November 10, 2021 [Per J. Gaerlan, Second Division].

<sup>108</sup> BCDA v. City Government of Baguio, G.R. No. 192694, February 22, 2023 [Per J. Leonen, Second Division].

<sup>109</sup> Wells Fargo Bank v. Collector of Internal Revenue, G.R. No. 46720, June 28, 1940 [Per J. Moran, *En Banc*].

<sup>110</sup> Manila Electric Co. v. Yatco, G.R. No. 45690, November 1, 1939 [Per J. Moran, *En Banc*].

<sup>111</sup> *Panhandle Oil Co. v. Mississippi ex Rel. Knox*, 277 U.S. 218, 223 (1928) (Holmes, J., dissenting) “The power to tax is not the power to destroy while this Court sits.”

<sup>112</sup> PHIL. CONST. art. X, § 5. The provision reads: “Each local government unit shall have the power to create its own sources of revenue and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.” See also LOCAL GOV’T CODE § 18 (power to generate and apply resources).

<sup>113</sup> *Alta Vista Golf and Country Club v. City of Cebu*, G.R. No. 180235, January 20, 2016 [Per Leonardo-De Castro, First Division].

<sup>114</sup> *Progressive Development Corp. v. Quezon City*, G.R. No. L-36081, April 24, 1989 [Per J. Feliciano, Third Division].

<sup>115</sup> PHIL. CONST. art. III, § 1.

<sup>116</sup> See PHIL. CONST. art. VI, § 28.

### Due process

- Taxes will not be allowed if they are confiscatory, except when they are intended precisely for destruction as an instrument of the police power.
- Due process does not require notice and hearing before a law prescribing a tax be enacted.
- But where the tax to be collected is *ad valorem* in nature, the taxpayer is entitled to be notified of the assessment proceedings and to be heard on the correct valuation to be given the property.
- No presumption of regularity exists in any administrative action which results in depriving a taxpayer of his property.

### Equal protection

- This flows from the constitutional command that “the rule of taxation shall be uniform and equitable.”<sup>117</sup>
  - o **Uniformity** – The persons or things belonging to the same class shall be taxed at the same rate.
  - o **Equality** – The tax shall be strictly proportional to the relative value of the property.
- Uniformity and equality require a valid classification in the selection of the objects of taxation.

#### (1) Uniformity (a.k.a. the equal protection clause)

- Uniformity does not forbid classification, as long as:<sup>118</sup>
  1. The standards that are used therefor are **substantial** and not arbitrary
  2. The categorization is **germane** to achieve the legislative purpose
  3. The law applies, *ceteris paribus*, to both **present and future** conditions
  4. The classification **applies equally** well to all those belonging to the same class.
- Inequities which result from singling out of one particular class for taxation or exemption infringe no constitutional limitation.<sup>119</sup>

#### (2) Equitable

- It connotes that taxes should be apportioned among the people **according to their capacity to pay**.
- *Tolentino v. Sec. of Finance*:<sup>120</sup> The mandate to Congress is not to prescribe, but **to evolve** a progressive tax system. It does not prohibit the imposition of indirect taxes which are regressive.
  - o The provision is a moral incentive to legislation, and not as a judicially enforceable right.

### Double taxation

- There is double taxation when additional taxes are laid—
  1. On the same subject
  2. By the same taxing jurisdiction (i.e. LGU or national government)
  3. During the same taxing period
  4. For the same purpose
- It is not *per se* unconstitutional.
- Double taxation will not be allowed if it results in the violation of the equal protection clause.

### Public purpose

- Revenues derived from taxes cannot be used for purely private purposes or for the exclusive benefit of private reasons.
- “Public purpose” is given broad interpretation to include even indirect public advantage or benefit, so long as some link to the public welfare is established.
- The public purpose of the government expenditure is not affected by any incidental benefit to a private person or entity<sup>121</sup>.

<sup>117</sup> PHIL. CONST. art. VI, § 28.

<sup>118</sup> See *Collector of Customs v. Hypermix Feeds Corporation*, G.R. No. 179579, February 1, 2012 [Per J. Sereno, Second Division], where the court struck down a tariff classification based on the kind and quality of wheat.

<sup>119</sup> *Supra* note 106.

<sup>120</sup> G.R. No. 115455, October 30, 1995 [Per J. Mendoza, *En Banc*], finding the VAT hike under RA 7716 not unconstitutional.

<sup>121</sup> *Bawasanta v. People*, G.R. No. 219300, November 17, 2021 [Per J. Gaerlan, Second Division].



### Tax exemptions

- Tax exemptions are construed strongly against the claimant.
  - o There is no vested right in a tax exemption.
- Tax exemptions and refunds are exceptions and are highly disfavored.
  - o Tax amnesty – A general pardon or the intentional overlooking by the state of its authority to impose penalties on persons otherwise guilty of a violation of a tax law.
    - An absolute waiver by the government of its right to collect what is due it and to give tax evaders a clean slate.
- Tax exemptions are either **constitutional or statutory**.

#### (1) Constitutional tax exemptions

- Article VI, Section 28(3), pertaining to charitable institutions, churches, and parsonages or convents, mosques, nonprofit cemeteries, and all **lands, buildings, and improvements actually, directly, and exclusively** used for **religious, charitable, or educational** purposes.
  - o There must be a direct and immediate and actual application of the property itself to the purposes for which the charitable institution is organized.
  - o Only applies to real property taxation. But, nevertheless, it must still be used actually, directly and exclusively used for the purposes set forth above.<sup>122</sup>
- Article XIV, Section 4(3), pertaining to all the **revenue and assets** of nonstock, nonprofit educational institutions used **actually, directly, and exclusively** for **educational** purposes.
- In *Commissioner of Internal Revenue v. De La Salle University*,<sup>123</sup> the court distinguished these two constitutional tax exemptions:
  - o When a **non-stock, non-profit educational institution** proves that it uses its revenues actually, directly, and exclusively for educational purposes, it shall be exempted from income tax, VAT, and local business tax under Article XIV, Section 4(3).
  - o When it also shows that it uses its assets in the form of real property for educational purposes, it shall be exempted from real property tax under Article VI, Section 28(3).

#### (2) Statutory tax exemptions

- These are up to Congress's discretion, although such a law granting tax exemption must be with the concurrence of a majority of all the members of the Congress.<sup>124</sup>
- If the exemption is granted gratuitously (*e.g.* in pursuance of an economic policy), Congress may revoke it at will.
- If the exemption is granted for valuable consideration, it is deemed to partake of the nature of a contract and the obligation thereof is protected against impairment.<sup>125</sup>

### End of midterm coverage

## Chapter 8: Due process of law

Article III, Section 1 of the Constitution provides:

No person shall be deprived of life, liberty or property without due process of law.<sup>126</sup>

Dual aspect:

1. Procedural
2. Substantive

<sup>122</sup> See *Lladoc v. Commissioner of Internal Revenue*, G.R. No. L-19201, June 16, 1965 [Per J. Paredes, *En Banc*] ("The exemption under [1935 PHIL. CONST. art. VI, § 22(3)] is only from the payment of taxes assessed on such properties enumerated, as property taxes, as contra-distinguished from excise taxes.") & *Lung Center of the Philippines v. Quezon City*, G.R. No. 144104, June 29, 2004 [Per J. Calleja, *En Banc*] ("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.").

<sup>123</sup> G.R. 196596, November 9, 2016 [Per J. Brion, Second Division].

<sup>124</sup> PHIL. CONST. art. VI, § 28(4).

<sup>125</sup> See PHIL. CONST. art. III, § 10.

<sup>126</sup> PHIL. CONST. art. III, § 1. This is the due process clause.

For an act to not be repugnant as violative of the due process clause, it must comply with both the substantive and procedural requirements.

#### Definition

- A precise definition of due process might prove constricting and prevent the judiciary from adjusting it to the circumstances of particular cases and to the ever-changing conditions of society (Framers of the 1935 Constitution).
  - o The very elasticity of the provision enlarges the rights of the individual to his life, liberty and property.
- Responsiveness to the supremacy of reason, obedience to the dictates of justice (Justice Enrique Fernando).
- The embodiment of the sporting idea of fair play (Justice Felix Frankfurter).
- A guaranty against any arbitrariness on the part of the government.
  - o Hence, any government act that militates against the ordinary norms of justice or fair play is considered an infraction of the great guaranty of due process.

#### Person

- Due process protects:
  - o Citizens
  - o Aliens (noncitizens)
  - o Artificial persons (*e.g.* corporations and partnerships)
    - But here, only the property is protected because the life and liberty of the artificial person is a mere creature of law, subject to the control of the legislature.
  - o State

#### Deprivation

- Applied in due process, deprivation connotes denial of the right to life, liberty or property.
- It's not necessarily unconstitutional. Deprival without due process is.
- *Life*: The state may validly claim a person's life such as during military service, or when he is sentenced to suffer capital punishment.<sup>127</sup>
  - o However, it's an invalid deprivation if the accused is condemned to death for a petty crime.
- *Liberty*: There's valid deprivation of liberty when a person afflicted with a communicable disease is required to be quarantined, or where an accused is imprisoned.
  - o It's an invalid exercise, however if a person is jailed without trial, prevented from criticizing the government, or is forced to follow a particular religion.
- *Property*: Private property may be taken when it's offensive to public welfare (police power), or expropriated, upon payment of just compensation so it can be used for some public purpose (eminent domain).
  - o It's unlawful, however, to take property merely for aesthetic purposes,<sup>128</sup> or taken without just compensation.

#### Life

- This connotes the integrity of the physical person.
  - o It's not permissible for the government to deprive the individual of any part of his body, even if it's punishment for a crime.
- Any measure that would endanger his health, or subject him to unnecessary pain<sup>129</sup> or to unreasonable physical exertion would also be subject to challenge.<sup>130</sup>
- Universal Declaration of Human Rights: Every human being enjoys the **right to life**.

<sup>127</sup> Republic Act No. 9346 (2006) prohibited the imposition of the death penalty in the Philippines.

<sup>128</sup> *People v. Fajardo*, G.R. No. L-12172, August 21, 1958 [Per J. Reyes, *En Banc*].

<sup>129</sup> PHIL. CONST. art. III, § 19.

<sup>130</sup> PHIL. CONST. art. III, § 18(2).

- In addition, the state is mandated to “equally protect the life of the mother and the life of the unborn from conception.”<sup>131</sup> Accordingly, this provision was meant to constrain Congress from enacting a measure legalizing abortion.<sup>132</sup>
- The right to life includes the human right to the pursuit of happiness and of health.
  - Hence, the court allowed an intersex person to change their birth certificate gender from female to male.<sup>133</sup>

### Liberty

- Liberty as guaranteed by the due process clause is not an unbridled license—it is liberty regulated by law.
  - A person may act freely but he may exercise his rights only in such manner as not to injure the rights of others.
  - As a creature of society, a person should be prepared to surrender part of his freedom for the benefit of the greater number in recognition of the time-honored principle of *salus populi est suprema lex*.
- Subject only to reasonable restrictions, a person is free to do as he pleases—anything that does not offend the public welfare.
  - Hence, the following are invalid restrictions of liberty
    - Abridging the right to marry, which is a fundamental right<sup>134</sup>
    - Preventing the reinstatement of an employee unless she marries the person who impregnated her<sup>135</sup>
- Nevertheless, one’s freedom of expression may not be used to unfairly destroy another person’s reputation,<sup>136</sup> incite rebellion,<sup>137</sup> offend public morals;<sup>138</sup> neither may he abuse the sanctity of his home by converting it into a den of criminality or a hotbed of disease; nor may he insist on selling goods at black market prices to the public’s detriment.

### Property

- Property is anything that can come under the right of ownership and be the subject of contract.
- This will include all things—real, personal, tangible and intangible—that are within the commerce of man.
- Hence, the following are invalid deprivation of property:
  - The stoppage of the construction of a building in one’s own property<sup>139</sup>
  - Dismantling of banners and fixtures (billboards) secured by lease agreements and permits<sup>140</sup>
  - Retirement benefits as a property interest of a retiree<sup>141</sup>
- Things that are not regarded as property may be deprived from someone without violating the due process clause, such as:
  - A claimed vested right to occupy public office, except when the salary has already been earned
  - Mere privileges, such as operating a cockpit and a liquor store
  - In the continued operation of law, which can be repealed or amended by Congress anytime

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<sup>131</sup> PHIL. CONST. art. II, § 12.

<sup>132</sup> *Sps. Imbong v. Ochoa*, G.R. No. 204819, April 8, 2014 [Per J. Mendoza, *En Banc*].

<sup>133</sup> *Republic v. Cagandahan*, G.R. No. 166676, September 12, 2008 [Per J. Quisimbing, Second Division].

<sup>134</sup> *Obergefell v. Hodges*, 576 U.S. 644 (2015).

<sup>135</sup> *J. Jardeleza, Concurring Opinion in Capin-Cadiz v. Brent Hospital and Colleges Inc.*, G.R. No. 187417, February 24, 2016 [Per J. Reyes, Third Division].

<sup>136</sup> REV. PEN. CODE, art. 353.

<sup>137</sup> REV. PEN. CODE, art. 138.

<sup>138</sup> REV. PEN. CODE, art. 200.

<sup>139</sup> *Knights of Rizal v. DMCI Homes Inc.*, G.R. No. 213948, April 25, 2017 [Per J. Carpio, *En Banc*].

<sup>140</sup> *DPWH v. City Advertising Ventures Corp.*, G.R. No. 182944, November 9, 2016 [Per J. Leonen, Second Division], holding that such agreement is a property right.

<sup>141</sup> *GSIS v. Montesclaros*, G.R. No. 146494, July 14, 2004 [Per J. Carpio, *En Banc*].

- However, when it comes to legislative franchises, the same cannot be revoked by Congress without due process of law<sup>142</sup>
  - In the continued reliance over a judicial doctrine, which may be modified anytime by the Supreme Court
- **Vested rights** – Rights are considered vested when the right to enjoyment is a present interest, absolute, unconditional and perfect or fixed and irrefutable.
  - Even the changing of the constitution cannot abrogate a vested right!<sup>143</sup>
  - Hence, the following do not constitute a vested right:
    - Sources of income of workers who are part of the informal economy<sup>144</sup>
    - Right of a person under investigation by the NBI to participate in investigation proceedings<sup>145</sup>
  - Vested rights may be lost if there is due process, and such deprivation is founded on law and jurisprudence.<sup>146</sup>

### Substantive due process

#### Nature

- Substantive due process requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty, or property.

Test: Is it a proper exercise of legislative power?

- To be so, the law must have a valid governmental objective (*i.e.* interests of the public generally), pursued in a lawful manner or that the means employed must be reasonably related to the accomplishment of the purpose and not unduly oppressive.
- *Deja vu?* No! The requirements of substantive due process are essentially the same as the requisites for a valid exercise of police power.

Some examples of statutes that pass the requirements of substantive due process:

- A law requiring all laundry establishments to issue receipts in English or Spanish<sup>147</sup>
- The nationalization<sup>148</sup> and liberalization of trade<sup>149</sup>
- Revision of the curriculum and adding additional years in basic education (K-12)<sup>150</sup>
- *Ex-parte* inquiry into certain bank deposits and investments<sup>151</sup>
- Considering as a nuisance candidate someone who has no bona fide intention to run<sup>152</sup>
- A 10-cent per liter fee against tankers for oil pollution management<sup>153</sup>
- A rule requiring the payment of minimum wages to bus drivers and conductors<sup>154</sup>
- Requiring five years of service as judges of first-level courts before they can qualify to second-level courts<sup>155</sup>

Some laws which were struck down for being violative of substantive due process:

<sup>142</sup> Manila International Ports Terminal Inc. v. Philippine Ports Authority, G.R. No. 196199, December 7, 2021 [Per J. Hernando, *En Banc*].

<sup>143</sup> Yinlu Bicol Mining Corp. v. Trans-Asia Oil and Energy Development Corp., G.R. No. 207942, January 12, 2015 [Per J. Bersamin, First Division], holding that “rights pertaining to mining patents issued pursuant to the Philippine Bill of 1902 and existing prior to November 15, 1935 are vested rights that cannot be impaired.”

<sup>144</sup> Zabal v. Duterte, G.R. No. 238467, February 12, 2019 [Per J. Del Castillo, *En Banc*].

<sup>145</sup> Rodriguez v. NBI, G.R. No. 219781, July 28, 2021 [Notice, Second Division].

<sup>146</sup> Quiao v. Quiao, G.R. No. 176556, July 4, 2012 [Per J. Reyes, Second Division].

<sup>147</sup> Kwong Sing v. City of Manila, G.R. 15972, October 11, 1920 [Per J. Malcolm, *En Banc*].

<sup>148</sup> Ichong v. Hernandez, G.R. No. L-7995, May 31, 1957 [Per J. Labrador, *En Banc*].

<sup>149</sup> Espina v. Zamora, G.R. No. 143855, September 21, 2010 [Per J. Abad, *En Banc*].

<sup>150</sup> COTESCUP v. Secretary of Education, G.R. No. 216930, October 9, 2018 [Per J. Caguioa, *En Banc*].

<sup>151</sup> Subido Pagente Certeza Mendoza & Binay Law Firm v. CA, G.R. No. 216914, December 6, 2016 [Per J. Perez, *En Banc*].

<sup>152</sup> De Alban v. COMELEC, G.R. No. 243968, March 22, 2022 [Per J. Lopez, *En Banc*].

<sup>153</sup> DOTR v. Philippine Petroleum Sea Transport Association, G.R. No. 230107, July 24, 2018 [Per J. Velasco, *En Banc*].

<sup>154</sup> Provincial Bus Operators Association v. DOLE, G.R. No. 202275, July 17, 2018 [Per J. Leonen, *En Banc*].

<sup>155</sup> Villanueva v. Judicial and Bar Council, G.R. No. 211833, April 7, 2015 [Per J. Reyes, *En Banc*].

- A law prohibiting the keeping its account books in any other language aside from English, Spanish or local dialect<sup>156</sup>.
- A three-month cap on claims of OFWs with an unexpired portion of >1 year in their contracts<sup>157</sup>
- Several provisions of the Anti-Terrorism Law, particularly the “Not Intended Clause,” among others, for violating the overbreadth doctrine, vagueness doctrine, and strict scrutiny<sup>158</sup>
- An ordinance requiring plantations to shift from aerial to truck-mounted boom spray, for being unreasonable and oppressive<sup>159</sup>
- Authority of the justice secretary to issue watchlist orders<sup>160</sup>
- Authority to issue freeze order for an indefinite period<sup>161</sup>

### **Procedural due process**

#### **Definition:**

- The method or manner why which the law is enforced.
- Compliance with the procedures or steps, even periods, prescribed by statute, in conformity with the standard of fair play and without arbitrariness on the part of those who are called to administer it.
- The twin requirement of notice and hearing constitute the essential elements of due process and neither of these elements can be eliminated without running afoul of the constitutional guaranty.

#### *(1) Judicial due process*

##### **Requisites:**

1. An impartial court or tribunal clothed with judicial power to hear and determine the matter
2. Jurisdiction must be lawfully acquired over the person of the defendant and over the property which is the subject matter of the proceeding
3. The defendant must be given an opportunity to be heard
4. Judgment must be rendered upon lawful hearing

##### **Impartial and competent court**

- Every litigant is entitled to the cold neutrality of an impartial judge.
  - o The judge must both be and appear to be impartial.<sup>162</sup>
  - o Hence, disqualification of judges is provided for under the Rules of Court:
    - When the judge, his wife or child is pecuniary interested as heir, legatee, creditor, or otherwise
    - When the judge is related to either party within the sixth degree of consanguinity or affinity
    - When the judge is related to the counsel within the fourth degree
    - When the judge has been executor, administrator, guardian, trustee or counsel in the case
    - When the judge has presided in any inferior court and his decision is the subject of review
    - When, in the exercise of his sound discretion, the judge inhibits himself<sup>163</sup>
- This impartiality is likewise expected in the conduct of preliminary investigations, which is subject of both substantive and procedural due process.
  - o Preliminary investigation is an executive, not a judicial function. Hence, it is within the executive branch’s competence to direct and control preliminary investigations, so long as the process is not tainted with grave abuse of discretion.<sup>164</sup>

<sup>156</sup> Yu Cong Eng v. Trinidad, 271 U.S. 500 (1926).

<sup>157</sup> Serrano v. Gallant Maritime Services Inc., G.R. No. 167614, March 24, 2019 [Per J. Austria-Martinez, *En Banc*].

<sup>158</sup> *Supra* note 56.

<sup>159</sup> *Supra* note 66.

<sup>160</sup> Genuino v. De Lima, G.R. No. 197930, April 17, 2018 [Per J. Reyes, *En Banc*].

<sup>161</sup> Yambao v. Republic, G.R. No. 171054, January 26, 2021 [Per J. Gaerlan, First Division].

<sup>162</sup> Javier v. COMELEC, G.R. No. L-68379-81, September 22, 1986 [Per J. Cruz, *En Banc*].

<sup>163</sup> 1964 REVISED RULES OF COURT, rule 137, § 1.

<sup>164</sup> Supreme Court, Re: Draft Department of Justice-National Prosecution Service’s Rules on Preliminary Investigation and Inquest Proceedings [A.M. 24-02-09-SC] (May 28, 2004).

- Mere suspicion of partiality will not suffice to invalidate the actions of a tribunal. Bias and partiality cannot be presumed.
- Mere imputation of bias or partiality is not enough ground for inhibition, and a judge will not be required to inhibit himself in the absence of clear and convincing evidence to overcome the presumption that he will dispense justice in accordance with law and evidence.

### Jurisdiction

- It is the power of the courts to make decisions that are binding on the parties/litigants.
- A person cannot be prejudiced by a ruling rendered in an action or proceeding in which he was not made a party.
- When jurisdiction is acquired:
  - o Petitioners/complainants – Upon filing of their complaints or petitions
  - o Defendants/respondents – Upon valid service of summons or their voluntary submission to the court's jurisdiction
- A decision rendered without proper service of summons suffers a jurisdictional infirmity.
  - o Summons must be served personally on a defendant.
- Actions *in personam*: Jurisdiction over the defendant is acquired by his voluntary appearance or through service of summons.
  - o Summons may be personal, substituted service, or—exceptionally—by publication.
- Actions *in rem/quasi in rem*: Notice by publication is sufficient.
  - o Jurisdiction over the person is not essential, provided that the relief granted by the court is limited to such as can be enforced against the property itself.
  - o Presumption: Property is in possession of the owner or his agent.

### Hearing

- A decision without a hearing is null and void ab initio and may be attacked collaterally or directly.
- Hence, the following decisions/instances were declared void for lack of a proper hearing:
  - o A decision that annulled a person's certificate of title over a land without impleading her<sup>165</sup>
  - o A party who was issued a writ of demolition without making an appearance in the case<sup>166</sup>
  - o A notice by publication of a hearing conducted by an administrative agency<sup>167</sup>
  - o A judgment directing payment of a monetary award at a 5% monthly interest rate without informing respondents of such a possibility<sup>168</sup>
  - o Service that was effected upon the employee of the plaintiff, because service must be effected upon the counsel of record<sup>169</sup>
  - o When the trial court ordered the arraignment and trial of the accused pending reinvestigation of the fiscal
- Nevertheless, the following practices were deemed compliant with procedural due process:
  - o The right to appeal that was lost due to appellant's neglect<sup>170</sup>
  - o When the petitioners deliberately avoided acknowledging the service of summons<sup>171</sup>
  - o When an administrative case will be summarily resolved in 10 days on the basis only of position papers<sup>172</sup>
  - o Issuance of an *ex parte* restraining order (which was consequently dissolved *ex parte*)<sup>173</sup>
  - o When the person has chosen not to be heard, or opted to be silent<sup>174</sup>

<sup>165</sup> DBP v. Bautista, G.R. No. L-21362, November 29, 1968 [Per J. Fernando, *En Banc*].

<sup>166</sup> Lorenzana v. Cayetano, G.R. No. L-37051, August 31, 1977 [Per J. Guerrero, First Division].

<sup>167</sup> Cordero v. Public Service Commission, G.R. No. 32489, March 28, 1983 [Per J. Vasquez, First Division].

<sup>168</sup> Diona v. Balangue, G.R. No. 173559, January 7, 2013 [Per J. Del Castillo, Second Division].

<sup>169</sup> University of the Philippines v. Dizon, G.R. No. 171182, August 23, 2012 [Per J. Bersamin, First Division].

<sup>170</sup> Lobete v. Sundiam, G.R. No. L-38278 June 28, 1983 [Per J. De Castro, Second Division].

<sup>171</sup> Ablaza v. Court of Industrial Relations, G.R. No. L-33906, December 21, 1983 [Per J. Gutierrez, First Division].

<sup>172</sup> Valladolid v. Inciong, G.R. No. L-52364, March 25, 1983 [Per J. Melencio-Herrera, First Division].

<sup>173</sup> Anglo-Fil Trading Corp. v. Lazaro, G.R. No. L-54958, September 2, 1983 [Per J. Gutierrez, *En Banc*].

<sup>174</sup> Stronghold Insurance Co. v. CA, G.R. 88050, January 30, 1992 [Per J. Cruz, First Division].

- “To be heard” does not only mean verbal arguments in court. One may also be heard through pleadings.<sup>175</sup>
- Any defect in the observance of due process is cured by the filing of a motion for reconsideration.
- Anent the confrontation clause,<sup>176</sup> the right of confrontation does not necessarily mean a physical face-to-face confrontation of the adversaries in the court.
  - o The right merely means the right to be given an opportunity to cross-examine.<sup>177</sup>
  - o The right to cross-examine is a personal one, which may be waived expressly or impliedly.
- Likewise, the adverse party should also be given a chance to oppose any motion in the trial, in keeping with the right to be heard.<sup>178</sup>

### Appeal

- The right to appeal is not essential to the right to a hearing.
  - o Appeal cannot be demanded as a matter of right.
- Except when guaranteed by the constitution, appeal may be allowed or denied by Congress in its discretion.
  - o Hence, denial of the right to appeal if allowed by law is a denial of due process.
- Congress cannot deprive a person of his right to appeal under the minimum appellate jurisdiction of the Supreme Court:
  - o Questions of constitutionality
  - o Questions of legality of any tax, impost, etc.
  - o Issue of jurisdiction of any lower court
  - o In criminal cases where the penalty imposed is *reclusion perpetua* or higher
  - o Pure question of law is involved<sup>179</sup>
- There is no denial of due process when the right to appeal is lost through neglect<sup>180</sup>
- Generally, points of laws, theories and arguments not raised in the trial courts cannot be raised for the first time on appeal.
  - o Exception: The court will resolve said issues if it is necessary for the complete adjudication of the rights and obligations of the parties.<sup>181</sup>
- A motion for reconsideration is also a statutory grant/privilege, which must strictly comply with the requisites laid in the rules of court.

### Exceptions

- The essential requisites of notice and hearing may be omitted without violation of due process in the following instances:
  - o Cancellation of the passport of a person sought for the commission of a crime
  - o Preventive suspension of a civil servant facing administrative charges
  - o Distrainment of properties for tax delinquency
  - o Padlocking of establishments found to be unsanitary or showing obscene films
  - o Issuance of a temporary protection order<sup>182</sup>
  - o Issuance of writs of preliminary attachment
  - o Issuance of writs of possession
  - o Abetment of nuisance *per se*<sup>183</sup>
    - In *Aquino v. Malay, Aklan*,<sup>184</sup> the Supreme Court held that nuisance per accidens cannot be abated extrajudicially (without a court order). Nevertheless,

<sup>175</sup> *Zaldivar v. Sandiganbayan*, G.R. No. 79690, October 7, 1988 [Per Curiam, *En Banc*].

<sup>176</sup> PHIL. CONST. art. III, § 14 (2).

<sup>177</sup> *Republic v. Sandiganbayan*, G.R. No. 109430-43, December 28, 1994 [Per J. Bellosillo, First Division].

<sup>178</sup> *Acampado v. Sps. Comilla*, G.R. No. 198531, September 28, 2015 [Per J. Perez, First Division], citing *Marcos v. Garchitorena*, G.R. No. 90110-43, February 22, 1990 [unreported].

<sup>179</sup> PHIL. CONST. art. VIII, § 5 (2).

<sup>180</sup> *Supra* note 170.

<sup>181</sup> Which is a rather broad exception.

<sup>182</sup> *Garcia v. Drilon*, G.R. 179267, G.R. No. 183152, January 21, 2015 [Per J. Perlas-Bernabe, *En Banc*].

<sup>183</sup> See An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 346, arts. 694-707 (1949).

<sup>184</sup> G.R. No. 211536, September 29, 2014 [Per J. Velasco, Third Division].

the court upheld the demolition of the West Cove Hotel by virtue of the mayor's authority under the Local Government Code.<sup>185</sup>

#### Judgment

- Due process requires that the judgment be based upon the lawful hearing previously conducted.
- The parties must be informed of how their case was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court.<sup>186</sup>
  - o The losing party is entitled to know why he lost, so he may appeal, if permitted.
- Courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by a party to a case.
- Evidence not formally offered during trial would also deprive the other party of due process. It has no probative value and must be excluded by the court.
  - o Exceptions: Judicial notice.<sup>187</sup>

#### (2) Administrative due process

The landmark case of *Ang Tibay v. Court of Industrial Relations*<sup>188</sup> laid down the **requisites for procedural due process in administrative proceedings**:

1. The right to a hearing, which includes the right to present one's case and submit evidence in support thereof
  2. The tribunal must consider the evidence presented
  3. The decision must have something to support itself
  4. The evidence must be substantial
  5. The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected
  6. The tribunal or body or any of its judges must act on its or his own independent consideration of the law and facts
  7. The board or body should render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decision rendered
- Administrative due process is a fair and reasonable opportunity to explain one's side.
    - o The *Ang Tibay* requisites do not apply to preliminary investigations, which are quasi-judicial in nature.
  - The following instances violated administrative due process:
    - o Taxation: Collection of tax deficiency based on collection letters, because taxpayers must be sufficiently informed of the factual basis of their delinquencies<sup>189</sup>
      - Hence, tax assessments issued in violation of the due process rights of a taxpayer are null and void
      - Nevertheless, an assessment of deficiency is not a condition sine qua non for the filing of a criminal action to evade payment of taxes<sup>190</sup>
    - o Labor: Termination of an employee without a just cause
      - Substantial due process in the context of labor cases pertains to the existence of a just cause as a ground for dismissal<sup>191</sup>
    - o Administrative: When the officer reviewed his own decision in his former, lower role<sup>192</sup>
      - Self-review is violative of procedural due process!

<sup>185</sup> LOCAL GOV'T CODE § 444 (b) (3) (vi).

<sup>186</sup> See PHIL. CONST. art. VIII, § 14.

<sup>187</sup> 1964 REVISED RULES OF COURT, rule 129, § 1.

<sup>188</sup> G.R. No. 46496, February 27, 1940 [Per J. Laurel, *En Banc*].

<sup>189</sup> CIR v. Pilipinas Shell, G.R. No. 197945, July 9, 2018 [Per J. Leonardo-De Castro, First Division] & CIR v. Sps. Magaan, G.R. 232663, May 3, 2021 [Per J. Leonen, Third Division].

<sup>190</sup> Kingsam Express v. People, G.R. No. 254086, September 7, 2022 [Notice, First Division].

<sup>191</sup> G&S Transport Corp. v. Medina, G.R. No. 243768, September 5, 2022 [Per J. Hernando, First Division].

<sup>192</sup> See Zambales Chromite v. CA, G.R. No. L-49711, November 7, 1979 [Per J. Aquino, Second Division], Anzaldo v. Clave, G.R. No. 54597, December 15, 1982 [Per J. Aquino, Second Division] & Miranda v. CSC, G.R. No. 213502, February 18, 2019 [Per J. Reyes, Second Division].



- Administrative rules of procedure should be construed liberally to promote their object to assist the parties in obtaining a just, speedy, and inexpensive determination of their claims and defenses
- Notice and hearing are dispensable in administrative investigations.
  - o In such cases, the right to a notice and hearing are not essential to due process of law.
  - o It's merely an opportunity to explain one's side or seek reconsideration.
- Litigants may be heard through pleadings, written explanations, position papers, memoranda or oral arguments.
  - o Trial-type proceedings is not required in all situations.
- The right to counsel is *not* an imperative in administrative investigations.<sup>193</sup>
  - o This is because the inquiries are conducted merely to determine whether there are facts that merit disciplinary measures.
  - o A party may or may not be assisted by counsel, and no duty rests on such body to furnish the person being investigated with counsel.<sup>194</sup>
- Because administrative proceedings are summary in nature, it is not necessary to require affiants to appear and testify and to be cross-examined by the adverse party.<sup>195</sup>
- The opportunity to adduce evidence is essential as decisions must be based on the evidence presented.
  - o For as long as the administrative decision is grounded on evidence and expressed in a manner that sufficiently informs the parties of the factual and legal bases of the decision, the due process requirement is satisfied.<sup>196</sup>
  - o Hence, falling short of this requirement will void the administrative decision.<sup>197</sup>
- There will be a violation of the right to due process if a reinvestigation is conducted without it being asked by a party.
- In the case of a preliminary investigation, the denial of such is a denial of due process.
  - o This is because preliminary investigation is a statutory right.
  - o The right to preliminary investigation is substantive, not merely formal or technical.<sup>198</sup>

## Chapter 9: Equal protection

Article III, Section 1 of the Constitution provides:

No person shall be deprived ... the equal protection of the laws.<sup>199</sup>

Definition:

- All persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed.

Nature

- The equal protection clause is directed principally against undue favor and individual or class privilege.
- 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.
- Even if the law be fair and impartial on its face, it will still violate equal protection if it is administered with an evil eye and an uneven hand so as to unjustly benefit some and prejudice others.<sup>200</sup>

<sup>193</sup> *Perez v. People*, G.R. No. 164764, February 12, 2008 [Per J. Reyes, Third Division].

<sup>194</sup> *Vivo v. PAGCOR*, G.R. No. 187854, November 12, 2013 [Per J. Bersamin, *En Banc*].

<sup>195</sup> *SEC v. Interport*, G.R. No. 135808, October 6, 2008 [Per J. Chico-Nazario, *En Banc*].

<sup>196</sup> *Solid Homes Inc. v. Laserna*, G.R. No. 166051, April 8, 2008 [Per J. Chico-Nazario, Third Division].

<sup>197</sup> See *Seares v. National Electrification Administration Board*, G.R. No. 254336, November 18, 2021 [Per J. Lazaro-Javier, First Division].

<sup>198</sup> *Palacios v. People*, G.R. No. 240676, March 18, 2019 [Per J. Perlas-Bernabe, Second Division].

<sup>199</sup> PHIL. CONST. art. III, § 1.

<sup>200</sup> *Yick Wo v. Hopkins*, 118 US 356. See also *People v. Vera*, G.R. No. 45685, December 22, 1937 [Per J. Laurel, *En Banc*].

- In *Yrasuegui v. Philippine Airlines*,<sup>201</sup> the Supreme Court held that the equal protection clause “erects no shield against private conduct, however discriminatory or wrongful.” Private actions, no matter how egregious, cannot violate the equal protection guarantee.

Persons protected:

1. Natural persons – This includes both citizens and aliens. However, the constitution reserves certain rights to Filipino citizens only, such as:
  - a. Right to vote
  - b. Right to hold public office
  - c. Exploit natural resources
  - d. Operate public utilities
2. Juridical persons – Only protection as to their property.

Classifications

- *Preface*: The law is not required to provide for equality among all persons if they are not similarly situated. What the constitution requires is equality among equals.
  - o Hence, the equal protection clause allows for classification.
- *Definition*: The grouping of persons or things similar to each other in certain particulars and different from all others in these same particulars.

**Requisites of a valid classification:**

1. It must be based on **substantial distinctions**
2. It must be **germane** to the purposes of the law
3. It must **not be limited to existing conditions** only
4. It must **apply equally** to all members of the class<sup>202</sup>

*(1) Substantial distinctions*

- Superficial differences do not make for a valid classification.<sup>203</sup>
- Congress is allowed a wide leeway in providing for a valid classification.
- The following are **valid** classifications:
  - o Classification of cities into highly urbanized cities and component cities based on their regular annual income<sup>204</sup>
  - o Classification of local elective officials into barangay officials and others<sup>205</sup>
  - o The preventive suspension handed down by the Ombudsman (up to six months) and those imposed by executive officials (up to 90 days)<sup>206</sup>
  - o Persons convicted by the Sandiganbayan and persons convicted by lower trial courts (the latter has one more level of appeal through the CA)<sup>207</sup>
  - o Filipino female domestics workers and Filipino female workers in general (the former is a class of its own)<sup>208</sup>
  - o NMAT takers who failed thrice and admitted medical students<sup>209</sup>
  - o Appointive and elective officials<sup>210</sup>
  - o Presidential appointees and nonpresidential appointees<sup>211</sup>
  - o Juridical and natural persons<sup>212</sup>

<sup>201</sup> G.R. No. 168081, October 17, 2008 [Per J. Reyes, Third Division].

<sup>202</sup> *People v. Cayat*, G.R. No. 45987, May 5, 1939 [Per J. Moran, First Division].

<sup>203</sup> “Fortunately for the greater number, discrimination against the ugly in favor of the beautiful is usually also not allowed.” ISAGANI A. CRUZ & CARLO L. CRUZ, *CONSTITUTIONAL LAW* 333 (2024).

<sup>204</sup> *Ceniza v. COMELEC*, G.R. No. L-52304, January 28, 1980 [Per J. Concepcion, *En Banc*].

<sup>205</sup> *COMELEC v. Cruz*, G.R. No. 186616, November 20, 2009 [Per J. Brion, *En Banc*].

<sup>206</sup> *Gobenciong v. CA*, G.R. No. 159883, March 31, 2008 [Per J. Velasco, *En Banc*].

<sup>207</sup> *Nuñez v. Sandiganbayan*, G.R. No. L-50581, January 30, 1982 [Per C.J. Concepcion, *En Banc*].

<sup>208</sup> *Philippine Association of Service Exporters v. Drilon*, G.R. No. 81958, June 30, 1988 [Per J. Samiento, *En Banc*].

<sup>209</sup> *Supra* note 49.

<sup>210</sup> *Quinto v. COMELEC*, G.R. No. 189698, February 22, 2019 [Per C.J. Puno, *En Banc*].

<sup>211</sup> *Pichay v. ODESLA-IAD*, G.R. No. 196425, July 24, 2012 [Per J. Pertas-Bernabe, *En Banc*].

<sup>212</sup> *Goldenway Merchandising Corp. v. Equitable PCI Bank*, G.R. No. 195540, March 13, 2013 [Per J. Villarama, First Division].

- Men and women<sup>213</sup>
- Justices of the Supreme Court and lawmaker-members of the electoral tribunals<sup>214</sup>
- LGBTs (class of their own)<sup>215</sup>
- Judges with five-year experience, and those who does not have<sup>216</sup>
- Senior citizens<sup>217</sup> and PWDs<sup>218</sup> (class of their own)
- Sea-based and land-based OFWs<sup>219</sup>
- The following are invalid classifications:
  - Local-hire and foreign-hire teachers<sup>220</sup>
  - Providing franking privilege for the president and Congress, but not for judges<sup>221</sup>
  - The oil deregulation law, when it discriminated against new players<sup>222</sup>
  - Tariff brackets based on national origin of wheat imports<sup>223</sup>
  - Those tried and convicted by a military court, and by civilian courts<sup>224</sup>
  - The Arroyo administration, and other previous administrations<sup>225</sup>
  - An occupant of a lot, and occupant of a condominium unit<sup>226</sup>
  - Dependent spouse whether they are married before or after the retirement of the pensioner<sup>227</sup>
  - PUVs and private vehicles, where the former was disallowed to carry election posters<sup>228</sup>
  - Foundlings from children with known Filipino parents<sup>229</sup>
  - Science high school students and general high school students<sup>230</sup>
  - *A pro hac vice* decision<sup>231</sup>
    - Exception: When the precedential limitation was done to prevent injustice or serve the ends of substantial justice, while being careful not to encourage a similar situation or practice in the future.<sup>232</sup>

## (2) Germaneness

- Illustrative example: The accepted difference in physical stamina between men and women will justify discrimination if the work involved is heavy or strenuous.
  - However, this classification will *not* be allowed if it will be used to justify having a lower passing average for women in the bar examinations, because physical strength is unrelated to the practice of law.
- The following classifications are germane:
  - Men and women in the Anti-VAWC Law<sup>233</sup>
  - Special rewards for BIR and BOC employees to encourage higher collection<sup>234</sup>

<sup>213</sup> *Supra* note 182.

<sup>214</sup> *Reyes v. House of Representatives Electoral Tribunal*, G.R. No. 221103, October 16, 2018 [Per J. Carpio, *En Banc*].

<sup>215</sup> *Ang Ladlad LGBT Party v. COMELEC*, G.R. No. 190582, April 8, 2019 [Per J. Del Castillo, *En Banc*].

<sup>216</sup> *Villanueva v. Judicial and Bar Council*, G.R. No. 211833, April 7, 2015 [Per J. Reyes, *En Banc*].

<sup>217</sup> *Supra* note 81.

<sup>218</sup> *Supra* note 55.

<sup>219</sup> *Joint Ship Manning Group Inc. v. SSS*, G.R. No. 247471, July 7, 2020 [Per J. Gesmundo, *En Banc*].

<sup>220</sup> *International School Alliance of Educators v. Quisumbing*, G.R. No. 128845, June 1, 2000 [Per J. Kapunan, First Division].

<sup>221</sup> *Philippine Judges Association v. Prado*, G.R. No. 105371, November 11, 1993 [Per J. Cruz, *En Banc*].

<sup>222</sup> *Tatad v. Secretary of Energy*, G.R. No. 124360, November 5, 1997 [Per J. Puno, *En Banc*].

<sup>223</sup> *Supra* note 118.

<sup>224</sup> *Garcia v. Executive Secretary*, G.R. No. 198544, July 30, 2012 [Per J. Peralta, Third Division].

<sup>225</sup> *Biraogo v. Philippine Truth Commission*, G.R. No. 192935, December 7, 2010 [Per J. Mendoza, *En Banc*].

<sup>226</sup> *Supra* note 106.

<sup>227</sup> *Dyaico v. SSS*, G.R. No. 161357, November 30, 2005 [Per J. Callejo, *En Banc*].

<sup>228</sup> *1-UTAK v. COMELEC*, G.R. No. 206020, April 14, 2015 [Per J. Reyes, *En Banc*].

<sup>229</sup> *David v. Senate Electoral Tribunal*, G.R. No. 221538, September 20, 2016 [Per J. Leonen, *En Banc*].

<sup>230</sup> *Supra* note 150. This is an *obiter dictum*.

<sup>231</sup> *Supra* note 139.

<sup>232</sup> *Guia v. COA*, G.R. No. 120864, October 8, 2003 [Per J. Caprio, First Division].

<sup>233</sup> *Supra* note 182.

<sup>234</sup> *Bureau of Customs Employees Association v. Teves*, G.R. No. 181704, December 6, 2011 [Per J. Villarama, *En Banc*].

- A distinction between government employees hired before and after July 1, 1989 to standardize the compensation scheme in the government, as per the SSL<sup>235</sup>
- Imposition of a license fee to carry firearms during election period, but not before or after, for the purpose of regulating the bearing of firearms during elections<sup>236</sup>

*(3) Not be limited to existing conditions only*

- This means that the classification must be enforced not only for the present, but as long as the problem sought to be corrected continues to exist.
- Two illustrative cases:
  - *People v. Cayat*:<sup>237</sup> non-Christian peoples were prohibited from consuming intoxicating liquor. The court sustained the validity of the classification as it was intended to apply as long as the difference between the two groups continued to exist.
    - The “difference” alluded to be that non-Christians have a low degree of culture and unfamiliarity with the drinks.
  - *Ormoc Sugar Co. Inc. v. Treasurer of Ormoc City*: The city imposed a tax on the sugar milled by the petitioner.
    - The taxing ordinance should not be singular and exclusive as to exclude any subsequently established sugar central, of the same class as plaintiff, from the coverage of the tax. Even if later a similar company is set up, it cannot be subject to the tax because the ordinance expressly points only to petitioner as the entity to be levied upon.
- A statute valid at one time may become void at another time because of altered circumstances (relative constitutionality).<sup>238</sup>
- At a time, the court upheld the validity of the law but declared its continued enforcement as unconstitutional.
  - The continued enforcement of an otherwise valid law would be unreasonable and oppressive, and its continued operation would be grossly discriminatory and lead to the oppression of creditors.<sup>239</sup>

*(4) Applicability to all*

- The mere fact that an individual belonging to a class differs from the other members, as long as that class is substantially distinguishable from all others, does not justify the nonapplication of the law to him.
  - Substantial similarity will suffice. As long as this is achieved, all those covered by the classification are to be treated equally.
- The classification will be regarded as invalid if all the members of the class are not similarly treated, both as to rights conferred and obligations imposed.

**Judicial scrutiny**

- The reasonability of a distinction and sufficiency of the justification given by the government for its conduct is gauged by using the **means-end test**.
- Means-end test requires the analysis of:
  - The interests of the public that generally require its exercise, as distinguished from those of a particular class
  - The means employed that are reasonably necessary for the accomplishment of the purpose and are not unduly oppressive upon individuals.
- To determine the propriety of the classification, courts resort to three levels of scrutiny:
  1. Rational basis scrutiny
  2. Intermediate scrutiny
  3. Strict scrutiny

<sup>235</sup> Zamboanga City Water District v. COA, G.R. No. 213472, January 26, 2016 [Per J. Mendoza, *En Banc*].

<sup>236</sup> PADPAO v. COMELEC, G.R. No. 223505, October 3, 2017 [Per J. Caguioa, *En Banc*].

<sup>237</sup> *Supra* note 202.

<sup>238</sup> *Supra* note 27.

<sup>239</sup> Rutter v. Esteban, G.R. No. L-3708, May 18, 1953 [Per J. Bautista Angelo, *En Banc*].

## Chapter 10: Searches and seizures

Article III, Section 2 of the Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.<sup>240</sup>

This tells us that neither search nor seizure may be allowed, as a general rule.

Article III, Section 3 of the Constitution provides:

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

Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.<sup>241</sup>

Who are protected?

1. Natural persons (including aliens)
  - a. The right against unreasonable searches and seizures is personal
    - i. Hence, it can only be invoked by the person entitled to it
2. Artificial persons
  - a. Companies may be required to open their books of account for examination

What is the extent?

- The right covers:
  - o Home
  - o Office or business establishments by him
  - o Papers and effects found in those places
- The right covers actions of individuals who have the color of a state-related function or those who are deemed agents of government.<sup>242</sup>
- The Bill of Rights, however, does not govern relationships between individuals. Hence, it cannot be invoked against the acts of private individuals.<sup>243</sup>
  - o Hence, a search by a shipping company does not violate the right against unreasonable searches and seizure.<sup>244</sup>
  - o So does a search by a guidance counselor, who is not an agent of the state.<sup>245</sup>

Three strands of the right to privacy:<sup>246</sup>

1. Locational or situational privacy
2. Informational privacy
3. Decisional privacy

The right against unreasonable searches and seizure is not absolute, as it admits of exceptions. Hence, the **constitutional requirements of a valid search warrant or a warrant of arrest are:**

1. It must be based on probable cause
2. The probable cause must be determined personally by the judge

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<sup>240</sup> PHIL. CONST. art. III, § 2.

<sup>241</sup> PHIL. CONST. art. III, § 3.

<sup>242</sup> Dela Cruz v. People, G.R. No. 209387, January 11, 2016 [Per J. Leonen, Second Division].

<sup>243</sup> Miguel v. People, G.R. No. 227038, July 31, 2017 [Per J. Perlas-Bernabe, First Division].

<sup>244</sup> People v. Marti, G.R. No. 81561, January 18, 1991 [Per J. Bidin, Third Division].

<sup>245</sup> Marquez v. People, G.R. No. 197207, March 13, 2013 [Per J. Brion, Second Division].

<sup>246</sup> Vivares v. St. Theresa's College, G.R. No. 202666, September 29, 2014 [Per J. Velasco, Third Division].

3. The determination must be made after examination under oath or affirmation of the complainant and the witnesses he may produce
4. It must particularly describe the place to be searched and the persons or things to be seized<sup>247</sup>

### ***(1) Existence of probable cause***

**Probable cause** – Such facts and circumstances antecedent to the issuance of the warrant that in themselves are sufficient to induce a cautious man to rely on them and act in pursuance thereof.

- Probability of guilt requires more than bare suspicion, but less than evidence which would justify a conviction.
  - o Not clear and convincing evidence
  - o Not evidence beyond reasonable doubt
  - o More than mere suspicion
- Probable cause, which justifies warrantless search and seizure, cannot be based *exclusively* on an initial tip relayed by a confidential informant.<sup>248</sup>

There are two instances where probable cause is required to be established:

1. By a peace officer or a private person making a **warrantless arrest** when an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it;<sup>249</sup> and
2. By the judge, to determine whether a search warrant shall be issued, and only upon probable cause in connection with **one specific offense**.<sup>250</sup>

### **A search warrant must refer only to one specific offense.**

- *Stonehill v. Diokno*:<sup>251</sup> Allegations of violations of the Revised Penal Code, Central Bank circulars, etc., make it impossible for the issuing judge to find the existence of probable cause, for it presupposes the introduction of competent proof that the respondent has performed particular acts and specific omissions violating our criminal laws.
  - o **Scattershot warrant** – A warrant which contains more than one offense.
- Nevertheless, the one-specific-offense rule is not violated when multiple counts of the same offense is lumped in a search warrant.<sup>252</sup>
- This rule is also complied with when a complex crime is alleged.<sup>253</sup>

In nonjudicial proceedings, the court has struck down laws which violated this requisite.

- In *Disini*,<sup>254</sup> the court annulled Sections 12 and 19 of the Anti-Cybercrime Law for allowing the justice secretary—an executive branch officer—to restrict or block access to computer data, and allow law enforcers, “with due cause,” to collect or record real-time computer data, respectively.
- In *Ligot v. Republic*, probable cause was differently defined in the case of freeze orders under the Anti-Money Laundering Act (AMLA).
  - o Here, probable cause refers to the sufficiency of the relation between an unlawful activity and the property or monetary instrument.

### ***(2) Determination of probable cause***

Determination of probable cause is to be made “personally by the judge.”

- This refers to judges of all levels.
- It is not a ministerial function of the judge—the judge has the right to determine the existence of probable cause.

<sup>247</sup> *Supra* note 240.

<sup>248</sup> *People v. Martinez*, G.R. No. 191366, December 13, 2010 [Per J. Mendoza, Second Division].

<sup>249</sup> 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 113, § 5 (b).

<sup>250</sup> *Id.* rule 126, § 4.

<sup>251</sup> G.R. L-19550, June 19, 1967 [Per C.J. Concepcion, *En Banc*].

<sup>252</sup> *Columbia Pictures Inc v. CA*, G.R. No. 110318, August 28, 1996 [Per J. Regalado, *En Banc*].

<sup>253</sup> See *Dimal v. People*, G.R. No. 216922, April 18, 2018 [Per J. Peralta, Second Division].

<sup>254</sup> *Supra* note 65.

- The judge is not bound by the finding of probable cause by the prosecutor, but he can rely on it.

**“Personally”** means the judge must “personally evaluate. The codal was written that way to prevent nonjudicial officials from determining probable cause to issue warrants. In *Soliven v. Makasiar*,<sup>255</sup> the court laid the following guidelines:

1. The judge must *personally evaluate* the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and on the basis thereof, issue a warrant of arrest; or
2. If on the basis thereof, he finds *no* probable cause, he may disregard the fiscal’s report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.

Are defects in the preliminary investigation (or the lack of it) will render an Information null and void?

- Generally, no.
- Exception: When there were violations of the right to due process.<sup>256</sup>

Two-pronged purpose of a preliminary investigation:

1. To protect the innocent against wrongful prosecutions
2. To spare the state from using its funds and resources in useless prosecutions

**Definition of probable cause in preliminary investigation:** The existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.

What is the extent of technicalities during a preliminary investigation?

- The technical rules should not be applied
- Hearsay evidence can be the basis of probable cause, as long as there is substantial basis for crediting the hearsay
- Parties do not have the right to examine witnesses
  - Though they may propound questions through the fiscal
- May even be done *ex-parte*

### **Prosecutorial discretion**

- The prosecutor’s determination of probable cause is solely within their **discretion**
- A *Mandamus* may not lie to compel the filing of cases by prosecutors<sup>257</sup>
- The recourse is through Rule 65 Certiorari—but only when there is an allegation of lack or excess of jurisdiction resulting from a grave abuse of discretion
  - This *Certiorari* petition, however, becomes **moot** once an information is filed and a court issues an arrest warrant.<sup>258</sup>

### **Two kinds of “preliminary investigation”**

1. Preliminary investigation by the prosecutor (executive)
2. Preliminary examination by the judge (judicial)

These two being separate, the judge has *no capacity* to review the prosecutor’s determination of probable cause.

- That falls under the secretary of justice.
- Hence, if a party wishes to assail the prosecutor’s exercise of executive determination of probable cause, the proper remedy is to question the prosecutor’s resolution via an appeal to the secretary of justice.

<sup>255</sup> G.R. No. 82585, November 14, 1988 [Per Curiam, *En Banc*].

<sup>256</sup> Preliminary investigation is a mere statutory right. However, the denial of it will constitute a violation of PHIL. CONST. art. III, § 14.

<sup>257</sup> *Marcelo Jr. v. Villordon*, G.R. No. 173081, December 15, 2010 [Per J. Carpio, Second Division].

<sup>258</sup> *Marantan v. DOJ*, G.R. No. 206354, March 13, 2019 [Per J. Leonen, Third Division].

- To move the court to conduct a judicial determination of probable cause is a mere superfluity.
- But once the information is filed in court, any motion to dismiss or to determine the accused's guilt lies within the sound discretion of the court.<sup>259</sup>

#### **What should the judge do after an information is filed in his court?**

- The judge must evaluate the evidence on the record, and may either:
  1. Issue a warrant of arrest, if there is probable cause
  2. Dismiss the case, if there is *no* probable cause<sup>260</sup>
  3. Order the prosecutor to submit additional evidence, if he doubts the existence of probable cause

#### **Administrative warrants**

- Warrants of arrest may be issued by administrative authorities only for the purpose of carrying out a final finding of a violation of law, like an order of deportation,<sup>261</sup> or an order of contempt, and *not* for the *sole* purpose of investigation or prosecution.
- Hence, the following are *not* considered warrants as contemplated by the constitution:
  - Production order and inspection order under the Writ of Amparo Rule<sup>262</sup>
  - Bank inquiry order under AMLA<sup>263</sup>
  - Detention under Section 29 of the Anti-Terrorism Act.
    - In *Calleja*,<sup>264</sup> the court construed this that there must first be a valid warrantless arrest before the individual may be detained up to 14 days without a warrant
- However, the following executive warrants are **void**:
  - Closure and seizure order under the Labor Code<sup>265</sup>
  - A mere proclamation by a governor to conduct general searches, seizures and arrests<sup>266</sup>

#### **Contempt**

- A judge may issue a warrant of arrest against an accused if he fails to appear before his court for arraignment despite notice.
- A judge may also issue a warrant of arrest pursuant to the court's power to cite for contempt.
- Congress, in its exercise of its power of legislative inquiry, may also provide for the arrest and detention of persons for contempt.
  - The period of imprisonment, however, should only last until the termination of the inquiry, or upon the adjournment of Congress, whichever is earlier.<sup>267</sup>

#### **Arrests**

- Definition: The taking of a person into custody in order that he may be bound to answer for the commission of an offense.<sup>268</sup>
  - It is made by *actual* restraint of a person, or by his submission to the custody of the person making the arrest.
  - No violence or unnecessary force shall be used in making an arrest, and the person shall not be subject to a greater restraint than is necessary for his detention.

<sup>259</sup> *Relampagos v. Sanduganbayan* (Second Division), G.R. No. 235480, January 27, 2021 [Per J. Inting, Third Division].

<sup>260</sup> A clear-cut case of lack of probable cause exists when the records readily show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged.

<sup>261</sup> A deportation proceeding is not criminal in nature but is purely administrative.

<sup>262</sup> *Roxas v. Macapagal-Arroyo*, G.R. No. 189155, September 7, 2010 [Per J. Perez, *En Banc*].

<sup>263</sup> *Republic v. Eugenio Jr.*, G.R. No. 174629, February 14, 2008 [Per J. Tinga, Second Division].

<sup>264</sup> *Supra* note 56.

<sup>265</sup> *Salazar v. Achacoso*, G.R. No. 81510, March 14, 1990 [Per J. Sarmiento, *En Banc*].

<sup>266</sup> *Kulayan v. Tan*, G.R. No. 187298, July 3, 2012 [Per C.J. Sereno, *En Banc*].

<sup>267</sup> *Balag v. Senate*, G.R. No. 234608, July 3, 2018 [Per J. Gesmundo, *En Banc*].

<sup>268</sup> 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 113, § 1.



- It is enough that there be an intention on the one part of one of the parties to arrest the other, and that there be an intent on the part of the other to submit, under the belief and impression that submission is necessary.<sup>269</sup>
- The warrant of arrest shall be executed within 10 days from issue, and in case of failure to execute, the arresting officer shall report to the judge and the reasons therefor.
- An arrest may be made on any day and at any time of the day and night
- The officer shall inform the person to be arrested of the cause of the arrest and of the fact that a warrant has been issued, except flees, forcibly resists, or when the giving of such information will imperil the arrest.
- The officer need not have the warrant in his possession at the time of the arrest, but shall be shown to him as soon as practicable.
- An officer may break into any building or enclosure if he is refused admittance thereto, after announcing his authority and purpose.
  - Likewise, he may break out therefrom when necessary to liberate himself.
- Any lawyer has the right to visit and confer privately with any person arrested in the jail or any other place of custody at any hour of the day or night.
- The Supreme Court also mandates the use of body-worn cameras and/or alternative recording device during arrests and searches.<sup>270</sup>
- A proper arrest must precede a subsequent search.
- But in *Ombudsman v. Brillantes*,<sup>271</sup> the court considered the arrest of a mistakenly identified person as valid as it was done in good faith.
  - When the police have probable cause to arrest one party, and the arresting officers had a reasonable, good-faith belief that the person arrested was in fact the one being sought for a crime, then the arrest is valid.

### ***(3) Examination of applicant***

The judge, before issuing a search warrant, must personally examine in the form of **searching questions and answers**, in writing and under oath the complainant and any witnesses on the facts **personally known to them**.<sup>272</sup>

- The evidence offered by the complainant and his witness should be based on their personal knowledge and not on mere information or belief.
  - Hence, initial hearsay information or tips must be followed up personally by the recipient for it to be used as basis for the issuance of a search warrant.<sup>273</sup>
- The records must show particular facts and circumstances that were considered by the judge as sufficient to make an independent evaluation of probable cause.
- Personal examination by the judge of the applicant and his witness is indispensable and the examination should be probing and exhaustive, not merely routinary or a rehash of the affidavits.
  - The complainant must swear to the truth of his statements, and not merely that it was “correct to the best of his knowledge and belief.”<sup>274</sup>
  - It is not enough that the judge merely stated his name and other personal circumstances.<sup>275</sup>
  - The judge must likewise take depositions in writing and attach them to record. It is not enough that affidavits were presented.
- A finding of probable cause may be **set aside and the search warrant be quashed** if the respondent presents **clear and convincing evidence** that the applicants and their witnesses

<sup>269</sup> Luz v. People, G.R. No. 197788, February 28, 2012 [Per J. Sereno, Second Division].

<sup>270</sup> RULES ON THE USE OF BODY-WORN CAMERAS IN THE EXECUTION OF WARRANTS, A.M. No. 21-06-08-SC, June 29, 2021.

<sup>271</sup> G.R. No. 213699, September 28, 2016.

<sup>272</sup> 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 126, § 4.

<sup>273</sup> Microsoft Corporation v. Samir Farajallah, G.R. No. 205800, September 10, 2014 [Per J. Carpio, Second Division].

<sup>274</sup> Alvarez v. Court of First Instance, G.R. No. 45358, January 29, 1937 [Per J. Imperial, *En Banc*].

<sup>275</sup> Paper Industries Corporation of the Philippines v. Asuncion, G.R. No. 122092, May 19, 1999 [Per J. Panganiban, Third Division].

committed a **deliberate falsehood or reckless disregard for the truth** on matters that are essential or necessary to a showing of probable cause.<sup>276</sup>

- However, mere “innocent and negligent omissions or misrepresentation of witnesses will not cause the quashal of a search warrant.”

### **Search warrants**

- Definition: An order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court.<sup>277</sup>
  - It is a John Doe proceeding.
  - It is a police weapon, issued under the police power.
  - It may only be applied for in furtherance of public prosecution.
- Where to apply for a search warrant?
  - Any court within whose territorial jurisdiction a crime was committed
  - *For compelling reasons stated in the application*, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced
  - If the criminal action has already been filed, the application shall only be made in the court where the criminal action is pending<sup>278</sup>
    - Nothing in the rule does it say that the court issuing a search warrant must also have jurisdiction over the offense.
      - Hence, any court may issue a search warrant even though it has no jurisdiction over the offense allegedly committed.
    - A search warrant may be issued by any court, and the resultant case may be filed in another court.
- Is a search warrant needed in conducting a search within a government-controlled detention facility?
  - Yes, where the purpose of the search goes beyond maintaining internal order and security in a detention facility, and the search is used as a tool to gather evidence against an inmate in order to prosecute him.
    - No warrant is required if it is merely done to preserve internal order and security.<sup>279</sup>
- For continuing or transitory crimes, the search warrant may be issued by a court where any of the element of the alleged offense was committed.<sup>280</sup>
- A private individual or a private corporation may appear, participate and file pleadings in the search warrant proceedings. Such private party may do so in collaboration with the government agency.
- **Remedies** from the denial or grant of a motion to quash of a search warrant:
  - If the warrant is an *incident* of a pending criminal case → Quashal is interlocutory
  - If the warrant is applied for and issued in anticipation of a criminal case → Quashal ends the judicial process
    - In this case, an appeal may be properly taken therefrom.
  - In any case, the judge’s determination is paid great deference by the reviewing court, as long as there was *substantial basis* for that determination.

### **(4) Particularity of description**

A search warrant issued must particularly describe the place to be searched and the persons or things to be seized in order for it to be valid.

<sup>276</sup> *Worldwide Web Corporation v. People*, G.R. No. 161106, January 13, 2014 [Per C.J. Sereno, *En Banc*].

<sup>277</sup> 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 126, § 1.

<sup>278</sup> *Id.* rule 126, § 2.

<sup>279</sup> *Re: Motu Proprio Fact-Finding Investigation on the Issuance of Search Warrant and Other Pending Incidents in the Case of the Deceased Mayor Rolando Espinosa, Sr.*, A.M. No. RTJ-17-2494, January 26, 2021 [Per Curiam, *En Banc*].

<sup>280</sup> *Petron Corp. v. Yao*, G.R. No. 243328, March 18, 2021 [Per C.J. Peralta, First Division].

- A warrant would be valid when it enables the police officers to readily identify the properties to be seized and leaves them with no discretion regarding the articles to be seized.
  - o Technical precision of description is *not* required.
  - o It is only necessary that there be reasonable particularity and certainty as to the identity of the property to be searched for and seized, so that the warrant shall not be a mere roving commission.
- Failure to comply with this requirement renders it a **general warrant** which is proscribed by law and the constitution.
- This particularization may properly be done only by the judge and only in the warrant itself. It cannot be left to the discretion of the arresting officers conducting the search.

#### **Requisites of a particular search warrant:**

1. The description therein is as specific as the circumstances will ordinarily allow
2. The description expresses a conclusion of fact, by which the warrant officer may be guided in making the search and seizures
3. The things to be described are limited to those which bear direct relation to the offense for which the warrant is being issued<sup>281</sup>

#### **Sufficient description**

- A description of the place to be searched is sufficient if the officer with the warrant can ascertain and identify with reasonable effort the place intended, and distinguish it from other places in the community.
- The place to be searched, as set out in the warrant, cannot be amplified or modified by the arresting officers' own personal knowledge of the premises.
- This requirement of **reasonable particularity** is primarily meant to enable the law enforcers serving the warrant to:
  - o **Readily identify the properties to be seized** and thus prevent them from seizing the wrong items
  - o **Leave said peace officers with no discretion** regarding the articles to be seized and thus prevent unreasonable searches and seizures
- The things described must be limited to those that bear a direct relation to the offense for which the warrant is issued.

#### **Does the inadmissibility of the things seized void the search warrant?**

- No, because:
  - o The seizure of goods not described in the search warrant does not render the whole seizure illegal, and the seizure is illegal only as to those things which were unlawful to seize, and
  - o The fact that the officers, *after* making a legal search and seizure under the warrant, illegally made a search and seizure of other property not within the warrant does not invalidate the first search and seizure<sup>282</sup>

#### **Persons and juridical persons**

- The person sought to be seized should be identified by name.
  - o Thus, if a warrant issued against "John Doe or Richard Roe, whose other true name is to your complainant unknown" is illegal.
    - *Exception:* If it is shown that John Doe was described as occupying and in control of a building at a specified address.<sup>283</sup>
- A search warrant need not identify with particularity the person against whom it is directed; it suffices that the place to be searched and the things to be seized are described.
  - o Nevertheless, a search warrant is valid when it only points to one house in an area.<sup>284</sup>

<sup>281</sup> *Supra* note 253.

<sup>282</sup> *Supra* note 253.

<sup>283</sup> *People v. Veloso*, G.R. No. 23051, October 20, 1925 [Per J. Malcolm, *En Banc*].

<sup>284</sup> *People v. Posada*, G.R. No. 196052, September 2, 2015 [Per J. Brion, Second Division].

- However, this warrant will be void if said one place or area contains several structures inside (e.g., a compound).<sup>285</sup>
- The existence of the corporate entity does not shield from prosecution the corporate agent who knowingly and intentionally caused the corporation to commit a crime.

#### **Execution of search warrants**

- It is valid only for 10 days, and it shall be void thereafter.
- It may be enforced at any reasonable hour of the day or night.
- No search of a house, room or any other premise shall be made, except in the presence of:
  - The lawful occupant thereof or any member of his family
  - In the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality
  - Hence, searches where the witnesses prescribed by law are prevented from actually observing and monitoring the search of the premises violates both the spirit and letter of the law.<sup>286</sup>
- The officer seizing property under the warrant must give a detailed receipt for the same to the lawful occupant of the premises, or in his absence, leave a receipt in the place in which he found the seized property.
- The officer must forthwith deliver the property to the judge who issued the warrant, and an inventory verified under oath.<sup>287</sup>
  - Violation of this shall constitute contempt of court.
- A search must be done with at least two devices (one body camera and one alternative, or two alternative devices).
  - Failure to observe these requirements without reasonable grounds shall render the evidence obtained inadmissible.<sup>288</sup>

#### **Properties subject to seizure**

The following are subject to search and seizure:

1. Property subject of the offense
2. Property stolen or embezzled and other proceeds or fruits of the offense
3. Property used or intended to be used as the means of committing an offense<sup>289</sup>

#### **Search as an incident of a lawful arrest**

If the search is an *incident* of a **lawful arrest**, seizure may be made of dangerous weapons or anything that may have been used or may constitute proof in the commission of an offense.<sup>290</sup>

- This search covers the area within the **immediate control** of the person searched, within which he might gain possession of a weapon or destructible evidence (permissible search area).<sup>291</sup>
  - For example, a peppermint gum container inside the utility box of the accused's motorcycle.<sup>292</sup>
  - However, it is not permissible to search a place around 20 meters away from the accused.<sup>293</sup>
- Hence, the data stored inside the mobile phone may not be seized because it cannot be used as a weapon to harm an arresting officer to effect the accused's escape.<sup>294</sup>

#### **May a seized item be returned to its owner?**

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<sup>285</sup> *Supra* note 275.

<sup>286</sup> *People v. Go*, G.R. No. 144639, September 12, 2003 [Per J. Carpio-Morales, Third Division].

<sup>287</sup> 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 126, § 12.

<sup>288</sup> *Supra* note 270.

<sup>289</sup> 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 126, § 2.

<sup>290</sup> *Id.* rule 126, § 3. See also *People v. Collado*, G.R. No. 185719, June 17, 2013 [Per J. Del Castillo, Second Division].

<sup>291</sup> *Valeroso v. CA*, G.R. No. 164815, September 3, 2009 [Per J. Nachura, Third Division].

<sup>292</sup> *People v. Amago*, G.R. No. 227739, January 15, 2020 [Per C.J. Peralta, First Division].

<sup>293</sup> *Del Castillo v. People*, G.R. No. 185128, January 30, 2012 [Per J. Peralta, Third Division].

<sup>294</sup> *Riley v. California*, 573 U.S. 373 (2014).

- Should there be *no* ensuing criminal prosecution in which the personal property seized is used as evidence, its return to the person from whom it was taken, or to the person who is entitled to its possession is but a matter of course.
  - o Exceptions: Seized contrabands. When the seized items are stolen goods or unpaid dutiable articles, the return of those goods, even if illegally seized, may not be ordered by the court.
- If there is illegal seizure, objects taken which were not specified in the search warrant should be returned.
- The court may also order the return of seized property should the government be unreasonably delayed in bringing a criminal prosecution.
- If the seized property is used as evidence, the order for its disposition or return can be made only when the case is finally terminated.
  - o Exception: If it is subject to forfeiture or similar proceedings.
- The order to return the seized item is immediately executory and unappealable.

#### **Admissibility of illegally seized evidence** (a.k.a. fruit of the poisonous tree)

- Articles illegally seized are not admissible as evidence.<sup>295</sup>
  - o Derivative or secondary evidence originating from illegally obtained evidence are also excluded, such as a written confession without a counsel.
    - The poisoned tree and its tainted fruits are inadmissible for any purpose in any proceeding.
  - o However, items seized by a *private person* are not covered by the exclusionary rule.<sup>296</sup>
  - o Moreover, it is possible that the illegally seized evidence may be used in the judicial or administrative action that may be filed against the officer responsible for its illegal seizure.<sup>297</sup>
- A valid warrantless arrest must precede a warrantless search. If the arrest is improper, any evidence obtained in the warrantless search is covered by the exclusionary principle.<sup>298</sup>
  - o In *Luz*, the court reasoned that the arrest was invalid because driving without a helmet does not require arrest—it merely requires the confiscation of the driver’s license.
  - o Even though a criminal case was subsequently filed, it will not “cure” the invalid warrantless arrest.<sup>299</sup> Moreover, there was a **lack of intent to arrest** the accused.
- Any property seized during an illegal arrest is inadmissible and cannot be considered even as part of the circumstantial evidence for the prosecution.

#### **Who and when can one object against the admissibility of the evidence seized?**

- The objection must be made *before arraignment*.<sup>300</sup>
  - o Otherwise, the omission constituted a *waiver* of the right against unreasonable searches and seizures.
  - o The waiver can be made expressly or impliedly.
    - Exception: In *Ogayon v. People*,<sup>301</sup> the court held that this rule is merely a *procedural rule*. It was certainly not intended to preclude belated objections against the search warrant’s validity, **especially if the grounds therefor are not immediately apparent**.
- The legality of a seizure can only be contested only by the party whose rights have been impaired.
  - o It is *purely personal* and cannot be availed of by third parties.
- The waiver of an illegal warrantless arrest does not carry with it a waiver of the inadmissibility of the evidence seized during the illegal warrantless arrest (the arrest and search are separate).

<sup>295</sup> *Supra* note 251. See also PHIL. CONST. art. III, § 3 (2).

<sup>296</sup> *Supra* note 244.

<sup>297</sup> *Supra* note 203 at 458, citing PHIL. CONST. art. III, § 3 (2).

<sup>298</sup> *Supra* note 269.

<sup>299</sup> *Homar v. People*, G.R. No. 182534, September 2, 2015 [Per J. Brion, Second Division]. This case revolves around a warrantless arrest due to violation of an anti-jaywalking ordinance.

<sup>300</sup> *People v. Zaspas*, G.R. No. 136396, September 29, 2000 [Per J. Vitug, Third Division].

<sup>301</sup> G.R. No. 188794, September 2, 2015 [Per J. Brion, Second Division].

- No question on the lawfulness of a search or seizure will be entertained on appeal unless it had been raised in the court below.

### **Motion to quash**

A motion to quash a search warrant may be based on grounds extrinsic of the search warrant, such as:

1. The place searched or the property seized are not those specified or described
2. There is no probable cause for the issuance of the search warrant<sup>302</sup>

*Quaerendum*: May another court of concurrent jurisdiction quash a search warrant issued by another court?

- It seems so.
  - o In *Surban v. People*,<sup>303</sup> the court invoked the doctrine of judicial stability,<sup>304</sup> and ruled that it was improper for the MTC (a lower court) to resolve a motion to quash a search warrant issued by the RTC (a higher court).
- What if it is an RTC versus an RTC?

The **remedy of a person against warrantless search** conducted on him is *civil*, under Art. 32, in relation to Art. 2219 (6) and (10) of the Civil Code.

### **Warrantless searches and seizures**

The following are permissible searches and seizures:

1. Consented searches
2. Incident to a lawful arrest
3. Searches of vessels and aircraft for violation of immigration, customs and drug laws
4. Searches of moving vehicles
5. Searches of automobiles at borders or constructive borders
6. Plain view doctrine
7. Searches of buildings and premises to enforce fire, sanitary, and building regulations
8. Stop and frisk or Terry search
9. Customs searches
10. Searches conducted under exigent and emergency circumstances

#### **(1) Consented search**

- The right to be secure from unreasonable search may, like every right, be waived and such waiver may be made either expressly or impliedly.
- However, consent to a search is not to be lightly inferred, but shown by clear and convincing evidence.
- Consent must be unequivocal, specific, intelligently given, and uncontaminated by duress or coercion.
- An arrest may also be made without warrant where the right thereto is waived, provided he knew of such right and knowingly decided not to invoke it.
  - o This waiver is *not* presumed when the person merely submits to the officer in manifestation of his respect for authority or where he allows entry into his home as a sign of hospitality and politeness.

#### **Requisites of a valid consented search:**

1. The right against unreasonable searches and seizures exists
2. The person had knowledge, either actual or constructive, of the existence of said right
3. The person had an actual intention to relinquish said right<sup>305</sup>

The following characteristics of the person “consenting” must be considered:

1. The age of the consenting party

<sup>302</sup> Tomas v. CIDG, G.R. No. 208090, November 9, 2016 [Per J. Peralta, Third Division].

<sup>303</sup> G.R. No. 231045, March 18, 2021 [Notice, First Division].

<sup>304</sup> No court can interfere by injunction with the judgments or orders of another court of concurrent jurisdiction having the power to grant the relief sought by injunction.

<sup>305</sup> Anonymous Letter-Complaint Against Atty. Miguel Morales, Clerk of Court, Metropolitan Trial Court of Manila, A.M. No. P-08-2519, November 19, 2008 [Per J. Austria-Martinez, *En Banc*].

2. Whether he was in a public or secluded location
3. Whether he objected to the search or passively looked on
4. His education or intelligence
5. The presence of coercive police procedures
6. The belief that no incriminating evidence will be found
7. The nature of the police questioning
8. The environment in which the questioning took place
9. The possibly vulnerable subjective state of the person consenting<sup>306</sup>

## **(2) In flagrante delicto**

- A warrantless search can be upheld as valid if made incident to a lawful arrest, provided the lawful arrest must precede the search of a person and his belongings.
  - o The process cannot be reversed (i.e., search first, then arrest).<sup>307</sup>
- In arrests in flagrante delicto, the accused is committing or attempting to commit or has just committed an offense in the presence of the arresting officer.

### **Requisites of a valid in flagrante delicto arrest:**

1. The person to be arrested must execute an **overt act** indicating that he has—
  - a. Just committed,
  - b. Actually committing, or
  - c. Is attempting to commit a crime; and
2. Such overt act is done **in the presence or within the view** of the arresting officer.

#### *Requisite 1: An overt act*

- Hence, a warrantless arrest caused by a mere telephone call report is invalid as there was no overt act done by the accused.<sup>308</sup>
- Running away *per se* is not an overt act. Flight isn't synonymous with guilt.<sup>309</sup>
- Hence, a reliable information alone is insufficient to support a warrantless arrest as this does not show an overt act.

#### *Requisite 2: In the presence of the arresting officer*

- It is enough if the overt act were to be seen by a police officer although from a distance.
  - o Hence, the scent of marijuana emanating from a bag is sufficient probable cause to cause the owner's *in flagrante delicto* arrest.<sup>310</sup>
  - o However, the court has consistently ruled that miniscule items (like a small shabu sachet) cannot be seen from a distance.<sup>311</sup>
  - o Moreover, the act must be plainly exposed—so, if a police officer “peaked through a partially opened door” and saw persons using drugs inside, it cannot be considered *in flagrante delicto*.<sup>312</sup>

#### *Buy-busts*

- A form of entrapment.
  - o For it to be valid, it must pass the **objective test**: The details of the purported transaction must be clearly and adequately shown, i.e., the initial contact between the poseur-buyer and the pusher, the offer to purchase, and the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale.

<sup>306</sup> *Saluday v. People*, G.R. No. 215305, April 3, 2018 [Per J. Carpio, *En Banc*].

<sup>307</sup> *J. Narvasa*, Dissenting Opinion in *People v. Malmstedt*, G.R. No. 91107, June 19, 1991 [Per J. Padilla, *En Banc*] & *People v. Chua Ho San*, G.R. No. 128222, June 17, 1999 [Per C.J. Davide, *En Banc*].

<sup>308</sup> *Porteria v. People*, G.R. No. 233777, March 20, 2019 [Per J. Reyes, First Division]. *Compare with* *People v. Badilla*, G.R. No. 218578, August 31, 2016 [Per J. Peralta, Third Division], where the police also received a phone report of someone indiscriminately firing a gun, and when they came to the scene, they saw the accused trying to pull something from his pocket. The act of pulling from the pocket was sufficient probable cause.

<sup>309</sup> See e.g., *People v. Villete*, G.R. No. 229051, March 21, 2022.

<sup>310</sup> *Macad v. People*, G.R. No. 227366, August 1, 2018.

<sup>311</sup> *Comerciante v. People*; *Sindac v. People*; & *People v. Jumarang*.

<sup>312</sup> *Antiquiera v. People*, G.R. No. 180661, December 11, 2013.

- They are arrests in flagrante delicto, which gives way to lawful warrantless arrests and seizures.
- “Tipped information,” however, can be sufficient probable cause to effect the warrantless searches in buy-bust operations or cases involving drugs in transit.

### **(3) Hot pursuit**

#### **Requisites of a valid hot pursuit arrest:**

1. An offense has just been committed
2. The person making the arrest has personal knowledge of facts indicating that the person to be arrested has committed it<sup>313</sup>
3. Immediacy, or there is *no time* for the officers to obtain a warrant for the person’s arrest<sup>314</sup>

**Personal knowledge** – This does *not* require the arresting officers to personally witness the commission of the offense with their own eyes.<sup>315</sup>

#### **Chain of custody for any crime involving illegal drugs:**

1. The seizure and marking of the illegal drug recovered from the accused by the apprehending officer
2. The turnover of the illegal drug seized by the apprehending officer to the investigating officer
3. The turnover by the investigating officer to the forensic chemist for laboratory examination
4. The turnover and submission of the marked illegal drug seized by the forensic chemist to the court

#### **On “tips” and “reliable information”**

- They have consistently been considered as insufficient to cause a warrantless arrest.
  - o The tip must be coupled with the performance of some overt act.
- Hence, a tip that the accused was carrying drugs even though he has just alighted from a bus and was waiting for a tricycle (not acting in a suspicious manner) is not enough to cause a warrantless arrest.<sup>316</sup>
- A similar incident occurred in the case of *People v. Aruta*.<sup>317</sup>
- Likewise, an anonymous tip from a text message cannot suffice to create probable cause that enables the authorities to conduct an extensive and intrusive search without a search warrant.<sup>318</sup>

### **(4) Stop and frisk or Terry search**

- A limited protective search of outer clothing for weapons.
- The apprehending officer must have a genuine reason to warrant the belief that the person to be held has weapons concealed about him.
- To sustain the validity of a stop and frisk search, **the arresting officer should have personally observed two or more suspicious circumstances**, the totality of which would then create a reasonable inference of criminal activity to compel the arresting officer to investigate further.<sup>319</sup>
  - o The test for the existence of reasonable suspicion is the totality of the circumstances, viewed through the eyes of a reasonable, prudent police officer.<sup>320</sup>
    - The search cannot be based on suspicion or a hunch.
- The following instances are valid application of the Terry search:

<sup>313</sup> *People v. Agojo*, G.R. No. 181318, April 16, 2009 [Per J. Tinga, Second Division].

<sup>314</sup> See *People v. Leng Haiyun*, G.R. No. 242889, March 14, 2022 [Per J. Lopez, Third Division].

<sup>315</sup> *People v. Uybocho*, G.R. No. 178039, January 19, 2011 [Per J. Perez, First Division]. In this case, they were monitoring the incident unfold via radio.

<sup>316</sup> *People v. Racho*, G.R. No. 186529, August 3, 2010 [Per J. Nachura, Second Division].

<sup>317</sup> G.R. No. 120915, April 3, 1998 [Per J. Romero, Third Division]. The “Aling Rosa” case.

<sup>318</sup> *People v. Sapla*, G.R. No. 244045, June 16, 2020 [Per J. Caguioa, *En Banc*].

<sup>319</sup> *Manibog v. People*, G.R. No. 211214, March 20, 2019 [Per J. Leonen, Third Division].

<sup>320</sup> *Aldaya Jr. v. People*, G.R. No. 249986, June 15, 2022 [Notice, Second Division].



- When a police observes suspicious or unusual conduct, which may lead him to believe that a criminal act may be afoot
- Where the search is merely a limited protective search of outer clothing for weapons<sup>321</sup>
  - Under these circumstances, the government could not have applied for a search warrant first.

#### **(5) Port searches**

- Frisking passengers at the airport is a standard procedure.<sup>322</sup>
  - Hence, contrabands seized during the search is admissible.
  - It also founds statutory basis, where the contract of carriage must contain a printed condition over airport searches.<sup>323</sup>
- Routine baggage inspections conducted by port authorities though done without search warrants are not unreasonable searches *per se*.
  - The codal provisions against unreasonable searches and seizures should not be so literally understood so as to deny *reasonable safeguards* to ensure the safety of the traveling public.<sup>324</sup>

#### **(6) Customs searches**

- These are exempted because the vessel can be quickly moved out of the locality or jurisdiction in which the search must be sought before the warrant could be secured.
- *Statutory basis*: The police may enter, pass through or search any land, inclosure, warehouse, store or building, etc. suspected of holding or conveying any dutiable or prohibited article introduced into the Philippines contrary to law.<sup>325</sup>

#### **Requisites of a valid customs search:**

1. The persons conducting the search were exercising police authority under Customs Law
2. The search was for the enforcement of Customs Law
3. The place searched is not a dwelling place or house<sup>326</sup>

#### **(7) Search of a moving vehicle**

- This is justified on the ground that it is *not* practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.
- It is also allowed for the prevention of smuggling or violations of immigration laws, provided such searches are made at the borders or “constructive borders” like checkpoints near the boundaries of the state.
- In the search of a moving vehicle, it must be shown that the vehicle was intentionally used as a means to transport illegal items.
- A search of a moving vehicle can either be:
  - Routine inspection, such as:
    - The officer merely draws aside the curtain of a vacant vehicle parked on the public fair grounds
    - Simply looks into a vehicle
    - Flashes a light therein without opening the car’s doors
    - Where the occupants are not subjected to a physical or body search
    - The inspection of the vehicle is limited to a visual search/inspection
    - The routine check is conducted in a fixed area
  - Extensive search

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<sup>321</sup> *Supra* note 269.

<sup>322</sup> *Sales v. People*, G.R. No. 191023, February 6, 2013 [Per J. Villarama, First Division].

<sup>323</sup> An Act Prohibiting Certain Acts Inimical to Civil Aviation, and for Other Purposes, Republic Act No. 6235, § 9 (1971).

<sup>324</sup> *Supra* note 242.

<sup>325</sup> An Act to Revise and Codify the Tariff and Customs Laws of the Philippines, Republic Act No. 1937, § 2201, *et seq.* (1957) (as amended).

<sup>326</sup> *Supra* note 242.

- This may only be done upon the presence of *probable cause*.<sup>327</sup>
- Nevertheless, a warrantless, intrusive search of a moving vehicle *cannot* be premised *solely* on an initial tip.
  - There must be, again, probable cause—a confluence of several suspicious circumstances.

#### **(8) Plain view**

- Prohibited articles within plain view, open to eye and hand, of law enforcement officer who comes upon them inadvertently may also be seized by him without warrant.

#### **Requisites for the application of the plain view doctrine:**

1. 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
2. The discovery of the evidence in plain view is inadvertent
3. It is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure<sup>328</sup>

When is a thing in 'plain view'?

- If the object is plainly exposed to sight.

#### **Can the plain view doctrine be used when executing a search warrant?**

- Yes, but once the valid portion of the search warrant has been executed, the plain view doctrine can *no longer* provide any basis for admitting the other items *subsequently* found.
- It is usually applied where a police officer is not searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object.
- Items that are *not illegal per se* seized during a search warrant implementation cannot be justified under the plain view doctrine.

#### **What is 'inadvertent'?**

- The police should *not* have intentionally entered the house with no prior surveillance or investigation.
  - Hence, peeping inside a house is not a proper application of the plain view doctrine.<sup>329</sup>
- It will not apply if the police are *actually* searching for evidence against the accused.

#### **(9) Inspections and administrative searches**

- Administrative searches or searches "incident of inspection, supervision, and regulation" sanctioned by the state in the exercise of its *police power* have been allowed.<sup>330</sup>
  - In this case, the subject of the police power legislation was public health.
  - Hence, for an administrative search to be valid, it must at least pass the test for a valid exercise of police power.
- The drug testing policy for employees and students under the Dangerous Drugs Act is essentially an administrative search.<sup>331</sup>

#### **(10) Checkpoints**

- Not illegal *per se* for as long as its necessity is (1) justified by the exigencies of public order and (2) conducted in a way least intrusive to motorists.
- Routine inspections in checkpoints are also permissible.

<sup>327</sup> See e.g., *People v. Baterina*, G.R. No. 236259, September 16, 2020 [Per J. Lazaro-Javier, First Division], where the police smelled marijuana from a window-less car, which led him to inspect the vehicle. The scent constituted probable cause, which necessitated an extensive search.

<sup>328</sup> *People v. Aguilar*, G.R. No. 253289, August 31, 2022 [Notice, First Division].

<sup>329</sup> *Bello v. People*, G.R. No. 249425, August 31, 2022 [Notice, First Division].

<sup>330</sup> *Venus Commercial Co. Inc. v. Department of Health*, G.R. No. 240764, November 18, 2021 [Per J. Lazaro-Javier, First Division].

<sup>331</sup> *Social Justice Society v. Dangerous Drugs Board*, G.R. No. 157870, November 3, 2021 [Per J. Velasco, *En Banc*].

- There is nothing, however, in the law that authorizes the persons in the checkpoint to order drivers and their companions to get out of the vehicle for a vehicle and body search.<sup>332</sup>

### **(11) Emergency or exigent searches and seizures**

- An example of this is the arrest of individuals rebellion whether as its fighting armed elements, or for committing non-violent acts but in furtherance of the rebellion.<sup>333</sup>
- Similarly, the Supreme Court upheld the warrantless search of an alleged headquarters of rebel forces during a *coup d'état*.<sup>334</sup>
  - o This determination was based on probable cause as surveillance was done before the search was conducted.

### **Privacy of communication and correspondence**

*Definition:* It is the right to be free from unwarranted exploitation of one's person or from intrusion into one's private activities in such a way as to cause humiliation to a person's ordinary sensibilities.

- The right to be let alone.
- Constitutional basis: Art. III, §3 (1).
  - o This means that no one—even the state—except in case of overriding social need and then only under the stringent procedural safeguards can disturb them in the privacy of their homes.

#### *Wire-tapping*

- Philippine law criminalizes wire-tapping.<sup>335</sup>
  - o Materials obtained via wiretap can only be used to prosecute cases involving national security, which may only be done upon a court's written authorization.<sup>336</sup>
  - o Evidence obtained in violation of this is inadmissible.<sup>337</sup>

#### *Accountability of public officers*

- In *Morfe v. Mutuc*,<sup>338</sup> the Supreme Court upheld the validity of the annual submission of the SALN.
  - o This is not to say that a public officer, by virtue of a position he holds, is bereft of constitutional protection; **it is only to emphasize that in subjecting him to such a further compulsory revelation** of his assets and liabilities, including the statement of the amounts and sources of income, the amounts of personal and family expenses, and the amount of income taxes paid for the next preceding calendar year, **there is no unconstitutional intrusion into what otherwise would be a private sphere.**
  - o In this case, the *rational basis relationship test* was used to determine the validity of the SALN provision. (It passed the test.)
- The court always endeavors to strike a balance between the accountability of public officers as a result of public office being a privilege, on the one hand, and their right to privacy as protected in the Bill of Rights, on the other.
  - o Hence, minor or explainable errors in the SALN should not be punishable.<sup>339</sup>

### **Zones of privacy**

1. Constitutional
  - a. Due process and equal protection clauses
  - b. Right against unreasonable searches and seizures
  - c. Privacy of communication and correspondence

<sup>332</sup> Sydeco v. People, G.R. No. 202692, November 12, 2014 [Per J. Velasco, Third Division].

<sup>333</sup> Umil v. Ramos, G.R. No. 81567, October 3, 1991 [Per Curiarn, *En Banc*].

<sup>334</sup> People v. De Gracia, G.R. No. 102009, July 6, 1994 [Per J. Regalado, Second Division].

<sup>335</sup> An Act to Prohibit and Penalize Wire Tapping and Other Related Violations of the Privacy of Communications and For Other Purposes [ANTI-WIRETAPPING LAW], Republic Act No. 4200, § 1 (1965).

<sup>336</sup> ANTI-WIRETAPPING LAW, § 3.

<sup>337</sup> *Id.* at § 4 & PHIL. CONST. art. III, § 3(2).

<sup>338</sup> G.R. No. L-20387, January 31, 1968 [Per J. Fernando, *En Banc*].

<sup>339</sup> Iglesias v. Ombudsman, G.R. No. 180745, August 30, 2017 [Per J. Leonen, Third Division].

- d. Liberty of abode and the right to travel
- e. Right to association
- f. Right against self-incrimination
- 2. Statutory
  - a. Art. 26, Civil Code
  - b. Art. 32, Civil Code
  - c. Art. 723, Civil Code
  - d. Art. 229, Rev. Pen. Code
  - e. Art. 290-292, Rev. Pen. Code
  - f. Art. 280, Rev. Pen. Code
  - g. Anti-Wiretapping Law
  - h. Bank Secrecy Act<sup>340</sup>
  - i. Intellectual Property Code
  - j. Data Privacy Act
  - k. Privileged communication under the Rules of Court

#### *Marital privacy*

- State intervention may not be allowed to encroach into zones of spousal privacy guaranteed by the constitution, which has been characterized as a relationship within the zone of privacy created by several fundamental constitutional guarantees.
- In *Imbong*,<sup>341</sup> the court upheld the spousal consent requirement for tubal ligation and vasectomy, on the basis of the right of the spouses to found a family.<sup>342</sup>
- In *Sps. Hing v. Choachuy*,<sup>343</sup> the court expanded the privacy protection in Art. 26, Civil Code, to places, locations or even situations which an individual considers as private.
- However, the court acknowledged that marrying someone does not shed his/her integrity or his right to privacy as an individual and the constitutional protection is ever available to him.<sup>344</sup>
  - o But this holding has been declared an *dictum*, because the rule on admissibility of evidence (under Art. III, § 3(2) of the Constitution) does not apply among private individuals.<sup>345</sup>
    - Therefore, evidence obtained by a complainant from the accused's Facebook Messenger account is admissible, because the exclusionary principle only covered the state.
- This privilege subsists though the person (or her spouse) is a person of interest in a criminal prosecution.<sup>346</sup>

#### **Test for violation of the right to privacy: Reasonable expectation of privacy**

- Whether a person has a reasonable expectation of privacy and whether that expectation has been violated.<sup>347</sup>
- The **reasonableness of a person's expectation of privacy depends on a two-part test:**
  - o Whether, by his conduct, the individual has exhibited an expectation of privacy; and
  - o This expectation is one that society recognizes as reasonable.
- The reasonableness must be determined in a case-to-case basis since it depends on the case's factual circumstances.

#### **Limitations on the right to privacy**

<sup>340</sup> But this statutory right will not prevent the courts from authorizing an inquiry upon fulfillment of the requirements under § 11, AMLA in the instances provided therein (e.g., probable cause that the deposits are related to kidnapping, or, more notably, in instances of impeachment). See *Republic v. Eugenio*, G.R. No. 174629, February 14, 2008 [Per J. Tinga, Second Division].

<sup>341</sup> *Supra* note 132.

<sup>342</sup> PHIL. CONST. art. XV, § 3.

<sup>343</sup> G.R. No. 179736, June 26, 2013 [Per J. Del Castillo, Second Division].

<sup>344</sup> *Zulueta v. CA*, G.R. No. 107383, February 20, 1996 [Per J. Mendoza, Second Division].

<sup>345</sup> *Cadajas v. People*, G.R. No. 247348, November 16, 2021 [Per J. Lopez, *En Banc*].

<sup>346</sup> *Sanchez v. Darroca*, G.R. No. 242257, June 15, 2021 [Per J. Leonen, *En Banc*].

<sup>347</sup> *Sabio v. Gordon*, G.R. No. 174340, October 17, 2006 [Per J. Sandoval-Gutierrez, *En Banc*].

- A limited intrusion is permissible, where that person is a *public figure* and the information sought to be elicited from him or to be published about him constitute matters of a *public character*.
  - o Hence, the right to privacy cannot be invoked to resist publication and dissemination of matters of public interest.
  - o Legislators, for instance, enjoy a *more limited right to privacy* and their actions are subject to closer scrutiny.
    - Hence, the right of the people to access information of matters of public concern **prevails over** the right to privacy of financial transactions.<sup>348</sup>
- The right to privacy is not absolute when there is an overriding compelling interest.
  - o Such as the SALN requirement.<sup>349</sup>
  - o This was also applied to allow the state to open and read the nonconfidential letters of detainees.<sup>350</sup>
- Moreover, it is possible for an entity (e.g., an office) to declare that there is no expectation of privacy (e.g., in the use of office computers).<sup>351</sup>

### **Social media and the right to privacy**

- Instructive is the *Vivares* case,<sup>352</sup> where the court held that there was no violation of the right to privacy because petitioners did not limit their posts through the “Me Only” privacy setting, or through the “Custom” setting in Facebook. If they did, then, there would be an *intention to limit access* to the particular post.
- Nevertheless, restricting the privacy to “Friends” does not guarantee absolute protection from the prying eyes of a other user who does not belong to one’s circle of friends.
  - o Hence, there is no violation of the right to privacy.<sup>353</sup>

### **The writ of habeas data**

- A remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.<sup>354</sup>
- The writ was conceptualized as a judicial remedy enforcing the right to privacy, most especially the right to informational privacy of individuals.<sup>355</sup>
- Availment of the writ requires the existence of a *nexus* between the right to privacy on the one hand, and the right to life, liberty or security on the other.

#### **Requisites for the privilege of the writ of habeas data:**

1. The existence of a person’s right to informational privacy, and
2. A showing at least by substantial evidence of an actual or threatened violation of the right to privacy in life, liberty, or security of the victim

## **Chapter 11: Liberty of abode and travel**

The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety or public health, as may be provided by law.<sup>356</sup>

<sup>348</sup> Valmonte v. Belmonte, G.R. No. 74930, February 13, 1989 [Per J. Cotes, *En Banc*].

<sup>349</sup> *Supra* note 338.

<sup>350</sup> In the Matter of the Petition for Habeas Corpus of Capt. Gary Alejano PN (Marines) et al., G.R. No. 160792, August 25, 2005 [Per J. Carpio, *En Banc*].

<sup>351</sup> Pollo v. Constantino-David, G.R. No. 181881, October 18, 2011 [Per J. Villarama, *En Banc*].

<sup>352</sup> *Supra* note 246.

<sup>353</sup> Belo v. Gueverra, A.C. No. 11394, December 1, 2016 [Per J. Perlas-Bernabe, First Division].

<sup>354</sup> RULE ON THE WRIT OF HABEAS DATA, A.M. No. 08-1-16-SC, § 1 (Feb. 2, 2008).

<sup>355</sup> *Supra* note 262.

<sup>356</sup> PHIL. CONST. art. III, § 6.

### Purpose

- To further emphasize the individual's liberty as safeguarded in general terms by the due process clause.
  - o It follows that this provision is a mere progeny of the *due process clause*.
- The right to travel is essential as it enables individuals to access and exercise their other rights.

### Limitations

- The **liberty of abode** may be restricted by the court
  - o Thus, a person facing criminal charges may be restrained by the court from leaving the country, or, if abroad, be compelled to return.
  - o A lessee may be judicially ejected for violation of his contractual duties.
    - Even public lands can be the subject of forcible entry cases, even if the parties to the ejectment suit are mere informal settlers.
- The **right to travel** may be restricted by police power (i.e., for reasons of national security, public safety or public health). As with any other exercise of police power, the restriction must be provided by **law**.<sup>357</sup>
  - o Hence, health officers may restrict access to contaminated areas and also quarantine those already exposed to the disease sought to be contained.
  - o This also applies in disasters, where authorities may order forced evacuation and prevent their return until the danger is over.
  - o The state may also regulate or prohibit travel of citizens to hostile countries to prevent possible international misunderstanding and conflict.
    - In the conflict of our OFWs, the government has, at times, order deployment bans or repatriation flights in conflict areas.
  - o LGUs may also enact ordinances imposing curfew for minors. This is an exercise of police power, and the state's role as *parens patriae*.

### Hold departure orders

- While an accused requesting permission to travel abroad has the burden to show the need for his travel, such permission must not be unduly withheld if it is sufficiently shown that allowing his travel would not deprive the court of its exercise of jurisdiction over his person.<sup>358</sup>
- A "Watchlist Order," containing names of individuals subject to preliminary investigation, and forbidding them from leaving the country is unconstitutional, because there was no law allowing this.<sup>359</sup>
  - o Hold departure orders are inherent to the courts—it coexists with the grant of judicial power.
  - o Hence, the Supreme Court devised "precautionary hold departure orders," which the prosecutor must apply with the appropriate Regional Trial Court. This is now valid, because it is now judicially sanctioned.

### Inherent limitations

- Power of the trial courts to prohibit persons charged with a crime to leave the country
- Power of the Congress to conduct a legislative inquiry, and, with it, to issue subpoena duces tecum and subpoena ad testificandum
- Power of the Supreme Court to *regulate* the travel of members of employees of the judiciary

## Chapter 12: Freedom of religion

### What is religion?

<sup>357</sup> Nevertheless, the appropriate executive officers or administrative authorities can impose limits only based on national security, public safety, public health, or as may be provided by law. See *Defensor-Santiago v. Vasquez*, G.R. No. 99289-90, January 27, 1993 [Per J. Regalado, *En Banc*].

<sup>358</sup> *Sy v. Sandiganbayan*, G.R. No. 237703, October 3, 2018 [Per J. Perlas-Bernabe, Second Division].

<sup>359</sup> *Genuino v. De Lima*, G.R. No. 197930, April 17, 2018 [Per J. Reyes, *En Banc*].

- A profession of faith to an active power that binds and elevates man to his Creator.<sup>360</sup>
- It also includes a rejection of religion, a refusal to believe in a hereafter or in the supremacy of a supernatural person with powers over life and death.

No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.<sup>361</sup>

The separation of Church and State shall be inviolable.<sup>362</sup>

### **Separation of church and state**

- This cuts both ways: The State is prohibited from interfering in purely ecclesiastical matters; the Church is likewise barred from meddling in purely secular matters.
- However, the wall of separation between Church and State is *not* a wall of hostility. The State, in fact, recognizes the beneficent influence of religion in the enrichment of the nation's life.

### **Nonestablishment clause**

- This means that:
  - o The state cannot set up a church
  - o Nor pass laws which aid one religion, aid all religion, or prefer one religion over another
  - o Nor force nor influence a person to go to or remain away from church or force him to profess a belief or disbelief in any religion
  - o The state cannot punish a person for entertaining or professing religious beliefs or disbeliefs, for church attendance or nonattendance
  - o No tax in any amount can be levied to support any religious activity or institution
  - o The state cannot openly or secretly participate in the affairs of any religious organization or group<sup>363</sup>
- In ***Lemon v. Kurtzman***,<sup>364</sup> the US Supreme Court held that there will be no violation of the nonestablishment clause if:
  - o The statute has a *secular legislative purpose*
  - o Its principal or primary effect is one that *neither advances nor inhibits* religion
  - o It does *not* foster an *excessive government entanglement* with religion.<sup>365</sup>
- This mandates a strict neutrality in affairs among religious groups.
  - o The government is neutral, and while protecting all, it prefers none, and it disparages none.<sup>366</sup>
- Therefore, the following are violative of the nonestablishment clause:
  - o The recitation by the students in public schools of a prayer composed by the board of regents.<sup>367</sup>
  - o A statute that required that at least 10 verses from the bible be read daily, without comment, in all public schools.<sup>368</sup>
  - o A religious group enlisting the services of public school teachers to distribute request forms for bible, received the bible copies, and delivered them to the students.<sup>369</sup>
  - o Student-led prayers at the football games<sup>370</sup>
- But the following *passed* the Lemon Test:

<sup>360</sup> *Aglipay v. Ruiz*, G.R. No. 45459, March 13, 1937 [Per J. Laurel, *En Banc*].

<sup>361</sup> PHIL. CONST. art. III, § 5.

<sup>362</sup> PHIL. CONST. art. II, § 6.

<sup>363</sup> *Everson v. Board of Education*, 330 U.S. 1 (1947).

<sup>364</sup> 403 U.S. 602 (1971).

<sup>365</sup> This is the three-pronged Lemon Test.

<sup>366</sup> *Supra* note 132.

<sup>367</sup> *Engel v. Vitale*, 370 U.S. 421. The School Prayer Case.

<sup>368</sup> *School District of Abington Township v. Schempp*, 374 U.S. 203.

<sup>369</sup> *Tudor v. Board of Education*, 14 N.J. 31 (1953).

<sup>370</sup> *Santa Fe Independent School District v. Doe*, 530 U.S. 290.

- Allowing students in a public school to attend religious instruction classes in a nearby private building, but subject to their obligation to make up for the lost time.<sup>371</sup>
  - The government lending textbooks for free to all students, including those attending private schools.<sup>372</sup>
  - Free transportation for all schoolchildren, including those attending parochial schools.<sup>373</sup>
    - A commonality in these cases is that the government aid was *directly given* to the student and his parents, *not* to the church-related school.
- In the context of the Philippines, the nonestablishment clause is essentially dead-letter law, because of the Supreme Court's liberal approach.
  - In *Aglipay*, the court held that any benefit indirectly enjoyed by a religious institution, so long as such benefit was only incidental to a legitimate secular objective, would *not* violate the prohibition.
    - Hence, one only needs to find a *secular objective* for the ostensibly state-backed religious activity.
  - Hence, the following were declared to be not violative of the nonestablishment clause:
    - A stamp issued for the 33<sup>rd</sup> International Eucharistic Congress under the sponsorship of the Catholic Church. The stamps were made to attract tourists.
    - A road being used for a religious procession, because it is merely incidental and a temporary use which is available indiscriminately to the public.
    - The barangay buying a religious image using funds it raised from private contributions.<sup>374</sup>
- Thus evolved the concept of **religious accommodation**.
  - Thus, the holding of Catholic masses in the basement of a hall of justice is *not a case of establishment, but merely accommodation*.<sup>375</sup>
  - Seventh-Day Adventist members must be exempted from attending their Saturday exams/classes, because their belief emphasized the importance of Sabbath as a sacred day.<sup>376</sup>
  - The PhilPost may also print, issue and sell Iglesia Ni Cristo commemorative stamps, paid for by the sect, and the use of government property is *de minimis*.<sup>377</sup>
  - The government may also expropriate the birthsite of the Iglesia Ni Cristo founder for historic purposes.<sup>378</sup>
- Nevertheless, religion must not cause the government to adopt their particular doctrines as policy for everyone, nor can they not cause the government to restrict other groups.
  - None of our laws should be based on any religious law, doctrine or teaching; otherwise, the separation of Church and State will be violated.<sup>379</sup>

### ***Intramural religious disputes***

- Disputes regarding religious dogma and other matters of faith are outside the jurisdiction of secular authorities.
  - Likewise, whatever dogma adopted by a religious group cannot be binding upon the State if it contravenes its valid laws.
- Ecclesiastical affairs – This involves the relationship between the church and its members and relates to matters of faith, religious doctrines, worship and governance of the congregation.
  - V. secular matters – Those with *no* relation whatsoever with the practice of faith, worship or doctrines of the church.

<sup>371</sup> *Zorach v. Claiborn*, 343 U.S. 306.

<sup>372</sup> *Board of Education v. Allen*, 392 U.S. 236.

<sup>373</sup> *Supra* note 363.

<sup>374</sup> *Garces v. Estenzo*.

<sup>375</sup> Re: Letter of Tony Q. Valenciano, A.M. No. 10-4-19-SC, March 7, 2017.

<sup>376</sup> *Valmores v. Achacoso*, G.R. No. 217453, July 19, 2017.

<sup>377</sup> *Peralta v. Philippine Postal Corporation*, G.R. No. 223395, December 4, 2018.

<sup>378</sup> *Manosca v. CA*, G.R. No. 106440, January 29, 1996.

<sup>379</sup> *Republic v. Manalo*, G.R. 221029, April 24, 2018.



- Hence, the termination of an employee is purely secular in nature. It is different from the ecclesiastical act of expelling a member from the religious congregation.<sup>380</sup>
- But in *Austria v. NLRC*,<sup>381</sup> the court upheld the jurisdiction of the respondent when the dismissal from service is *not* religious in nature.
  - o The determination of a “just cause” for termination is under the State’s purview.
- Where the dispute involves the **property rights** of the religious group, or the relations of the members where property rights are involved, the **civil courts** may assume jurisdiction.<sup>382</sup>
  - o Where a civil right depends upon some matter pertaining to ecclesiastical affairs, the civil tribunal tries the civil right and nothing more.<sup>383</sup>
- Hence, a church’s decision to disconnect its ties with another entity is its sole prerogative and power.<sup>384</sup>

### **Free exercise clause**

Two-fold aspect:

1. Freedom to believe – This is absolute
2. Freedom to act on one’s belief – Subject to police power restriction

### **Freedom to believe**

- The individual is free to believe (or disbelieve) as he pleases concerning the hereafter.
- However absurd his beliefs may be to others, even if they be hostile and heretical to the majority, he has full freedom to believe as he pleases.
- Every one has a right to his belief and he may not be called to account because he cannot prove what he believes.

### **Freedom to act on one’s belief**

- The inherent police power can be exercised to prevent religious practices inimical to society.
  - o What the constitution gave was *religious liberty*, not civil immunity.
- This is violated in two ways:
  - o When one is *compelled* to act against one’s belief
  - o When one is *prevented* from acting according to one’s belief.
- As long as it can be shown that the exercise of the right *does not impair* the public welfare, the attempt of the State to regulate or prohibit such right would be an *unconstitutional* encroachment.
- The test to determine between religious freedom and powers of the State is the **test of reasonableness**.
  - o *Ebranilag v. The Division Superintendent of Schools of Cebu*:<sup>385</sup> Jehovah’s Witness members may be excused from saluting the flag because it was in their view an image to which the bible prohibited them from rendering obeisance.
  - o *Wisconsin v. Yoder*:<sup>386</sup> The parents’ fundamental right to freedom of religion, which may not be outweighed by the state’s interest in educating its children.

### **Principle of benevolent neutrality**

- ***Estrada v. Escritor***:<sup>387</sup> The benevolent neutrality approach gives room for the accommodation of religious exercise.
- The State must satisfy two tests:<sup>388</sup>

<sup>380</sup> Bishop Amari v. Villaflor, G.R. No. 224521, February 17, 2020.

<sup>381</sup> G.R. No. 124382, August 16, 1999.

<sup>382</sup> See Fonacier v. CA.

<sup>383</sup> Gonzales v. Archbishop of Manila. See also Taruc v. Bishop De la Cruz, G.R. No. 144801, March 10, 2005.

<sup>384</sup> United Church of Christ in the Philippines Inc. v. Bradford United Church of Christ Inc., G.R. No. 171905, June 20, 2012.

<sup>385</sup> G.R. No. 95770, March 1, 1993 [Per J. Griño-Aquino, *En Banc*].

<sup>386</sup> 406 U.S. 205 (1972).

<sup>387</sup> A.M. No. P-02-1651, June 22, 2006.

<sup>388</sup> Strict scrutiny. Moreover, they may be assailed via facial challenge.

- There must be a compelling state interest
  - The state must have used the least intrusive means possible so that the free exercise is not infringed any more than necessary to achieve the legitimate goal of the state.
- The purpose of accommodation is to remove a burden on, or to facilitate the exercise of, a person's or institution's religion.
  - An exemption from the law's application or its burdensome effect is sought, and *not* the declaration of unconstitutionality.
- ***Victoriano v. Elizalde Rope Workers Union***:<sup>389</sup> Any legislation whose effect or purpose is to impede the observance of one or all religious, or to discriminate invidiously between the religions, is *invalid*, even though the burden is only indirect.
  - But when the state enacts a *general law* to advance secular goals, the statute is *valid* despite its indirect burden on religious observance, unless the state can accomplish its purpose without imposing such burden.
  - Hence, members of religious sects cannot be compelled or coerced to join labor unions even when said unions have closed shop agreements with the employers. And in spite of any closed shop agreement, members of said religious sects cannot be refused employment or dismissed from their jobs on the sole ground that they are not members of the collective bargaining union.

### **Morality**

- What the nonestablishment clause calls for is governmental neutrality in religious matters. Governmental reliance on religious justification is inconsistent with this policy of neutrality.
  - The government must act for secular purposes and in ways that have primarily secular effects.<sup>390</sup>
- Our democracy precludes using religious or moral views of one part of the community to exclude from consideration the values of other members of the community.<sup>391</sup>
  - Hence, a single female employee who, because of her premarital sexual relations with her single boyfriend, got pregnant, was illegally dismissed.<sup>392</sup>
- When the law speaks of immoral or, necessarily, disgraceful conduct, it pertains to public and secular morality.
  - It refers to those conducts which are proscribed because they are *detrimental to conditions upon which depend the existence and progress of human society*.
  - Morality must be gauged from a **purely public and secular view**.
- Laws and rules of conduct must be based on a secular purpose.<sup>393</sup>
  - There is a danger of compelled religion when religious morality is incorporated in governmental regulations and policies.

### **Religious tests**

- The constitutional prohibition against religious tests is aimed against clandestine attempts on the part of the government to prevent a person from exercising his civil or political rights because of his religious beliefs.

### **Conscientious objector**

- Conscientious objector status with respect to military conscription is based on a three-pronged test:
  - An applicant's objection must be against participating in war in *any* form;
  - An applicant's objection to service in the military must be *based on religious training and belief*; and
  - An applicant's objection must be *sincere*.
    - This, however, is now unavailing in the Philippines due to Article II, Section 4 of the Constitution.

<sup>389</sup> G.R. no. L-25256, September 12, 1974 [Per J. Zaldivar, Second Division].

<sup>390</sup> *Supra* note 215.

<sup>391</sup> *Espejon v. Lorredo*, A.M. No. MTJ-22-007, March 9, 2022.

<sup>392</sup> *Leus v. St. Scholastica's College Westgrove*, G.R. No. 187226, January 28, 2015.

<sup>393</sup> *Perfecto v. Esidera*, A.M. No. RTJ-15-2417, July 22, 2015.

- In *Imbong*,<sup>394</sup> the court annulled several provisions of the RH Law which required health workers to disseminate reproductive health information to patients despite their conscientious objections.
  - o According to the court, the law violated the health workers' religious beliefs, and compelled them to perform an act against his beliefs.

### Chapter 13: Freedom of expression

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.<sup>395</sup>

In *Diocese of Bacolod v. COMELEC*,<sup>396</sup> the court laid down six theories and schools of thought regarding freedom of expression:

1. Deliberative democracy
2. Market place of ideas
3. Self-expression that enhances human dignity
4. Marker for group identity
5. Protect individuals and minorities against majoritarian abuse
6. Safety valve theory

#### Modes of expression

1. Political speech
  - a. Such as a tarpaulin showing support or disapproval of candidates<sup>397</sup>
  - b. Or election campaign materials posted on one's own private vehicle<sup>398</sup>
2. Commercial speech<sup>399</sup>
  - a. These are still entitled to protection (i.e., strict scrutiny)
  - b. Such as unsolicited advertisement

#### Restraint upon these freedoms may either be:

1. **Content-based** – The regulation or censorship is based on the subject matter of the utterance or speech.
  - a. Aimed at the contents or idea of the expression
2. **Content-neutral** – If it is merely concerned with the incidents of the speech, or one that merely controls the time, place or manner and under well-defined standards.
  - a. The standards are tailored to serve a compelling state interest, without restraint on the message of the expression.

#### (1) Content-based

- Can either be:
  - o Viewpoint-based
  - o Subject-based
- Bears a heavy presumption of invalidity and is measured against the clear and present danger rule (the speech).
- Examples:
  1. An ordinance converting the location of a radio station critical of the local government officials<sup>400</sup>

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<sup>394</sup> *Supra* note 132.

<sup>395</sup> PHIL. CONST. art. III, §4.

<sup>396</sup> G.R. No. 205728, January 21, 2015 [Per J. Leonen, *En Banc*].

<sup>397</sup> *Id.*

<sup>398</sup> 1-UTAK v. COMELEC, G.R. No. 206020, April 14, 2015.

<sup>399</sup> *Supra* note 254.

<sup>400</sup> New Sounds Broadcasting Network v. Dy

2. Warnings of the justice secretary who publicly threatened to prosecute for violations of the Anti-Wiretapping Act and the memorandum of the NTC threatening broadcast stations with the cancellation of their licenses<sup>401</sup>
  3. An order by the COMELEC requiring the church to take down election tarpaulins on the ground that they exceeded the limits on election propaganda posters<sup>402</sup>
- A governmental action that restricts freedom of speech or of the press based on content is given the *strictest scrutiny* in light of its inherent and invasive impact (the regulation).

## **(2) Content-neutral**

- Content-neutral regulation is subjected to the *intermediate scrutiny*:
  - o The regulation furthers an important or substantial governmental interest that is unrelated to the suppression of expression
  - o The restriction must be narrowly tailored
- Example: Prohibiting PUV owners from posting election campaign materials<sup>403</sup>
  - o This was struck down as invalid.

## **The following restraints on free speech were upheld:**

1. Suspension order of the MTRCB against the host of a religious TV program because his utterances constituted unprotected speech or low-value expression
  - a. **Low value expression** – Such as libelous statements, obscenity or pornography, false or misleading advertisement, insulting or fighting words (words which tend to incite an immediate breach of peace and expression endangering national security).<sup>404</sup>
    - i. But speech can *no longer be proscribed* merely because it is lewd, profane, insulting, vulgar or offensive.<sup>405</sup>
2. A law that regulates the time, place, and manner of holding of rallies by requiring permits.<sup>406</sup>

## **Elements of freedom of expression:**

1. Freedom from prior restraint or censorship
2. Freedom from subsequent punishment

## **(1) Freedom from prior restraint**

- It is *not* lawful to require the obtention from the authorities of a speaker's permit before a person may deliver a speech, or the previous submission of the speech for their (dis)approval.
- Censorship need not partake of total suppression; even restriction of circulation is unconstitutional.<sup>407</sup>
- **Captive audience doctrine** – Censorship which shields the public from some kinds of speech on the ground that they are more offensive than others.
  - o This has been upheld *only* when the speaker intrudes on the privacy of the home or the degree of captivity makes it either impossible or impractical for the unwilling viewer to avoid exposure.<sup>408</sup>
- Any system of prior restraints of expression has a heavy presumption against its validity. The government thus carries a heavy burden of showing justification for the enforcement of such a restraint.<sup>409</sup>
  - o This is a *presumption of unconstitutionality*.

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<sup>401</sup> Chavez v. Gonzales

<sup>402</sup> *Supra* note 396. In this case, size matters.

<sup>403</sup> *Supra* note 398.

<sup>404</sup> Soriano v. Laguardia

<sup>405</sup> MVR Publications Inc. v. Islamic Da' Wah Council of the Philippines Inc.

<sup>406</sup> BAYAN v. Ermita (Batas Pambansa 880 case).

<sup>407</sup> Grosjean v. American Press Co.

<sup>408</sup> *Supra* note 398.

<sup>409</sup> New York Times Co. v. Sullivan, 403 U.S. 713.

- *Primicias v. Fugoso*:<sup>410</sup> The mayor of Manila could only reasonably regulate—not absolutely prohibit—the use of public places for a public meeting.
- *Burgos v. Chief of Staff*: The closure, after search and seizure, of a publication constitutes previous restraint abhorrent to the freedom of the press guaranteed under the fundamental law.
- *Adiong v. COMELEC*: The prohibition of posting of decals and car stickers is censorship by the COMELEC, which is unconstitutional.
  - o This is because the owner has a right to freely express his choice.
  - o But election paraphernalia by private persons can still be regulated if the regulation is:
    - Provided by law
    - Reasonable
    - Narrowly tailored to meet the objective of enhancing the opportunity of all candidates to be heard and considering the primacy of the guarantee of free expression
    - Demonstrably the least restrictive means to achieve that (i.e., it must be content-neutral)
  - o But in *St. Anthony College v. COMELEC*,<sup>411</sup> the court declared as unconstitutional the removal or destruction of privately owned campaign materials displayed on private property.
- The court also invalidated the prohibition against publication of preelection surveys 15 days before an election and surveys affecting local candidates 7 days before an election, because it constitutes total suppression of a category of speech.<sup>412</sup>
  - o But a regulation by COMELEC was upheld when it merely required the disclosure of commissioners and payors of all surveys published within a specified period.<sup>413</sup>
- It is also *not* prior restraint the advisory by the justice secretary during the Oakwood Mutiny. The notice reminded media of their possible criminal liability if they disobey lawful orders during emergencies which may lead to collateral damage to properties and civilian casualties.<sup>414</sup>

## ***(2) Freedom from subsequent punishment***

### **Libel**

- Also considered as *unprotected speech* are **libelous statements**, when found to be false, malicious or unrelated to a public officer's performance of his duties or irrelevant to matters of public interest involving public figures. Hence, they may give rise to criminal and civil liability.
- Elements of libel:
  1. It must be defamatory
  2. It must be malicious
  3. It must be given publicly
  4. The victim must be identifiable

### **Administrative liability**

1. *Concerned Boholanos for Law and Order v. Calibo*:<sup>415</sup> A judge cannot be held liable simply because he was only exercising his constitutional right to be heard in a petition for the redress of grievances as a consumer.
2. *GSIS v. Villaviza*: Government workers who merely wore a red shirt as they marched toward and appeared before the Investigation Unit to support their co-workers cannot be held administratively liable.
3. *GSIS v. Kapisanan ng mga Maggagawa sa GSIS*: Workers who joined a walk-out and a mass protest or demonstration for four straight days may be held administratively liable (dismissal) because it was a disruptive approach. It resulted to *work stoppage* and *service-delivery*

<sup>410</sup> G.R. L-1800, January 27, 1948 [Per J. Feria, *En Banc*].

<sup>411</sup> G.R. No. 258805, October 10, 2023.

<sup>412</sup> *Social Weather Stations v. COMELEC*, G.R. No. 147571, May 5, 2001.

<sup>413</sup> *Social Weather Stations v. COMELEC*, G.R. No. 208062, April 7, 2015.

<sup>414</sup> *Tordesillas v. Puno*, G.R. No. 210088, October 1, 2018.

<sup>415</sup> A.M. No. RTJ-01-1621, September 27, 2007.

*interruption*, the very evil sought to be prevented by the prohibition against strikes by government personnel.

- a. Hence, without the **intent at work stoppage or service disruption**, the concerted activity is **not prohibited**.

### **The three tests:**

1. Clear and present danger rule
2. Dangerous tendency rule
3. Balancing test

### **Clear and present danger**

- **Clear** – Must point to a causal connection with the danger of the substantive evil arising from the utterance questioned.
- **Present** – The danger must be very likely inevitable.
- *Primicias*:<sup>416</sup> To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one.
- *Navarro v. Villegas*:<sup>417</sup> The court upheld the refusal of the mayor to issue a permit for a demonstration as it was in the height of student unrest and activism. The rally could ignite the turbulence the mayor wanted to prevent.
- *Reyes v. Bagatsing*:<sup>418</sup> Whenever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.
  - o Hence, a rally was allowed to be held in Luneta to the US Embassy.
- *Iglesia Ni Cristo v. CA*:<sup>419</sup> It is only where it is unavoidably necessary to prevent and immediate and grave danger to the security and welfare of the community that infringement of religious freedom may be justified, and only to the smallest extent necessary to avoid the danger.
  - o Hence, the MTRCB may not censor the show on the ground that they “offend and constitute an attack against other religions which is expressly prohibited by law.”

### **Dangerous tendency**

- A person could be punished for his ideas even if they only *tended* to create the evil sought to be prevented. It was not necessary to actually create the evil; a mere tendency toward the evil was enough.
- This was applied in cases where extreme difficulty is confronted in determining where the freedom of expression ends and the right of courts to protect their independence begins.

### **Balancing test**

- When particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional, partial abridgment of speech, the duty of the courts is to determine which of the two conflicting interest demands the greater protection under the particular circumstances presented.

### **Criticism of official conduct**

- *General rule*: The official acts, and now even the private life, of a public servant are legitimate subjects of public comment.
  - o As long as the comments are made in good faith and with justifiable ends, they are insulated from prosecution or damage suits for defamation, even if such views were found to be inaccurate or erroneous.

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<sup>416</sup> *Supra* note 410.

<sup>417</sup> G.R. No. L-31687, February 26, 1970 [Minute resolution, *En Banc*].

<sup>418</sup> G.R. No. L-65366, November 9, 1983 [Per C.J. Fernando, *En Banc*].

<sup>419</sup> G.R. No. 119673, July 26, 1996.

- This also applies to public figures (such as candidates in an election), even private individuals who are involved in a public issue.
  - o However, this does not extend to a fictional or novelized representation of a person, no matter how public a figure he may be.<sup>420</sup>
  - o However, the court upheld the right of a filmmaker to make a motion picture about the EDSA People Power Revolution, despite Enrile's objection.
    - The court held that the right to privacy of a public figure is narrower than that of an ordinary citizen.<sup>421</sup>
  - o Likewise, when one is involved in a public issue, the media may now report on him as legitimate news.<sup>422</sup>

### **Contempt of courts**

- *Sub judice* rule: Newspaper publications tending to impede, obstruct, embarrass or influence the courts in administering justice in a pending suit or proceeding constitutes criminal contempt which is summarily punishable by the courts. The rule is otherwise after the case is ended.<sup>423</sup>
- *Zaldivar v. Sandiganbayan*:<sup>424</sup> A member of the bar can, and will, be stopped at the point and where he infringes our Canons of Ethics; and if he wishes to remain a member of the Bar he will conduct himself in accordance therewith.
  - o Hence, a lawyer was ordered a show cause order when his clients mounted a 24-hour picket along Padre Faura, blocking traffic and maintained a continuous harangue pleading of their case.<sup>425</sup>
    - Following this case, the court declared that "no demonstrations or pickets intended to pressure or influence courts of justice into acting one way or the other on pending cases shall be allowed in the vicinity and/or within the premises of any and all courts."
- Valid criticism: It is the cardinal condition of all such criticism, however, that it shall be *bona fide*, and shall not spill the walls of decency and propriety.
- Two kinds of publications relating to court and court proceedings which can warrant the exercise of the power of contempt:
  - That which tends to impede, obstruct, embarrass or influence the courts in administering justice in a pending suit or proceeding
  - That which tends to degrade the courts and to destroy public confidence in them or that which tends to bring them in any way into disrepute.
- Nevertheless, the court cannot hold in contempt one who ventures to publish anything that tends to make him unpopular or to belittle him.

### **Art and obscenity**

- ***Miller v. California*** laid down the **test for obscenity**:
  - o Whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest.
  - o Whether the work depicts or describes in a patently offensive way, sexual conduct specifically defined by the applicable law.
  - o Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.
- Obscenity and pornography are unprotected speech which the state has the right and mandate to protect the public from.<sup>426</sup>
  - o Laws regulating these materials *cannot* be *facially invalidated* because there is no transcendent value to society that would justify such attack.

<sup>420</sup> Lagunza v. Sotto Vda. De Gonzales

<sup>421</sup> Ayer Productions Pty. Ltd. V. Capulong,

<sup>422</sup> Palad v. Solis, G.R. No. 206691, October 3, 2016.

<sup>423</sup> People v. Alarcon

<sup>424</sup> G.R. No. 79690-707, October 7, 1988 [Per Curiam, *En Banc*].

<sup>425</sup> Nestle Philippines Inc. v. Sanchez, G.R. No. 75209, September 30, 1987 [Per Curiam, *En Banc*].

<sup>426</sup> Madrilejos v. Gatdula, G.R. No 184389, November 16, 2021.

- Likewise, pornographic materials may be destroyed even if the accused is acquitted (in a case of violating Art. 201, REV. PEN. CODE).<sup>427</sup>

### Assembly and petition

- The public meeting is an effective forum for the ventilation of ideas affecting the common welfare.
- It may not be subject to prior restraint or censorship. Hence, it may not be conditioned upon the prior issuance of a permit or authorization from the government.
  - But when it will be conducted in a public place, permit for the use of the place—and not necessarily for the assembly itself—may be validly required.
  - Hence, the government may only regulate—not prohibit—the right. The most they can do is to indicate the time and conditions for their use.
    - Thus, the mayor may move the demonstration to a certain part of a park which cannot disrupt a nearby church service.<sup>428</sup>
    - The mayor can also move the place of demonstration totally, such as when it was moved from Plaza Miranda to UP Diliman.<sup>429</sup>
    - But in *Tañada v. Bagatsing*,<sup>430</sup> the court reversed the mayor's denial of issuing a permit, but moved the location from Liwasang Bonifacio to Ugarte Field, a private park.
- **Batas Pambansa 880** (Public Assembly Act) provides that *no permit is necessary* when the demonstration will be held in:
  - Freedom parks
  - Private places
  - Campus of a government-owned and operated educational institution.
- Denial of a permit must be justified only upon clear and convincing evidence that the assembly will create a clear and present danger to public order, safety, convenience, morals or health.
- Law enforcement agencies cannot interfere with a lawful assembly, but may detail a contingent under a responsible commander at least 100 meters away. They must maintain *maximum tolerance*.
  - **Maximum tolerance** – The highest degree of restraint that the military, police and other peace keeping authorities shall observe during a public assembly or in the dispersal of the same
- The test of a lawful assembly should be the purpose for which it is held.
  - Hence, even if the organizers were lawful, the assembly will still be illegal if its objective is to incite sedition or rebellion.
- Untoward incidents during a public assembly will *not* make the assembly unlawful for that reason *alone*.

### Students' rights

- *Malabanan v. Ramento*:<sup>431</sup> With the students' demonstration taking place in the school premises and during the daytime, *no clear and present danger of public disorder is discernible*. This is *without prejudice* to the taking of disciplinary action for conduct, which, to borrow from *Tinker*, "materially disrupts classwork or involves substantial disorder or invasion of the rights of others."
  - Hence, the students may not be suspended because of staging a mobilization in the premises of the university.
- In *Villar v. Technological Institute of the Philippines*, the court held that grades cannot be utilized to discriminate against those students who exercise their constitutional right to peaceable assembly and free speech.<sup>432</sup>

### Labor strikes

<sup>427</sup> *Nogales v. People*, G.R. No. 191080, November 21, 2011.

<sup>428</sup> *De la Cruz v. Ela*

<sup>429</sup> *Supra* note 417.

<sup>430</sup> G.R. No. L-68273, August 18, 1984.

<sup>431</sup> G.R. No. L-62270, May 21, 1984 [Per C.J. Fernando, *En Banc*].

<sup>432</sup> G.R. No. L-69198, April 17, 1985 [Per C.J. Fernando, *En Banc*].



- In *TMPCWA v. NLRC*, the court deemed the protest that the workers staged in front of the DOLE office as illegal strikes because there was an ongoing labor dispute arising between the union and the management.<sup>433</sup>
- In *Solid Bank Union v. MBTC*, the court held that the right to strike has limits—particularly, Art. 264 of the Labor Code. Said provision states that “no strike or lockout shall be declared after assumption of jurisdiction.”<sup>434</sup>
  - o Hence, a strike that is undertaken despite the issuance by the labor secretary of an assumption order is prohibited and thus illegal.

### Right of association

The right of the people, including those employed in the public and private sectors, to form unions, associations or societies for purposes not contrary to law shall not be abridged.<sup>435</sup>

The phrase “for purposes not contrary to law” is a built-in limitation; a recognition of the police power. And it is actually superfluous.

*Does the right to organize equate to a right to recognition?*

- No, because the state can set reasonable regulations—procedural, formal and substantive—with which organizations seeking state imprimatur must comply.<sup>436</sup>

### Mandatory memberships

- In the case of homeowners association, the right of association cannot be invoked because the association is a private person. Hence, mandatory membership was upheld.

### Unionism

- The right to form unions are guaranteed to those employed in the public and private sectors.
- However, those in the civil service *may not declare a strike to enforce their economic demands*.
  - o This is because the constitution is silent as to whether such recognition to unionize also includes the right to strike.<sup>437</sup>
- In *Calleja*,<sup>438</sup> the court invalidated the provision that prohibited joining organizations “organized for the purpose of engaging in terrorism.”
  - o Moreover, mere or nominal membership in a proscribed organization is not punishable under Section 10 of the ATA. It is *knowing membership*—that is, the person is aware of the proscription and despite that, he still joins the group.
- In *Victoriano*,<sup>439</sup> the court sustained the law that allowed laborers to dissociate from or not join a labor union despite its closed-shop agreement if their religious belief prohibit them.
  - o The closed-shop union is valid because the state promotes unionism.<sup>440</sup>

### Political organizations

- The right of association is not violated in a law the prohibits political parties from joining barangay elections, because political neutrality was needed.<sup>441</sup>
- The lawyer’s freedom of association is also not violated by the mandatory Integrated Bar membership (and fees).<sup>442</sup>
- Organizations may not be compelled by the state to reveal its list of members.<sup>443</sup>

<sup>433</sup> G.R. No. 158786, October 19, 2007 [Per J. Velasco, Second Division].

<sup>434</sup> G.R. No. 159460, November 15, 2010 [Per J. Villarama, Third Division].

<sup>435</sup> PHIL. CONST. art. III, §8.

<sup>436</sup> Quezon City PTCA Federation Inc. v. Department of Education

<sup>437</sup> SSS Employees Association v. CA

<sup>438</sup> *Supra* note 56.

<sup>439</sup> *Supra* note 389.

<sup>440</sup> Liberty Flour Mills Employees Association v. Liberty Flour Mills Inc.

<sup>441</sup> Occeña v. COMELEC

<sup>442</sup> In re Edillon, A.M. No. 1928, August 3, 1978.

<sup>443</sup> NAACP v. Alabama, 357 U.S. 449.

- But a similar measure was upheld when applied to the Ku Klux Klan.<sup>444</sup>

### Access to information

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 all 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.<sup>445</sup>

*This is a self-executing provision*

- Hence, the COMELEC, by *mandamus*, may be compelled to explain fully its election preparation, and to disclose the names of the party-list nominees.<sup>446</sup>
- But in *IDEALS v. PSALM*,<sup>447</sup> the court distinguished between disclosure and access:
  - Unlike the disclosure of information which is *mandatory*, the other aspect of the people's right to know *requires a demand or request* for one to gain access to documents and paper of the particular agency. The duty to disclose covers only transactions involving public interest, while the duty to allow access has a broader scope of information which embraces not only transactions involving public interest, but any matter contained in official communications and public documents of the government agency.

### Two requisites to invoke the right to information *via mandamus*:

1. The information sought must be in relation to matters of public concern or public interest
2. It must not be exempt by law from the operation of the constitutional guarantee<sup>448</sup>

### Constitutionally required disclosures

1. Lawmakers' business and financial interests<sup>449</sup>
2. President must inform the public on the state of his health in case of his serious illness<sup>450</sup>
3. The SALN, and high-ranking government officials must disclose it to the public in the manner provided by law.<sup>451</sup>
  - a. Custodians of public documents must *not* concern themselves with the motives, reasons and objects of the persons seeking access to the records.<sup>452</sup>
  - b. However, disclosure of SALN may be subject to regulation, hence, the duty of the custodian is *not* ministerial.<sup>453</sup>
4. President must notify Congress within 30 days from execution of every contract with foreign-owned corporations involving either technical or financial assistance for large-scale EDU<sup>454</sup>
5. Information on foreign loans must also be made available to the public<sup>455</sup>
  - a. Hence, in *Colmenares v. Duterte*,<sup>456</sup> the court noted that a confidentiality clause in a loan agreement cannot trump the command of the constitution for disclosure.

### Information not subject to disclosure

<sup>444</sup> New York v. Zimmerman, 278 U.S. 63 (1928).

<sup>445</sup> PHIL. CONST. art. III, §7.

<sup>446</sup> Guingona v. COMELEC, G.R. No. 191846, May 6, 2010 [Per J. Carpio, *En Banc*] & Bantay Republic Act v. COMELEC, G.R. No. 177271, May 4, 2007 [Per J. Garcia, *En Banc*].

<sup>447</sup> G.R. No. 192088, October 9, 2012 [Per J. Villarama, *En Banc*].

<sup>448</sup> Belgica v. Ochoa, G.R. No. 208566, November 19, 2013 [Per J. Perlas-Bernabe, *En Banc*].

<sup>449</sup> PHIL. CONST. art. VI, §12.

<sup>450</sup> PHIL. CONST. art. VII, §12.

<sup>451</sup> PHIL. CONST. art. XI, §17.

<sup>452</sup> In re Request of PCIJ for the 2008 SALNs and PDS of CA Justices, A.M. No. 09-8-07-CA, June 13, 2012 [Per J. Mendoza, *En Banc*].

<sup>453</sup> Biraogo v. Martires, G.R. No. 254516, February 2, 2021 [Notice, *En Banc*].

<sup>454</sup> PHIL. CONST. art. XII, §2.

<sup>455</sup> PHIL. CONST. art. XII, §21.

<sup>456</sup> G.R. No. 245981, August 9, 2022 [Per J. Lopez, *En Banc*].

1. National security matters and intelligence information
2. Trade secrets and banking transactions
3. Criminal matters
4. Diplomatic negotiations<sup>457</sup>
5. Information covered by executive privilege:
  - a. Informer's privilege
  - b. Presidential communications privilege
  - c. Deliberative process privilege
  - d. Diplomatic negotiations privilege
6. Court deliberations

## Chapter 14: Nonimpairment clause

No law impairing the obligation of contracts shall be passed.<sup>458</sup>

**Purpose:** To prohibit state interference in *purely private* transactions. It is also a check on the legislature so as to compel it to legislate only general laws, prescribing rules of conduct that operate prospectively.

### Contracts

- Any lawful agreement on property or property rights, whether real or personal, tangible or intangible.
- It does not include franchises,<sup>459</sup> licenses,<sup>460</sup> license agreements,<sup>461</sup> and a marriage contract.
- It also includes a law granting tax exemption in exchange for a valuable consideration.<sup>462</sup>
- It also does not include public office because it is not a property right and cannot be the subject of a contract between the incumbent and the government.
  - o Hence, the government may, at any time, abolish any public office. By way of an exception, the government cannot take back salary which has already been earned through a retroactive legislation as that would effectively impair property rights.
- Excluded, too, are "special contracts imbued with public interest,"<sup>463</sup> and contracts whose subject matter are related to public welfare.<sup>464</sup>

### Law

- This covers republic acts, executive orders and administrative regulations, and local ordinances.
- It does not include judicial decisions or adjudications made by administrative agencies.
- To be a "suspect" law under the nonimpairment clause, it must *retroact* so as to affect existing contracts concluded *before* its enactment.
  - o There is *no* impairment if the law only affects contracts *after* its enactment.

### Obligation

- This is the *vinculum juris* that binds the party to each other.

### Impairment

- Impairment is anything that diminishes the efficacy of the contract. The degree of diminution is immaterial.

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<sup>457</sup> AKBAYAN v. Aquino, G.R. No. 170516, July 16, 2008 [Per J. Carpio-Morales, *En Banc*].

<sup>458</sup> PHIL. CONST., art. III, §10.

<sup>459</sup> Manila Electric Company v. Province of Laguna

<sup>460</sup> Pedro v. Provincial Board of Rizal

<sup>461</sup> Alvarez v. PICOP Resources Inc.

<sup>462</sup> Casanova v. Hord

<sup>463</sup> *Supra* note 26.

<sup>464</sup> *Supra* note 154.

- There is impairment if a subsequent law changes the terms of a contract, imposes new conditions, dispenses with those agreed upon or withdraws remedies for the enforcement of the rights of the parties.<sup>465</sup>
- In case of *remedies*, there will only be impairment only if *all* of them are withdrawn. Otherwise, there will be no impairment as long as a substantial and efficacious remedy remains.

### Limitations

- A contract valid at the time of its execution may be legally modified or even completely invalidated by a subsequent law, which exercises the police power.
- The police power is superior to the nonimpairment clause.
- Hence, the following laws were sustained:
  - o A law outlawing all kinds of gambling, in effect revoking gambling franchises issued by the state<sup>466</sup>
  - o An ordinance which changed the zoning classification of an area from residential to commercial, though it invalidated the clause in a contract where only houses may be built on said land<sup>467</sup>
    - Zoning ordinances are an exercise of police power.
  - o Laws increasing social security contributions and granting PUV drivers and conductors minimum wages (social legislations)<sup>468</sup>
- Nevertheless, the following laws were deemed inconsistent with the nonimpairment clause:
  - o A law imposing moratorium on loan payments because it suspended all the creditor's rights, oppressively long, and the passing of the emergency (war)<sup>469</sup>

### Chapter 15: Ex post facto laws and bills of attainder

No ex post facto law or bill of attainder shall be enacted.<sup>470</sup>

**Ex post facto law** – A law that would make a previous criminal act although it was not so at the time it was committed.

#### Kinds of ex post facto laws:

1. Every law that makes criminal an act done before the passage of the law and which was innocent when done, and punishes such an act.
2. Every law that aggravates a crime, or makes it greater than it was committed.
3. Every law that changes punishment, and inflicts a greater punishment than the law annexed to the crime when committed.
4. Every law that alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission of the offense, in order to convict the offender
5. Every law which, assuming to regulate civil rights and remedies only, in effect imposes a penalty or the deprivation of a right for something which when done was lawful
6. Every law which deprives persons accused of crime of some lawful protection to which they have become entitled, such as the protection of a former conviction or acquittal, or of a proclamation of amnesty

#### Characteristics of an ex post facto law:

1. It must refer to *criminal* matters
2. It must be *retroactive* in its application
3. It must be to the *prejudice* of the accused<sup>471</sup>

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<sup>465</sup> *Supra* note 236.

<sup>466</sup> *Stone v. Mississippi*, 101 U.S. 814 (1879).

<sup>467</sup> *Ortigas & Co. v. Feati Bank*

<sup>468</sup> *Supra* note 154.

<sup>469</sup> *Supra* note 239.

<sup>470</sup> PHIL. CONST. art. III, §22.

<sup>471</sup> Hence, laws that are retroactive, but favorable to the accused are not unconstitutional. See Art. 22, REV. PEN. CODE.

**Applicability:**

1. Does not apply to administrative orders and memorandum orders
2. Does not apply to laws creating and delineating the subject-matter jurisdiction of a new court (i.e., the Sandiganbayan)<sup>472</sup>
3. Does not apply to remedial and procedural law, as these may be applied retroactively
4. Does not apply to retroactive penal laws *favorable* to the accused
  - a. Hence, a law that reduces the term of imprisonment and the addition of a fine may be applied retroactively.<sup>473</sup>

**Bill of attainder** – A legislative act that inflicts punishment without a trial, its essence being the substitution of legislative fiat for a judicial determination of guilt.

- It is only when the law applies either to *named* or *ascertainable* members of a group in such a way as to inflict punishment on them without a judicial trial that it becomes a *bill of attainder*.

**The anti-subversion and anti-terror act**

- They do not violate the prohibition on bills of attainder, because the government must still prove that the accused joined the CPP or a proscribed groups knowingly, willfully and by overt acts, and that they joined, knowing its subversive character and with specific intent to further its basic objective.<sup>474</sup>
- What is punished, hence, is *knowing membership* and not a nominal or *per se* membership.<sup>475</sup>

**Requisites of a bill of attainder:**

1. A specification of certain individuals or group of individuals
2. The imposition of a punishment, penal or otherwise
3. The lack of judicial trial<sup>476</sup>

**Chapter 16: Nonimprisonment for debt**

No person shall be imprisoned for debt or non-payment of a poll tax.<sup>477</sup>

**Debt** – Any civil obligation arising from contract, expressed or implied.

- It includes debt obtained through fraud.

**Is unpaid support debt?**

- *Sura v. Martin*:<sup>478</sup> A person who failed to pay support, despite a court order, due to his insolvency, cannot be arrested as it would be tantamount for imprisonment for debt.
- *Acharon v. People*:<sup>479</sup> In order for criminal liability to arise under Section 5(i) of RA 9262, insofar as it deals with denial of financial support, there must, therefore, be evidence on record that the accused willfully or consciously withheld financial support *legally due* the woman for the purpose of inflicting mental or emotional anguish upon her.

**Crime**

- The debtor can be validly punished in a criminal action if he contracted his debt through fraud.
  - o Hence, the obligation's source is delict, and not contractual, removing it from the ambit of the nonimprisonment for debt clause.
- *Lozano v. Martinez*: The gravamen of the offense punished by BP 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment.

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<sup>472</sup> *Supra* note 207.

<sup>473</sup> Valeroso v. People, G.R. No. 164815, February 22, 2008

<sup>474</sup> People v. Ferrer, G.R. No. L-32613-14, December 27, 1972 [Per J. Castro, First Division].

<sup>475</sup> *Supra* note 56.

<sup>476</sup> Fuertes v. Senate, G.R. No. 208162, January 7, 2020 [Per J. Leonen, *En Banc*].

<sup>477</sup> CONST. art. III, §20.

<sup>478</sup> G.R. No. L-25091, November 29, 1968 [Per J. Capistrano *En Banc*].

<sup>479</sup> G.R. No. 224946, November 9, 2021 [Per J. Caguioa, *En Banc*].

The law is not intended to coerce a debtor to pay his debt. It is not a crime against property, but an offense against public order.

**Poll tax** – A specific fixed sum levied upon every person belonging to a certain class without regard to his property or occupation.

- While nonpayment of taxes may be a basis of a criminal case (and eventual imprisonment), the nonpayment of poll taxes does not.
  - o Hence, a person cannot be forced to pay even the nominal cost of a community tax certificate (cedula).<sup>480</sup>

## Chapter 17: Involuntary servitude

No involuntary servitude in any form shall exist except as a punishment for a crime whereof the part shall have been duly convicted.<sup>481</sup>

**Involuntary servitude** – The condition of one who is compelled by force, coercion<sup>482</sup> or imprisonment and against his will to labor for another, whether he is paid or not.

1. Slavery – That civil relation in which one man has absolute power over the life, fortune and liberty of another
2. Peonage – A condition of enforced servitude by which the servitor is restrained of his liberty and compelled to labor in liquidation of some debt of obligation, real or pretended, against his will.

### Exceptions:

1. Punishment for a crime
2. Defense of the state<sup>483</sup>
3. Naval enlistment
4. Posse comitatus for the apprehension of criminals
5. Return to work order
6. Patria potestas or parental power

## Chapter 18: The writ of Habeas Corpus

The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion when the public safety requires it.<sup>484</sup>

### Definition and nature

- It is a prerogative writ of liberty employed to test the validity of a person's detention.
- Its purpose is to relieve a person from unlawful restraint.
- The writ is issued liberally, but it is different from the privilege—the final decision where a court determines the legality of the restraint.
  - o The writ is just a command for the production of the body of the person restrained.

### When available

- When the individual is subjected to physical restraint
  - o Even moral restraint!<sup>485</sup>
  - o But *not* restrictive custody or nominal restraint<sup>486</sup>
- Cases involving who has the rightful custody of the minor
- Unlawful denial of bail
- Conviction by a court without jurisdiction or where his sentence has become invalid
  - o But *not* when errors of law are alleged

<sup>480</sup> See *People v. Linsaňan*, G.R. No. 43290, December 21, 1935 [Per J. Abad-Santos, *En Banc*].

<sup>481</sup> PHIL. CONST. art. III, §18 (1).

<sup>482</sup> There must be coercion or compulsion. Otherwise, it is not involuntary servitude. See *Imbong*.

<sup>483</sup> PHIL. CONST. art. II, §4.

<sup>484</sup> PHIL. CONST. art. III, §15.

<sup>485</sup> *Caunca v. Salazar*

<sup>486</sup> *Ampatuan v. Macaraig*

- Denial of the right to a speedy trial or to the speedy disposition of cases
- Deprive of liberty due to mistaken identity
- Detainees whose pending cases have gone beyond the mandated periods for the conduct of preliminary inquiry, or whose cases have already been dismissed on inquest, preliminary investigation, despite on appeal with the justice secretary
- When there is a violation of the liberty of abode
- As a post-conviction remedy, when:
  - o There has been a deprivation of a constitutional right resulting in the restraint of a person
  - o The court had no jurisdiction to impose the sentence
  - o The imposed penalty has been excessive<sup>487</sup>

#### **Grounds for suspension**

- The president is entrusted the power to suspend the privilege of the writ of Habeas Corpus only upon *either* of the two grounds in the constitution: invasion or rebellion, when the public safety requires it.<sup>488</sup>

#### **Writ of Amparo**

- A remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.
- It covers extralegal killings and enforced disappearances or threats thereof.

#### **Writ of Habeas Data**

- Intended to ensure the human right to privacy by requiring the respondent to produce the necessary information to locate the missing person or such data about him that have been gathered in secret to support the suspicion that he has been taken into custody in violation of his constitutional rights or, worse, has been salvaged without benefit of lawful trial.
- The writ may also be sought to secure destruction of such secret information gathered in violation of the person's right to privacy to justify summary action against him by the government or any private entity.
- There must be substantial evidence of an actual or threatened violation of the right to privacy in life, liberty or security of the victim.

### **Chapter 19: Speedy disposition of cases**

All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.<sup>489</sup>

**General rule:** Rules prescribing the time within which certain acts must be done, or certain proceedings taken, are considered *absolutely indispensable* to the prevention of needless delays and the orderly and speedy discharge of judicial business. These rules are mandatory.<sup>490</sup>

#### **There occurs a violation of the right to speedy disposition when:**

1. The proceedings are attended by vexatious, capricious and oppressive delays
2. Unjustified postponements of the trial are sought and secured
3. Without cause of justifiable motive, a long period of time is allowed to elapse without the party having his case tried<sup>491</sup>

#### **Rules in determining the delay:**

1. **Fixed-Time Period Rule** – There is a delay if the case is not done within a specified time period.

<sup>487</sup> In re: Raymundo Reyes, G.R. No. 251954, June 10, 2020.

<sup>488</sup> PHIL. CONST. art. VII, §18.

<sup>489</sup> PHIL. CONST. art. III, §16.

<sup>490</sup> See e.g., PHIL. CONST. art. VIII, §15 (1) & art. IX-A, §7, which set the time limit for the courts and constitutional commissions to resolve matters before them.

<sup>491</sup> Yulo v. People, G.R. No. 142752, March 4, 2005.

2. **Demand-Waiver Rule** – A defendant has waived his right to a speedy disposition for any period prior to which he has *not demanded* trial. A demand is necessary to trigger the right.
3. **Balancing Test** – The conduct of both the prosecution and defendant are weighed. The following factors are balanced:
  - a. Length of delay
  - b. Reasons for the delay
  - c. The assertion or failure to assert such right by the accused
  - d. The prejudice caused by the delay

#### Reckoning period

- The fact-finding investigation is excluded from the determination as to whether or not there has been inordinate delay.<sup>492</sup>
- **Cagang Rules:**
  1. The right to speedy disposition applies to all cases, while the right to speedy trial is only applicable to criminal cases.
  2. A case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation.
  3. Courts must first determine which party carries the burden of proof:
    - a. Defense – if the right is invoked within the given time periods promulgated by the Supreme Court or the Ombudsman
    - b. Prosecution – if the delay occurs beyond the given time period and the right is invoked
  4. Determination of the length of delay is never mechanical, except:
    - a. When the prosecution was solely motivated by malice (politically motivated) or when there is continued prosecution despite the utter lack of evidence.
    - b. Waiver of the accused to the right.
  5. The right must be timely raised.<sup>493</sup>

#### Chapter 20: Rights of the accused

##### Outline

Provision	Right	Codal provision
§14(1)	Criminal due process	No person shall be held to answer for a criminal offense without due process of law.
§17	Self-incrimination	No person shall be compelled to be a witness against himself.
§12	Custodial investigation	Any person under investigation for the commission of an offense shall have the: <ul style="list-style-type: none"> <li>- Right to be informed of his right to remain silent</li> <li>- 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.</li> </ul> These rights cannot be waived except upon in writing and in the presence of counsel.
§13	Bail	All persons, except those charged with offenses punishable by <i>reclusion perpetua</i> when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of <i>habeas corpus</i> is suspended. Excessive bail shall not be required.

<sup>492</sup> Cagang v. Sandiganbayan, G.R. No. 206438, July 31, 2018 [Per J. Leonen, *En Banc*].

<sup>493</sup> The violation of the right may be raised before entering a plea during arraignment, in a motion for reconsideration, but not on appeal.



§14(2)	Presumption of innocence Right to be heard - Assistance of counsel Nature and cause of accusation The trial - Trial in absentia Confrontation Compulsory process	In all criminal prosecutions, - The accused shall be presumed innocent until the contrary is proved, - And shall enjoy the right to be heard by himself and counsel, - To be informed of the nature and cause of the accusation against him, - To have a speedy, impartial, and public trial, - To meet the witness face to face, and - To have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf.  However, after arraignment, trial may proceed notwithstanding the absence of the accused: <i>Provided</i> , that he has been duly notified and his failure to appear is unjustifiable.
19	Prohibited punishments	- Excessive fines shall not be imposed, - nor cruel, degrading, or inhuman punishment inflicted. - Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to <i>reclusion perpetua</i> .  The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.
21	Double jeopardy Act violating law and ordinance	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.

**Criminal due process (§14[1])**

- This provision is restricted to criminal cases only and purely to their procedural requirements.
- It requires that the procedure established by law or the rules be followed to assure that the state makes no mistake in taking the life or liberty except that of the guilty.
- It requires that the accused be:
  - o Tried by an impartial and competent court
  - o In accordance with the procedure prescribed by law
  - o With proper observance of *all* the rights accorded him under the constitution and statutes.
    - While a preliminary investigation is not required by the constitution, it is required by law. Hence, the denial of the right to a preliminary investigation constitutes denial of criminal due process.<sup>494</sup>
    - Moreover, preliminary investigations are subject to the requirements of both substantive and procedural due process.

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<sup>494</sup> Patanao v. Enage

- In any case, when the accused pleads to the charge, he is deemed to have waived the right to a preliminary investigation and the right to question any irregularity that surrounds it.<sup>495</sup>
- A basic ingredient of criminal due process is a trial conducted in accordance with the rudiments of fair play (i.e., a judge who is impartial and not biased).
  - Hence, the Supreme Court annulled the trial of the Ninoy Aquino assassins because the dictator's influence and pressure prevented a fair and impartial trial.<sup>496</sup>
  - A mistrial may be declared if it is shown that the proceedings were held under such circumstances as would prevent the accused from freely making his defense or the judge from freely arriving at his decision.
- Due process is also violated where a person is impleaded for a violation of a law, administrative regulation, or municipal ordinance not previously published.<sup>497</sup>
- The accused may waive such rights, provided that the waiver is valid.
- Likewise, the state is also entitled to due process.

### **Self-incrimination (§17)**

- This right is available in criminal, civil, administrative and legislative proceedings, as well as to both the accused and any witness to whom an incriminating question is addressed.
- *Scope:* As long as the question will tend to incriminate, the witness is entitled to the privilege.
  - In all other cases, he may not refuse to answer provided the question is relevant and otherwise allowed even if the answer may tend to embarrass him or subject him to civil liability.
- It applies only to testimonial evidence.
  - Hence, a person may be compelled to submit to a physical examination of his body.
  - It does not apply to *object* evidence.
  - Hence, the mandatory drug testing requirement for all persons charged with a criminal offense having an imposable penalty of more than six years is *unconstitutional*.<sup>498</sup>
- The prohibition also applies to the compulsion for the production of documents, papers and chattels that may be used as evidence against the witness, except where the state has a right to inspect it.
- It also protects the accused from giving away his handwriting specimen.
- *When available:* It may be invoked only when and as the incriminating question is asked.
  - The accused, however, may refuse altogether to take the stand as a witness for the prosecution.
  - Nonetheless, the right can be waived directly, or by a failure to invoke it.

### **Custodial investigation (§12)**

- **Miranda Rights:**
  - Right to remain silent
  - Anything he says may be used against him in a court of law
  - He has the right to talk to an attorney before being questioned and to have his counsel present when being questioned
  - If he cannot afford an attorney, one will be provided before any questioning if he so desires.
- **Custodial investigation** – Any questioning initiated by law enforcement officers after a person has been taken into custody or deprived of his freedom of action in any significant way.
  - It begins after a general inquiry, and the investigation has started to focus on a particular person as a suspect.

<sup>495</sup> Cruz v. People, G.R. No. 176504, September 3, 2008.

<sup>496</sup> Galman v. Sandiganbayan

<sup>497</sup> Tañada v. Tuvera

<sup>498</sup> *Supra* note 331.

- Hence, an admission during a general inquiry is admissible.<sup>499</sup>
- If the accused were not informed of their Miranda rights when they affixed their signatures, the admission (like signing the boxes and plastic bags seized) is inadmissible.
  - However, the signing of a certificate of orderly search should *not be considered an admission of guilty, but merely an admission of lawful search*.
- Roadside questioning is *not* custodial investigation, but a motorist who has been subject to such and subjected to “custody” afterwards will now be under the panoply of Miranda rights.
- Administrative investigations are not covered by Miranda rights.
- Custodial investigation shall include the practice of issuing an “invitations” to a person to an investigation.
- **Requisites for an admissible extrajudicial confession:**
  - Voluntary
  - Made with the assistance of a competent and independent counsel
  - Express
  - In writing
- Hence, the following extrajudicial confessions were ruled inadmissible:
  - Admissions of the accused, while made in the presence of counsel, who was not adequately educated to understand fully and fairly his rights
  - An execution of an affidavit by an accused without the assistance of counsel and without first being informed of her right to remain silent, shortly after she was accosted by airport personnel for having found drugs inside her bag
- However, the court admitted as evidence an uncounseled confession by the accused to a mayor, and **voluntary statements made to news reporters**.<sup>500</sup>
  - Hence, the rule, that verbal confessions to the newsmen are not covered by §12(1) and (3) of the Bill of Rights, because the Bill of Rights does not concern itself with the relation between a private individual and another individual.
- Uncounseled extrajudicial statements given to barangay tanods and barangay chairmen are inadmissible, but they are admissible if made to neighbors and barangay kagawads and if *not* made during custodial investigations.
- The right is also inapplicable to spontaneous statement *not* elicited through questioning by the authorities, but given in an ordinary manner whereby the accused orally admitted having committed the crime.
- However, a confession is inadmissible if the accused has been tortured, coerced, or is a minor or incapable of fully understanding their rights (vitiation of consent).
  - Nevertheless, a claim of torture must be substantiated by competent and independent corroborating evidence, like a medical certificate.
- In any case, for conviction to occur, there must still be evidence of the *corpus delicti* in addition to the extrajudicial confession.
- **Right to counsel** – The accused has the right to a competent and independent counsel, preferably of his own choice and to be provided free if he cannot afford one.
  - This may also be waived, so long as it is in writing and in the presence of counsel.
  - It attaches upon the start of the investigation, i.e., when the investigating officer starts to ask questions to elicit information, confessions or admissions from the accused.<sup>501</sup>
    - However, the right to counsel is unavailable in a police line-up because it is not part of custodial investigation. But after the start of the custodial investigation, any identification of an uncounseled accused made in a police line-up is inadmissible.
  - The counsel must be independent—that is, it must not be provided by the very same agency investigating nor working for it.
  - Hence, a reenactment of the crime without counsel of the accused is inadmissible.
- Nevertheless, a violation of the Miranda rights during custodial investigation will render inadmissible *only* the admission made, and not the other evidence.

<sup>499</sup> People v. Cabanada, G.R. No. 221424, July 19, 2017.

<sup>500</sup> People v. Andan, G.R. No. 116437, March 3, 1997.

<sup>501</sup> People v. Macam

- *When to raise objections:* Before arraignment.<sup>502</sup>

### **Bail (§13)**

- It is the security given for the release of a person in custody of the law, furnished by him or a bondsman, conditioned upon his appearance before any court as may be required.
- *Who may apply:* Only a person under detention may petition for bail, or a person who has indicted.
  - o In applications for bail, it is not necessary for the court to first acquire jurisdiction over the person of the accused to dismiss the case or grant other reliefs.
- *Bail is a matter of right:*
  - o Before or after conviction by MTC
  - o Before conviction by RTC, except those charged with offenses punishable by death or reclusion perpetua
  - o Before conviction of offenses punishable by death or reclusion perpetua when the evidence of guilt is not strong
- *Bail is discretionary:*
  - o After conviction by the RTC of an offense not punishable by death or reclusion perpetua
  - o After conviction by the RTC of an offense with a penalty exceeding six years
- *Bail is not allowed:*
  - o When the offense charged is punishable by death or reclusion perpetua and the evidence of guilt is strong.
- **Bail hearing** – It is separate and distinct from the initial hearing.
  - o *Standard of proof:* Proof evident or presumption great
    - **Proof evident** – It means clear, strong evidence which leads a well-guarded dispassionate judgement to the conclusion that the offense has been committed as charged, that accused is the guilty agent, and that he will probably be punished capitally if the law is administered.
    - **Presumption great** – It exists when the circumstances testified to are such that the inference of guilt naturally to be drawn therefrom is strong, clear, and convincing to an unbiased judgment and excludes all reasonable probability of any other conclusion.
  - o The bail hearing may be *summary* in nature, or may be held in the trial itself.
  - o It *cannot* be granted upon mere *ex parte* motion, because notice and hearing is required whether bail is a matter of right or discretion.
  - o Mere probability of escape does not warrant the denial of the right to bail—the remedy is to *increase* the bail.
- In fixing a reasonable amount of bail, the judge must consider the following factors:
  - o Financial ability of the accused to give bail
  - o Nature and circumstances of the offense
  - o Penalty for the offense charged
  - o Character and reputation of the accused
  - o Age and health of the accused
  - o Weight of the evidence against the accused
  - o Probability of the accused appearing at the trial
  - o Forfeiture of other bail
  - o The fact that the accused was a fugitive from justice when arrested
  - o Pendency of other cases where the accused is on bail
- An application for or admission to bail should not bar the accused from challenging the validity of his arrest or the legality of the warrant issued, or from assailing the regularity or questioning the absence of a preliminary investigation, **provided that he raises them before entering his plea.**

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<sup>502</sup> People v. Concepcion

- A second petition for bail is not barred by *res judicata* because this doctrine is inapplicable in criminal proceedings.

### **Presumption of innocence** (§14[2])

- It is the responsibility of the prosecution to establish the defendant's guilty beyond reasonable doubt; otherwise he is entitled to acquittal.
- Conviction will depend not on the weakness of his defense but on the strength of the prosecution.
- When guilt is not proven with moral certainty, it has been the policy of longstanding that the presumption of innocence must be favored, and exoneration granted as a matter of right.
- It may, however, be overcome by *contrary presumptions, e.g.*:
  - o Unexplained flight may indicate guilt
  - o Escape from detention during pendency of the case is an indication of guilt (but non-flight, on its own, is not proof of innocence)
  - o Possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi*
  - o Possession of stolen property may give rise to the presumption that he stole it
  - o A person's presence in a hazing is *prima facie* evidence of his participation
  - o Inability of the accountable officer to produce the funds or property to him will be considered *prima facie* evidence of malversation
  - o But in case of a conflict between the presumption of regularity of police officers and the presumption of innocence, the latter prevails.<sup>503</sup>
- This presumption prevails until a promulgation of final conviction is made.<sup>504</sup>
- Notably, it also applies to disbarment proceedings.

### **Right to be heard** (§14[2])

- The right to be heard is indispensable in any criminal proceeding.
- The right to be assisted by counsel is an indispensable component of due process in criminal prosecution.
- This right includes:
  - o The right to present evidence in one's defenses
  - o The right to be present
  - o The right to defend oneself in person at every stage of the proceedings
- Assistance to counsel
  - o This right has never been considered subject to a waiver.<sup>505</sup>
    - But it may be waived in writing and in the presence of counsel during custodial investigation.
  - o A counsel *de officio* should still be appointed by the court despite the objection of the accused.
  - o The counsel *de officio* must exert his utmost efforts as if he were representing a paying client.
  - o This constitutional requirement is fulfilled if the accused were represented by counsel *de officio* during arraignment and pre-trial.
  - o The right continues even where the case is appealed.
  - o The right to counsel may *not* be invoked in administrative proceedings, nor in legislative inquiries.
    - But it exists in civil cases.<sup>506</sup>
  - o It is lost when the accused, who is out on bail while his appeal is pending, failed to contact his counsel of record or find a new counsel to submit the appellant's brief.<sup>507</sup>

### **Nature and cause of accusation** (§14[2])

<sup>503</sup> People v. Gatlabayan, G.R. No. 186467, July 13, 2011.

<sup>504</sup> Trillanes v. Pimentel, G.R. No. 179817, June 27, 2007.

<sup>505</sup> People v. Holgado

<sup>506</sup> Cambil v. Kabalikat Para sa Maunlad na Buhay Inc., G.R. No. 245938, April 5, 2022.

<sup>507</sup> Laguna v. CA, G.R. No. 173390, June 27, 2012.

- Three-fold purpose of the right:
  - o To furnish the accused with such a description of the charge against him as will enable him to make his defense
  - o To avail himself of his conviction or acquittal for protection against a further prosecution for the same cause (double jeopardy)
  - o To inform the court of the facts alleged so it may decide if these will be sufficient to support a conviction.<sup>508</sup>
- **A complaint or information is sufficient if it states the following:**
  - o The name of the accused
  - o The designation of the offense given by the statute
  - o The acts of omissions complained of as constituting the offense
  - o The name of the offended party
  - o The *approximate* date of the commission of the offense
  - o The place where the offense was committed
- *Test of sufficiency:* Whether it enables a person of common understanding to know the charge against him, and the court to render judgment properly.
- The information must just allege the **ultimate facts** constituting the elements of the crime charged.
- The description and not the designation of the offense is controlling.
  - o Hence, the information is valid even if there be an erroneous designation.
  - o The actual recital of facts in the complaint or information determines the real nature of the crime.
    - Hence, it must be alleged in the information that the public officer committed the offense “in relation to their office.” Else, the information is defective.<sup>509</sup>
  - o The specific acts of the accused do not have to be described in detail as it is enough that the offense be described with *sufficient particularity* to make sure the accused fully understands what he is being charged with.<sup>510</sup>
- Amending or substituting the information:

Type of amendment	When can it be made	Leave of court required?	Other conditions
Formal	Before plea	No	
	After plea	Yes	It must <i>not</i> prejudice the rights of the accused
Substantial	Before plea	Yes, and by motion of prosecution	Must give notice to offended party; leave of court required; court must state reasons in its order and furnish all parties
Mistake in charging the proper offense	At any time <i>before</i> judgment	Yes (dismissal of original information required)	New complaint or information must be filed; no double jeopardy; court may require witnesses to post bail

- *Test if the substantial amendment may be made:*
  - o Is a defense under the original complaint or information still available despite the amendment?

<sup>508</sup> People v. De La Cruz, G.R. No. 175929, December 16, 2008 [Per J. Reyes, Third Division].

<sup>509</sup> Herrera v. Sandiganbayan, G.R. Nos. 119660-61, February 13, 2009 [Per J. Azcuna, First Division].

<sup>510</sup> Guy v. People, G.R. Nos. 166794-96, March 20, 2009 [Per J. Tinga, Second Division].

- Would any evidence the accused might have still be applicable to the amended complaint or information?
    - If “yes” to either, the information’s amendment is prejudicial to the accused and cannot be made.
- When a motion to quash is filed challenging the validity and sufficiency of the information, and the defect may be cured by amendment, the court must deny the motion to quash and order the prosecution to file an amended information.
- The **qualifying or aggravating circumstances must be alleged** (i.e., to make homicide a murder).
- The information must charge **only one offense**, except when the offense is a special complex crime.
- **Variance doctrine:** When there is a variance between the offense charged and that proved, and the offense as charged is *included or necessarily includes* the offense proved, the accused shall be convicted of:
  - the offense proved included in the offense charged, or
  - the offense charged included in the offense proved.
    - Hence, the illegal sale of marijuana *absorbs* the illegal possession of marijuana, *except* if the seller was also apprehended in the illegal possession of another quantity of marijuana not covered by or not included in the illegal sale.<sup>511</sup>
- **Arraignment** – The point where the charge is communicated to the accused, and is indispensable, and cannot be waived for reasons of public policy.
  - Role of the judge when an accused pleads *guilty*:
    - Conduct a searching inquiry into the voluntariness and full comprehension by the accused of the consequences of his plea
    - It must require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability
    - It must ask the accused whether he desires to present evidence on his behalf, and allow him to do so if he so desires
- In any case, the accused must assail the sufficiency of the information by objecting during arraignment or doing so during trial.<sup>512</sup>
  - The failure to do so is deemed waiver of the right.

### The trial (§14[2])

- **Impartial**
  - This requirement will call for no less than the cold neutrality of an impartial judge, to ensure that justice is done to the defendant.
  - Due process cannot be satisfied in the absence of that degree of objectivity on the part of the judge sufficient to reassure litigants of his being fair and just.<sup>513</sup>
- **Public**
  - This is necessary to prevent abuses that may be committed by the court to the prejudice of the defendant.
  - The people has a right to attend the proceedings not only because of their interest therein but also so they can see whether the constitutional safeguards for the accused are being observed.
    - Hence, the Supreme Court has allowed the live TV and radio broadcasting or the Maguindanao Massacre cases, subject to requirements and restrictions.<sup>514</sup>

<sup>511</sup> People v. Manansala, G.R. No. 175939, April 3, 2013 [Per J. Bersamin, First Division].

<sup>512</sup> Frias v. People, G.R. No. 171437, October 4, 2007 [Per J. Corona, *En Banc*].

<sup>513</sup> Mateo v. Villaluz, G.R. Nos. L-34756-59, March 31, 1973 Per J. Fernando, First Division].

<sup>514</sup> Re: Petition for Radio and Television Coverage, A.M. No. 10-11-5-SC, June 14, 2011 [Per J. Carpio-Morales, *En Banc*].

- But a different conclusion was reached years earlier, when it just allowed audio-visual recording of the Erap trial,<sup>515</sup> and prohibited it at all in the trial in connection with the libel case filed by President Aquino versus a newspaper columnist.<sup>516</sup>
- **Speedy**
  - It is a trial that is free from vexatious, capricious and oppressive delays.
  - The right to a speedy trial, which begins from the filing of the information, cannot be quantified into a specified number of days or months but must be examined in the light of surrounding circumstances.<sup>517</sup>
  - The accused must be arraigned within 30 days from the filing of the information, or from the date the accused has appeared before the court, whichever is later.<sup>518</sup>
  - A petition for a Writ of Habeas Corpus may be granted based on inordinate delay, but this does not mean that the principal case may be dismissed.<sup>519</sup>
- **Trial in absentia**
  - The right to be present in the trial is a personal right and may be validly waived.
  - Hence, the accused can now *not appear* in the trial, provided that:
    - He has been arraigned
    - He has been duly notified of the trial
    - His failure to appear is unjustified
  - Trial in absentia, however, does not abrogate the provisions of the Rules of Court regarding forfeiture of the bail bond if the accused fails to appear at his trial.
  - Effect of absence during promulgation:
    - The promulgation will still push through, but he will lose the remedies available in these rules and the court shall order his arrest (if convicted).
    - Within 15 days from promulgation of judgment, the accused may file a motion for leave to avail of the remedies and explain his absence.

#### **Right of confrontation (§14[2])**

- The accused must know who his accusers are and must be given a chance to cross-examine them on their charges.
- It is essentially the right to cross-examination.
- Two-fold purpose:
  - To afford the accused an opportunity to test the testimony of witnesses by cross examination
  - To allow the judge to observe the deportment of witnesses.
- Hence, depositions and *ex parte* affidavits are inadmissible unless the persons making them are presented in court for examination. Otherwise, it is hearsay and excluded.
  - Exceptions: A dying declaration, or those part of the *res gestae*.
- The examination of witnesses must be done orally before a judge in open court.
- However, it is not necessarily an *actual* cross-examination but merely an opportunity to exercise the right to cross-examine, if desired.
  - Hence, it may be waived.
  - It is also inapplicable during preliminary investigation.

#### **Compulsory process (§14[2])**

- The accused is entitled under the constitution to the issuance of *subpoena ad testificandum* and *subpoena duces tecum* for the purpose of compelling the attendance of witnesses and the production of evidence that he may need for his defense.

<sup>515</sup> Re: Request Radio-TV Coverage of the Trial in the Sandiganbayan, A.M. No. 01-4-03-SC, September 13, 2001 [Per J. Mendoza, *En Banc*]

<sup>516</sup> Re: Live TV and Radio Coverage of the Hearing, October 22, 1991 [Resolution, *En Banc*].

<sup>517</sup> Martin v. Ver, G.R. No. L-62810, July 25, 1983 [Per J. Plana, *En Banc*].

<sup>518</sup> SPEEDY TRIAL ACT, §7 (1998).

<sup>519</sup> Reyes v. Director of Whoever is In-Charge of Camp Bagong Diwa, G.R. No. 254838, January 17, 2023 [Per J. Hernando, First Division].



- Failure to do so is punishable as contempt of court. Even to arrest, if needed.
- Hence, the Sandiganbayan committed grave abuse of discretion when it denied accused's motion to examine the prosecution's evidence.<sup>520</sup>
- However, it is unavailing in proceedings that are *not* criminal in nature, i.e., a taxation case.<sup>521</sup>
- The right must be invoked during the trial, and failure to do so constitutes a waiver that cannot be rectified or undone on appeal.<sup>522</sup>

### **Prohibited punishments (§19)**

- *Cruel, degrading or inhuman punishment* – It must be inhuman and barbarous and shocking to the conscience, like the garrote, the thumbscrew, the rack, burning at the stake and crucifixion.
  - Cruelty must be inherent at the penalty, such as whipping at the post.
  - Torture is a cruel punishment because it involves a deliberate design to increase the suffering of the prisoner in a manner so flagrant and oppressive as to revolt the moral sense of the community.
- This only extends to situations of extreme corporeal or psychological punishment that strips the individual of his humanity. It is aimed at the form or character of the punishment, rather than its severity.<sup>523</sup>
  - Hence, the penalty of perpetual disqualification to hold public office is valid.
  - Moreover, the prohibition only applies to criminal prosecutions.
  - Hence, the death penalty is *not* cruel, degrading or inhuman. However, it may be imposed only on heinous offenses.<sup>524</sup>
- *Generally*, the penalty must be *proportionate* to the offense. To do otherwise is violative of the due process clause.
  - However, harsher penalties may be imposed when, for example, the offense has become so rampant and the penalty is the deterrent.
    - Thus, the court sustained the validity of a harsher penalty under RA 9262 though it has the same degree of physical harm under Art. 266 of the RPC, which carries a lower penalty.<sup>525</sup>
  - The same rule applies to the imposition of fine, although the judge must consider the accused's wealth or means.<sup>526</sup>

### **Double jeopardy (§21)**

Two kinds:

1. Double jeopardy for the same offense
2. Double jeopardy for the same act

### **Requisites of double jeopardy:**<sup>527</sup>

1. A valid complaint or information
  - a. *See comments on the right to be informed of the nature and cause of the accusation.*
2. Filed before a competent court
  - a. The court must have jurisdiction.
  - b. It must be a "valid previous proceedings"<sup>528</sup>

<sup>520</sup> Marquez v. Sandiganbayan, G.R. Nos. 187912-14, January 31, 2011 [Per J. Mendoza, Second Division].

<sup>521</sup> Fitness By Design Inc v. CIR, G.R. No. 177982, October 17, 2008 [Per J. Carpio-Morales, Second Division].

<sup>522</sup> US v. Garcia, G.R. No. 3951, March 14, 1908 [Per J. Carson, First Division].

<sup>523</sup> Maturan v. COMELEC, G.R. No. 227155, March 28, 2017 [Per J. Bersamin, *En Banc*].

<sup>524</sup> Echegaray v. Secretary of Justice, G.R. No. 132601, October 12, 1998 [Per Curiam, *En Banc*].

<sup>525</sup> Dabalos v. RTC, G.R. No. 193960, January 7, 2013 [Per J. Perlas-Bernabe, Second Division].

<sup>526</sup> REV. PEN. CODE., art. 66.

<sup>527</sup> In other words: (1) First jeopardy must have attached prior to the second jeopardy; (2) First jeopardy must have terminated; and (3) Second jeopardy must be for the same offense as the first.

<sup>528</sup> People v. Brecinio, G.R. No. L-31949, October 26, 1983 [Per J. Abad Santos, Second Division].

- c. When a court martial and a civil court have concurrent jurisdiction, a decision by one court will bar another prosecution for the same offense in the other court.<sup>529</sup>
- d. When an information is *motu proprio* dismissed for lack of jurisdiction by a court which is actually competent to hear it, the dismissal will entitle the accused to plead double jeopardy.<sup>530</sup>
3. To which the defendant has pleaded
  - a. *Los Baños v. Pedro*:<sup>531</sup> The grant of a motion to quash before he makes his plea can be appealed by the prosecution as the defendant has not been placed in jeopardy.
    - i. *Exceptions*: A granted motion to quash will bar a second jeopardy if: (1) the crime has prescribed; or (2) there is double jeopardy.
4. Of which he had been previously acquitted, convicted, or which was dismissed *without* his express consent.
  - a. Hence, there is *no* double jeopardy when the accused consents to the dismissal of the case as it is deemed a waiver of his right against double jeopardy.
    - i. The consent must be express. Silence is *not* consent.<sup>532</sup>
  - b. Dismissal with the express consent of the accused will *still* give rise to double jeopardy if it is based on:
    - i. The insufficiency of the evidence of the prosecution
    - ii. Demurrer to evidence
      1. But no double jeopardy if basis is lack of jurisdiction (requisite 2 is absent).
    - iii. Violation of the right of the accused to a speedy trial

### ***Appeal of prosecution***

- A judgment of acquittal is final and is no longer reviewable. <sup>533</sup>
- A judgment of acquittal cannot be subject to a motion for reconsideration.
- Exceptions:
  - o The court gravely abused its discretion resulting in loss of jurisdiction
    - Such as, when the prosecution was not allowed the opportunity to make its case or where the trial was a sham.<sup>534</sup>
  - o When a mistrial has occurred.
- In criminal cases, an appeal *throws the entire case wide open for review* and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those raised by the parties as errors.
  - o Hence, it can increase the penalty.
- An acquittal on appeal should benefit even those, or the co-accused, who did not appeal, including those who may have withdrawn their appeals.<sup>535</sup>

### ***Crimes covered***

- The right against double jeopardy covers prosecution *anew* for the:
  - o The original offense charged
  - o Its frustration or attempt
  - o For any offense which necessarily includes or is necessarily included in the offense charged
- However, where a single act is directed against one person but said act constitutes a violation of two or more entirely distinct or unrelated provisions of law, or by a special law and the Revised Penal Code, the prosecution against one is not an obstacle to the prosecution of another.

### ***Doctrine of supervening events***

<sup>529</sup> *Crisologo v. People*, G.R. No. L-6277, February 26, 1954 [Per J. Reyes, *En Banc*].

<sup>530</sup> *People v. Obsania*, G.R. No. L-24447, June 29, 1968 [Per J. Castro, *En Banc*].

<sup>531</sup> G.R. No. 173588, April 22, 2009 [Per J. Brion, *En Banc*].

<sup>532</sup> *People v. Ylagan*, G.R. No. 38443, November 25, 1933 [Per J. Abad Santos, *En Banc*].

<sup>533</sup> *People v. Terrado*, G.R. No. 148226, July 14, 2008 [Per J. Nachura, Third Division].

<sup>534</sup> *People v. Laguio*, G.R. No. 128587, March 16, 2007 [Per J. Garcia, First Division].

<sup>535</sup> *People v. Siat*, G.R. No. 233529, October 4, 2021 [Notice, Second Division].

- The accused may be prosecuted for another offense if a subsequent development changes the character of the first indictment under which he may have already been charged or convicted.
  - o Thus, a person convicted of physical injuries may still be prosecuted for homicide if the victim dies later.<sup>536</sup>
- Under the Rules of Court, the conviction of the accused shall not be a bar to another prosecution for an offense which necessarily includes the offense charged in the former complaint or information under *any* of the following instances:<sup>537</sup>
  - o The graver offense developed due to *supervening facts* arising from the same act or omission constituting the former charge;
  - o The facts constituting the graver charge *became known or were discovered only after* the filing of the former complaint or information
  - o The plea of guilty to the lesser offense was made *without* the consent of the prosecutor and of the offended party

### ***Inseparable offenses***

- Where one offense is inseparable from another and proceeds from the same act, they cannot be the subject of different prosecutions.
  - o Thus, one already convicted of less serious physical injuries cannot be later prosecuted of direct assault committed on the same occasion and against the same victim.<sup>538</sup>
  - o Likewise, the crime of sale of illegal drugs necessarily includes the crime of illegal possession of drugs.<sup>539</sup>
    - And so is possession and use of illegal drugs.<sup>540</sup>
- Nonetheless, it is possible for one act to give rise to several crimes, in which case several prosecutions for each crime must be filed, provided the elements of the several crimes are *not* identical.
  - o Hence, double jeopardy will arise when a separate charge of reckless imprudence resulting in slight physical injuries, *and* reckless imprudence resulting in damage to property, because reckless imprudence under Art. 365 of the RPC is a *single quasi-offense by itself*.<sup>541</sup>

### ***Act violating law and ordinance***

- If an act is punished by a law and an ordinance, conviction/acquittal under either shall constitute a bar to another prosecution for the same act.
  - o Hence, a person convicted of *jueteng* under a municipal ordinance cannot be charged under Art. 195 of the RPC.

## **Chapter 21: Free access to courts**

Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.<sup>542</sup>

### **Some manifestations:**

1. The Public Attorney's Office (PAO) is authorized to serve court processes on behalf of their clients and the costs may be charged to the PAO. In turn, the PAO may be reimbursed from the opposing party's costs.
2. An indigent party may also be authorized to proceed with his case as an indigent, and be exempt from paying fees.

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<sup>536</sup> Diaz v. US, 223 U.S. 442 (1912).

<sup>537</sup> RULES OF COURT, rule 117, §7.

<sup>538</sup> Tacas v. Cariaso, G.R. No. L-37406, August 31, 1976 [Per J. Fernando, Second Division].

<sup>539</sup> *Supra* note 284.

<sup>540</sup> Braganza v. People, G.R. No. 249891, June 20, 2022 [Notice, Second Division].

<sup>541</sup> Ivler v. Modesto-San Pedro, G.R. No. 172716, November 17, 2010 [Per J. Carpio, Second Division].

<sup>542</sup> PHIL. CONST. art. III, §11.

3. Indigent litigants are also exempt from legal fees if their gross income do not exceed a certain threshold.

However, this clause does not extend to juridical persons, even if they represent underprivileged persons.<sup>543</sup>

## Chapter 22: Citizens of the Philippines

**Citizenship** – Membership in a political community with all its concomitant rights and responsibilities.

### Principles of nationality:

1. *Jus soli* – Citizenship is conferred by virtue of the place of birth.
2. *Jus sanguinis* – Citizenship is conferred by virtue of blood relationship.
  - a. This is what the constitution uses.

### Citizens of the Philippines:

1. Those who are citizens of the Philippines at the time of the adoption of this Constitution;
2. Those whose fathers or mothers are citizens of the Philippines;<sup>544</sup>
3. Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
4. Those who are naturalized in accordance with law.<sup>545</sup>
5. Foundlings, who are natural-born citizens.<sup>546</sup>

### (1) Citizenship under the previous Constitutions

- 1935 Constitution
- 1973 Constitution
- The current constitution took effect on February 2, 1987.

### (2) Children of Filipino parents

- So long as either of the parent is a Filipino, whether natural-born or naturalized, the child is a Filipino citizen.

### (3) Election of Philippine citizenship

- This right was only available to those born to Filipino mothers under the 1935 Constitution, who would have been able to elect Philippine citizenship upon attaining majority age.
  - o A child born to an alien father and a Filipino mother in 1970 had until 1988 to elect Philippine citizenship.
- Election is not necessary to a child born to a Filipino mother.
- Statutory formalities for electing Philippine citizenship:
  1. A statement of election under oath
  2. An oath of allegiance to the constitution and the government
  3. Registration of the statement of election and of the oath

### (4) Naturalization

- The process by which a foreigner acquires, voluntarily or by operation of law, the citizenship of another state. It is either direct or derivative.
  1. *Direct naturalization*
    - a. Individual judicial proceedings under naturalization laws
    - b. Act of Congress
    - c. Naturalization *en masse* (during times of occupation)
    - d. Adoption of orphan minors as nationals of the state where they are born
  2. *Derivative naturalization*
    - a. On the wife of the naturalized husband

<sup>543</sup> In re: Roger Pioreschi, A.M. No. 09-6-9-SC, August 19, 2009 [Per J. Bersamin, *En Banc*].

<sup>544</sup> Parents who are not necessarily natural-born.

<sup>545</sup> PHIL. CONST. art. IV, §1.

<sup>546</sup> *Supra* note 229.

- b. On the minor children of the naturalized parent
- c. On the alien woman upon marriage to a national

#### **Qualifications for naturalization:**

1. At least 18 years old
2. Resident of the Philippines for at least 10 continuous years<sup>547</sup>
3. Good moral character
4. Owner of real estate in the Philippines not less than P5,000, Philippine currency, or must have some known lucrative trade, profession, or lawful occupation
5. Able to speak and write English or Spanish and any of the principal Philippine languages
6. Enrolled his minor children of school age in any of the public or private schools in the Philippines

#### **Disqualifications for naturalization:**

1. Persons opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing all organized governments
2. Persons defending or teaching the necessity or propriety of violence
3. Polygamists
4. Persons convicted of crime involving moral turpitude
5. Persons suffering from mental alienation or incurable contagious diseases
6. Persons who have not mingled socially with the Filipinos
7. Citizens of nations with whom the Philippines is at war
8. Citizens of a country whose laws do not grant Filipinos the right to become naturalized citizens or a subject thereof (reciprocity)

#### **Effects of naturalization**

1. The person shall acquire all the rights of a Filipino, except those reserved to natural-born Filipino citizens (direct).
2. It also vest Philippine citizenship upon his wife, if she might herself be lawfully naturalized (derivative).
3. His minor child born in the Philippines shall also be considered citizen of the Philippines (derivative). Consequently:
  - a. Case 1: Minor child born outside the Philippines but was residing here at the time of the naturalization – also a Filipino
  - b. Case 2: Minor child born outside the Philippines before the naturalization – a citizen only during his minority, unless he begins to reside permanently in the Philippines while still a minor
  - c. Case 3: Minor child born outside the Philippines after naturalization – a citizen, provided he registers as such before any Philippine consulate within one year after attaining majority age and he takes the oath of allegiance.

#### **Revocation of naturalization**

- A person may be denaturalized on petition of the solicitor general, based on any of the following grounds:
  - o The certificate of naturalization was fraudulently obtained
  - o He established his permanent residence abroad within five years from naturalization
  - o The petition was based on an invalid declaration of intention
  - o His minor children failed to comply with the educational requirements
  - o He allowed himself to be used as a dummy in violation of our naturalization laws
- Effects on derivative naturalization
  - o If the revocation affects the *intrinsic* validity – wife and children are denaturalized
  - o If the revocation was *personal* to the petitioner – wife and children unaffected

#### **Mixed marriages**

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<sup>547</sup> This is waived, if any of the following are present: (1) having honorably held office under the government; (2) having established a new industry or introduced a useful invention in the Philippines; (3) marriage to a Filipina; (4) having been engaged as a teacher in the Philippines for at least two years; and (5) having been born in the Philippines.

Citizens of the Philippines who marry aliens shall retain their Philippine citizenship, unless by their act or omission they are deemed, under the law, to have renounced it.<sup>548</sup>

*Moy Ya Lim Yao v. Commissioner of Immigration*:<sup>549</sup>

1. An alien woman marrying a Filipino, naturalized or natural-born, becomes *ipso facto* a Filipina.
2. An alien woman married to an alien who is subsequently naturalized also becomes a Filipino citizen following her husband's oath as Filipino citizen.

### Loss and reacquisition of citizenship

#### Philippine citizenship is lost:

1. By naturalization in a foreign country
2. By express renunciation of citizenship
3. By subscribing to an oath of allegiance to support the constitution or laws of a foreign country upon attaining 18 years old
  - a. Exception: If that other country is at war with the Philippines, the Filipino cannot divest himself of Philippine citizenship
4. By rendering service to or accepting commission in the armed forces of a foreign country
  - a. Exception: If the service is with the Philippines's consent, and the Philippines has a defense agreement with that nation or the foreign nation has armed forces in the Philippines.
5. By cancelation of the certificate of naturalization
6. By being declared a deserter of the Philippine armed forces in time of war

#### Philippine citizenship is reacquired:

1. By naturalization
2. By repatriation of deserters
3. By an Act of Congress

These modes allow the Filipino citizen to recover his original status, i.e., as a natural-born or naturalized, prior to the loss of Filipino citizenship.<sup>550</sup>

### Dual citizenship

Cases where dual citizenship is possible:

1. Those born of Filipino mothers and/or fathers in foreign countries which follow the principle of *jus soli*
2. Those born in the Philippines of Filipino mothers and alien fathers, if by the laws of their fathers' country such children are citizens of that country
3. Those who marry aliens if by the laws of the latter's country the former are considered citizens, unless by their act or omission they are deemed to have renounced Philippine citizenship

### Natural born citizens

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. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens.

### Dual allegiance

Dual allegiance is *not* dual citizenship, and *vice-versa*:<sup>551</sup>

	Dual citizenship	Dual allegiance
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<sup>548</sup> PHIL. CONST. art. IV, §4.

<sup>549</sup> G.R. No. L-21289, October 4, 1971 [Per J. Barredo, *En Banc*].

<sup>550</sup> Bengson v. HRET, G.R. No. 142840, May 7, 2001 [Per J. Kapunan, *En Banc*].

<sup>551</sup> Mercado v. Manzano, G.R. No. 135083, May 26, 1999 [Per J. Mendoza, *En Banc*].

<b>Definition</b>	A legal status where a person is considered a national of two or more states under their respective laws	A situation where a person voluntarily owes loyalty to two or more states
<b>Basis</b>	Arises due to the concurrent application of different national laws (e.g., <i>jus soli</i> vs. <i>jus sanguinis</i> )	Arises from a positive act of the individual showing allegiance to multiple states
<b>Voluntariness</b>	Involuntary	Voluntary
<b>Legal status</b>	Recognized and may be regulated	Viewed with suspicion and may be prohibited due to concerns about national loyalty or security
<b>Examples</b>	<p>Born to Filipino parents in a <i>jus soli</i> country</p> <p>Born in the Philippines to a Filipino mother and alien father</p> <p>Marriage to a foreigner with automatic citizenship under the spouse's country</p>	<p>Taking an oath of allegiance to another country</p> <p>Serving in a foreign military or government</p>

Hence, dual citizens may run for office, but not persons who have dual allegiance.

### Republic Act 9225

- The law provides for the restoration or retention of the original citizenship of any natural born Filipino who has acquired citizenship in a foreign country through naturalization proceedings, provided that he takes the prescribed oath.
- The law does not apply to persons who become citizens of a foreign land *jure soli* and also the citizenship of their parents *jure sanguinis* ("dual citizens by birth").
  - o Only naturalized foreign citizens are eligible!<sup>552</sup>
- Reacquisition vs. retention:
  - o Retention – The phrase in RA 9225, "shall be deemed not to have lost their Philippine citizenship" shall only apply to those natural-born Filipinos who became foreign citizens *after* the effectivity of the law.
  - o Reacquisition – Those who have been naturalized in a foreign country *before* RA 9225 would have lost their citizenship on the basis of CA 63 and are therefore considered as merely reacquiring natural-born status upon taking the oath.
    - The phrase "shall be deemed not to have lost their Philippine citizenship" is inapplicable to them.
- However, the use of a foreign passport after taking the oath in RA 9925 is a recantation of that oath, making one *disqualified* to run for office.
  - o It however, does not divest Filipino citizenship regained by repatriation. Only the oath is recanted.<sup>553</sup>

<sup>552</sup> G.R. No. 257453, August 09, 2022 [Per J. Rosario, *En Banc*]

<sup>553</sup> Maquiling v. COMELEC, G.R. No. 195649, April 16, 2013 [Per C.J. Sereno, *En Banc*].