
Q & A BAR 2000-2015

• SUGGESTED ANSWERS TO BAR EXAMINATION QUESTIONS •

POLITICAL LAW

-Arranged by Topic-

Sources:

THE UP LAW COMPLEX (1997-2007, 2009, 2010)
THE UP BAR REVIEW INSTITUTE (2012, 2013, 2014, 2015)
PHILIPPINE ASSOCIATION OF LAW SCHOOLS (2007, 2008)

Edited and Arranged by:

“Piadina III”

(in collaboration with “Panacea”, “Probatio Viva” & βΣΔ-Iligan Chapter)
MINDANAO STATE UNIVERSITY- COLLEGE OF LAW

DISCLAIMER:

EXCEPT FOR SOME OF THE CLASSIFICATION OF THE TOPICS, NO PART OF THIS MATERIAL BELONGS TO (OR HAS BEEN SUPPLIED PERSONALLY BY) THE EDITOR AND/OR THE COMPILERS. ALL THE ANSWERS TO THE BAR QUESTIONS WERE STRICTLY DERIVED FROM THE SOURCES CITED.

AS THE RE-UPDATING OF THE ORIGINAL BAR Q & A (ARRANGED BY TOPIC) IS QUITE A TEDIOUS TASK, THE USER MAY FIND THIS MATERIAL FRAUGHT WITH MANY TYPOGRAPHICAL ERROR. ALSO, SOME QUESTIONS MAY BE IMPROPERLY CLASSIFIED. THE EDITOR, THEREFORE, SEEKS THE KIND INDULGENCE OF THE USER.

FURTHER, THE EDITOR IS LIKEWISE NOT RESPONSIBLE FOR THE MISAPPLICATION OR ABUSE OF THIS MATERIAL. NOR DOES THE EDITOR TAKE RESPONSIBILITY FOR ANY DAMAGE RESULTING FROM ITS USE OR MISUSE.

FINALLY, WHILE IT IS HOPED THAT THIS MATERIAL WILL BENEFIT LAW STUDENTS AND BAR REVIEWEES, USING IT WITHOUT AN EXTENSIVE STUDY AND MASTERY OF THE SUBJECT MATTER IS HIGHLY DISCOURAGED. INDEED, THERE CAN NEVER BE ANY SUBSTITUTE FOR READING THE TEXTBOOKS.

A PERSONAL NOTE FROM THE EDITOR

Dearest Fellow Bar Warriors,

All praises is due to Him who is the Source of All Knowledge and Wisdom!

I am very pleased to share with you this piece which I have been working on for the past three years. Despite the difficulty in having to re-page, proofread and re-classify the topics, two reasons compelled me into further re-updating: ONE, my first update is fraught with typographical errors; and TWO, I blame this Bar Q & A for making me pass the 2015 Bar Exam. :-) This work is, therefore, my little way of giving back and sharing such an amazing blessing.

To effectively use this work, it is recommended that the student/bar reviewee answer the questions first before reading the suggested answers. It may be that one's answer is not the same as that of the suggested answer -- one should not be disheartened. Remember, these are mere suggested answers. Further, one should also pay attention to topics frequently asked. By doing so, one can at least get an idea which topics are 'BAR-able', so to speak, and which are not. To the former, one should devote time; to the latter, familiarity will suffice.

As a piece of unsolicited advise from one who has tasted the 'anguish of defeat and the glory of the hour triumphant', no matter how much you have given up on yourself, NEVER GIVE UP ON THE MERCY OF GOD! For "verily, with each hardship comes relief".

- Atty. MSLD -

TABLE OF CONTENTS¹

GENERAL CONCEPTS

1987 Constitution; People Power (2000)	10
1987 Constitution; People Power (2003)	10
Supremacy of the Constitution (2004)	10
Government Presidential Form vs. Parliamentary Form (2006)	10
Amendments (2007)	11
Amendments; People's Initiative (2009)	11
Amendments (2014)	11
People's Initiative (2004)	12
People's Initiative (2014)	12
REFERENDUM vs. INITIATIVE (2005)	12
State Immunity from Suit (2009)	12
State Immunity from Suit; Bureau of Customs (2013)	12
Delegation of Powers (2002)	13
Delegation of Powers (2005)	13
Delegation of Powers; Completeness Test; Sufficient Test (2005)	13
Government Presidential Form vs. Parliamentary Form (2006)	14

1987 CONSTITUTION

National Territory

Archipelagic Doctrine (2009)	14
Archipelagic Doctrine; UNCLOS (2015)	14
Contiguous Zone vs. Exclusive Economic Zone (2004)	15
Maritime Regimes; Contiguous Zone vs. Exclusive Economic Zone vs. Territorial Sea vs. Continental Shelf (2015)	15
Exclusive Economic Zone; Rights of the Coastal State (2005)	15
Contiguous Zone vs. Exclusive Economic Zone (2004)	15
Territorial Sea vs. Internal Waters (2004)	16
Philippine Territory; Archipelagic Waters; UNCLOS (2013)	16

General Principles and State Policies

Doctrine of Incorporation; Pacta Sunt Servanda (2000)	16
Principle of Civilian Supremacy (2006)	16
Armed Forces; Servant of the People (2003)	17
Defense of State (2009)	17
Transparency; Matters of Public Interest (2000)	17

Legislative Department

Commission on Appointments (2002)	18
Doctrine of Necessary Implication; Hold-over (2010)	18
Discipline; Suspension of a Member of the Congress (2002)	18
Elected Official; De Facto Officer (2004)	18

¹ "GIVE CREDIT WHEN IT'S DUE.":

The arrangement and classification of concepts in this work was inspired by and heavily adopted from the Original Compilers: Atty. Janette Laggui-Icao and Atty. Alex Andrew P. Icao (2005 Edition Updated by Romualdo L. Señeris II, LLB. in April 19, 2007; Further re-updated by alias "*Dondee the Retaker 2007*"—all of SILIMAN UNIVERSITY COLLEGE OF LAW; recently re-updated by alias "Rollan, Faith Chareen —Pet2x11 D. Salise, Hector Christopher —Jay-Arhil Jr. M."—all of University of San Jose-Recoletos School of Law.

Electoral Tribunal; HRET Members' Right & Responsibilities (2002)	19
Electoral Tribunal; Functions & Composition (2006)	19
Electoral Tribunal; HRET (2014)	19
Electoral Tribunal; PET (2012)	20
Party-list Representative; Seat Allocation (2007)	20
Party-List; Seat Allocation; Representative's Qualifications (2014)	20
Party-List; Foreign Funding (2010)	21
Party-List; Major Political Party (2015)	21
Law-Making; Appropriation Law; Rider Provision (2001)	21
Law-Making; Abolish; Destroy (2008)	22
Law-Making; Admission to the Bar (2009)	22
Law-Making; Conflict of Interest (2010)	22
Law-Making; Item vs. Pocket Veto (2010)	22
Law-Making; Oversight Committee (2010)	23
Law-making; Trial by Jury (2013)	24
Law-making; Encroachment of Judiciary's Rule-making Power (2014)	24
Prohibitions and Inhibitions of Public Office (2004)	24
Separation of Powers (2003)	24
Prohibition to Appear as Counsel (2013)	24
Investigations in Aid of Legislation (2009)	25
Investigations in Aid of Legislation; Executive Privilege (2010)	25
Contempt Powers; Effect of Adjournment of Session (2014)	26
Impeachment (2012)	26
Impeachment (2013)	26
Creation of a Legislative District by Reapportionment (2015)	26

Executive Department

Appointing Power; Acting vs. Permanent Appointment (2003)	26
Appointing Power; Appointments Requiring Confirmation; RA 6975-Unconstitutional (2002)	27
Appointing Powers; Ad Interim Appointments (Q4-2005)	27
Appointing Power; Ad-Interim Appointments (2010)	27
Appointing Power; Midnight Appointment; Anti-Nepotism (2014)	28
Control Power (2009)	28
Faithful Execution Clause (2014)	28
Calling-out Power; President (2006)	28
Control Power; Foreign Relations (2010)	29
Declaration; State of Calamity; Legal Effects (2005)	29
Declaration; State of National Emergency (Q1-2006)	29
Declaration; State of National Emergency (2010)	29
State of Rebellion vs. State of National Emergency (2015)	30
Power to Enter into Executive Agreements (2003)	30
Power to Enter into Executive Agreement; Treaty Abrogation (2008)	30
Power to Enter into Treaty (2010)	30
Martial Law; Limitations (2000)	30
Martial Law; Sufficiency of the Factual Basis (2006)	31
Privilege; Presidential Communications vs. Deliberative Process (2010)	31
Executive Privilege (2015)	32
Pardoning Power; Breach of Condition; Revocation (2005)	32
Pardoning Power; Limitations (2015)	33
Prohibition Against Multiple Positions & Additional Compensation (2002)	33
Doctrine of Qualified Political Agency; Application (2105)	33

Judicial Department

Function; Continuing Constitutional Convention (2000)	34
Judicial Independence; Safeguard (2000)	34
Judicial Review; Legal Standing (2010)	34
Judicial Review; Issues of Transcendental Importance (2014)	35
Judicial Review; Expanded Concept (2015)	35
Judicial Power; Trial by Jury (2008)	35

Judicial Power; Declaration of Unconstitutionality Cannot Be Reversed by Enactment of Law (2014)	35
Judicial Functions; National Labor Relations Commission (2013)	36
Supreme Court En Banc; Promulgation of Decision (2014)	36
Political Question: Separation of Powers (2004)	37
Political Question; To Settle Actual Controversies (2004)	37
Operative Fact Doctrine (2010)	37
Supervision; Courts & its Personnel (2005)	37
Rule-making Power; Fiscal Autonomy (2014)	37
Rule-making Power; Fiscal Autonomy (2015)	38
Rule-making Power; Statutory vs. Constitutional (2015)	38

Constitutional Commissions

Constitutional Commissions & Council (2006)	38
Rotational Scheme (2010)	38
Fiscal Autonomy (2014)	38
Prohibition on Holding Another Office (2015)	39
Civil Service Commission vs. COA (2004)	39
Jurisdiction over the GOCCs (2003)	39
Appointment; Relatives (2008)	40
Appointment; Relatives (2010)	40
De Facto Officer (2010)	40
De Facto Officer; Salary Entitlement (2009)	40
Discretionary Duty of a Public Officer (2010)	40
Oath or Affirmation (2007)	40
Security of Tenure (2005)	41
Security of Tenure (2010)	41
Double Compensation (2015)	41
Judicial Review of Decisions (2001)	41
Inclusion/Exclusion; Jurisdiction (2001)	41
Grant of Pardon to Election Offenses (2010)	41
Prohibition on Reappointment (2015)	42
COA; Jurisdiction (2001)	42

Bill of Rights

Fundamental Powers of the State; Police Power; Abatement of Nuisance (2004)	42
Fundamental Powers of the State; Police Power; Abatement of Nuisance (2010)	43
Fundamental Powers of the State; Police Power; Zoning Ordinance vs. Non-Impairment of Contracts (2001)	43
Fundamental Powers of the State; Police Power; Prohibition of Gambling (2009)	43
Fundamental Powers of the State; Police Power; Presentability of Policemen (2008)	44
Fundamental Powers of the State; Police Powers; Confiscation of Property (2014)	44
Fundamental Powers of the State; Power of Eminent Domain; Immunity from Suit (2001)	44
Fundamental Powers of the State; Power of Eminent Domain; Policy of "All or None" (2000)	44
Fundamental Powers of the State; Power of Eminent Domain; Power to Exercise (2005)	45
Fundamental Powers of the State; Power of Eminent Domain; Public Purpose (2008)	45
Fundamental Powers of the State; Power of Eminent Domain; Socialized Housing (2009)	46
Fundamental Powers of the State; Power of Eminent Domain; Valid and Definite Offer (2010)	46
Fundamental Powers of the State; Power of Eminent Domain; 'Reverse' Proceeding (2014)	46
Due Process; Permit to Carry Firearm Outside Residence (2006)	46
Due Process; PPA-Pilots (2001)	47
Due Process; Public School Teachers (2002)	47
Due Process; Substantive (2003)	47
Equal Protection; Police Power (2000)	47
Equal Protection; Responsible Parenthood (2007)	48
Equal Protection; 3 Levels of Tests (2015)	48
Searches and Seizure; Private Individuals (2005)	49
Searches and Seizures; Aliens (2001)	49
Searches and Seizures; search made by a private citizen (2002)	49
Searches and Seizures; Valid Warrantless Search (2000)	50
Searches and Seizure; Valid Warrantless Search (2015)	50

Search and Seizure; Warrantless Arrest (2009)	50
Search and Seizure; Warrantless Arrest (2008)	51
Search and Seizure; Warrantless Search (2010)	51
Searches and Seizure; Plain View Doctrine (2012)	51
Privacy of Communication (2009)	51
Liberty of Abode & Right to Travel (2012)	52
Freedom of Expression; Censorship (2003)	52
Freedom of Speech; Clear and Present Danger Rule (2012)	52
Freedom of Speech; Prior Restraint (2014)	53
Freedom of Speech; Commercial Speech; Prohibitions (2007)	53
Freedom of Speech; Commercial Speech (2012)	53
Freedom of Speech; Private Parties; Prior Restraint (2007)	54
Freedom of Speech; Symbolic Expression (2008)	54
Freedom of Speech; Overbreadth Doctrine vs. Void for Vagueness (2010)	55
Doctrine of Void for Vagueness (2012)	55
Overbreadth Doctrine (2012)	55
Doctrine of Void for Vagueness (2012)	55
The Concept of <i>Facial Challenge</i> (2015)	55
Freedom of the Press; Actual Malice (2004)	56
Freedom of the Press; Prior Restraint (2009)	56
Freedom of the Press; Freedom of Circulation (2014)	56
Freedom of Religion; Flag Salute (2003)	56
Freedom of Religion; Benevolent Neutrality Test (2009)	57
Right to Assembly; Permit Application; Freedom Parks (2006)	57
Right to Assembly; Permit (2007)	58
Right to Assembly; Public Teachers (2000)	58
Right to Assembly; Public Teachers (2002)	59
Right to Information; Matters of Public Concern (2009)	59
Rights of Suspects; Custodial Investigation; Extrajudicial Confession (2001)	59
Rights of Suspects; Custodial Investigation; Right to Counsel (2000)	60
Rights of Suspects; Custodial Investigation; Right to Counsel; Receipt of Property Seized (2002)	60
Rights of Suspects; Police Line-up (2012)	60
Rights of Suspects; Right to Remain Silent (2013)	61
Rights of Suspects; Custodial Investigation; When Commenced (2014)	61
Rights of the Accused; Right to Bail; Capital Offense (2006)	61
Rights of the Accused; Right to Bail; Matter of Right or a Matter of Discretion (Q7-2005)	61
Rights of the Accused; Right to Bail (2009)	62
Rights of the Accused; Right to Bail; Double Jeopardy (2008)	62
Rights of the Accused; Presumption of Innocence (2004)	63
Rights of the Accused; Right to Counsel of His Choice (2005)	63
Rights of the Accused; Right to an Independent Counsel (2013)	63
Rights of the Accused; Right to Speedy Trial (2000)	63
Rights of the Accused; Self-Incrimination (2000)	64
Rights of the Accused; Self-Incrimination (2006)	64
Rights of the Accused; Self-Incrimination (2010)	64
Rights of the Accused; Self-Incrimination (2014)	65
Double Jeopardy (2000)	65
Double Jeopardy (2001)	65
Double Jeopardy (2002)	65
Writ of Amparo (2013)	66

Citizenship

Effect of Oath of Allegiance (2004)	66
Effect of Repatriation (2002)	66
Effect of Repatriation (2003)	67
Effect of Reacquisition of Philippine Citizenship (2009)	67
Effects of Philippine Bill of 1902 (2001)	67
Electing Philippine Citizenship (2006)	68
Electing Philippine Citizenship; When Proper (2006)	68
Residency Requirements; Elective Official (2005)	68

Status; Legitimate Child (2003)	68
Ways of Reacquiring Citizenship (2000)	68
Dual Citizenship vs. Dual Allegiance (2009)	68
Marriage of a Citizen to an Alien; Effect on Citizenship (2014)	69
<i>Jus Sanguinis</i> (2015)	69

Accountability of Public Officers

Abandonment of Office (2000)	69
Discipline; Clemency; Doctrine of Condonation (2000)	70
Discipline; Preventive Suspension & Appeal; entitlement to salary pendent (2001)	70
Discipline; Preventive Suspension (2002)	70
Discipline; Preventive Suspension (2009)	71
Elective Public Officer; De Facto Officer (2000)	71
Elective Public Officers; De Facto Officer; effects (2004)	72
Graft and Corruption; Prescription of Crime (2002)	72
Impeachment; Cronyism (2000)	72
Ombudsman; Power to Suspend; Preventive Suspension (2004)	72
Ombudsman; Power to Investigate (2003)	72
Ombudsman; Power to Impose Penalties (2009)	73
Ombudsman; Power and Jurisdiction (2012)	73
Prohibition On Elective Officer to Hold Public Office (2002)	73

Administrative Law

Alter Ego Principle (2013)	74
Exhaustion of Administrative Remedies (2000)	74
Exhaustion of Administrative Remedies (2015)	74
Judicial Review of Administrative Action (2001)	74
Power of the President to Reorganize Administrative Structure (2003)	74
Rules and Regulations; Due Process (2000)	75
Government Agency vs. Government Instrumentality (2005)	75
Quasi-Judicial Body or Agency (2006)	75

Election Laws

2nd Placer Rule (2003)	75
Effect of Filing of Certificate of Candidacy; Appointive Officer vs Elective Officer (2002)	75
Effect of Filing of Certificate of Candidacy; Fair Election Act (2003)	76
Petition for Disqualification; Jurisdiction (2012)	76
Pre-Proclamation Contest (2008)	76
Election Protest vs. Quo Warranto (2001)	77
Election Protest vs. Quo Warranto (Q5-2006)	77
Election Protest; Substitution; Quo Warranto (2009)	77
Quo Warranto; Elective vs. Apoointive (2012)	78
Petition for Disqualification; Sec. 68 vs. Sec. 78 (2015)	78
Expiration of Term; Effects (2000)	78
Recall (2002)	78
Three-Term Limit Rule (2001)	79
Three-Term Limit; from Municipality to Newly-Created City (2005)	79
Three-Term Limit; Congressmen (2001)	80
Three Term Limit; Contest; Substitution (2008)	80
Vacancy; Effect of Vice-Mayor Acting As Mayor (2002)	80
Rule on Succession; Vacancy; Mayor (2015)	81
Rule on Succession; Vacancy; SB (2002)	81
Rule on Succession; Vacancy; Recall (2010)	81
Rule on Successionl; Vacancy: Sangguniang Panlalawigan (2008)	81

Local Government

Boundary Dispute Resolution; LGU; RTC's Jurisdiction (2005)	81
Boundary Dispute Resolution; LGU; RTC (2010)	82
Internal Revenue Allotment Fund (2007)	82
Confiscation of Driver's License; MMDA (2010)	82
Creation of New Local Government Units; Plebiscite Requirement (2004)	82
Creation of Province; Contiguous Land Requirement (2014)	82
De Facto Public Corporations; Effect (2004)	83
De facto Municipal Corporation vs. Municipal Corporation by Estoppel (2010)	83
Ordinance Validity; Disapproval (2009)	83
Law fixing the terms of local elective officials (Q4-2006)	83
Ordinance; Validity; Closure or Lease of Properties for Public Use (2003)	83
Ordinance Validity; Regulation of Disco Pubs (2010)	84
Power; Eminent Domain; LGU; Right to Exercise (2005)	84
Reclassification of Land (2010)	84
Powers of Barangay Assembly (2003)	84
Powers; Liga ng mga Barangay (2003)	84
LGU's; Emergency Powers (2015)	85

National Economy and Patrimony

Acquisition of Lands (2000)	85
Acquisition of Lands by Hereditary Succession (2002)	85
Lease of Private Agricultural Lands (2001)	85
Acquisition of Lands (2009)	85
Constitutional Prohibition (2004)	85
Ownership; Hydro-Electric Powerplant (2015)	86
Chinese citizens; Engaging in Retail Trade (2006)	86
Exploration, development, and utilization of natural resources (2006)	86
Grandfather Rule (2015)	87

Social Justice and Human Rights

Commission on Human Rights; Power to issue TRO (2001)	87
Commission on Human Rights; Power; Limitations (2005)	88

Education, Science & Technology, Arts

Education; Right to Choose Profession (2000)	88
Education; Right to Quality Education (2003)	88
Education; Academic Freedom (2008)	89
Education; Academic Freedom (2007)	90
Education; Academic Freedom (2013)	90
Education; Communication and Instruction (2007)	90
Education; Teaching of Religion (2010)	90
Education; Foreign Ownership (2009)	90
Education; Scholarship Grants (2007)	90
Education; Study of Religion (2008)	90

General Provisions

Philippine Flag (2006)	91
National Anthem (2009)	91

PUBLIC INTERNATIONAL LAW

Sources of International Law; Primary & Subsidiary Sources (2003)	91
Sources of International Law (2012)	91
Opinio Juris (2008)	91
Opinio Juris (2012)	91
Hard Law vs. Soft Law (2008)	92
Principle of Attribution or Imputation (2010)	92
Principle of Auto-Limitation (2009)	92
Diplomatic Immunity (2000)	93
Diplomatic Immunity (2001)	93
Diplomatic Immunity (2003)	93
Diplomatic Immunity (2004)	94
Diplomatic Immunity; Ambassador (2005)	94
Diplomatic Immunity (2013)	94
Diplomatic Immunity; Ambassadors (2014)	95
Agreements; Binding Effect (2003)	95
Executive Agreement; Treaty; Formalities (2012)	95
Executive Agreements (2015)	95
Extradition; Grounds (2002)	96
Extradition; Retroactive Application (Q2- 2005)	96
Extradition: Double Criminality (2007)	97
Flag State vs. Flag of Convenience (2004)	97
International Convention; Law of the Sea (2004)	97
International Court of Justice (Q9-2006)	98
International Court of Justice vs. Int'l Criminal Court (2010)	98
International Law Violation; Treaty (2008)	98
International Law vs. Municipal Law; Territorial Principle; International Crimes (Q2-2005)	99
Municipal Law vs. International Law (2003)	99
Mandates and Trust Territories (2003)	99
Outer Space; Jurisdiction (2003)	100
Principle of Auto-Limitation (2006)	100
Reciprocity v. Principle of Auto-Limitation (2006)	100
Right to Transit and Innocent Passage (2004)	100
Sovereignty; Definition; Nature (Q10-2006)	100
State Sovereignty; Effective Occupation; Terra Nullius (2000)	100
Territorial Sea vs. Internal Waters (2004)	101
Concept of Association (2010)	101
Use of Force; Exceptions (2003)	101
Use of Force; Right of Self-defense (2002)	102
Use of Force; Self-Defense (2009)	103
Human Rights; Civil and Political Rights (2007)	103
Constitutive Theory vs. Declaratory Theory (2004)	103
Human Rights; Civil and Political Rights; Freedom from Torture (2010)	104
Genocide (2010)	104
Wilson doctrine vs. Estrada doctrine (2004)	104
Retorsion (2010)	104
Reparation (2007)	105

GENERAL CONCEPTS

1987 Constitution; People Power (2000)

Is the concept of People Power recognized in the Constitution? Discuss briefly. (3%)

SUGGESTED ANSWER:

Yes, the concept of People Power is recognized in the Constitution. Under Section 32, Article VI of the Constitution, through initiative and referendum, the people can directly propose and enact laws or approve or reject any act or law or part thereof passed by the Congress or local legislative body after the registration of a petition therefor signed by at least ten per centum of the total number of registered voters, of which every legislative district must be represented by at least three per centum of the registered voters thereof.

Under Section 16, Article XIII of the Constitution, the right of the people and their organizations to effective and reasonable participation at all levels of social, political and economic decision-making shall not be abridged. The State shall, by law facilitate the establishment of adequate consultation mechanisms.

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

1987 Constitution; People Power (2003)

Is "people power" recognized by the 1987 Constitution? Explain fully.

SUGGESTED ANSWER:

"People power" is recognized in the Constitution. Article III, Section 4 of the 1987 Constitution guarantees the right of the people peaceable to assemble and petition the government for redress of grievances. Article VI, Section 32 of the 1987 Constitution requires Congress to pass a law allowing the people to directly propose and enact laws through initiative and to approve or reject any act or law or part of it passed by Congress or a local legislative body. Article XIII, Section 16 of the 1987 Constitution provides that the right of the people and their organizations to participate at all levels of social, political, and economic decision-making shall not be abridged and that the State shall, by law, facilitate the establishment of adequate consultation mechanisms. Article XVII, Section 2 of the 1987 Constitution provides that subject to the enactment of an implementing law, the people may directly propose amendments to the Constitution through initiative.

Supremacy of the Constitution (2004)

BNN Republic has a defense treaty with EVA Federation. According to the Republic's Secretary of Defense, the treaty allows temporary basing of friendly foreign troops in case of training exercises for the war on terrorism. The Majority Leader of the Senate contends that whether temporary or not, the basing of foreign troops however

friendly is prohibited by the Constitution of BNN which provides that, "No foreign military bases shall be allowed in BNN territory."

In case there is indeed an irreconcilable conflict between a provision of the treaty and a provision of the Constitution, in a jurisdiction and legal system like ours, which should prevail: the provision of the treaty or of the Constitution? Why? Explain with reasons, briefly. (5%)

SUGGESTED ANSWER:

In case of conflict between a provision of a treaty and a provision of the Constitution, the provision of the Constitution should prevail. Section 5(2)(a), Article VIII of the 1987 Constitution authorizes the nullification of a treaty when it conflicts with the Constitution. (Gonzales v. Hechanova, 9 SCRA 230 [1963]).

Government Presidential Form vs. Parliamentary Form (2006)

a) What is the principal identifying feature of a presidential form of government? Explain. (2.5%)

SUGGESTED ANSWER:

The principal identifying feature of a presidential form of government is embodied in the separation of powers doctrine. Each department of government exercises powers granted to it by the Constitution and may not control, interfere with or encroach upon the acts done within the constitutional competence of the others. However, the Constitution also gives each department certain powers by which it may definitely restrain the others from improvident action, thereby maintaining a system of checks and balances among them, thus, preserving the will of the sovereign expressed in the Constitution.

b) What are the essential characteristics of a parliamentary form of government? (2.5%)

SUGGESTED ANSWER:

The essential characteristics of a parliamentary form of government are: the fusion of the legislative and executive branches in parliament; the prime minister, who is the head of government, and the members of the cabinet, are chosen from among the members of parliament and as such are accountable to the latter; and the prime minister may be removed from office by a vote of loss of confidence of parliament. There may be a head of state who may or may not be elected.

Amendments or Revisions

Amendments (2007)

TRUE OR FALSE.

a. An amendment to the Constitution shall be valid upon a vote of three-fourths of all the Members of the Congress.

SUGGESTED ANSWER:

The statement is false. First, an amendment proposed by Congress must be approved by at least three-fourths (3/4) vote of the members of the Senate and of the House of Representatives voting separately. It is inherent

in a bicameral legislature for two houses to vote separately (II Record of the Constitutional Commission 493). Second, the amendment shall be valid only when ratified by a majority of the votes cast in a plebiscite (Constitution, Art. XVII, sec.4).

Amendments; People's Initiative (2009)

What are the essential elements of a valid petition for a people's initiative to amend the 1987 constitutions?

SUGGESTED ANSWER:

The essential elements of a valid petition for a people's initiative are:

1. The people must author and sign the entire proposal; no agent or representative can sign in their behalf;
2. The proposal must be embodied in the petition; and
3. The number of people who petitioned must be at least 12% of the total number registered voter, of which every legislative district must be represented by at least 3% of the registered voter therein.
4. Any amendment through people's initiative shall be valid when ratified by a majority of the votes cast in a plebiscite which shall be held not earlier than 60 days nor later than 90 days after the certification by the Commission on Election of the sufficiency of the petition.

Amendments (2014)

With the passage of time, the members of the House of Representatives increased with the creation of new legislative districts and the corresponding adjustments in the number of party-list representatives. At a time when the House membership was already 290, a great number of the members decided that it was time to propose amendments to the Constitution. The Senators, however, were cool to the idea. But the members of the House insisted. They accordingly convened Congress into a constituent assembly in spite of the opposition of the majority of the members of the Senate. When the votes were counted, 275 members of the House of Representatives approved the proposed amendments. Only 10 Senators supported such proposals. The proponents now claim that the proposals were validly made, since more than the required three-fourths vote of Congress has been obtained. The 14 Senators who voted against the proposals claim that the proposals needed not three-fourths vote of the *entire* Congress but each house. Since the required number of votes in the Senate was not obtained, then there could be no valid proposals, so argued the Senators. Were the proposals validly adopted by Congress? (5%)

SUGGESTED ANSWER:

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

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

People's Initiative (2004)

An amendment to or a revision of the present Constitution may be proposed by a Constitutional Convention or by the Congress upon a vote of three-fourths of all its members. Is there a third way of proposing revisions of or amendments to the Constitution? If so, how? (5%)

SUGGESTED ANSWER:

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

People's Initiative (2014)

Several citizens, unhappy with the proliferation of families dominating the political landscape, decided to take matters into their own hands. They proposed to come up with a people's initiative defining political dynasties. They started a signature campaign for the purpose of coming up with a petition for that purpose. Some others expressed misgivings about a people's initiative for the purpose of proposing amendments to the Constitution, however. They cited the Court's decision in *Santiago v. Commission on Elections*, 270 SCRA 106 (1997), as authority for their position that there is yet no enabling law for such purpose. On the other hand, there are also those who claim that the individual votes of the justices in *Lambino v. Commission on Elections*, 505 SCRA 160 (2006), mean that Santiago's pronouncement has effectively been abandoned. If you were consulted by those behind the new attempt at a people's initiative, how would you advise them? (4%)

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

REFERENDUM vs. INITIATIVE (2005)

(a) The present Constitution introduced the concepts and processes of Initiative and Referendum. Compare and differentiate one from the other. (3%)

SUGGESTED ANSWER:

INITIATIVE is the power of the people to propose amendments to the Constitution or to propose and enact legislations through an election called for the purpose. Under the 1987 Constitution, the people through initiative can propose amendments to the Constitution upon a petition of at least twelve per centum of the total number of registered voters, of which every legislative district must be represented by at least three per centum of the registered voters therein.

REFERENDUM is the power of the electorate to approve or reject a legislation through an election called for the purpose. (Sec. 3, R.A. No. 6735 [1989]).

On the other hand, the Local Government Code (R.A. No. 7160) defines LOCAL INITIATIVE as the legal process whereby the registered voters of a local government unit may directly propose, enact, or amend any ordinance (Sec. 120) and LOCAL REFERENDUM as the legal process whereby the registered voters of the local government units may approve, amend or reject any ordinance enacted by the Sanggunian. (Sec. 126)

State Immunity from Suit

State Immunity from Suit (2009)

The Municipality of Pinatukdao is sued for damages arising from injuries sustained by a pedestrian who was hit by a glass pane that fell from a dilapidated window frame of the municipal hall. The municipality files a motion to dismiss the complaint, invoking state immunity from suit. Resolve the motion with reasons. (3%).

SUGGESTED ANSWER:

State immunity as defense will not prosper because under the law, a municipal corporation can be sued and be sued as expressly provided under the local government code. Furthermore, under the civil code, it can also be held liable for damages for the death of, or injury suffered by, any person by reason of the defective condition of roads, streets, bridges, public buildings and other public works under their control or supervision (art. 2189).

In the present case, the municipal building is under their control and supervision, thus, no immunity from suit.

State Immunity from Suit; Bureau of Customs (2013)

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

against the Department of Finance and the Bureau of Customs.

The Bureau of Customs raised the defense of immunity from suit and, alternatively, that liability should lie with XYZ Corp. which the Bureau had contracted for the lease of ten (10) high powered van cranes but delivered only five (5) of these cranes, thus causing the delay in its cargo-handling operations. It appears that the Bureau, despite demand, did not pay XYZ Corp. the Php 1.0 Million deposit and advance rental required under their contract.

(A) Will the action by the group of importers prosper? (5%)

SUGGESTED ANSWER:

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

(B) Can XYZ Corp. sue the Bureau of Customs to collect rentals for the delivered cranes? (5%)

SUGGESTED ANSWER:

No, XYZ Corporation cannot sue the Bureau of Customs to collect rentals for the delivered cranes. The contract was a necessary incident to the performance of its governmental functions. To properly collect the revenues and customs duties, the Bureau of Customs must check to determine if the declaration of the importers tallies with the landed merchandise. The cranes are needed to haul the landed merchandise to a suitable place for inspection (**Mobil Philippines Exploration, Inc. v. Customs Arrastre, 18 SCRA 1120**).

ALTERNATIVE ANSWER:

Yes, XYZ Corporation may sue the Bureau of Customs because the contract is connected with a proprietary function, the operation of the arrastre service (*Philippine Refining Company v. Court of Appeals, 256 SCRA 667*). Besides, XYZ Corporation leased its van cranes because the Bureau of Customs undertook to pay its rentals. Justice and Equity demand that the Bureau of Customs should not be allowed to invoke state immunity from suit (**Republic v. Unimex-Micro Electronics GmBH, 518 SCRA 19**).

Delegation of Powers

Delegation of Powers (2002)

Suppose that Congress passed a law creating a Department of Human Habitat and authorizing the Department Secretary to promulgate implementing rules and regulations. Suppose further that the law declared that violation of the implementing rules and regulations so issued would be punishable as a crime and authorized the Department Secretary to prescribe the penalty for such violation. If the law defines certain acts as violations of the law and makes them punishable, for example, with imprisonment of three (3) years or a fine in the amount of

P10,000.00, or both such imprisonment and fine, in the discretion of the court, can it be provided in the implementing rules and regulations promulgated by the Department Secretary that their violation will also be subject to the same penalties as those provided in the law itself? Explain your answer fully. (5%)

SUGGESTED ANSWER:

The rules and regulations promulgated by the Secretary of Human Habitat cannot provide that the penalties for their violation will be the same as the penalties for the violation of the law. As held in *United States v. Barrias*, 11 Phil. 327 (1908), the fixing of the penalty for criminal offenses involves the exercise of legislative power and cannot be delegated. The law itself must prescribe the penalty.

Delegation of Powers (2005)

(2) Section 32 of Republic Act No. 4670 (The Magna Carta for Public School Teachers) reads: Sec. 32. Penal Provision. — A person who shall willfully interfere with, restrain or coerce any teacher in the exercise of his rights guaranteed by this Act or who shall in any other manner commit any act to defeat any of the provisions of this Act shall, upon conviction, be punished by a fine of not less than one hundred pesos nor more than one thousand pesos, or by imprisonment, in the discretion of the court. Is the proviso granting the court the authority to impose a penalty or imprisonment in its discretion constitutional? Explain briefly. (4%)

SUGGESTED ANSWER:

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

Delegation of Powers; Completeness Test; Sufficient Standard Test (2005)

(1) The two accepted tests to determine whether or not there is a valid delegation of legislative power are the Completeness Test and the Sufficient Standard Test. Explain each. (4%)

ALTERNATIVE ANSWER:

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

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

ALTERNATIVE ANSWER:

COMPLETENESS TEST. The law must be complete in all its essential terms and conditions when it leaves the legislature so that there will be nothing left for the delegate to do when it reaches him except to enforce it. (See *ITS v. Ang Tang Ho*, G.R. No. L-17122, February 27, 1922) SUFFICIENT STANDARD TEST. A sufficient standard is intended to map out the boundaries of the delegate's authority by defining the legislative policy and indicating the circumstances under which it is to be pursued and effected; intended to prevent a total transference of legislative power from the legislature to the delegate. The standard is usually indicated in the law delegating legislative power. (See *Ynot u. Intermediate Appellate Court*, G.R. No. 74457, March 20, 1987)

Forms of Government

Government Presidential Form vs. Parliamentary Form (2006)

1. a) What is the principal identifying feature of a presidential form of government? Explain. (2.5%)

SUGGESTED ANSWER:

The principal identifying feature of a presidential form of government is embodied in the separation of powers doctrine. Each department of government exercises powers granted to it by the Constitution and may not control, interfere with or encroach upon the acts done within the constitutional competence of the others. However, the Constitution also gives each department certain powers by which it may definitely restrain the others from improvident action, thereby maintaining a system of checks and balances among them, thus, preserving the will of the sovereign expressed in the Constitution.

b) What are the essential characteristics of a parliamentary form of government? (2.5%)

SUGGESTED ANSWER:

The essential characteristics of a parliamentary form of government are: the fusion of the legislative and executive branches in parliament; the prime minister, who is the head of government, and the members of the cabinet, are chosen from among the members of parliament and as such are accountable to the latter; and the prime minister may be removed from office by a vote of loss of confidence of parliament. There may be a head of state who may or may not be elected.

NATIONAL TERRITORY

Archipelagic Doctrine (2009)

b. Under the archipelago doctrine, the waters around, between, and connecting the islands of the archipelago form part of the territorial sea of the archipelagic state.

SUGGESTED ANSWER:

FALSE. Under Article I of the Constitution, The waters around, between and connecting the islands of the archipelago form part of the INTERNAL WATERS. Under Article 49 (1) of the U.N. Convention on the U.N. Convention on the Law of the Sea, these waters do not form part of the territorial sea but are described as archipelagic waters.

Archipelagic Doctrine; UNCLOS (2015)

(1) A bill was introduced in the House of Representatives in order to implement faithfully the provisions of the United Nations Convention on the Law of the Sea (UNCLOS) to which the Philippines is a signatory. Congressman Pat Rio Tek questioned the constitutionality of the bill on the ground that the provisions of UN CLOS are violative of the provisions of the Constitution defining the Philippine internal waters and territorial sea. Do you agree or not with the said objection? Explain. (3%)

SUGGESTED ANSWER:

(1) The vast expanse of internal waters described by the Constitution as separating the islands of the Philippine Archipelago without regard to breadth or dimension is part of state territory and is subject to state sovereignty. It is not open to international navigation except with the express consent of the coastal state.

On the other hand, the UNCLOS transforms constitutional internal waters into archipelagic waters which under Article 52 "ships of all States enjoy the right if innocent passage," on the part of archipelagic states such as the Philippines.

As to territorial sea, the expanse of the Philippine territorial sea extends by 200 nautical miles up to the International Treaty Limits (ITL) surrounding the Philippines Archipelago as drawn pursuant to Article III of the Treaty of Paris of 10 December 1898 and as constitutionalized under Article 1 of the 1935 Constitution.

Under UNLCOS, such expanse of territorial sea collapse and the IRL as boundaries of the Philippines disappeared and under the UNCLOS the new boundaries are drawn by the outer limit of the new territorial seas and not exceeding 12 nautical miles from the baseline. Thus, sovereignty indicated by the ITL also collapsed.

ALTERNATIVE ANSWER:

1) The objection of Congressman Pat Rio Tek is not valid. The UNCLOS has nothing to do with the acquisition or loss of territory. It is a multilateral treaty regulating sea use rights and maritime zones, contiguous

zones, exclusive economic zones, and continental shelves. Whether referred to as internal waters or archipelagic waters, the Philippines exercises sovereignty over the body of water lying landward of the baselines. (Magallona v. Ermita. 655 SCRA 476 [2011]).

ANOTHER ALTERNATIVE ANSWER:

1) I do not agree.

"The UNCLOS is a product of international negotiation that seeks to balance State Sovereignty (mare clausum) and the principle of freedom of the high seas (mare liberum). The freedom to use the world's marine waters is one of the oldest customary principles of international law. The UNCLOS gives to the coastal State sovereign rights in varying degrees over the different zones of the sea which are: 1) internal waters, 2) territorial sea, 3) contiguous zone, 4) exclusive economic zone, and 5) the high seas. It also gives coastal States more or less jurisdiction over foreign vessels depending on where the vessel is located. Insofar as the internal waters and territorial sea is concerned, the Coastal State exercises sovereignty, subject to the UNCLOS and other rules of international law. Such sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil." (Arigo v. Swift, G.R. No. 206510, Sept. 16, 2014).

UNCLOS III does not define the internal and territorial waters of states but merely "prescribes the water-land ratio, length, and contour of baselines of archipelagic States like the Philippines."

"UNCLOS III has nothing to do with the acquisition (or loss) of territory." It is a multilateral treaty regulating, among others, sea-use rights over maritime zones (i.e., the territorial waters [12 nautical miles from the baselines], contiguous zone [12 nautical miles from the baselines], exclusive economic zone [200 nautical miles from the baseline]), and continental shelves that UNCLOS III delimits."

UNCLOS III and its ancillary baselines laws play no role in the acquisition, enlargement or, as petitioners claim, diminution of territory. Under traditional international law typology, States acquire (or conversely, lose) territory through occupation, accretion, cession and prescription, not by executing multilateral treaties on the regulations of sea-use rights or enacting statutes to comply with the treaty's terms to delimit maritime zones and continental shelves. Territorial claims to land features are outside UNCLOS III, and are instead governed by the rules on general international law." (Magallona v. ermita, 655 SCRA 476 [2001]).

Contiguous Zone vs. Exclusive Economic Zone (2004)

Distinguish: The contiguous zone and the exclusive economic zone.

SUGGESTED ANSWER:

CONTIGUOUS ZONE is a zone contiguous to the territorial sea and extends up to 12 nautical miles from the territorial sea and over which the coastal state may exercise control necessary to prevent infringement of its customs, fiscal, immigration or sanitary laws and

regulations within its territory or territorial sea. (Article 33 of the Convention on the Law of the Sea.) The EXCLUSIVE ECONOMIC ZONE is a zone extending up to 200 nautical miles from the baselines of a state over which the coastal state has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or nonliving, of the waters superjacent to the seabed and of the seabed and subsoil, and with regard to other activities for the economic exploitation and exploration of the zone. (Articles 56 and 57 of the Convention on the Law of the Sea.)

Maritime Regimes; Contiguous Zone vs. Exclusive Economic Zone vs. Territorial Sea vs. Continental Shelf (2015)

(2) Describe the following maritime regimes under UNCLOS (4%)

(a) Territorial sea (b) Contiguous zone (c) Exclusive economic zone (d) Continental shelf

SUGGESTED ANSWER:

(a) The territorial sea is 12 nautical miles from the baselines. An archipelagic state may draw straight archipelagic baselines joining the outermost islands and drying reefs of the archipelago, but the drawing of the baselines should not depart to any appreciable extent from the general configuration of the archipelago save for 3 percent of the total number of the baselines. (*Magallona vs. Ermita*, 655 SCRA 476 [2001]).

(b) The contiguous zone is a zone contiguous to the territorial sea. The maximum limit is 24 nautical miles from the baselines of the territorial sea. It confers functional jurisdiction to prevent infringements of customs, fiscal, immigration and sanitary regulations. (Crawford, *Brownlie's Principle of Public International Law*, 8th ed., pp.265-268).

(c) The economic zone extends no farther than 200 nautical miles from the baselines of the territorial sea. The coastal state has sovereign rights for the purpose of exploiting, conserving and managing the natural resources of the waters superjacent to the sea-bed and its sub-soil, and economic exploitation and exploration, such as the production of energy. Crawford, *Brownlie's Principle of Public International Law*, 8th ed., p. 276).

(d) The continental shelf gives the coastal state rights to explore and exploit the resources of the shelf by operation of law. Crawford, *Brownlie's Principle of Public International Law*, 8th ed., p.276).

Exclusive Economic Zone; Rights of the Coastal State (2005)

(c) Enumerate the rights of the coastal state in the exclusive economic zone. (3%)

ALTERNATIVE ANSWER:

In the EXCLUSIVE ECONOMIC ZONE, the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its

subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds in an area not extending more than 200 nautical miles beyond the baseline from which the territorial sea is measured. Other rights include the production of energy from the water, currents and winds, the establishment and use of artificial islands, installations and structures, marine scientific research and the protection and preservation of the marine environment. (Art. 56, U.N. Convention on the Law of the Sea)

ALTERNATIVE ANSWER:

SOVEREIGN RIGHTS — for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the seabed and subsoil and the superjacent waters, and with regard to other activities such as the production of energy from the water, currents and winds in an area not extending more than 200 nautical miles beyond the baseline from which the territorial sea is measured. (See Art. 56, UNCLOS) Jurisdiction, *inter alia*, with regard to: (1) the establishment and use of artificial islands, installations and structures; (2) marine scientific research; and (3) the protection and preservation of the marine environment.

Contiguous Zone vs. Exclusive Economic Zone (2004)

A. Distinguish briefly but clearly between:

2) The contiguous zone and the exclusive economic zone.

SUGGESTED ANSWER:

(2) CONTIGUOUS ZONE is a zone contiguous to the territorial sea and extends up to **twelve nautical miles** from the territorial sea and over which the coastal state may exercise control necessary to prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea. (Article 33 of the Convention on the Law of the Sea.) The EXCLUSIVE ECONOMIC ZONE is a zone extending up to 200 nautical miles from the baselines of a state over which the coastal state has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or nonliving, of the waters superjacent to the seabed and of the seabed and subsoil, and with regard to other activities for the economic exploitation and exploration of the zone. (Articles 56 and 57 of the Convention on the Law of the Sea.)

Territorial Sea vs. Internal Waters (2004)

Distinguish: The territorial sea and the internal waters of the Philippines.

SUGGESTED ANSWER:

TERRITORIAL SEA is an adjacent belt of sea with a breadth of 12 nautical miles measured from the baselines of a state and over which the state has sovereignty. (Articles 2 and 3 of the Convention on the Law of the Sea.) Ship of all states enjoy the right of innocent passage through the territorial sea. (Article 14 of the Convention on the Law of the Sea.) Under Section 1, Article I of the 1987 Constitution, the INTERNAL WATERS of the Philippines consist of the waters around, between and connecting the islands of the Philippine

Archipelago, regardless of their breadth and dimensions, including the waters in bays, rivers and lakes. No right of innocent passage for foreign vessels exists in the case of internal waters. (Harris, *Cases and Materials on International Law*, 5th ed., 1998, p. 407.) Internal waters are the waters on the landward side of baselines from which the breadth of the territorial sea is calculated. (Brownlie, *Principles of Public International Law*, 4th ed., 1990, p. 120.)

Philippine Territory; Archipelagic Waters; UNCLOS (2013)

Congress passed Republic Act No. 7711 to comply with the United Nations Convention on the Law of the Sea. In a petition filed with the Supreme Court, Anak Ti Ilocos, an association of Ilocano professionals, argued that Republic Act No. 7711 discarded the definition of the Philippine territory under the Treaty of Paris and in related treaties; excluded the Kalayaan Islands and the Scarborough Shoals from the Philippine Archipelagic baselines; and converted internal waters into archipelagic waters. Is the petition meritorious? (6%)

Suggested Answer:

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

GENERAL PRINCIPLES & STATE POLICIES

Doctrine of Incorporation; Pacta Sunt Servanda (2000)

No X. The Philippines has become a member of the World Trade Organization (WTO) and resultantly agreed that it "shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements." This is assailed as unconstitutional because this undertaking unduly limits, restricts and impairs Philippine sovereignty and means among others that Congress could not pass legislation that will be good for our national interest and general welfare if such legislation will not conform with the WTO Agreements. Refute this argument. (5%)

SUGGESTED ANSWER:

According to *Tanada v. Angara*, 272 SCRA 18 (1997), the sovereignty of the Philippines is subject to restriction by its membership in the family of nations and the limitations imposed of treaty limitations. Section 2. Article II of the Constitution adopts the generally accepted principles of international law as part of the law of the

land. One of such principles is *pacta sunt servanda*. The Constitution did not envision a hermit-like isolation of the country from the rest of the world.

Principle of Civilian Supremacy (2006)

2. What Constitutional provisions institutionalize the principle of civilian supremacy? (2.5%)

SUGGESTED ANSWER:

The following constitutional provisions institutionalize the principle of civilian supremacy:

- Civilian authority is at all times supreme over the military. [Article II, Section 3]
- The installation of the President, the highest civilian authority, as the Commander-in-Chief of the military. [Article VII, Section 18]
- The requirement that members of the AFP swear to uphold and defend the Constitution, which is the fundamental law of the civil government. [Article XVI, Section 5(1)]
- The requirement that members of the AFP shall have respect for people's rights in the performance of their duty. [Article XVI, Section 5(2)]
- Professionalism in the armed forces. [Article XVI, Section 5(3)]
- Insulation of the AFP from partisan politics. [Article XVI, Section 5(3)]
- Prohibition against the appointment of an AFP member in the active service to a civilian position. [Article XVI, Section 5(4)]
- Compulsory retirement of officers without extension of service. [Article XVI, Section 5(5)]
- Requirement of proportional recruitment from all provinces and cities, so as to avoid any regional clique from forming within the AFP. [Article XVI, Section 5(7)]
- A 3-year limitation on the tour of duty of the Chief of Staff, which although extendible in case of emergency by the President, depends on Congressional declaration of emergency. [Article XVI, Section 5(6)] The establishment of a police force that is not only civilian in character but also under the local executives. [Article XVI, Section 5(7)]

Armed Forces; Servant of the People (2003)

Article II, Section 3, of the 1987 Constitution expresses, in part, that the "Armed Forces of the Philippines is the protector of the people and (of) the State." Describe briefly what this provision means. Is the Philippine National Police covered by the same mandate?

FIRST ALTERNATIVE ANSWER:

Article II, Section 3 of the 1987 Constitution means that the Armed Forces of the Philippines should not serve the interest of the President but of the people and should not commit abuses against the people. (Record of the Constitutional Commission, Vol. V, p. 133.) This provision is specifically addressed to the Armed Forces of the Philippines and not to the Philippine National Police, because the latter is separate and distinct from the former. (Record of the Constitutional Commission, Vol. V, p. 296; *Manalo v. Sistoza*. 312 SCR A 239 [1999].)

SECOND ALTERNATIVE ANSWER:

Article II, Section 3 of the 1987 Constitution can be interpreted to mean that the Armed Forces of the Philippines can be a legitimate instrument for the overthrow of the civilian government if it has ceased to be the servant of the people. (Bernas, The 1987 Constitution of the Philippines: A Commentary, 2003 ed., p. 66.) This provision does not apply to the Philippine National Police, because it is separate and distinct from the Armed Forces of the Philippines. (Record of the Constitutional Commission, Vol. V, p. 296, Manalo v. Sistoza. 312 SCRA 239 [1999].)

Defense of State (2009)

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

SUGGESTED ANSWER:

FALSE. In the defense of the state, all citizens may be required by law to render personal, military or civil service (Section 4, Article II of the Constitution). The duty is imposed on all citizens without distinction as to gender.

ALTERNATIVE ANSWER:

TRUE. The prime duty of the Government is to serve and protect the people. The Government may call upon the people to defend the State and, in the fulfillment thereof, ALL CITIZENS may be required, under conditions provided by law, to render personal military or civil service. What is mandatory is the calling out of the people to defend the state. But the citizens including woman may render personal or military service.

Transparency; Matters of Public Interest (2000)

State at least three constitutional provisions reflecting the State policy on transparency in matters of public interest. What is the purpose of said policy? (5%)

SUGGESTED ANSWER:

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

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

5. XXX XXX (6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence," (Section 12, Article XI)
6. "A public officer or employee shall, upon assumption of office, and as often as thereafter may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law." (Section 17, Article XI)
7. "Information on foreign loans obtained or guaranteed by the Government shall be made available to the public." (Section 21 Article XII) As explained In Valmonte v. Belmonte, 170 SCRA 256 (1989), the purpose of the policy is to protect the people from abuse of governmental power. If access to information of public concern is denied, the postulate "public office is a public trust" would be mere empty words. {Note: The examinee should be given full credit if he gives any three of the above-mentioned provisions.}

LEGISLATIVE DEPARTMENT

Commission on Appointments (2002)

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

A. A How many seats would the PPP be entitled to have in the Commission on Appointments? Explain your answer fully. (5%)

B. Suppose 15 of the CP representatives, while maintaining their party affiliation, entered into a political alliance with the PPP in order to form the "Rainbow Coalition" in the House. What effect, if any, would this have on the right of the CP to have a seat or seats in the Commission on Appointments? Explain your answer fully. (5%)

SUGGESTED ANSWER:

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

of that political party and underrepresentation of the other political parties.

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

Doctrine of Necessary Implication; Hold-over (2010)

Define/Explain.

(d) Doctrine of necessary implication

SUGGESTED ANSWER:

DOCTRINE OF NECESSARY IMPLICATION provides that every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms. Ex necessitate legis. (*Pepsi-Cola Products Philippines, Inc. v. Secretary of Labor*, 312 SCRA 104, 117 [1999]).

(e) Principle of holdover

SUGGESTED ANSWER:

PRINCIPLE OF HOLDOVER provides that an incumbent officer or official may remain in office and continue performing his functions beyond his tenure or term until his successor has been elected and qualified.

Discipline; Suspension of a Member of the Congress (2002)

Simeon Valera was formerly a Provincial Governor who ran and won as a Member of the House of Representatives for the Second Congressional District of Iloilo. For violation of Section 3 of the Anti-Graft and Corrupt Practices Act (R.A. No.3019), as amended, allegedly committed when he was still a Provincial Governor, a criminal complaint was filed against him before the Office of the Ombudsman for which, upon a finding of probable cause, a criminal case was filed with the Sandiganbayan. During the course of trial, the Sandiganbayan issued an order of preventive suspension for 90 days against him. Representative Valera questioned the validity of the Sandiganbayan order on the ground that, under Article VI, Section 16(3) of the Constitution, he can be suspended only by the House of Representatives and that the criminal case against him did not arise from his actuations as a member of the House of Representatives. Is Representative Valera's contention correct? Why? (5%)

SUGGESTED ANSWER:

The contention of Representative Valera is not correct. As held in *Santiago v. Sandiganbayan*, 356 SCRA 636, the suspension contemplated in Article VI, Section 16(3) of the Constitution is a punishment that is imposed by the

Senate or House of Representatives upon an erring member, it is distinct from the suspension under Section 13 of the Anti-Graft and Corrupt Practices Act, which is not a penalty but a preventive measure. Since Section 13 of the Anti-Graft and Corruption Practices Act does not state that the public officer must be suspended only in the office where he is alleged to have committed the acts which he has been charged, it applies to any office which he may be holding.

Elected Official; De Facto Officer (2004)

AVE ran for Congressman of QU province. However, his opponent, BART, was the one proclaimed and seated as the winner of the election by the COMELEC. AVE filed seasonably a protest before HRET (House of Representatives Electoral Tribunal). After two years, HRET reversed the COMELEC's decision and AVE was proclaimed finally as the duly elected Congressman. Thus, he had only one year to serve in Congress. Can AVE collect salaries and allowances from the government for the first two years of his term as Congressman? Should BART refund to the government the salaries and allowances he had received as Congressman? What will happen to the bills that BART alone authored and were approved by the House of Representatives while he was seated as Congressman? Reason and explain briefly. (5%)

SUGGESTED ANSWER:

AVE cannot collect salaries and allowances from the government for the first two years of his term, because in the meanwhile BART collected the salaries and allowances. BART was a de facto officer while he was in possession of the office. To allow AVE to collect the salaries and allowances will result in making the government pay a second time. (Mechem, *A Treatise on the Law of Public Offices and Public Officers*, [1890] pp. 222-223.) BART is not required to refund to the government the salaries and allowances he received. As a de facto officer, he is entitled to the salaries and allowances because he rendered services during his incumbency. (*Rodriguez v. Tan*, 91 Phil. 724 [1952]) The bills which BART alone authored and were approved by the House of Representatives are valid because he was a de facto officer during his incumbency. The acts of a de facto officer are valid insofar as the public is concerned. (*People v. Garcia*, 313 SCRA 279 [1999]).

Electoral Tribunal; HRET Members' Right & Responsibilities (2002)

In an election case, the House of Representatives Electoral Tribunal rendered a decision upholding the election protest of protestant A, a member of the Freedom Party, against protestee B, a member of the Federal Party. The deciding vote in favor of A was cast by Representative X, a member of the Federal Party. For having voted against his party mate, Representative X was removed by Resolution of the House of Representatives, at the instance of his party (the Federal Party), from membership in the HRET. Representative X protested his removal on the ground that he voted on the basis of the evidence presented and contended that he had security of tenure as a HRET Member and that he

cannot be removed except for a valid cause. With whose contention do you agree, that of the Federal Party or that of Representative X? Why? (5%)

SUGGESTED ANSWER:

I agree with the contention of Representative X. As held in *Bondoc v. Pineda*, 201 SCRA 792 (1991), the members of the House of Representatives Electoral Tribunal are entitled to security of tenure like members of the judiciary. Membership in it may not be terminated except for a just cause. Disloyalty to party is not a valid ground for the expulsion of a member of the House of Representatives Electoral Tribunal. Its members must discharge their functions with impartiality independent from the political party to which they belong.

Electoral Tribunal; Functions & Composition (2006)

1. What is the function of the Senate Electoral Tribunal and the House of Representatives Electoral Tribunal? (2.5%)

SUGGESTED ANSWER:

Under Article VI, Section 17 of the 1987 Constitution, the Senate and House of Representatives Electoral Tribunals shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members.

2. What is the composition of each? (2.5%)

SUGGESTED ANSWER:

Each Electoral Tribunal shall be composed of NINE Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman (Article VI, Section 17, 1987 Constitution).

Electoral Tribunal; HRET (2014)

Beauty was proclaimed as the winning candidate for the position of Representative in the House of Representatives three (3) days after the elections in May. She then immediately took her oath of office. However, there was a pending disqualification case against her, which case was eventually decided by the COMELEC against her 10 days after the election. Since she has already been proclaimed, she ignored that decision and did not bother appealing it. The COMELEC then declared in the first week of June that its decision holding that *Beauty* was not validly elected had become final. *Beauty* then went to the Supreme Court questioning the jurisdiction of the COMELEC claiming that since she had already been proclaimed and had taken her oath of office, such election body had no more right to come up with a decision – that the jurisdiction had already been transferred to the House of Representatives Electoral Tribunal. How defensible is the argument of *Beauty*? (4%)

SUGGESTED ANSWER:

The House of Representatives Electoral Tribunal has acquired exclusive jurisdiction over the case of *Beauty*, since she has already been proclaimed. The

proclamation of the winning candidate is the operative fact that triggers the exclusive jurisdiction of the House of Representatives Electoral Tribunal over election contests relating to the election, returns and qualifications of the winning candidate. The proclamation divests the Commission on Elections of jurisdiction over the question of disqualifications pending before it at the time of the proclamation. Any case pertaining to questions over the qualifications of a winning candidate should be raised before the House of Representatives Electoral Tribunal (*Limkaichong v. Commission on Elections*, 538 SCRA 1 [2011]; *Jalosjos, Jr. v. Commission on Elections*, 674 SCRA 530 [2013]).

ALTERNATIVE ANSWER:

The argument of *Beauty* is untenable. For the House of Representatives Electoral Tribunal to acquire jurisdiction over the disqualification case, she must be a Member of the House of Representatives. Although she had been proclaimed and had taken her oath of office, she had not yet assumed office. The term of office of the Members of the House of Representatives begins at noon of the thirtieth day of June next following their election (*Reyes v. Commission on Elections*, 699 SCRA 522 [2012]).

Electoral Tribunal; PET (2012)

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

a. Aggrieved, Yellow filed with the Supreme Court a Petition for Certiorari challenging the decision of the PET alleging grave abuse of discretion. Does the Supreme Court have jurisdiction? Explain. (3%)

SUGGESTED ANSWER:

The Supreme Court has no jurisdiction over the petition. The Presidential Electoral Tribunal is not simply an agency to which the Members of the Senate Court were assigned. It is not separate from the Supreme Court (*Macalintal v. Presidential Electoral Tribunal*, 631 SCRA 239).

b. Would the answer in (a.) be the same if Yellow and Orange were contending for a senatorial slot and it was the Senate Electoral Tribunal (SET) who issued the challenged ruling? (3%)

SUGGESTED ANSWER:

The Supreme Court would have jurisdiction if it were the Senate Electoral Tribunal who issued the challenged ruling. The Supreme Court can review its decision if it acted with grave abuse of discretion (*Lerias v. House of Representatives Electoral Tribunal*, 202 SCRA 808).

c. What is the composition of the PET? (2%)

SUGGESTED ANSWER:

The Presidential Electoral Tribunal is composed of the Chief Justice and the Associate Justices of the Supreme Court sitting *en banc* (Section 4, Article VII of the Constitution).

d. What is judicial power? Explain Briefly. (2%)

SUGGESTED ANSWER:

Judicial Power, under Sec 1 (1) of Art. 8, is the authority to settle justifiable controversies or disputes involving rights that are enforceable and demandable before the court of justice or the redress of wrongs for violation of such rights (**Lopez v. Roxas, 17 SCRA 756**). It includes the duty of the courts to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government (Section 1, Article VIII of the Constitution).

Party-list Representative; Seat Allocation (2007)

The Supreme Court has provided a formula for allocating seats for party-list representatives. For each of these rules, state the constitutional or legal basis, if any, and the purpose.

(a) The twenty percent allocation - the combined number of all party-list congressmen shall not exceed twenty percent of the total membership of the House of Representatives, including those elected under the party list;

SUGGESTED ANSWER:

Section 5(2), Article VI of the Constitution, as implemented by R.A. No. 7941. The purpose is to assure that there will be at least a guaranteed portion of the House of Representatives reserved for the party-list members. The legislative policy is to promote the election of party-list representatives in order to enable Filipinos belonging to the marginalized and underrepresented sectors to contribute legislation that would benefit them.

(b) The two percent threshold - only those parties garnering a minimum of two percent of the total valid votes cast for the party-list system are "qualified" to have a seat in the House of Representatives;

SUGGESTED ANSWER:

R.A. No. 7941. This is to ensure that the party-list organizations at least represents a significant portion of those voting for the party-list system – that they at least have a substantial constituency which must, at the minimum, not be less than two percent (2%) of the total number of those casting their votes for party-list organizations.

(c) The three-seat limit - each qualified party, regardless of the number of votes it actually obtained, is entitled to a maximum of three seats; that is, one "qualifying" and two additional seats; and

SUGGESTED ANSWER:

R.A. No. 7941. This is to prevent any dominant party-list organization from having a monopoly of the seats for the party-list system. Since the objective of the party-list system is to enable other groups who might otherwise have difficulty getting to Congress through the traditional system of elections, then the system developed to accommodate them must be fair and equitable enough to afford better odds to as many groups as possible.

(d) The first-party rule - additional seats which a qualified party is entitled to shall be determined in relation to the total number of votes garnered by the party with the highest number of votes.

SUGGESTED ANSWER:

R.A. No. 7941. The party-list system is predicated, among others, on proportional representation. Thus, there is need to reflect the same in relation to the total number of votes obtained. Accordingly, the first party must not be placed on the same footing as the others who obtained less votes. The votes obtained by first placer would be the reckoning point for the computation of additional seats or members for the remaining organizations who got at least two percent (2%) of the votes cast for the party-list system. (*Veterans Federation Party v. COMELEC*, G.R. No. 136781, October 6, 2000).

Party-List; Seat Allocation; Representative's Qualifications (2014)

Greenpeas is an ideology-based political party fighting for environmental causes. It decided to participate under the party-list system. When the election results came in, it only obtained 1.99 percent of the votes cast under the party-list system. *Bluebean*, a political observer, claimed that *Greenpeas* is not entitled to any seat since it failed to obtain at least 2% of the votes. Moreover, since it does not represent any of the marginalized and underrepresented sectors of society, *Greenpeas* is not entitled to participate under the party-list system. How valid are the observations of *Bluebean*? (4%)

SUGGESTED ANSWER:

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

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

Party-List; Foreign Funding (2010)

Rudy Domingo, 38 years old, natural-born Filipino and a resident of the Philippines since birth, is a Manila-based entrepreneur who runs KABAKA, a coalition of people's organizations from fisherfolk communities. KABAKA's operations consist of empowering fisherfolk leaders through livelihood projects and trainings on good

governance. The Dutch Foundation for Global Initiatives, a private organization registered in the Netherlands, receives a huge subsidy from the Dutch Foreign Ministry, which, in turn is allocated worldwide to the Foundation's partners like KABAKA. Rudy seeks to register KABAKA as a party-list with himself as a nominee of the coalition. Will KABAKA and Rudy be qualified as a party-list and a nominee, respectively? Decide with reasons.

SUGGESTED ANSWER:

NO, Kabaka and Rudy will not be qualified as party-list and nominee because KABAKA is a partner of Dutch Foreign Ministry a foreign based organization. KABAKA is indirectly receiving support from Dutch Ministry. It is therefore disqualified to be registered as a party-list. (Section 2(5), Article IX-C of the Constitution). Under the law, the following are grounds for disqualification for registration in the party-list system:

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

Party-List; Major Political Party (2015)

The Partido ng Mapagkakatiwalaang Pilipino (PMP) is a major political party which has participated in every election since the enactment of the 1987 Constitution. It has fielded candidates mostly for legislative district elections. In fact, a number of its members were elected, and are actually serving, in the House of Representatives. In the coming 2016 elections, the PMP leadership intends to join the party-list system.

Can PMP join the party-list system without violating the Constitution and Republic Act (R.A.) No. 7941? (4%)

SUGGESTED ANSWER:

Yes, the Partido ng Mga Mapagkakatiwalaang Pilipino can join the party-list system provided it does not field candidates in the legislative district elections. (Atong Paglaum, Inc. v. Commission on Elections, 694 SCRA 477 [2013]).

Law-Making; Appropriation Law; Rider Provision (2001)

Suppose that the forthcoming General Appropriations Law for Year 2002, in the portion pertaining to the Department of Education, Culture and Sports, will contain a provision to the effect that the Reserve Officers Training Course (ROTC) in all colleges and universities is hereby abolished, and in lieu thereof all male college students shall be required to plant ten (10) trees every year for two (2) years in areas to be designated by the Department of Environment and Natural Resources in coordination with the Department of Education, Culture and Sports and the local government unit concerned. It further provides that the same provision shall be incorporated in future General appropriations Acts. There is no specific item of appropriation of funds for the purpose. Comment on the constitutionality of said provision. (5%)

SUGGESTED ANSWER:

The provision is unconstitutional, because it is a rider. Section 25(2), Article VI of the Constitution provides, "No provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein." The abolition of the Reserve Officers Training Course involves a policy matter. As held in *Philippine Constitution Association vs. Enriquez*, 235 SCRA 506 (1994), this cannot be incorporated in the General Appropriations Act but must be embodied in a separate law.

Law-Making; Abolish; Destroy (2008)

In 1963, Congress passed a law creating a government-owned corporation named Manila War Memorial Commission (MWMC), with the primary function of overseeing the construction of a massive memorial in the heart of Manila to commemorate victims of the 1945 Battle of Manila.

The MWMC charter provided an initial appropriation of P1,000,000 empowered the corporation to raise funds in its own name, and set aside a parcel of land in Malate for the memorial site. The charter set the corporate life of MWMC at 50 years with a proviso that Congress may not abolish MWMC until after the completion of the memorial.

Forty-five (45) years later, the memorial was only 1/3 complete, and the memorial site itself had long been overrun by squatters. Congress enacted a law abolishing the MWMC and requiring that the funds raised by it be remitted to the National Treasury. The MWMC challenged the validity of the law arguing that under its charter its mandate is to complete the memorial no matter how long it takes. Decide with reasons. (6%).

SUGGESTED ANSWER:

The law abolishing the MWMC is valid. Within the plenary powers of the Congress, it can create as well as destroy what is created after determination its purpose could no longer be attained by subsequent circumstances. The power to create also carries with it the power to destroy so long as it was done in good faith and consistent with the purpose of promoting the general welfare.

Law-Making; Admission to the Bar (2009)

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

SUGGESTED ANSWER:

FALSE. Congress cannot enact a law regulating the admission to the legal profession. It is within the power of the Supreme Court to promulgate rules concerning the admission to the legal profession. The present Constitution has taken away the power of Congress to alter the Rules of Court (*Echegaray vs. Secretary of Justice*, 301 SCRA 96 [1999]). The law will violate the principle of separation of powers.

ALTERNATIVE ANSWER:

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

Law-Making; Conflict of Interest (2010)

Congresswoman A is a co-owner of an industrial estate in Sta. Rosa, Laguna which she had declared in her Statement of Assets and liabilities. A member of her political party authored a bill which would provide a 5-year development plant for all industrial estates in the southern Tagalog Region to attract investors. The plan included an appropriation of 2 billion pesos for construction of roads around the estates. When the bill finally became law, a civil society watchdog questioned the constitutionality of the law as it obviously benefited Congresswoman A's industrial estate. Decide with reasons (3%)

SUGGESTED ANSWER:

The law is a valid exercise of police power although it may indirectly benefited a Congresswoman but the purpose of the law to provide a 5-year plant for all industrial estates is reasonable thus, it conform to the twin requisite of lawful subject and lawful means for a valid exercise police power.

However, the congresswoman could be sanctioned by the House of Representative for failure to notify the House of a potential conflict of interest in the filing of the proposed legislation of which they author.

ALTERNATIVE ANSWER:

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

Law-Making; Item vs. Pocket Veto (2010)

Distinguish between pocket veto and item veto

SUGGESTED ANSWER:

An item veto refers to the veto made by the president but not the entire bill is vetoed but only a specific items. Generally item veto is not allowed but the constitution

permits item veto on revenue, tariff, and appropriation bill. And although it is not a appropriation, tariff or revenue bill an item veto is still allowed for inappropriate provision in the bill.

A pocket veto occurs when the President fails to act on the bill and did not return the bill to Congress because the latter is not in session. In the Philippines pocket veto is not applicable because a bill will pass into law if remain inacted within 30 days from receipt thereof.

Law-Making; Oversight Committee (2010)

The Poverty Alleviation and Assistance Act was passed to enhance the capacity of the most marginalized families nationwide. A financial assistance scheme called "conditional cash transfers" was initially funded 500 million pesos by Congress. One of the provisions of the law gave the joint-congressional oversight committee authority to screen the list of beneficiary families initially determined by the Secretary of Department of Social Welfare and Development pursuant to the Department implementing rules. Mang Pandoy, a resident of Smokey Mountain in Tondo, questioned the authority of the Committee.

(b) Is the grant of authority to the Oversight Committee to screen beneficiaries constitutional? Decide with Reasons.

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

NO. True that the Oversight power of congress is to scrutinize, investigate, and supervise that the laws that it enacted is fully implemented. But to secure authority to screen beneficiaries is an unfair interference with the personal liberty or property of individual. It is more of an intrusion than an overseeing.

Law-making; Trial by Jury (2013)

Congress enacted a law providing for trial by jury for those charged with crimes or offenses punishable by reclusion perpetua or life imprisonment. The law provides for the qualifications of members of the jury, the guidelines for the bar and bench for their selection, the manner a trial by jury shall operate, and the procedures to be followed. Is the law constitutional? (6%)

SUGGESTED ANSWER:

The law providing for trial by jury is unconstitutional because of the omission of Article VIII, Section 5 (5) of the 1987 Constitution of the provisions in Article VIII, Section 13 of the 1935 Constitution and Article X, Section 5 (5) of the 1973 Constitution, which authorized the Legislature to repeal, alter or supplement the rules of procedure promulgated by the Supreme Court. Congress can no longer enact any law governing rules of procedure for the courts (*Echegaray v. Secretary of Justice*, 301 SCRA 96).

ALTERNATIVE ANSWER:

The law is valid, because the grant of a right to trial by jury involves a substantive law and is within the competence of Congress (**Article VIII, Section 5 (5) of the 1987 Constitution**).

Law-making; Encroachment of Judiciary's Rule-making Power (2014)

Congress passed a law, R.A. No. 15005, creating an administrative Board principally tasked with the supervision and regulation of legal education. The Board was attached to the Department of Education. It was empowered, among others, to prescribe minimum standards for law admission and minimum qualifications of faculty members, the basic *curricula* for the course of study aligned to the requirements for admission to the Bar, law practice and social consciousness, as well as to establish a law practice internship as a requirement for taking the Bar which a law student shall undergo anytime during the law course, and to adopt a system of continuing legal education. *Professor Boombastick*, a long-time law practitioner and lecturer in several prestigious law schools, assails the constitutionality of the law arguing; that it encroached on the prerogatives of the Supreme Court to promulgate rules relative to admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. If you were *Professor Boombastick's* understudy, how may you help him develop clear, concise and cogent arguments in support of his position based on the present Constitution, and the decisions of the Supreme Court on judicial independence and fiscal autonomy? (4%)

SUGGESTED ANSWER:

The statutory authority granted to the administrative Board to promulgate rules and regulations cannot encroach upon the exclusive authority of the Supreme Court to regulate the admission to the practice of law (Section 5(5), Article VIII of the Constitution).

Thus, the Administrative Board cannot prescribe additional standards for admission to the practice of law, adopt a course of study which is inconsistent with the requirements of the Supreme Court, and impose additional requirements to take the bar examinations (*Philippine Lawyer's Association v. Agrava*, 105 Phil. 173 [1959]). Since Congress has no power to repeal, alter or supplement the Rules of Court, it cannot delegate such power to the Administrative Board.

Prohibitions and Inhibitions of Public Office (2004)

JAR faces a dilemma: should he accept a Cabinet appointment now or run later for Senator? Having succeeded in law practice as well as prospered in private business where he and his wife have substantial investments, he now contemplates public service but without losing the flexibility to engage in corporate affairs or participate in professional activities within ethical bounds. Taking into account the prohibitions and inhibitions of public office whether as Senator or Secretary, he turns to you for advice to resolve his dilemma. What is your advice? Explain briefly. (5%)

SUGGESTED ANSWER:

I shall advise JAR to run for SENATOR. As a Senator, he can retain his investments in his business, although he must make a full disclosure of his business and financial interests and notify the Senate of a potential conflict of interest if he authors a bill. (Section 12, Article VI of the 1987 Constitution.) He can continue practicing law, but he cannot personally appear as counsel before any court of justice, the Electoral Tribunals, or quasijudicial and other administrative bodies. (Section 14, Article VI of the 1987 Constitution.) As a member of the Cabinet, JAR cannot directly or indirectly practice law or participate in any business. He will have to divest himself of his investments in his business. (Section 13, Article VII of the 1987 Constitution.) In fact, the Constitutional prohibition imposed on members of the Cabinet covers both public and private office or employment. (*Civil Liberties Union v. Executive Secretary*, 194 SCRA 317) **Separation of Powers (2003)** No II - A group of losing litigants in a case decided by the Supreme Court filed a complaint before the Ombudsman charging the Justices with knowingly and deliberately rendering an unjust decision in utter violation of the penal laws of the land. Can the Ombudsman validly take cognizance of the case? Explain.

SUGGESTED ANSWER:

No, the Ombudsman cannot entertain the complaint. As stated in the case of *In re: Laureta*, 148 SCRA 382 [1987], pursuant to the principle of separation of powers, the correctness of the decisions of the Supreme Court as final arbiter of all justiciable disputes is conclusive upon all other departments of the government; the Ombudsman has no power to review the decisions of the Supreme Court by entertaining a complaint against the Justices of the Supreme Court for knowingly rendering an unjust decision.

SECOND ALTERNATIVE ANSWER:

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

Prohibition to Appear as Counsel (2013)

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

As part of the party's advocacy and services, Congressman Ablang engages in labor counseling, particularly for local workers with claims against their employers and for those who need representation in collective bargaining negotiations with employers. When labor cases arise, AWGP enters its appearance in representation of the workers and the Congressman makes it a point to be there to accompany the workers, although a retained counsel also formally enters his

appearance and is invariably there. Congressman Ablang largely takes a passive role in the proceedings although he occasionally speaks to supplement the retained counsel's statements. It is otherwise in CBA negotiations where he actively participates.

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

Is the cited ground for disbarment meritorious? (6%)

SUGGESTED ANSWER:

Being a Congressman, Atty. Ablang is disqualified under Article VI, Section 14 of the 1987 Constitution from personally appearing as counsel before quasi-judicial and other administrative bodies. His speaking for workers before administrative bodies handling labor cases constitutes personal appearance before them (**Puyat v. De Guzman, 1135 SCRA 33**). His involvement in collective bargaining negotiations also involves practice of law, because he is making use of his legal knowledge for the benefit of others (**Cayetano v. Monsod, 201 SCRA 210**). The Bureau of Labor Relations is involved in collective bargaining negotiations (Article 250 of Labor Code).

Atty. Ablang should not be disbarred but should be merely suspended from the practice of law. Suspension is the appropriate penalty for involvement in the unlawful practice of law (**Tapay v. Bancolo, 694 SCRA 1**).

ALTERNATIVE ANSWER:

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

Investigations in Aid of Legislation (2009)

Congressman Nonoy delivered a privilege speech charging the Intercontinental Universal Bank (IUB) with the sale of unregistered foreign securities, in violation of RA no. 8799. He then filed, and the House of Representatives unanimously approved, a resolution directing the House Committee on Good Government (HCGG) to conduct an inquiry on the matter, in aid of legislation, in order to prevent the recurrence of any similar fraudulent activity.

HCGG immediately scheduled a hearing and invited the responsible officials of IUB, the chairman and Commissioners of the SEC and the Governor of the BSP. On the date set for the hearing, only the SEC commissioners appeared, prompting Congressman Nonoy to move for the issuance of the appropriate subpoena ad testificandum to compel the attendance of the invited resource persons.

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

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

SUGGESTED ANSWER:

The argument is untenable, the mere filing of a criminal or an administrative complaint before the court of quasi-judicial body should not automatically bar the conduct of legislative inquiry provided that there is an explicit subject and nature of the inquiry. Since legislative inquiry is an essential part of legislative power, it cannot be made subordinate to criminal and civil actions. Otherwise, it would be very easy to subvert any investigation in aid of legislation through the convenient ploy of instituting civil and criminal actions (**Standard Chartered Bank [Philippine Branch] vs. Senate Committee on Banks, Financial Institutions and Currencies, 541 SCRA 456 [2007]**).

ALTERNATIVE ANSWER:

Yes, legislative inquiry would preempt judicial action. In one case, the Supreme Court did not allow the Committee to continue with the legislative inquiry because it was not in aid of legislation but in aid of prosecution. It holds that there will be a violation of separation of powers and the possibility of conflicting judgment.

The Subjudice rule restricts comments and disclosures pertaining to judicial proceedings to avoid prejudicing the issue, influencing the court, or obstructing the administrations of justice.

(b) Compelling the IUB officials, who are also respondents in the criminal and civil cases in court, to testify at the inquiry would violate their constitutional right against self-incrimination. (3%)

Are the foregoing arguments tenable? Decide with reasons.

SUGGESTED ANSWER:

Congress can compel them to appear. Persons under legislative investigation are not being indicted as accused in a criminal proceeding but are merely summoned as resource persons, or witnesses, in a legislative inquiry. Hence they cannot on the ground of their right against self-incrimination, altogether decline appearing before the Congress, although they may invoke the privilege when a question calling for an incriminating answer is propounded (**Standard Chartered Bank [Philippine Branch] vs. Senate Committee on Banks, Financial Institutions and Currencies, 541 SCRA 456 [2007]**).

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

SUGGESTED ANSWER:

No, the Governor cannot invoke executive privilege. Only

the President as a general rule can invoke executive privilege (Senate of the Philippines vs. Ermita, 488 SCRA 1 [2006]).

Investigations in Aid of Legislation; Executive Privilege (2010)

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

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

SUGGESTED ANSWER:

YES. Individuals invited to a legislative inquiry can be anybody whether an executive head or not. The inquiry is in aid of legislation which is to elicit information useful for legislation not for prosecution or persecution. The attendance of the resource person is mandatory and can be compelled through compulsory processes. Only the President or the Executive Secretary by order of the President can invoke executive privilege (Senate of Philippines vs. Ermita, 488 SCRA 13 [2006]).

He may be cited for contempt if he fails to attend.

(b) Is the Budget Secretary shielded by executive privilege from responding to the inquiries of the House Committee? Explain Briefly. If the answer is no, is there any sanction that may be imposed on him?

SUGGESTED ANSWER:

NO, executive privilege is granted to the President himself not to anybody else. It is the president who shall invoke the privilege. The inquiry is in aid of legislation and neither the President nor Executive Secretary by order of the President invoke executive privilege (Senate of the Philippines vs. Ermita, 438 SCRA 1 [2006]).

Citation for contempt can be imposed.

Contempt Powers; Effect of Adjournment of Session (2014)

A few months before the end of the present Congress, Strongwill was invited by the Senate to shed light in an inquiry relative to the alleged siphoning and diverting of the pork barrel of members of Congress to non-existent or fictitious projects. Strongwill has been identified in the news as the principal actor responsible for the scandal, the leader of a non-governmental organization which ostensibly funnelled the funds to certain local government projects which existed only on paper. At the start of the hearings before the Senate, Strongwill refused at once to cooperate. The Senate cited him in contempt and sent him to jail until he would have seen the light. The Congress, thereafter, adjourned sine die

preparatory to the assumption to office of the newly-elected members. In the meantime, Strongwill languished behind bars and the remaining senators refused to have him released, claiming that the Senate is a continuing body and, therefore, he can be detained indefinitely. Are the senators right? (4%)

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

Impeachment (2012)

A verified impeachment complaint was filed by two hundred (200) Members of the House of Representatives against Madam Chief Justice Blue. The complaint was immediately transmitted to the Senate for trial.

a. Madam Chief Justice Blue challenges such immediate transmittal to the Senate because the verified complaint 1) not included in the order of business of the House, 2) was not referred to the House Committee on Justice for hearing and consideration for sufficiency in form and substance, and 3) was not submitted to the House Plenary for consideration as enumerated in Paragraph (2), Section 3, Article XI of the 1987 Constitution. Decide with reasons. (5%)

SUGGESTED ANSWER:

Since the verified complaint was filed by the 200 Members of the House of Representatives and they constituted at least one third of its Members, it need not undergo the procedure in Paragraph 2, Section 3, Article XI of the Constitution. The verified complaint constitutes the Articles of Impeachment, and trial by the Senate should proceed forthwith (Section 3 (4), Article XI of the Constitution).

b. What is the purpose of Impeachment? Does conviction prevent further prosecution and punishment? Explain. (3%)

SUGGESTED ANSWER:

The purpose of impeachment is not to punish but only to remove a public officer to secure the people against gross political misdemeanors (Bernas, *The 1987 Constitution of the Philippines, A Commentary*, 2009 ed., p. 1150). Conviction does not prevent further prosecution and punishment. The person convicted is subject to prosecution and punishment according to law (Section 3 (7), Article XI of the Constitution).

c. Enumerate the grounds for impeachment. Is graft and corruption a ground for impeachment? (2%)

SUGGESTED ANSWER:

The following are the grounds for impeachment:

1. Culpable violation of the Constitution;
2. Treason;
3. Bribery;
4. Graft and Corruption;
5. Other high crimes; and
6. Betrayal of public trust

Impeachment (2013)

As a leading member of the Lapiang Mandirigma in the House of Representatives, you were tasked by the party to initiate the moves to impeach the President because he entered into an executive agreement with the US Ambassador for the use of the former Subic Naval Base by the US Navy, for free, i.e., without need to pay rent nor any kind of fees as a show of goodwill to the U.S. because of the continuing harmonious RP-US relations. Cite at least two (2) grounds for impeachment and explain why you chose them. (6%)

SUGGESTED ANSWER:

The President can be impeached for the culpable violation of the Constitution and the betrayal of public trust. The Supreme Court has already ruled that the provision in Article XVIII, Section 25 of the Constitution requires a treaty even for the mere temporary presence of the foreign troops in the Philippines (**Bayan v. Zamora, 342 SCRA 499**). The President cannot claim, therefore, that he acted in good faith (**Report of the Special Committee in the Impeachment of President Quirino, Congressional Record of the House of Representatives, Vol. IV, p. 1553**). Betrayal of public trust includes violation of the oath of the office of the President (**Record of the Constitutional Commission, Vol. II, p. 272**). In this office, the President swore to preserve and defend the Constitution (Article VII, Section 5 of the Constitution).

ALTERNATIVE ANSWER:

The President can be impeached for the culpable violation of the Constitution and graft and corruption (Article XI, Section 2). By entering into the executive agreement, the President violated Section 3 (d) of the Anti-Graft and Corrupt Practices Act because of the undue injury to the Republic of the Philippines.

Creation of a Legislative District by Reapportionment (2015)

On August 15, 2015, Congresswoman Dina Tatalo filed and sponsored House Bill No. 5432, entitled "An Act Providing for the Apportionment of the Lone District of the City of Pangarap." The bill eventually became a law, R.A. No. 1234. It mandated that the lone legislative district of the City of Pangarap would now consist of two (2) districts. For the 2016 elections, the voters of the City of Pangarap would be classified as belonging to either the first or second district, depending on their place of residence. The constituents of each district would elect their own representative to Congress as well as eight (8) members of the Sangguniang Panglungsod. R.A. No. 1234 apportioned the City's barangays. The COMELEC thereafter promulgated Resolution No. 2170 implementing R.A. No. 1234.

Piolo Cruz assails the COMELEC Resolution as unconstitutional. According to him, R.A. No. 1234 cannot be implemented without conducting a plebiscite because the apportionment under the law falls within the meaning of creation, division, merger, abolition or substantial alteration of boundaries of cities under Section 10, Article X of the 1987 Constitution. Is the claim correct? Explain. (4%)

SUGGESTED ANSWER:

The claim of Piolo Cruz is not correct. The Constitution does not require a plebiscite for the creation of a new legislative district by a legislative reapportionment. It is required only for the creation of new local government units. (*Bagabuyo v. Commission on Elections, 573 SCRA 290 [2008]*).

EXECUTIVE DEPARTMENT

Appointing Power; Acting vs. Permanent Appointment (2003)

No V - What is the nature of an "acting appointment" to a government office? Does such an appointment give the appointee the right to claim that the appointment will, in time, ripen into a permanent one? Explain.

SUGGESTED ANSWER:

According to *Sevilla v. Court of Appeals, 209 SCRA 637 [1992]*, an acting appointment is merely temporary. As held in *Marohombsar v. Alonto, 194 SCRA 390 [1991]*, a temporary appointment cannot become a permanent appointment, unless a new appointment which is permanent is made. This holds true unless the acting appointment was made because of a temporary vacancy. In such a case, the temporary appointee holds office until the assumption of office by the permanent appointee.

Appointing Power; Appointments Requiring Confirmation; RA 6975-Unconstitutional (2002)

No V - On December 13, 1990, the President signed into law Republic Act No. 6975 (subsequently amended by RA No. 8551) creating the Department of Interior and Local Government. Sections 26 and 31 of the law provide that senior officers of the Philippine National Police (PNP), from Senior Superintendent, Chief Superintendent, Deputy Director General to Director General or Chief of PNP shall, among others, be appointed by the President subject to confirmation by the Commission on Appointments. In 1991 the President promoted Chief Superintendent Roberto Matapang and Senior Superintendent Conrado Mahigpit to the positions of Director and Chief Superintendent of the PNP, respectively. Their appointments were in a permanent capacity. Without undergoing confirmation by the Commission on Appointments, Matapang and Mahigpit took their oath of office and assumed their respective positions. Thereafter, the Department of Budget and Management authorized disbursements for their salaries and other emoluments. Juan Bantay filed a taxpayer's suit questioning the legality of the appointments and

disbursements made. Bantay argues that the appointments are invalid inasmuch as the same have not been confirmed by the Commission on Appointments, as required under Sections 26 and 31 of R.A. No. 6975. Determine with reasons the legality of the appointments and the disbursements for salaries by discussing the constitutional validity of Sections 26 and 31 of R.A. No. 6975. (5%)

SUGGESTED ANSWER:

The appointments of Matapang and Mahigpit are valid even if they were not confirmed by the Commission on Appointments, because they are not among the public officials whose appointments are required to be confirmed by the first sentence of Article VII, Section 16 of the Constitution. According to *Manalo v. Sistoza*, 312 SCRA 239 (1999), Sections 26 and 31 of Republic Act 6975 are unconstitutional, because Congress cannot by law expand the list of public officials required to be confirmed by the Commission on Appointments. Since the appointments of Matapang and Mahigpit are valid, the disbursements of their salaries and emoluments are valid.

Appointing Powers; Ad Interim Appointments (2005)

(1) In March 2001, while Congress was adjourned, the President appointed Santos as Chairman of the COMELEC. Santos immediately took his oath and assumed office. While his appointment was promptly submitted to the Commission on Appointments for confirmation, it was not acted upon and Congress again adjourned. In June 2001, the President extended a second ad interim appointment to Santos for the same position with the same term, and this appointment was again submitted to the Commission on Appointments for confirmation. Santos took his oath anew and performed the functions of his office. Reyes, a political rival, filed a suit assailing certain orders issued by Santos. He also questioned the validity of Santos' appointment. Resolve the following issues: (5%)

(a) Does Santos' assumption of office on the basis of the ad interim appointments issued by the President amount to a temporary appointment which is prohibited by Section 1(2), Article IX-C of the Constitution?

ALTERNATIVE ANSWER:

No, Santos' appointment does not amount to a temporary appointment. An ad interim appointment is a permanent appointment because it takes effect immediately and can no longer be withdrawn by the President once the appointee has qualified into office. The fact that it is subject to confirmation by the Commission on Appointments does not alter its permanent character. The Constitution itself makes an ad interim appointment permanent in character by making it effective until disapproved by the Commission on Appointments or until the next adjournment of Congress. A temporary or acting appointee does not enjoy any security of tenure, no matter how briefly. (*Matibag v. Benipayo*, G.R. No. 149036, April 2, 2002)

ALTERNATIVE ANSWER:

An ad interim appointment is a permanent appointment and does not violate Section 1(2), Article IX-C of the

Constitution. (*Pamantasan ng Lungsod ng Maynila v. IAC*, G.R. No. L- 65439, November 13, 1985)

(b) Assuming the legality of the first ad interim appointment and assumption of office by Santos, were his second ad interim appointment and subsequent assumption of office to the same position violations of the prohibition on reappointment under Section 1(2), Article IX-C of the Constitution?

SUGGESTED ANSWER:

No, the second ad interim appointment and subsequent assumption of office does not violate the Constitution. The prohibition on reappointment in Section 1(2), Article IX-C of the Constitution does not apply to by-passed ad interim appointments. It can be revived by a new ad interim appointment because there is no final disapproval under Section 16, Article VII of the Constitution, and such new appointment will not result in the appointee serving beyond the fixed term of seven years. The phrase "without reappointment" applies only to one who has been appointed by the President and confirmed by the Commission on Appointments, whether or not such person completes his term of office. To hold otherwise will lead to absurdities and negate the President's power to make ad interim appointments. (*Matibag v. Benipayo*, G.R. No. 149036, April 2, 2002)

Appointing Power; Ad-Interim Appointments (2010)

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

NO. an interim appointment is an appointment made by the President during the recess of Congress and it is a permanent appointment and shall continue to hold such permanency until disapproved by the Commission on Appointment or until the next adjournment of congress.

If the appointment is bypassed and the appointee was not re-appointed he can no longer re-assume as career ambassador because by accepting an ad interim appointment he is deemed to have waived his right to hold his old position as ad interim appointment is permanent.

Appointing Power; Midnight Appointment; Anti-Nepotism (2014)

Margie has been in the judiciary for a long time, starting from the lowest court. Twenty (20) years from her first year in the judiciary, she was nominated as a Justice in the Court of Appeals. Margie also happens to be a first-degree cousin of the President. The Judicial and Bar

Council included her in the short-list submitted to the President whose term of office was about to end – it was a month before the next presidential elections. Can the President still make appointments to the judiciary during the so-called midnight appointment ban period? Assuming that he can still make appointments, could he appoint Margie, his cousin? (4%)

SUGGESTED ANSWER:

The President can make appointments to the Supreme Court two months before a presidential election until the end of his term but not to the rest of the Judiciary like the Court of Appeals. Under Section 4 (1), Article VIII of the Constitution, vacancies in the Supreme Court shall be filled within ninety (90) days from the occurrence of the vacancy. Under Section 9, Article VIII of the Constitution, vacancies in the lower courts shall be filled within ninety (90) days from submission of the list of nominees. These appointments are screened by the Judicial and Bar Council, and the process necessarily precludes or prevents the President from making purely political appointments to the courts, which is what is sought to be [prevented by the prohibition (*De Castro v. Judicial and Bar Council*, 615 SCRA 666 [2010].)]

The President may also appoint his first cousin, Margie, as Justice of the Court of Appeals. The prohibition in Section 13, Article VII of the Constitution against appointment by the President of relatives within the fourth degree by consanguinity or affinity does not include appointments to the Judiciary.

ALTERNATIVE ANSWER

(FOR THE FIRST QUESTION): The President cannot make appointments to the Judiciary during two months before the presidential election until the end of his term because of the ban in Section 15, Article VII of the Constitution. Despite the constitutional mandate to fill vacancies in Judiciary within the prescribed periods, the prohibitions against the appointments releases the President from the obligation to appoint within them. The delay is excusable, since it will be impossible to comply with his obligation.

Control Power (2009)

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

SUGGESTED ANSWER:

TRUE. The president exercises the power of control over all executive departments and agencies, including government-owned or controlled corporations with or without original charters. But the President does not have the power of control over LGUs (*Cruz vs. Secretary of Environment and Natural Resources*, 347 SCRA 128 [2000]; *National Marketing Corporation vs. Arca*, 29 SCRA 648 [1969]).

Faithful Execution Clause (2014)

The President, concerned about persistent reports of widespread irregularities and shenanigans related to the alleged ghost projects with which the pork barrel funds of members of Congress had been associated, decided not to release the funds authorized under a Special

Appropriations Act for the construction of a new bridge. The Chief Executive explained that, to properly conserve and preserve the limited funds of the government, as well as to avoid further mistrust by the people, such a project – which he considered as unnecessary since there was an old bridge near the proposed bridge which was still functional – should be scrapped. Does the President have such authority? (4%)

SUGGESTED ANSWER:

The president has the authority to withhold the release of the funds under a Special Appropriation Act for a project which he considered unnecessary. The faithful execution of the laws requires the President to desist from implementing a law if by doing so will prejudice public interest. It is folly to require the President to spend the entire amounts appropriated in the law in such a case (*Philippine Constitution Association v. Enriquez*, 235 SCRA 506 [1994]).

ALTERNATIVE ANSWER:

The President does not possess the authority to scrap the Special Appropriations Act for the construction of the new bridge. His refusal to spend the funds appropriated for the purpose is unlawful.

The President is expected to faithfully implement the purpose for which Congress appropriated funds. Generally, he cannot replace legislative discretion with his own personal judgment as to the wisdom of a law (*Araullo v. Aquino*, G.R. No. 209287, July 1, 2014).

Calling-out Power; President (2006)

1. What do you mean by the "Calling-out Power" of the President under Section 18, Article VII of the Constitution? (5%)

SUGGESTED ANSWER:

Under Article VII, Sec. 18 of the 1987 Constitution, whenever it becomes necessary, the President, as Commander-in-Chief, may call out the armed forces to aid him in preventing or suppressing lawless violence, invasion or rebellion (*David v. Arroyo*, G.R. No. 171396, May 3, 2006).

Control Power; Foreign Relations (2010)

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

SUGGESTED ANSWER:

The argument of the chancellor of Central Luzon State University is not valid. Since an alien has no right to enter the Philippines, preventing Prof. Sing Kui from entering the Philippines is not a violation of his rights. (Lee and Quigley, *Consular Law and Practice*, 3rd ed., p.220.)

Since the President has the Power of Control over foreign relations, he has the power to ban aliens from entering the Philippines. (United States vs. Curtiss-Wright Export Corporation, 299 U.S. 304 [1936]).

ALTERNATIVE ANSWER:

There is no violation of the Constitution. It is within the Residual Power of the President to select who shall be allowed entry in the Philippines especially when the allowance of such entry poses imminent threat or danger to national security.

Declaration; State of Calamity; Legal Effects (2005)

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

SUGGESTED ANSWER:

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

1. Automatic Price Control — under R.A. No. 7581, The Price Act;
2. Authorization for the importation of rice under R.A. No. 8178, The Agricultural Tariffication Act;
3. Automatic appropriation under R.A. No. 7160 is available for unforeseen expenditures arising from the occurrence of calamities in areas declared to be in a state of calamity;
4. Local government units may enact a supplemental budget for supplies and materials or payment of services to prevent danger to or loss of life or property, under R.A. No. 7160;
5. Entitlement to hazard allowance for Public Health Workers (under R.A. No. 7305, Magna Carta for Public Health Workers), who shall be compensated hazard allowances equivalent to at least twenty-five percent (25%) of the monthly basic salary of health workers receiving salary grade 19 and below, and five percent (5%) for health workers with salary grade 20 and above;
6. Entitlement to hazard allowance for science and technological personnel of the government under R.A. No. 8439; and
7. A crime committed during the state of calamity will be considered aggravated under Art. 14, par. 7 of the Revised Penal Code.

Declaration; State of National Emergency (2006)

2. On February 24, 2006, President Gloria Macapagal-Arroyo issued Proclamation No. 1017 declaring a state of national emergency. Is this Proclamation constitutional? Explain. (2.5%)

SUGGESTED ANSWER:

The proclamation is constitutional insofar as it constitutes a call by the President for the AFP to prevent or suppress lawless violence as this is sustained by Section 18, Article VII of the Constitution. However, PP 1017's provisions giving the President express or implied power (1) to issue decrees; (2) to direct the AFP to enforce obedience to all laws even those not related to lawless violence as well as decrees promulgated by the President; and (3) to impose standards on media or any form of prior restraint on the press, are ultra vires and

unconstitutional. Likewise, under Section 17, Article XII of the Constitution, the President, in the absence of legislation, cannot take over privately-owned public utilities and businesses affected with the public interest (David v. Arroyo, G.R. No. 171396, May 3, 2006).

3. During the effectivity of this Proclamation, Gener, Lito and Bong were arrested by the police for acts of terrorism. Is the arrest legal? Explain. (2.5%)

SUGGESTED ANSWER:

The arrest, apparently done without a valid warrant, is illegal. However, a warrantless arrest would be valid if those accused are caught committing crimes en flagrante delicto. On the other hand, if the arrest is made pursuant to a valid warrant, then it is lawful. The term "acts of terrorism" has not been legally defined and made punishable by Congress. No law has been enacted to guide the law enforcement agents, and eventually the courts, to determine the limits in making arrests for the commission of said acts of terrorism (David v. Arroyo, G.R. No. 171396, May 3, 2006).

Declaration; State of National Emergency (2010)

TRUE OR FALSE.

a. A proclamation of a State of emergency is sufficient to allow the President to take over any public utility.

SUGGESTED ANSWER:

The statement that a proclamation of emergency is sufficient to allow the President to take over any public utility is false. Since it is an aspect of emergency powers, in accordance with Section 23(2), Article VI of the Constitution, there must be a law delegating such power to the President. (David vs. Macapagal-Arroyo, 489 SCRA 160 [2006]).

ALTERNATIVE ANSWER:

FALSE. The declaration of a state of emergency is one thing and the exercise of emergency powers is another. In the latter case, it requires a prior legislative enactment before the President can exercise them.

State of Rebellion vs. State of National Emergency (2015)

(1) Distinguish the President's authority to declare a state of rebellion from the authority to proclaim a state of national emergency. (2%)

SUGGESTED ANSWER:

The power of the President to (declare a state of rebellion) is based on the power of the President as chief executive and commander-in-chief of the Armed Forces of the Philippines. It is not necessary for the President to declare a state of rebellion before calling out the Armed Forces of the Philippines to suppress it. The proclamation only gives notice to the nation that such a state exists and that the Armed Forces of the Philippines may be called upon to suppress it. (Sanlakas v. Executive Secretary, 421 SCRA 656 [2004]).

In (a proclamation of a state of national emergency), the President is already calling out the Armed Forces of the Philippines to suppress not only rebellion but also lawless violence. (David v. Arroyo, 489 SCRA 162 [2006]).

Power to Enter into Executive Agreements (2003)

No XX - An Executive Agreement was executed between the Philippines and a neighboring State. The Senate of the Philippines took it upon itself to procure a certified true copy of the Executive Agreement and, after deliberating on it, declared, by a unanimous vote, that the agreement was both unwise and against the best interest of the country. Is the Executive Agreement binding (a) from the standpoint of Philippine law and (b) from the standpoint of international law? Explain

SUGGESTED ANSWER:

(a) From the standpoint of Philippine law, the Executive Agreement is binding. According to *Commissioner of Customs v. Eastern Sea Trading*, 3 SCRA 351 [1961], the President can enter into an Executive Agreement without the necessity of concurrence by the Senate.

(b) The Executive Agreement is also binding from the standpoint of international law...

Power to Enter into Executive Agreement; Treaty Abrogation (2008)

The President alone without the concurrence of the Senate abrogated a treaty. Assume that the other country-party to the treaty is agreeable to the abrogation provided it complies with the Philippine Constitution. If a case involving the validity of the treaty of the treaty abrogation is brought to the Supreme Court, how should it be resolved? (6%).

SUGGESTED ANSWER:

The President should be overruled. She cannot abrogate a treaty alone even if the other State, party to a treaty, agrees to the abrogation. If the legislative branch ratifies a treaty by 2/3 vote pursuant to Art. VII, Sec. 21, it must also do so when the President abrogates it. She cannot *motu proprio* abrogate the treaty.

ALTERNATIVE ANSWER:

The Supreme Court should sustain the validity of the abrogation of the treaty. There is no constitutional provision governing the termination of a treaty. What the constitution provides is only the concurrence of the Senate in order that a treaty be valid and binding and under recent jurisprudence, the ratification of the treaty is left to the sound discretion of the President.

Therefore, the President as the representative of the State in treaty negotiation can abrogate a treaty by himself.

Power to Enter into Treaty (2010)

TRUE OR FALSE.

b. A treaty which provides tax exemption needs no concurrence by a majority of all the Members of the Congress

SUGGESTED ANSWER:

The statement that a treaty which provides tax exemption needs no concurrence by a majority of all the Members of Congress is true. It is only a law, not a treaty, granting a tax exemption which requires the concurrence of a majority of all the Members of Congress. (Section 28(4), Article VI of the Constitution.) Without respect to its lawful substantive content, a treaty, to be valid and effective, requires concurrence by at least two-thirds of all the

Members of the Senate. (Sec. 21, Art. VII of the Constitution).

ALTERNATIVE ANSWER:

FALSE. Granting tax exemptions requires concurrence by a majority of all the Members of the Congress.

Martial Law; Limitations (2000)

No XVII. Declaring a rebellion, hostile groups have opened and maintained armed conflicts on the Islands of Sulu and Basilan.

a) To quell this, can the President place under martial law the islands of Sulu and Basilan? Give your reasons? (3%)

b) What are the constitutional safeguards on the exercise of the President's power to proclaim martial law? (2%)

SUGGESTED ANSWER:

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

b) The following are the constitutional safeguards on the exercise of the power of the President to proclaim martial law:

1. There must be actual invasion or rebellion;
2. The duration of the proclamation shall not exceed sixty days;
3. Within forty-eight hours, the President shall report his action to Congress. If Congress is not in session, it must convene within twenty-four hours;
4. Congress may by majority vote of all its members voting jointly revoke the proclamation, and the President cannot set aside the revocation;
5. By the same vote and in the same manner, upon Initiative of the President, Congress may extend the proclamation if the invasion or rebellion continues and public safety requires the extension;
6. The Supreme Court may review the factual sufficiency of the proclamation, and the Supreme Court must decide the case within thirty days from the time it was filed;
7. Martial law does not automatically suspend the privilege of the writ of habeas corpus or the operation of the Constitution.
8. It does not supplant the functioning of the civil courts and of Congress. Military courts have no jurisdiction over civilians where civil courts are able to function. (Cruz, *Philippine Political Law*, 1995 ed., pp. 213- 214.)

Martial Law; Sufficiency of the Factual Basis (2006)

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

with the Supreme Court a petition questioning the validity of Proclamation No. 1018.

1. Does Robert have a standing to challenge Proclamation No. 1018? Explain. (2.5%)

SUGGESTED ANSWER:

Yes, Robert has standing. Under Article VIII, Section 17 of the 1987 Constitution, the Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law. As citizen therefore, Robert may file the petition questioning Proclamation No. 1018.

2. In the same suit, the Solicitor General contends that under the Constitution, the President as Commander-in-Chief, determines whether the exigency has arisen requiring the exercise of his power to declare Martial Law and that his determination is conclusive upon the courts. How should the Supreme Court rule? (2.5%)

SUGGESTED ANSWER:

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

3. The Solicitor General argues that, in any event, the determination of whether the rebellion poses danger to public safety involves a question of fact and the Supreme Court is not a trier of facts. What should be the ruling of the Court? (2.5%)

SUGGESTED ANSWER:

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government (Art. Vin, Sec. 1, par. 2, 1987 Constitution). When the grant of power is qualified, conditional or subject to limitations, the issue of whether the prescribed qualifications or conditions have been met or the limitations respected, is justiciable — the problem being one of legality or validity, not its wisdom. Article VII, Section 18 of the 1987 Constitution specifically grants the Supreme Court the power to review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law. Thus, in the matter of such declaration, two conditions must concur: (1) there must be an actual invasion or rebellion; and (2) public safety must require it. The Supreme Court cannot renege on its constitutional duty to determine whether or not the said factual conditions exist (IBP v. Zamora, G.R. No. 141284, August 15, 2000).

4. Finally, the Solicitor General maintains that the President reported to Congress such proclamation of

Martial Law, but Congress did not revoke the proclamation. What is the effect of the inaction of Congress on the suit brought by Robert to the Supreme Court? (2.5%)

SUGGESTED ANSWER:

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

Privilege; Presidential Communications vs. Deliberative Process (2010)

Distinguish "presidential communication privilege" from "deliberative process privilege."

SUGGESTED ANSWER:

Jurisprudence laid down 2 kinds of executive privilege which are presidential communication privilege and deliberative process privilege (Neri vs. Senate Committee on Accountability of Public Officers and Investigations, 549 SCRA 77 [2008]).

Presidential Communication Privilege: pertains to the communications, documents or other materials that reflect presidential decision-making and deliberations and that the President believes should remain confidential. It applies to decision-making of the President. It is based on separation of powers. It is always subject to a greater scrutiny.

Deliberative Process Privilege: includes advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated. Based on common law privileged it applies to decision-making of executive officials and not subject to greater scrutiny.

Executive Privilege (2015)

Several senior officers of the Armed Forces of the Philippines received invitations from the Chairperson of the Senate Committees on National Defense and Security for them to appear as resource persons in scheduled public hearings regarding a wide range of subjects. The invitations state that these public hearings were triggered by the privilege speeches of the Senators that there was massive electoral fraud during the last national elections. The invitees Brigadier General Matapang and Lieutenant Coronel Makatuwiran, who were among those tasked to maintain peace and order during the last election, refused to attend because of an Executive Order banning all public officials enumerated in paragraph 3 thereof from appearing before either house of Congress without prior approval of the President to ensure adherence to the rule of executive privilege. Among those included in the enumeration are "senior officials of executive departments who, in the

judgment of the department heads, are covered by executive privilege." Several individuals and groups challenge the constitutionality of the subject executive order because it frustrates the power of the Congress to conduct inquiries in aid of legislation under Section 21, Article VI of the 1987 Constitution. Decide the case. (5%)

SUGGESTED ANSWER:

Under Section 5, Article XVI of the Constitution, the President is commander-in-chief of the Armed Forces of the Philippines. By virtue of this power, the President can prevent Brigadier General Matapang and Lieutenant Colonel Makatuwiran from appearing before the Senate to testify before a legislative investigation. (*Guidani v. Senga*, 498 SCRA 671 [2006]).

The provision in the Executive Order which authorized Department Secretaries to invoke executive privilege in case senior officials in their departments are asked to appear in a legislative investigation is not valid. It is upon the President that executive power is vested. Only the President can make use of Executive Privilege. (*Senate v. Ermita*, 488 SCRA 1 [2006]).

Pardoning Power; Breach of Condition; Revocation (2005)

(1) Bruno still had several years to serve on his sentence when he was conditionally pardoned by the President. Among the conditions imposed was that he would "not again violate any of the penal laws of the Philippines." Bruno accepted all of the conditions and was released. Shortly thereafter, Bruno was charged with 2 counts of estafa. He was then incarcerated to serve the i expired portion of his sentence following the revocation by the President of the pardon. Bruno's family filed a petition for habeas corpus, alleging that it was error to have him recommitted as the charges were false, in fact, half of them were already dismissed. Resolve the petition with reasons. (4%)

SUGGESTED ANSWER:

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

Pardoning Power: Executive Clemency (2008)

ST, a Regional Trial Court judge who falsified his Certificate of Service, was found liable by the Supreme Court for serious misconduct and inefficiency, and meted

the penalty of suspension from office for 6 months. Subsequently, ST filed a petition for executive clemency with the Office of the President. The Executive Secretary, acting on said petition issued a resolution granting ST executive clemency. Is the grant of executive clemency valid? Why or why not? (6%)

SUGGESTED ANSWER:

No. the grant of executive clemency is invalid because it violates the separation of powers. The Supreme Court has the power of administrative supervision over all courts and its personnel and with this power the Supreme Court can discipline erring Judges.

The grant of an executive clemency has the effect of removing the penalty imposed by the competent authority. The Supreme Court has the authority to discipline judges of lower court. In so doing, the constitution guaranteed its independence from the other political bodies. If the executive department were to grant executive clemency, it would be an encroachment of a prerogative thus violation of the separation of powers.

Pardoning Power; Limitations (2015)

(2) What are the limitations, if any, to the pardoning power of the President? (3%)

SUGGESTED ANSWER:

The following are the limitations to the pardoning power of the President:

- 1.The President cannot pardon impeachment cases.
- 2.The President may grant pardons only after conviction by final judgment.
- 3.Amnesty requires the concurrence of the majority of all the Members of the Congress. (Section 19, Article VII of the Constitution)
- 4.The President cannot grant pardon, amnesty, parole or suspension of sentence for violation of election law, rules and regulation without favourable recommendation of the Commission on Elections. (Section 9, Article IX-C of the Constitution)
- 5.The President cannot pardon members and employees of the Judiciary found guilty by the Supreme Court in administrative cases, because it will encroach upon the exclusive power of the administrative supervision of the Supreme Court over them. (In re Petition for Judicial Clemency of Manuel V. Romilo Jr., G.R. No. 97091, December 9, 1997).

ALTERNATIVE ANSWER

(2) "The 1987 Constitution, specifically Section 19 of Article VII and Section 5 of Article IX-C, provides that the President of the Philippines possesses the power to grant pardons, along with the other acts of executive clemency, to wit:

"Section 19. Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprimands, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment.

"He shall also have the power to grant amnesty with the concurrence of a majority of all the Members of the Congress.

"Section 5. No pardon, amnesty, parole, or suspension of sentence for violation of election laws, rules, and

regulations shall be granted by the President without the (favorable recommendation of the Commission).

It is apparent from the foregoing constitutional provisions that the only instances in which the President may not extend pardon remain to be in: (1) impeachment cases; (2) cases have not yet resulted in a final conviction; and (3) cases involving violations of election law, rules and regulations in which there was no favorable recommendation coming from the COMELEC.” (Risos-Vidal v. COMELEC, G.R. No. 206666, January 21, 2015).

It may be added that pardons may not be extended to a person convicted of legislative contempt, as this would violate the (doctrine of separation of powers) or of civil contempt since this would involve the benefit not of the State itself but of the private litigant whose rights have been violated by the contemner. Pardon cannot also be extended for purpose of absolving the pardonee of civil liability, including judicial costs, since, again, the interest that is remitted does not belong to the State but to the private litigant. (Cruz and Cruz, Philippine Political Law, 2014 Edition, page 445).

Prohibition Against Multiple Positions & Additional Compensation (2002)

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

If you were the judge, how would you decide the following:

- a) the issue regarding the holding of multiple positions? (3%)
- b) the issue on the payment of additional or double compensation?(2%) Explain your answers fully.

SUGGESTED ANSWER:

(a) If I were the judge, I would uphold the validity of the designation of Secretary M as ex officio member of the Monetary Board, As stated in *Civil Liberties Union v. Executive Secretary*, 194 SCRA 317 (1991), the prohibition against the holding of multiple positions by Cabinet Members in Article VII, Section 13 of the Constitution does not apply to positions occupied in an ex officio capacity as provided by law and as required by the primary functions of their office.

(b) If I were the Judge, I would rule that Secretary M cannot receive any additional compensation. As stated in *Civil Liberties Union v. Executive Secretary*, 194 SCRA 317 (1991), a Cabinet Member holding an ex-officio position has no right to receive additional compensation, for his services in that position are already paid for by the compensation attached to his principal office.

Doctrine of Qualified Political Agency; Application (2105)

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

SUGGESTED ANSWER:

The invocation of the qualified political agency doctrine is not correct. Although some of the members of the Board of Directors were cabinet members, they did not become members of the Board of Directors because of their appointment but because of their designation by the law. When they implemented a new organizational plan, they were not acting as alter egos of the President but as members of the Board of Directors pursuant to the law. (*Manalang-Demigillo v. Trade and Investment Development Corporation of the Philippines*, 692 SCRA 359 [2012]).

JUDICIAL DEPARTMENT

Function; Continuing Constitutional Convention (2000)

One Senator remarked that the Supreme Court is a continuing Constitutional Convention. Do you agree? Explain. (2%)

SUGGESTED ANSWER:

I do not agree that the Supreme Court is a continuing Constitutional Convention. The criticism is based on the assumption that in exercising its power of judicial review the Supreme Court is not merely interpreting the Constitution but is trying to remake the Government on the basis of the personal predilections of the Members of the Supreme Court, this is a power that properly belongs

to the people and their elected representatives. The Supreme Court cannot decide cases merely on the basis of the letter of the Constitution. It has to interpret the Constitution to give effect to the intent of its framers and of the people adopting it. In Interpreting the Constitution, the Supreme Court has to adopt it to the ever-changing circumstances of society. When the Supreme Court strikes down an act of the Legislative or the Executive Department, it is merely discharging its duty under the Constitution to determine conflicting claims of authority.

ALTERNATIVE ANSWER:

To a certain extent, the Supreme Court is a continuing Constitutional Convention. When a case is brought in court involving a constitutional issue. It becomes necessary to interpret the Constitution, Since the Supreme Court is supreme within its own sphere, its interpretation of the Constitution will form part of the law of the land.

Judicial Independence; Safeguard (2000)

No 1. Name at least three constitutional safeguards to maintain judicial independence. (3%)

SUGGESTED ANSWER:

The following are the constitutional safeguards to maintain judicial independence:

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

Judicial Review; Legal Standing (2010)

The Poverty Alleviation and Assistance Act was passed to enhance the capacity of the most marginalized families nationwide. A financial assistance scheme called "conditional cash transfers" was initially funded 500 million pesos by Congress. One of the provisions of the law gave the joint-congressional oversight committee authority to screen the list of beneficiary families initially determined by the Secretary of Department of Social Welfare and Development pursuant to the Department implementing rules. MangPandoy, a resident of smokey Mountain in Tondo, questioned the authority of the Committee.

(a) Does Mang Pandoy have legal standing to question the law?

SUGGESTED ANSWER:

On the assumption that Mang Pandoy is a beneficiary of the financial legal assistance, he has legal standing to question the law. He may be prejudiced by the improper screening of the beneficiary families. (Province of Batangas vs. Romulo, 492 SCRA 736 [2004]). Besides, since the implementation of the law will require the expenditure of public funds, as a tax payer Mang Pandoy has legal standing to question the law. (Cruz vs. Secretary of Environment and Natural Resources, 347 SCRA 128).

ALTERNATIVE ANSWER:

Yes. Mang Pandoy has legal standing to question the law as a taxpayer and a citizen. As a taxpayer he has to show that there will be an illegal disbursement of public funds. As a citizen he must show that the issue involved is of transcendental importance.

Judicial Review; Issues of Transcendental Importance (2014)

In keeping with the modern age of instant and incessant information and transformation, Congress passed Cybercrime Prevention Act to regulate access to and use of the amenities of the cyberspace. While ostensibly the law is intended to protect the interests of society, some of its provisions were also seen as impermissibly invading and impairing widely cherished liberties of the people particularly the freedom of expression. Before the law could even be implemented, petitions were filed in the Supreme Court questioning said provisions by people who felt threatened, for themselves as well as for the benefit of others who may be similarly affected but not minded enough to challenge the law. The Solicitor General countered that there is no basis for the exercise of the power of judicial review since there has yet been no violation of the law, and therefore, there is no actual case or controversy to speak of, aside from the fact that the petitioners have no *locus standi* since they do not claim to be in imminent danger of being prosecuted under the law. Can the Court proceed to decide the case even if the law has not yet become effective? (4%)

SUGGESTED ANSWER:

The Supreme Court can proceed to decide the case even if the law has not yet become effective. Since the petitions filed sought to nullify the Cybercrime Prevention

Act, because it violated several provisions of the Bill of Rights, the Supreme Court became duty-bound to settle the dispute (*Tañada v. Angara*, 272 SCRA 18 [1997]). Since it is alleged that the Cybercrime Prevention Act violates various provisions of the Bill of Rights, including freedom of speech, freedom of the press, and the right against unreasonable searches and seizure, the issues raised are of paramount public interest, of transcendental importance and with far-reaching constitutional implications, that justify dispensation with *locus standi* and exercise of the power of judicial review by the Supreme Court (*Chavez v. Gonzales*, 545 SCRA 441 [2008]). Jurisprudence provides that *locus standi* not required when the action was filed to prevent a chilling effect on the exercise of the right to freedom of expression and overbreadth.

Judicial Review; Expanded Concept (2015)

(1) What is the concept of expanded judicial review under the 1987 Constitution? (3%)

SUGGESTED ANSWER:

Because of the expanded power of judicial review of the Supreme Court, the facial challenge to the constitutionality of laws is no longer limited to laws which violate freedom of speech but applies to all violations of fundamental rights under the Bill of Rights. (*Imbong v. Ochoa, Jr.*, 721 SCRA 140 [2014]).

In addition, the remedies of certiorari and prohibition in the Supreme Court are broader in scope and may be issued to correct errors of jurisdiction of judicial, quasi-judicial or ministerial actions and may be invoked to restrain any act of grave abuse of discretion of any branch of government, even if it does not exercise judicial, quasi-judicial or ministerial functions. (*Araullo v. Aquino III*, 728 SCRA 1 [2014]).

ALTERNATIVE ANSWER:

The concept of “expanded judicial power” is specified in the second paragraph of Section 1 of Article VIII of the Constitution where it is provided that judicial power includes the duty “to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.”

Judicial Power; Trial by Jury (2008)

Congress enacted law establishing the right to trial by jury of an accused charged with a felony or offense punishable with reclusion perpetua or life imprisonment. The law provides for the qualifications of prospective jury members, the guidelines to be observed by the Judge and the lawyers in jury selection including the grounds for challenging the selection of jury members, and the methodology for jury deliberations. Is the law constitutional? Explain fully. (7%)

SUGGESTED ANSWER:

The law is unconstitutional because the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts is vested only in the Supreme Court.

Congress cannot encroach to the prerogatives of the Judiciary particularly those expressly given by the Constitution. The interference of Congress of such power would be struck down because it violates the separation of powers.

Judicial Power; Declaration of Unconstitutionality Cannot Be Reversed by Enactment of Law (2014)

In *Serrano v. Gallant Maritime Services, Inc.*, 582 SCRA 254 (2009), the Supreme Court declared as violative of the Equal Protection Clause the 5th paragraph of §10 R.A. No. 8042 (*Migrant Workers and Overseas Filipinos Act of 1995*) for discriminating against illegally dismissed OFWs who still had more than a year to their contract compared to those who only had less than a year remaining. The next year, Congress enacted R.A. No. 10222, an amendment to the Migrant Workers and Overseas Filipinos Act, which practically reinstated the provision struck down in *Serrano*.

Seamacho, an overseas seafarer who still had two years remaining on his contract when he was illegally terminated, and who would only be entitled to a maximum of six-month's pay under the reinstated provision, engages you as his counsel. How are you to argue that the new law is invalid insofar as it brings back to the statute books a provision that has already been struck down by the Court? (5%)

SUGGESTED ANSWER:

I will argue that since Section 10 of Republic Act No. 8042 has already been declared unconstitutional by the Supreme Court, its nullity cannot be cured by reincorporation or reenactment of the same or a similar law or provision. Once a law has been declared unconstitutional, it remains unconstitutional unless circumstances have so changed as to warrant a reverse conclusion (*Sameer Overseas Placement Agency v. Cabiles*, G.R. No. 170139, August 5, 2014).

Judicial Functions; National Labor Relations Commission (2013)

In her interview before the Judicial and Bar Council (JBC), Commissioner Annie Amorsolo of the National Labor Relations Commission claims that she should be given credit for judicial service because as NLRC Commissioner, she has the rank of a Justice of the Court of Appeals; she adjudicates cases that are appealable to the Court of Appeals; she is assigned car plate No. 10; and she is, by law, entitled to the rank, benefits and privileges of a Court of Appeals Justice.

If you are a member of the JBC, would you give credit to this explanation? (6%)

SUGGESTED ANSWER:

No, I will not give credence to the explanation of Commissioner Annie Amorsolo. Her ranking merely means that she has the same salary and benefits as a Justice of the Court of Appeals. However, she is not actually a Justice of the Court of Appeals. The National Labor Relations is not a court. She does not perform judicial functions (*Noblejas v. Teehankee*, 23 SCRA 405).

Supreme Court En Banc; Promulgation of Decision (2014)

The Court had adopted the practice of announcing its decision in important, controversial or interesting cases the moment the votes had been taken among the justices, even as the final printed decision and separate opinions are not yet available to the public. In a greatly anticipated decision in a case of wide-ranging ramifications, the voting was close – 8 for the majority, while 7 were for the other side. After the Court had thus voted, it issued a press release announcing the result, with the advice that the printed copy of the decision, together with the separate opinions, were to be issued subsequently. The following day, however, one of the members of the Court died. The Court then announced that it would deliberate anew on the case since apparently the one who died belonged to the majority. *Citizens for Transparency*, a group of civic-spirited professionals and ordinary citizens dedicated to transparency and accountability in the government, questioned the act of the Court. The petitioners claimed the decision had already been validly adopted and promulgated. Therefore, it could no longer be recalled by the Court. At the same time, the group also asked the Court to disclose to the public the original decision and the separate opinions of the magistrates, together with what they had deliberated on just before they came up with the press release about the 8-7 decision. (6%)

(A) Was the announced 8-7 decision already validly promulgated and thus not subject to recall?

SUGGESTED ANSWER:

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

(B) If the decision was not yet finalized at the time when the justice died, could it still be promulgated?

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER FOR:

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

(C) If the decision was still being finalized, should the Court release to the public the majority decision and the separate opinions as originally announced, together with their deliberations on the issues?

SUGGESTED ANSWER:

(C) The Supreme Court should not release to the public the majority opinion and the separate opinions, as well as its deliberations. They are part of its confidential internal deliberations (*Limkaichong v. Commission on Elections*, 594 SCRA 434 [2009]).

Political Question: Separation of Powers (2004)

(b) SDO was elected Congressman. Before the end of his first year in office, he inflicted physical injuries on a colleague, ET, in the course of a heated debate. Charges were filed in court against him as well as in the House Ethics Committee. Later, the House of Representatives, dividing along party lines, voted to expel him. Claiming that his expulsion was railroaded and tainted by bribery, he filed a petition seeking a declaration by the Supreme Court that the House gravely abused its discretion and violated the Constitution. He prayed that his expulsion be annulled and that he should be restored by the Speaker to his position as Congressman. Is SDO's petition before the Supreme Court justiciable? Cite pertinent issues for consideration. (5%)

SUGGESTED ANSWER:

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

Political Question; To Settle Actual Controversies (2004)

(a) The 1935, 1973 and 1987 Constitutions commonly provide that "Judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law." What is the effect of the addition in the 1987 Constitution of the following provision: "Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government"? Discuss briefly, citing at least one illustrative case. (5%)

SUGGESTED ANSWER:

The effect of the second paragraph of Section 1, Article VIII of the 1987 Constitution is to limit resort to the political question doctrine and to broaden the scope of

judicial inquiry into areas which the Judiciary, under the previous Constitutions, would have left to the political departments to decide. If a political question is involved, the Judiciary can determine whether or not the official whose action is being questioned acted with grave abuse of discretion amounting to lack or excess of jurisdiction (*Marcos v. Manglapus*, 177 SCRA 668 [1989]); (*Daza v. Singson*, 180 SCRA 496 [1989]). Thus, although the House of Representatives Electoral Tribunal has exclusive jurisdiction to decide election contests involving members of the House of Representatives, the Supreme Court nullified the removal of one of its members for voting in favor of the protestant, who belonged to a different party. (*Bondoc v. Pineda*, 201 SCRA 792 [1991]).

Operative Fact Doctrine (2010)

Define/Explain.

(a) Doctrine of operative facts

SUGGESTED ANSWER:

DOCTRINE OF OPERATIVE FACTS –The general rule is that an unconstitutional law is void. It produces no rights, imposes no duties and affords no protection. However, the doctrine of operative fact is an exception to the general rule and it only applies as a matter of equity and fair play.

Under the doctrine of operative fact, the unconstitutional law remains unconstitutional, but the effects of the unconstitutional law, prior to its judicial declaration of nullity, may be left undisturbed as a matter of equity and fair play.

It can never be invoked to validate as constitutional an unconstitutional act.

Supervision; Courts & its Personnel (2005)

(2) Pedro Masipag filed with the Ombudsman a complaint against RTC Judge Jose Palacpac with violation of Article 204 of the Revised Penal Code for knowingly rendering an unjust judgment in Criminal Case No. 617. Judge Palacpac filed a motion with the Ombudsman to refer the complaint to the Supreme Court to determine whether an administrative aspect was involved in the said case. The Ombudsman denied the motion on the ground that no administrative case against Judge Palacpac relative to the decision in Criminal Case No. 617 was filed and pending in his office. State with reasons whether the Ombudsman's ruling is correct. (4%)

SUGGESTED ANSWER:

The Ombudsman's ruling is not correct. Under Section 6, Article VIII of the Constitution, it is the Supreme Court which is vested with exclusive administrative supervision over all courts and its personnel. Prescinding from this premise, the Ombudsman cannot determine for itself and by itself whether a criminal complaint against a judge, or court employee, involves an administrative matter. The Ombudsman is duty bound to have all cases against judges and court personnel filed before it, referred to the Supreme Court for determination as to whether an administrative aspect is involved therein. (*Judge Jose Caoibes v. Ombudsman*, G.R. No. 132177, July 19, 2001)

Rule-making Power; Fiscal Autonomy (2014)

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

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

Discuss the constitutionality of the said law, taking into account the arguments of both parties? (4%)

SUGGESTED ANSWER:

The law is unconstitutional. The Constitution has taken away the power of Congress to repeal, alter or supplement the Rules of the Court. The fiscal autonomy guaranteed the Judiciary by Section 3, Article VIII of the Constitution recognized the authority of the Supreme Court to levy, assess and collect fees. Congress cannot amend the rules promulgated by the Supreme Court for the payment of legal fees by granting exemptions (*In re Petition for Recognition of Exemption of the Government Service Insurance System from Payment of Legal Fees*, 612 SCRA 193 [2010]; *In re Exemption of National Power Corporation from Payment of Court and Sheriff's Fees of Duly Registered Cooperatives*, 668 SCRA 1 [2012]).

Rule-making Power; Fiscal Autonomy (2015)

Congress enacted R.A. No. 14344 creating the City of Masuwerte which took effect on September 25, 2014. Section 23 of the law specifically exempts the City of Masuwerte from the payment of legal fees in the cases that it would file and/or prosecute in the courts of law. In two (2) cases that it filed, the City of Masuwerte was assessed legal fees by the clerk of court pursuant to Rule 141 (Legal Fees) of the Rules of Court. The City of Masuwerte questions the assessment claiming that it is exempt from paying legal fees under Section 23 of its charter. Is the claim of exemption tenable? Explain. (4%)

SUGGESTED ANSWER:

The exemption from payment of legal fees is not valid. The rules promulgated by the Supreme Court for the payment of legal fees were in the exercise of its rule-making power cannot be modified by a law granting an exemption from payment. (*In Re-Exemption from Payment of Court and Sheriff's Fees of Duly Registered Cooperatives*, 668 SCRA 1 [2012]).

Rule-making Power; Statutory vs. Constitutional (2015)

(2) Differentiate the rule-making power or the power of the Supreme Court to promulgate rules under Section 5, Article VIII of the 1987 Constitution and judicial legislation. (2%)

SUGGESTED ANSWER:

Judicial Legislation refers to the encroachment by the Judiciary upon the function of the legislature by making law rather than declaring, construing or enforcing the law. (Ballentine's Law Dictionary, 3rd ed., p. 685).

Section 3 (5), Article VIII of the Constitution granted the Supreme Court power to promulgate rules concerning the protection and enforcement of constitutional rights. In the exercise of this power, the Supreme Court promulgated the Rule on the Writ of Amparo, the Rule on the Writ of Habeas Data and the Rules of Procedure for Environmental Cases.

CONSTITUTIONAL COMMISSIONS

Constitutional Commissions & Council (2006)

2. The legislature may abolish this body: (5%)

- Commission on Appointments
- Ombudsman
- Judicial and Bar Council
- Court of Tax Appeals
- Commission on Audit

SUGGESTED ANSWER:

The legislature may abolish the d) COURT OF TAX APPEALS since it is merely a creation of law unlike the Commission on Appointments, Ombudsman, Judicial and Bar Council and Commission on Audit which are all constitutional creations. Thus, the latter agencies may only be abolished by way of an amendment or revision of the Constitution.

Rotational Scheme (2010)

(a) What is the rational scheme of appointments in the COMELEC?

SUGGESTED ANSWER:

The rational scheme of appointments in the COMELEC refers to the appointment of the Commissioner and 5 of its members not simultaneously but by intervals of every after 2 years upon expiration of their term of office.

(b) What are the two conditions for its workability?

SUGGESTED ANSWER:

The two conditions for its workability are:

- The first Chairman and Commissioners should start on a common date and
- Any vacancy before the expiration of the term should be filled only for the unexpired balance of the term

(c) To what other constitutional offices does the rational scheme of appointments apply?

SUGGESTED ANSWER:

The rational scheme of appointments applies to COA,

CSC, COMELEC, and JBC (Section 9(2), Article VIII, Section 1(2), Article IX-B and Section 1(2), Article IX-D of the Constitution).

Fiscal Autonomy (2014)

Towards the end of the year, the Commission on Audit (COA) sought the remainder of its appropriation from the Department of Budget and Management (DBM). However, the DBM refused because the COA had not yet submitted a report on the expenditures relative to the earlier amount released to it. And, pursuant to the "no report, no release" policy of the DBM, COA is not entitled to any further releases in the meantime. COA counters that such a policy contravenes the guaranty of fiscal autonomy granted by the Constitution. Is COA entitled to receive the rest of its appropriations even without complying with the DBM policy? (4%)

SUGGESTED ANSWER:

The Commission on Audit is entitled to receive the rest of its appropriations even without complying with the policy of the Department of Budget and Management. Section 5, Article IX-A of the Constitution provides that its approved annual appropriations shall be automatically and regularly released. The Secretary of Budget and Management cannot make the release of the appropriations subject to the submission of reports (*Civil Service Commission vs. Department of Budget and Management*, 464 SCRA 116 [2005]).

Prohibition on Holding Another Office (2015)

The President appoints Emilio Melchor as Chairperson of the Civil Service Commission. Upon confirmation of Melchor's appointment, the President issues an executive order including him as Ex-Officio member of the Board of Trustees of the Government Service Insurance System (GSIS), Employees Compensation Commission (ECC), and the Board of Directors of the Philippine Health Insurance Corporation (PHILHEALTH). Allegedly, this is based on the Administrative Code of 1997 (E.O. No. 292), particularly Section 14, Chapter 3, Title I-A, Book V. This provision reads: "The chairman of the CSC shall be a member of the Board of Directors of other governing bodies of government entities whose functions affect the career development, employment, status, rights, privileges, and welfare of government officials and employees ... " A taxpayer questions the designation of Melchor as ex-officio member of the said corporations before the Supreme Court based on two (2) grounds, to wit: (1) it violates the constitutional prohibition on members of the Constitutional Commissions to hold any other office or employment during his tenure; and (2) it impairs the independence of the CSC. Will the petition prosper? Explain. (4%)

SUGGESTED ANSWER:

(1) The Chairperson Emilio Melchor's holding ex-officio of the other offices under the Executive Order mentioned in the problem would constitute a clear violation of the special prohibition in Section 2 of Article IX-A of the Constitution, which strictly provides that he shall, during his tenure, not hold any other office or employment. Said constitutional provision does not make any distinction among the offices he may not hold, or as to whether or

not the functions attached to said offices would be primarily related to his duties as Chairperson of the Civil Service Commission and therefore may be held in an ex-officio capacity.

The GSIS, PHILHEALTH, ECC and HDMF are vested by their respective charters with various powers and functions to carry out the purposes for which they were created. While powers and functions associated with appointments, compensation and benefits affect the career development, employment status, rights, privileges and welfare of government officials and employees, the GSIS, PHILHEALTH, ECC, and HDMF are also tasked to perform other corporate powers and functions that are not personnel-related. All of these powers and functions, whether personnel-related or not, are carried out and exercised by the respective Boards of the GSIS, PHILHEALTH, ECC and HDMF, he may exercise these powers and functions, which are not anymore derived from his position as CSC Chairman, such as imposing interest on unpaid or unremitted contributions issuing guidelines for the accreditation of health care providers, or approving restructuring proposals in the payment of unpaid loan amortizations.

The CSC Chairman's designation as member of the governing boards of the GSIS, PHILHEALTH, ECC and HDMF entitles him to receive per diem, a form of additional compensation that is disallowed by the concept of an ex officio position by virtue of its clear contravention of the proscription set by Section 2, Article IX-A of the 1987 Constitution. This situation goes against the principle behind an ex officio position, and must, therefore, be held unconstitutional.

(2) Apart from violating the prohibition against holding multiple offices, Melchor's designation as member of the governing Boards of the GSIS, PHILHEALTH, ECC and HDMF impairs the independence of the CSC. Under Section 17, Article VII of the Constitution, the President exercises control over all government offices in the Executive Branch. An office that is legally not under the control of the President is not part of the Executive Branch. (*Funa v. The Chairman, Civil Service Commission*, G.R. No. November 25, 2014 11, 2010, 612 SCRA 308).

Civil Service Commission

Civil Service Commission vs. COA (2004)

Former Governor PP of ADS Province had dismissed several employees to scale down the operations of his Office. The employees complained to the Merit Systems Protection Board, which ruled that the Civil Service rules were violated when the employees were dismissed. The Civil Service Commission (CSC) affirmed the MSPB decision, and ordered ADS to reinstate the employees with full backwages. ADS did not appeal and the order became final. Instead of complying immediately, BOP, the incumbent Governor of ADS, referred the matter to the Commission on Audit (COA), which ruled that the

amounts due are the personal liabilities of the former Governor who dismissed the employees in bad faith. Thus, ADS refused to pay. The final CSC decision, however, did not find the former Governor in bad faith. The former Governor was likewise not heard on the question of his liability. Is ADS' refusal justified? Can COA disallow the payment of backwages by ADS to the dismissed employees due under a final CSC decision? Decide and reason briefly. (5%)

SUGGESTED ANSWER:

A. The refusal of ADS is not justified, and the Commission on Audit cannot disallow the payment of backwages by ADS to the dismissed employee. The Commission on Audit cannot make a ruling that it is the former governor who should be personally liable, since the former governor was not given the opportunity to be heard. In addition, the Commission on Audit cannot set aside a final decision of the Civil Service Commission. The payment of backwages to illegally dismissed government employee is not an irregular, unnecessary, excessive, extravagant or unconscionable expenditure. (*Uy v. Commission on Audit*, 328 SCRA 607 [2000]).

Jurisdiction over the GOCCs (2003)

No VII - A corporation, a holder of a certificate of registration issued by the Securities and Exchange Commission, is owned and controlled by the Republic of the Philippines. The Civil Service Commission (CSC), in a memorandum-order, directs the corporation to comply with Civil Service Rules in the appointment of all of its officers and employees. The memorandum-order of the CSC is assailed by the corporation, as well as by its officers and employees, before the court. How should the case be resolved?

SUGGESTED ANSWER:

The memorandum-order of the Civil Service Commission should be declared void. As held in *Gamogamo v. PNO Shipping and Transit Corporation*. 381 SCRA 742 (2002). Under Article IX-B, Section 2(1) of the 1987 Constitution government-owned or controlled corporations organized under the Corporation Code are not covered by the Civil Service Law but by the Labor Code, because only government-owned or controlled corporations with original charters are covered by the Civil Service.

Appointment; Relatives (2008)

The Mayor of San Jose City appointed his wife, Amelia, as City Treasurer from among three (3) employees of the city considered for the said position. Prior to said promotion, Amelia had been an Assistant City Treasurer for ten (10) years, that is, even before she married the City Mayor. Should the Civil Service Commission approve the promotional appointment of Amelia? Why or why not?

SUGGESTED ANSWER:

The Civil Service Commission should disapprove the promotional appointment if at the time of appointment Amelia is already married to the appointing authority, the Mayor, because it violates the rule on nepotism which prohibits the appointment of relatives by consanguinity or affinity within the third degree of the appointing authority in public office. This is to ensure that entrance to public

office should be based on merits and fitness. The rule on nepotism also extends to promotional appointment.

However, if at the time of appoint the Mayor and Amelia is not yet married and thereafter married each other, the promotional appointment should remain as valid appointment.

Appointment; Relatives (2010)

TRUE OR FALSE.

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

SUGGESTED ANSWER:

FALSE. The Rule on Nepotism extends to designation, and promotional appointment in favor of a relative (Laurel vs. Civil Service Commission, 203 SCRA 195 [1991]).

De Facto Officer (2010)

a. A person who occupies an office that is defectively created is a de facto officer.

SUGGESTED ANSWER:

FALSE. A de facto officer occupies a valid existing office however under a color of title of the office. For him to be a de facto officer, the office must be validly created. (Tuanda vs. Sandiganbayan, 249 SCRA 342 [1995]).

ALTERNATIVE ANSWER:

The statement that a person who occupies in office that is defectively created is a de facto officer is TRUE. The person appointed or elected pursuant to an unconstitutional law is a de facto officer, before the law is declared to be such. (State vs. Carroll, 38 Conn.[1871]).

De Facto Officer; Salary Entitlement (2009)

TRUE OR FALSE.

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

SUGGESTED ANSWER:

TRUE. A de facto public officer discharges his public duties under a color of title to the office, therefore, by right entitled to salary (Civil Liberties vs. Executive Secretary, 194 SCRA 317).

Discretionary Duty of a Public Officer (2010)

TRUE OR FALSE.

c. A discretionary duty of a public officer is never delegable.

SUGGESTED ANSWER:

The statement that a discretionary duty of a public officer can never be delegated is FALSE. It can be delegated if the delegation is authorized (Mechem, A Treatise on the Law on Public Offices and Officers, p.368).

ALTERNATIVE ANSWER:

TRUE. Discretionary duty of a public officer cannot be delegated.

Oath or Affirmation (2007)

TRUE OR FALSE.

b. All public officers and employees shall take an oath to uphold and defend the Constitution.

SUGGESTED ANSWER:

The statement is true. This is expressly provided for in Section 4, Article IX-B of the 1987 Constitution.

ALTERNATIVE ANSWER:

The statement is true as under Section 40 of the Administrative Code of 1987 (Executive Order No. 292), it is provided that "all public officers and employees of the government, including every member of the armed forces shall, before entering upon discharge of his duties, take an oath or affirmation to uphold and defend the Constitution.

ALTERNATIVE ANSWER:

The statement is false. The Constitution states: "All public officers and employees shall take an oath or affirmation to uphold and defend this Constitution" (1987 Constitution, Art. IX-B, sec.4).

Security of Tenure (2005)

(3) Ricardo was elected Dean of the College of Education in a State University for a term of five (5) years unless sooner terminated. Many were not pleased with his performance. To appease those critical of him, the President created a new position, that of Special Assistant to the President with the rank of Dean, without reduction in salary, and appointed Ricardo to said position in the interest of the service. Contemporaneously, the University President appointed Santos as Acting Dean in place of Ricardo. (5%)

(a) Does the phrase "unless sooner terminated" mean that the position of Ricardo is terminable at will?

ALTERNATIVE ANSWER:

No, the term "unless sooner terminated" could not mean that his position is terminable at will. Security of tenure means that dismissal should only be for cause, as provided by law and not otherwise. (Palmera v. CSC, G.R. No. 110168, August 4, 1994)

ALTERNATIVE ANSWER:

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

(b) Was Ricardo removed from his position as Dean of the College of Education or merely transferred to the position of Special Assistant to the President? Explain.

SUGGESTED ANSWER:

Ricardo was removed from his position as dean. Having an appointment with a fixed term, he cannot, without his consent, be transferred before the end of his term. He cannot be asked to give up his post nor appointed as dean of another college, much less transferred to another position even if it be dignified with a dean's rank. More than this, the transfer was a demotion because deanship in a university, being an academic position which requires learning, ability and scholarship, is more exalted than that of a special assistant who merely assists the President, as the title indicates. The special assistant does not make authoritative decisions unlike the dean who does so in his own name and responsibility. The position of dean is created by law, while the special

assistant is not so provided by law; it was a creation of the university president. (Sta. Maria v. Lopez, G.R. No. L-30773, February 18, 1970)

Security of Tenure (2010)

TRUE OR FALSE.

d. Acquisition of civil service eligibility during tenure of a temporary appointee does not automatically translate to a permanent appointment.

SUGGESTED ANSWER:

TRUE. There is a need for another appointment for permanency (Province of Camarines Sur vs. Court of Appeals, 246 SCRA 281 [1995]).

Double Compensation (2015)

Professor Masipag who holds a plantilla or regular item in the University of the Philippines (UP) is appointed as an Executive Assistant in the Court of Appeals (CA). The professor is considered only on leave of absence in UP while he reports for work at the CA which shall pay him the salary of the Executive Assistant. The appointment to the CA position was questioned, but Professor Masipag countered that he will not collect the salary for both positions; hence, he can not be accused of receiving double compensation. Is the argument of the professor valid? Explain. (4%)

SUGGESTED ANSWER:

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

Commission on Elections

Judicial Review of Decisions (2001)

No XVI - In an election protest involving the position of Governor of the Province of Laguna between "A", the protestee, and "B", the protestant, the First Division of the COMELEC rendered a decision upholding B's protest. Can "A" file a petition for certiorari with the Supreme Court under Rule 65 of the Rules of Court, from the decision of the COMELEC First Division? If yes. Why? If not what procedural step must he undertake first? (5%)

SUGGESTED ANSWER:

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

Inclusion/Exclusion; Jurisdiction (2001)

Let us suppose that Congress enacted a law which amended the Omnibus Election Code (particularly Sections 138, 139, 142, 143) by vesting , in the COMELEC the jurisdiction over inclusion and exclusion cases filed by voters, instead of in the courts (MTC, then RTC). Is the law valid or not, and why? (5%)

SUGGESTED ANSWER:

The law granting the COMELEC jurisdiction over inclusion and exclusion cases is unconstitutional. Under Section 2(3), Article IX-C of the Constitution, the COMELEC cannot decide the right to vote, which refers to the inclusion and exclusion of voters. Under Section 2(6), Article IX-C of the Constitution, it can only file petitions in court for inclusion or exclusion of voters.

Grant of Pardon to Election Offenses (2010)

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

SUGGESTED ANSWER:

Mayor Galicia can run again for an elective office but not immediately. Under Section 40 of the Local Government Code, he cannot run for an elective office within two (2) years after serving sentence. Under Section 12 of the Omnibus Election Code, he can run for an elective national office after the expiration of five (5) years from his service of sentence. The pardon granted to him is invalid. The offense involved a violation of the Omnibus Election Code and the pardon was granted without the favorable recommendation of the Commission on Elections. (Section 5, Article IX-C of the Constitution).

ALTERNATIVE ANSWER:

No. Galicia is not eligible to run for an elective position because the executive clemency is not valid and effective because it was granted with constitutional infirmity. The Constitution requires recommendation from the COMELEC before the President may grant executive clemency for offenses violating election laws.

Prohibition on Reappointment (2015)

The President appointed Dexter I. Ty as Chairperson of the COMELEC on June 14, 2011 for a term of seven (7) years pursuant to the 1987 Constitution. His term of office started on June 2, 2011 to end on June 2, 2018. Subsequently, the President appointed Ms. Marikit as the third member of the COMELEC for a term of seven (7) years starting June 2, 2014 until June 2, 2021. On June 2, 2015, Chairperson Ty retired optionally after having served the government for thirty (30) years. The President then appointed Commissioner Marikit as COMELEC Chairperson. The Commission on Appointments confirmed her appointment. The appointment papers expressly indicate that Marikit will serve as COMELEC Chairperson "until the expiration of the original term of her office as COMELEC

Commissioner or on June 2, 2021." Matalino, a tax payer, files a petition for certiorari before the Supreme Court asserting that the appointment of Marikit as COMELEC Chairperson is unconstitutional for the following reasons: (1) The appointment of Marikit as COMELEC Chairperson constituted a reappointment which is proscribed by Section 1 (2), Article IX of the 1987 Constitution; and (2) the term of office expressly stated in the appointment papers of Marikit likewise contravenes the aforementioned constitutional provision. Will the constitutional challenge succeed? Explain. (4%)

SUGGESTED ANSWER:

The argument of Matalino that the appointment of Commissioner Marikit as Chairman constituted a reappointment, which is prohibited by the Constitution is not tenable. When he was appointed as Chairman, Commissioner Marikit had not yet fully served his term. What the Constitution prohibits was his reappointment as Commissioner after serving his seven-year term. His appointment as Chairman was a promotional appointment and was not covered by the prohibition against reappointment. (2) The limitation of the term of Commissioner Marikit as Chairman until the expiration of the original term of her office as Commissioner on June 2, 2021 is valid until 2018, that is, the unexpired portion of the last Chairman's term but invalid if until 2021 as it exceeds the limitation. It is in accordance with the principle that a promotional appointment is allowed provided that the aggregate period of the term of the appointee will not exceed seven years and that the rotational scheme of staggering the terms of the commission membership is maintained. (Funa v. Villar, 670 SCRA 579 [2012]).

Commission on Audit

COA; Jurisdiction (2001)

The Philippine National Bank was then one of the leading government-owned banks and it was under the audit jurisdiction of the Commission on Audit (COA). A few years ago, it was privatized. What is the effect, if any, of the privatization of PNB on the audit Jurisdiction of the COA? (5%)

SUGGESTED ANSWER:

In accordance with the ruling in *Philippine Airlines vs. Commission on Audit*, 245 SCRA 39,(1995), since the Philippine National Bank is no longer owned by the Government, the Commission on Audit no longer has jurisdiction to audit it as an institution. Under Section 2(2), Article IX-D of the Constitution, it is government-owned or controlled corporations and their subsidiaries which are subject to audit by the Commission on Audit. However, in accordance with Section 2(1), Article IX-D of the Constitution, the Commission on Audit can audit the Philippine National Bank with respect to its accounts because the Government still has equity in it.

BILL OF RIGHTS

Fundamental Powers of the State; Police Power; Abatement of Nuisance (2004)

(9-b) The City of San Rafael passed an ordinance authorizing the City Mayor, assisted by the police, to remove all advertising signs displayed or exposed to public view in the main city street, for being offensive to sight or otherwise a nuisance. AM, whose advertising agency owns and rents out many of the billboards ordered removed by the City Mayor, claims that the City should pay for the destroyed billboards at their current market value since the City has appropriated them for the public purpose of city beautification. The Mayor refuses to pay, so AM is suing the City and the Mayor for damages arising from the taking of his property without due process nor just compensation. Will AM prosper? Reason briefly. (5%)

FIRST ALTERNATIVE ANSWER:

The suit of AM will not prosper. The removal of the billboards is not an exercise of the power of eminent domain but of police power (*Churchill v. Rafferty*, 32 Phil. 580 [1915]- The abatement of a nuisance in the exercise of police power does not constitute taking of property and does not entitle the owner of the property involved to compensation. (*Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 175 SCRA 343 [1989]).

SECOND ALTERNATIVE ANSWER:

The removal of the billboards for the purpose of beautification permanently deprived AM of the right to use his property and amounts to its taking. Consequently, he should be paid just compensation. (*People v. Fajardo*, 104 Phil. 443 [1958]).

Fundamental Powers of the State; Police Power; Abatement of Nuisance (2010)

ABC operates an industrial waste processing plant within Laoag City. Occasionally, whenever fluid substances are released through a nearby creek, obnoxious odor is emitted causing dizziness among residents in Barangay La Paz. On complaint of the Punong Barangay, the City Mayor wrote ABC demanding that it abate the nuisance. This was ignored. An invitation to attend a hearing called by the Sangguniang Panlungsod was also declined by the president of ABC. The city government thereupon issued a cease and desist order to stop the operations of plant, prompting ABC to file a petition for injunction before the RTC, arguing that the city government did not have any power to abate the alleged nuisance. Decide with reasons.(3%)

SUGGESTED ANSWER:

The city government has no power to stop the operations of the plant. Since its operations is not a nuisance per se, the city government cannot abate it extrajudicially. A suit must be filed in court. (*AC Enterprises, Inc. vs. Frabelle Properties Corporation*, 506 SCRA 625 [2006]).

ALTERNATIVE ANSWER:

Petition will not prosper. The obnoxious odor emitted from the processing plant is a nuisance per se which can be summarily abated by the city government. Even if we consider it a nuisance per accidens, the cease and desist

order to stop the operations of the plant is still valid because there had been compliance with due process, that is, the opportunity to be heard has been given.

Fundamental Powers of the State; Police Power; Zoning Ordinance vs. Non-Impairment of Contracts (2001)

In the deeds of sale to, and in the land titles of homeowners of a residential subdivision in Pasig City, there are restrictions annotated therein to the effect that only residential houses or structures may be built or constructed on the lots. However, the City Council of Pasig enacted an ordinance amending the existing zoning ordinance by changing the zone classification in that place from purely residential to commercial. "A", a lot owner, sold his lot to a banking firm and the latter started constructing a commercial building on the lot to house a bank inside the subdivision. The subdivision owner and the homeowners' association filed a case in court to stop the construction of the building for banking business purposes and to respect the restrictions embodied in the deed of sale by the subdivision developer to the lot owners, as well as the annotation in the titles. If you were the Judge, how would you resolve the case? (5%)

SUGGESTED ANSWER:

If I were the judge, I would dismiss the case. As held in *Ortigas and Company Limited Partnership vs. FEAT Bank and Trust Company*, 94 SCRA 633 (1979), the zoning ordinance is a valid exercise of police power and prevails over the contractual stipulation restricting the use of the lot to residential purposes.

Fundamental Powers of the State; Police Power; Prohibition of Gambling (2009)

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

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

SUGGESTED ANSWER:

Yes. although the Congress has the plenary power to enact law and interfere with the personal liberty and property in order to promote the general welfare, the exercise of police power is subject to 2 test: 1. Lawful subject – refers to the interest of the General Public requiring the interference of the State and 2. Lawful means – refers to the reasonable means employed necessary for the accomplishment of its objective and not duly oppressive upon individuals.

Basis of the exercise of police power:

- (1) *Sic utere tuo et alienum non laedas* – use your property so that you do not injure that of another
- (2) *Salus populi est suprema lex* – the welfare of the people is the highest law

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

SUGGESTED ANSWER:

NO. Because the lawful means is not reasonably necessary for the accomplishment of its objective. It adds more burden upon individuals.

ALTERNATIVE ANSWER:

A tax of 30% on winnings from gambling does not violate due process as to the reasonableness of the rate of the tax imposed. Taxes on non-useful enterprises may be increased to restrain the number of persons who might otherwise engage in it (*Ermata-Malate Hotel and Motel Operators Association, Inc. vs. City Mayor of Manila*, 20 SCRA 849 [1967]). Taxes may be imposed for the attainment of the objective of police power (*Lutz vs. Araneta*, 98 Phil. 148 [1955]).

Fundamental Powers of the State; Police Power; Presentability of Policemen (2008)

The Philippine National Police (PNP) issued a circular to all its members directed at the style and length of male police officers' hair, sideburns and moustaches, as well as the size of their waistlines. It prohibits beards, goatees, and waistlines over 38 inches, except for medical reason. Some police officers questioned the validity of the circular, claiming that it violated their right to liberty under the Constitution. Resolve the controversy. 6%

SUGGESTED ANSWER:

Although the National Police is civilian in character, it partakes of some of the characteristics of military life, thus permitting the imposition of reasonable measures for discipline, uniformity in behavior and presentableness. The circular does not go beyond what is reasonable and therefore passes the test of due process (*Gudani vs. Senga*, G.R. No. 170165, Aug. 15, 2006).

In *Kelly vs. Johnson*, 425 US 238 (1976), the US Supreme Court said that the regulations of personal appearance of policemen could be justified so long as there was a rational connection between the regulation and the promotional safety of persons and property. The requisite connection was present since the government had a legitimate interest in policemen's appearances so that they would: (1) be readily recognizable to the public and (2) feel a sense of "esprit de corps" that comes from being similar.

ALTERNATIVE ANSWER:

The circular is a valid exercise of police power. The rule-making power is vested in congress however, it can be delegated to administrative agencies pursuant to a valid delegation requiring the concurrence of the following:

1. Made pursuant of law
2. Issued within the scope and purview of the law
3. Promulgated in accordance with the prescribed procedure

4. it must be reasonable

It is the policy of the state to secure peace and order through the PNP. Therefore, it is reasonable to require them to be physically fit in order to secure peace and order in the community. This is to boost the confidence of the public that they are not lazy and they are doing their job with dedication.

Fundamental Powers of the State; Police Powers; Confiscation of Property (2014)

The National Building Code and its implementing rules provide, *inter alia*, that operators of shopping centers and malls should provide parking and loading spaces, in accordance with a prescribed ratio. The Solicitor General, heeding the call of the public for the provision of free parking spaces in malls, filed a case to compel said business concerns to discontinue their practice of collecting parking fees. The mall owners and operators oppose, saying that this is an invalid taking of their property, thus a violation of due process. The Solicitor General justifies it, however, claiming that it is a valid exercise of police power. Could the mall owners and operators be validly compelled to provide free parking to their customers? (4%)

SUGGESTED ANSWER:

No, the mall owners and operators cannot be validly compelled to provide free parking to their customers, because requiring them to provide free parking space to their customers is beyond the scope of police powers. It amounts to confiscation of property (*Office of the Solicitor General v. Ayala Land, Inc.*, 600 SCRA 617 [2009]).

Fundamental Powers of the State; Power of Eminent Domain; Immunity from Suit (2001)

The Republic of the Philippines, through the Department of Public Works and Highways (DPWH), constructed a new highway linking Metro Manila and Quezon province, and which major thoroughfare traversed the land owned by Mang Pandoy. The government neither filed any expropriation proceedings nor paid any compensation to Mang Pandoy for the land thus taken and used as a public road. Mang Pandoy filed a suit against the government to compel payment for the value of his land. The DPWH filed a motion to dismiss the case on the ground that the State is immune from suit. Mang Pandoy filed an opposition. Resolve the motion. (5%)

SUGGESTED ANSWER:

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

Fundamental Powers of the State; Power of Eminent Domain; Policy of "All or None" (2000)

No VIII. Madlangbayan is the owner of a 500 square meter lot which was the birthplace of the founder of a religious sect who admittedly played an important role in Philippine history and culture. The National Historical

Commission (NHC) passed a resolution declaring it a national landmark and on its recommendation the lot was subjected to expropriation proceedings. This was opposed by Madlangbayan on the following grounds: a) that the lot is not a vast tract; b) that those to be benefited by the expropriation would only be the members of the religious sect of its founder, and c) that the NHC has not initiated the expropriation of birthplaces of other more deserving historical personalities. Resolve the opposition raised by Madlangbayan. (5%)

SUGGESTED ANSWER:

The arguments of Madlangbayan are not meritorious. According to *Manosca v. Court of Appeals*, 252 SCRA 412 (1996), the power of eminent domain is not confined to expropriation of vast tracts of the land. The expropriation of the lot to preserve it as the birthplace of the founder of the religious sect because of his role in Philippine history and culture is for a public purpose, because public use is no longer restricted to the traditional concept. The fact that the expropriation will benefit the members of the religious sect is merely incidental. The fact that other birthplaces have not been expropriated is likewise not a valid basis for opposing the expropriation. As held in *J.M. Tuason and Company, Inc. v. Land Tenure Administration*, 31 SCRA 413 (1970), the expropriating authority is not required to adhere to the policy of "all or none".

Fundamental Powers of the State; Power of Eminent Domain; Power to Exercise (2005)

The Sangguniang Bayan of the Municipality of Santa, Ilocos Sur passed Resolution No. 1 authorizing its Mayor to initiate a petition for the expropriation of a lot owned by Christina as site for its municipal sports center. This was approved by the Mayor. However, the Sangguniang Panlalawigan of Ilocos Sur disapproved the Resolution as there might still be other available lots in Santa for a sports center. Nonetheless, the Municipality of Santa, through its Mayor, filed a complaint for eminent domain. Christina opposed this on the following grounds:

1. the Municipality of Santa has no power to expropriate;
2. Resolution No. 1 has been voided since the Sangguniang Panlalawigan disapproved it for being arbitrary; and
3. the Municipality of Santa has other and better lots for that purpose. Resolve the case with reasons. (5%)

SUGGESTED ANSWERS:

- a) Under Section 19 of R.A. No. 7160, the power of eminent domain is explicitly granted to the municipality, but must be exercised through an ordinance rather than through a resolution. (*Municipality of Paranaque v. V.M. Realty Corp.*, G.R. No. 127820, July 20, 1998)
- b) The Sangguniang Panlalawigan of Ilocos Sur was without the authority to disapprove Resolution No. 1 as the municipality clearly has the power to exercise the right of eminent domain and its Sangguniang Bayan the capacity to promulgate said resolution. The only ground upon which a provincial board may declare any municipal resolution, ordinance or order invalid is when such resolution, ordinance or order is beyond the powers conferred upon the council or president making the same.

Such is not the situation in this case. (Moday v. Court of Appeals, G.R. No. 107916, February 20, 1997)

c) The question of whether there is genuine necessity for the expropriation of Christina's lot or whether the municipality has other and better lots for the purpose is a matter that will have to be resolved by the Court upon presentation of evidence by the parties to the case.

Fundamental Powers of the State; Power of Eminent Domain; Public Purpose (2008)

Congress passed a law authorizing the National Housing Authority (NHA) to expropriate or acquire private property for the redevelopment of slum areas, as well as to lease or resell the property to private developers to carry out the redevelopment plan. Pursuant to the law, the NHA acquired all properties within a targeted badly blighted area in San Nicolas, Manila except a well-maintained drug and convenience store that poses no blight or health problem itself. Thereafter, NHA initiated expropriation proceedings against the store owner who protested that his property could not be taken because it is not residential or slum housing. He also contended that his property is being condemned for a private purpose, not a public one, noting the NHA's sale of the entire area except his property to a private party. If you were the judge, how would you decide the case? (6%).

SUGGESTED ANSWER:

The power of the NHA is a delegated power of eminent domain, strictly construed against its holder and limited to the public purpose of redevelopment of slum areas. The expropriation of a property already previously excluded for not posing a blight of health problem lacks public purpose and exceeds the delegated power of the NHA.

ALTERNATIVE ANSWER:

The power of expropriation cannot be used to benefit private parties (Pascual vs. Secretary, G.R. No. L-10405, Dec. 29, 1960.) In this case, the main beneficiary would be the private realty company. The taking of private property and then transferring it to private persons under the guise of public use is not within the power of eminent domain (Heirs of Moreno vs. Mactan Airport, G.R. No. 156273, August 9, 2005).

Fundamental Powers of the State; Power of Eminent Domain; Socialized Housing (2009)

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

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

SUGGESTED ANSWER:

The following are the defenses that I will set up:

- a. No prior valid and definite offer was made
- b. The expropriation is for socialized housing therefore it must comply with the order of preference of the land to be acquired and the mode of acquisition. Under the law regarding expropriation for socialized housing, private lands is the last in line and the expropriation proceeding is last resorted to if all other modes of acquisition has already been exhausted.

Order of expropriation for socialized housing:

1. Government lands
2. Alienable lands of the public domain
3. Unregistered, abandoned or idle lands
4. Lands within the declared areas for priority development, zonal improvement program sites, slum improvement and resettlement sites which have not yet been acquired
5. BLISS sites which have not yet been acquired

Privately owned lands - The mode of expropriation is subject to conditions:

- a. It shall be resorted to only when the other modes of acquisition have been exhausted; and
- b. Parcels owned by small property owners are exempt from such acquisition. Small property owners are owners of residential lands with an area not more than 300 sq.m. in highly urbanized cities and not more than 800 sq.m. in other urban areas; and they do not own residential property other than the same.

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

SUGGESTED ANSWER:

Yes. As a general rule, non-payment of just compensation does not entitle the landowner to recover possession of the expropriated lots. Instead legal interest on just compensation should be paid (National Power Corporation vs. Henson, 300 SCRA 751 [1998]). However, in cases where the government failed to pay the just compensation within 5 years from the FINALITY OF THE JUDGMENT in the expropriation proceedings, the owners concerned shall have the right to recover possession of their property (Republic vs. Lim, 462 SCRA 265 [2005]).

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

SUGGESTED ANSWER:

It depends. The property owner's right to repurchase the property depends upon the character of the title acquired

by the expropriator, ie., if the land is expropriated for a particular purpose with the condition that when that purpose is ended or abandoned, the property shall revert to the former owner, then the former owner can reacquire the property (*Heirs of Timoteo Moreno vs. Mactan-Cebu International Airport Authority*, 413 SCRA 502 [2003]).

But if there is no such condition the owner cannot repurchase because the judgment in the expropriation case grants title to the lot in fee simple to the REPUBLIC.

Fundamental Powers of the State; Power of Eminent Domain; Valid and Definite Offer (2010)

a. A valid and definite offer to buy a property is a prerequisite to expropriation initiated by a local government unit.

SUGGESTED ANSWER:

TRUE. Under the Local Government Code, there must be a prior valid and definite offer before expropriation proceeding can be initiated (Section 19, Local Government Code).

Fundamental Powers of the State; Power of Eminent Domain; 'Reverse' Proceeding (2014)

The *National Power and Grid Corporation (NPGC)*, a government entity involved in power generation distribution, had its transmission lines traverse some fields belonging to *Farmerjoe*. *NPGC* did so without instituting any expropriation proceedings. *Farmerjoe*, not knowing any better, did not immediately press his claim for payment until after ten years later when a son of his took up Law and told him that he had a right to claim compensation. That was then the only time that *Farmerjoe* earnestly demanded payment. When the *NPGC* ignored him, he instituted a case for payment of just compensation. In defense, *NPGC* pointed out that the claim had already prescribed since under its Charter it is clearly provided that "actions for damages must be filed within five years after the rights of way, transmission lines, substations, plants or other facilities shall have been established and that after said period, no suit shall be brought to question the said rights of way, transmission lines, substations, plants or other facilities." If you were the lawyer of *Farmerjoe*, how would you protect and vindicate the rights of your client? (4%)

SUGGESTED ANSWER:

Farmerjoe's demand for payment is justified and cannot be considered as prescribed. His demand for payment is an action for the payment of just compensation and not an action for damages as provided in the Charter of the National Power and Grid Corporation. It partakes of the nature of a reverse eminent domain proceeding (or inverse condemnation proceeding) wherein claims for just compensation for property taken can be made and pursued (*National Power Corporation v. Vda. De Capin*, 569 SCRA 648 [2008]; *National Power Corporation v. Heirs of Sangkay*, 656 SCRA 60 [2011]).

ALTERNATIVE ANSWER:

I will claim that since National Power and Grid Corporation took the property traversing the fields of *Farmerjoe* without first acquiring title through

expropriation or negotiated sale, his action to recover just compensation is imprescriptible (*Republic v. Court of Appeals*, 454 SCRA 510 [2005]).

Due Process; Permit to Carry Firearm Outside Residence (2006)

3. Does a Permit to Carry Firearm Outside Residence (PTCFOR) constitute a property right protected by the Constitution? (2.5%)

SUGGESTED ANSWER:

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

Due Process; PPA-Pilots (2001)

The Philippine Ports Authority (PPA) General Manager issued an administrative order to the effect that all existing regular appointments to harbor pilot positions shall remain valid only up to December 31 of the current year and that henceforth all appointments to harbor pilot positions shall be only for a term of one year from date of effectivity, subject to yearly renewal or cancellation by the PPA after conduct of a rigid evaluation of performance. Pilotage as a profession may be practiced only by duly licensed individuals, who have to pass five government professional examinations. The Harbor Pilot Association challenged the validity of said administrative order arguing that it violated the harbor pilots' right to exercise their profession and their right to due process of law and that the said administrative order was issued without prior notice and hearing. The PPA countered that the administrative order was valid as it was issued in the exercise of its administrative control and supervision over harbor pilots under PPA's legislative charter, and that in issuing the order as a rule or regulation, it was performing its executive or legislative, and not a quasi-judicial function. Due process of law is classified into two kinds, namely, procedural due process and substantive due process of law. Was there, or, was there no violation of the harbor pilots' right to exercise their profession and their right to due process of law? (5%)

SUGGESTED ANSWER:

The right of the harbor pilots to due process was violated. Am held in *Corona vs. United Harbor Pilots Association of the Philippines*, 283 SCRA 31 (1997) pilotage as a profession is a property right protected by the guarantee of due process. The pre-evaluation cancellation of the licenses of the harbor pilots every year is unreasonable and violated their right to substantive due process. The renewal is dependent on the evaluation after the licenses have been cancelled. The issuance of the administrative order also violated procedural due process, since no prior public hearing was conducted. As hold in *Commissioner of Internal Revenue vs. Court of Appeals*, 261 SCRA 237 (1998), *when a regulation is being issued under the quasi-legislative authority of an administrative*

agency, the requirements of notice, hearing and publication must be observed.

Due Process; Public School Teachers (2002)

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

SUGGESTED ANSWER:

The teachers were deprived of due process of law. Under Section 9 of the Magna Carta for Public School Teachers, one of the members of the committee must be a teacher who is a representative of the local, or in its absence, any existing provincial or national organization of teachers. According to *Fabella v. Court of Appeals*, 283 SCRA 256 (1997), to be considered the authorized representative of such organization, the teacher must be chosen by the organization itself and not by the Secretary of Education, Culture and Sports. Since in administrative proceedings, due process requires that the tribunal be vested with jurisdiction and be so constituted as to afford a person charged administratively a reasonable guarantee of impartiality, if the teacher who is a member of the committee was not appointed in accordance with the law, any proceeding before it is tainted with deprivation of procedural due process.

Due Process; Substantive (2003)

2003 No XII - The municipal council of the municipality of Guagua, Pampanga, passed an ordinance penalizing any person or entity engaged in the business of selling tickets to movies or other public exhibitions, games or performances which would charge children between 7 and 12 years of age the full price of admission tickets instead of only one-half of the amount thereof. Would you hold the ordinance a valid exercise of legislative power by the municipality? Why?

SUGGESTED ANSWER:

The ordinance is void. As held in *Balacuit v. Court of First Instance of Agusan del Norte*, 163 SCRA 182 [1988], the ordinance is unreasonable. It deprives the sellers of the tickets of their property without due process. A ticket is a property right and may be sold for such price as the owner of it can obtain. There is nothing pernicious in charging children the same price as adults.

Equal Protection; Police Power (2000)

Undaunted by his three failures in the National Medical Admission Test (NMAT), Cruz applied to take it again but he was refused because of an order of the Department of Education, Culture and Sports (DECS) disallowing flunkers from taking the test a fourth time. Cruz filed suit assailing this rule raising the constitutional grounds of accessible quality education, academic freedom and equal protection. The government opposes this, upholding the constitutionality of the rule on the ground of exercise of police power. Decide the case discussing the grounds raised. (5%)

SUGGESTED ANSWER:

As held in *Department of Education, Culture and Sports v. San Diego*, 180 SCRA 533 (1989), the rule is a valid exercise of police power to ensure that those admitted to the medical profession are qualified. The arguments of Cruz are not meritorious. The right to quality education and academic freedom are not absolute. Under Section 5(3), Article XIV of the Constitution, the right to choose a profession is subject to fair, reasonable and equitable admission and academic requirements. The rule does not violate equal protection. There is a substantial distinction between medical students and other students. Unlike other professions, the medical profession directly affects the lives of the people.

Equal Protection; Responsible Parenthood (2007)

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

(a) Is the Executive Order in any way constitutionally infirm? Explain.

SUGGESTED ANSWER:

The Executive Order is constitutionally infirm. Under the 1987 Constitution, the State shall defend the right of spouses to establish a family in accordance with their religious convictions and the demands of responsible parenthood. (Art. XV, Sec. 3[1]). By upholding natural family planning and prohibiting city hospitals from prescribing artificial methods of contraception, the Mayor is imposing his religious beliefs on spouses who rely on the services of city hospitals. This clearly violates the above section of the Constitution.

Moreover, the 1987 Constitution states that no person shall be denied the equal protection of the laws. (Art. III, Sec. 1). The Constitution also provides that the state shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living and an improved

quality of life for all. (Art. II, Section 9). The loss of access of poor city women to family planning programs is discriminatory and creates suspect classification. It also goes against the demands of social justice as enshrined in the immediately preceding provision.

ALTERNATIVE ANSWER:

The Executive Order is constitutionally infirm. It constitutes an invalid exercise of police power and violates substantive due process by depriving people of the means to control their reproductive processes. Moreover, since the national government has not outlawed the use of artificial methods of contraception, then it would be against national policies. In addition, the Mayor cannot issue such Executive Order without an underlying ordinance. (Moday v. Court of Appeals, G.R. No. 107916, February 20, 1997) Besides, the action of the Mayor may be in violation of a person's right to privacy.

ALTERNATIVE ANSWER:

The executive order is constitutionally infirm. It violates Section 3(1), Article XV of the 1987 Constitution, which recognizes the right of the spouses to found a family in accordance with the demands of responsible parenthood which includes the artificial method.

ALTERNATIVE ANSWER:

The Executive order is constitutionally infirm. When Section 12, Article II of the 1987 Constitution provides that the State shall equally protect the life of the mother and the life of the unborn from conception, it is prohibiting abortion only and not the use of artificial contraceptives (Record of the Constitutional Commission, Vol. IV. Pp.683, 711 and 760).

(c) May the Commission on Human Rights order the Mayor to stop the implementation of the Executive Order? Explain.

SUGGESTED ANSWER:

No, the power of the Commission on Human Rights (CHR) is limited to fact-finding investigations. Thus, it cannot issue an "order to desist" against the mayor, inasmuch as the order prescinds from an adjudicatory power that CHR does not possess. (Simon v. Commission on Human Rights, G.R. No. 100150, January 5, 1994; Cariño v. Commission on Human Rights, G.R. No. 96681, December 2, 1991.)

Equal Protection; 3 Levels of Tests (2015)

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

(1) What are the three (3) levels of test that are applied in equal protection cases? Explain. (3%)

SUGGESTED ANSWER:

The three levels of test applied in equal protection cases are the strict scrutiny review, the intermediate scrutiny

review and rationality review.

If the legislative classification disadvantages a subject class or impinges upon a fundamental right, the statute must fall unless the government can show that the classification serves a compelling governmental interest.

If the classification, while not facially invidious, gives rise to recurring constitutional difficulties or disadvantages a quasi-suspect class, it will be treated under intermediate review. The law must not only further an important government interest and be related to that interest. The justification must be genuine and must not depend on broad generalizations.

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

ALTERNATIVE ANSWER

The three levels of tests may be applied in equal protection cases may be classified as follows: the strict scrutiny test, for laws dealing with freedom of the mind or restricting the political process, the rational basis standard for review of economic legislation; and heightened or intermediate scrutiny for evaluating classification based on gender and legitimacy.

(2) Which of the three (3) levels of test should be applied to the present case? Explain. (3%)

SUGGESTED ANSWER:

Classification on the basis of sexual orientation is a quasi-subject classification that prompts intermediate review. Gay and lesbian persons historically were and continue to be the target of discrimination due to their sexual orientation. Sexual orientation has no relation to a person's ability to contribute to society. The discrimination that distinguish the gays and lesbians persons are beyond their control. The group lacks sufficient political strength to bring an end to discrimination through political means. (Ang Ladlad LGBT Party v. Commission on Elections. 618 SCRA 32 [2010]),

ALTERNATIVE ANSWER

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

Searches and Seizure; Private Individuals (2005)

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

filed a suit assailing his dismissal. Rule on the admissibility of the letter and check. (5%)

ALTERNATIVE ANSWER:

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

ALTERNATIVE ANSWER:

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

Searches and Seizures; Aliens (2001)

No IV - A is an alien. State whether, in the Philippines, he: Is entitled to the right against illegal searches and seizures and against illegal arrests. (2%)

SUGGESTED ANSWER:

Aliens are entitled to the right against illegal searches and seizures and illegal arrests. As applied in *People v. Chua Ho San*, 307 SCRA 432 (1999), these rights are available to all persons, including aliens.

Searches and Seizures; Place of Search (2001)

No XI - Armed with a search and seizure warrant, a team of policemen led by Inspector Trias entered a compound and searched the house described therein as No. 17 Speaker Perez St., Sta. Mesa Heights, Quezon City, owned by Mr. Ernani Pelets, for a reported cache of firearms and ammunition. However, upon thorough search of the house, the police found nothing. Then, acting on a hunch, the policemen proceeded to a smaller house inside the same compound with address at No. 17-A Speaker Perez St., entered it, and conducted a search therein over the objection of Mr. Pelets who happened to be the same owner of the first house. There, the police found the unlicensed firearms and ammunition they were looking for. As a result, Mr. Ernani Pelets was criminally charged in court with Illegal possession of firearms and ammunition as penalized under P.D. 1866, as amended by RA. 8294. At the trial, he vehemently objected to the presentation of the evidence against him

for being inadmissible. Is Mr. Emani Pelet's contention valid or not? Why? (5%)

SUGGESTED ANSWER:

The contention of Ernani Pelet is valid. As held in *People vs. Court of Appeals*, 291SCRA 400 (1993), if the place searched is different from that stated in the search warrant, the evidence seized is inadmissible. The policeman cannot modify the place to be searched as set out in the search warrant.

Searches and Seizures; search made by a private citizen (2002)

No VIII. One day a passenger bus conductor found a man's handbag left in the bus. When the conductor opened the bag, he found inside a catling card with the owner's name (Dante Galang) and address, a few hundred peso bills, and a small plastic bag containing a white powdery substance. He brought the powdery substance to the National Bureau of Investigation for laboratory examination and it was determined to be methamphetamine hydrochloride or shabu, a prohibited drug. Dante Galang was subsequently traced and found and brought to the NBI Office where he admitted ownership of the handbag and its contents. In the course of the interrogation by NBI agents, and without the presence and assistance of counsel, Galang was made to sign a receipt for the plastic bag and its shabu contents. Galang was charged with illegal possession of prohibited drugs and was convicted. On appeal he contends that –

(1) The plastic bag and its contents are inadmissible in evidence being the product of an illegal search and seizure; (3%) and

(2) The receipt he signed is also inadmissible as his rights under custodial investigation were not observed. (2%) Decide the case with reasons.

SUGGESTED ANSWER:

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

B. It is inadmissible....

Searches and Seizures; Valid Warrantless Search (2000)

a) Crack officers of the Anti-Narcotics Unit were assigned on surveillance of the environs of a cemetery where the sale and use of dangerous drugs are rampant. A man with reddish and glassy eyes was walking unsteadily moving towards them but veered away when he sensed the presence of policemen. They approached him, introduced themselves as police officers and asked him what he had clenched in his hand. As he kept mum, the policemen pried his hand open and found a sachet of shabu, a dangerous drug. Accordingly

charged in court, the accused objected to the admission in evidence of the dangerous drug because it was the result of an illegal search and seizure. Rule on the objection. (3%)

b) What are the instances when warrantless searches may be effected? (2%)

SUGGESTED ANSWER:

a) The objection is not tenable. In accordance with *Manalili v. Court of Appeals*, 280 SCRA 400 (1997). since the accused had red eyes and was walking unsteadily and the place is a known hang-out of drug addicts, the police officers had sufficient reason to stop the accused and to frisk him. Since shabu was actually found during the investigation, it could be seized without the need for a search warrant.

b) A warrantless search may be effected in the following cases:

1. Searches incidental to a lawful arrest;
2. Searches of moving vehicles;
3. Searches of prohibited articles in plain view;
4. Enforcement of customs law;
5. Consented searches;
6. Stop and frisk (*People v. Monaco*, 285 SCRA 703 [1998]);
7. Routine searches at borders and ports of entry (*United States v. Ramsey*, 431 U.S. 606 [1977]); and
8. Searches of businesses in the exercise of visitatorial powers to enforce police regulations (*New York v. Burger*, 482 U.S. 691 [1987]).

Searches and Seizure; Valid Warrantless Search (2015)

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

In his final bid for exoneration, Hades went to the Supreme Court claiming that his constitutional right against unreasonable searches and seizures was violated when the police officers searched his vehicle without a warrant; that the shabu confiscated from him is thus inadmissible in evidence; and that there being no evidence against him, he is entitled to an acquittal.

For its part, the People of the Philippines maintains that the case of Hades involved a consented warrantless search which is legally recognized. The People adverts to the fact that Hades did not offer any protest when the

police officers asked him if they could look inside the vehicle. Thus, any evidence obtained in the course thereof is admissible in evidence.

Whose claim is correct? Explain. (5%)

SUGGESTED ANSWER:

The warrantless search was illegal. There was no probable cause to search the van. The shabu was not immediately apparent. It was discovered only after they opened the boxes. The mere passive silence of Hades did not constitute consent to the warrantless search. (*Caballes v. Court of Appeals*, 373 SCRA 221 [2005]).

Search and Seizure; Warrantless Arrest (2009)

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

During the trial, the accused: (Decide with reasons)

(a) Challenged the validity of his arrest; (2%)

SUGGESTED ANSWER:

The arrest is valid. The law enforcer has sufficient reason to accost the accused because of his suspicious actuations, coupled with the fact that based on reliable information the area was a haven for drug addicts. (*Manalili vs. Court of Appeals*, 280 SCRA 400 [1997]).

ALTERNATIVE ANSWER:

The warrantless arrest of the accused was void. There was no overt act or suspicious circumstances that would indicate that he was committing a crime. The search preceded his arrest (*People vs. Tudtud*, 412 SCRA 142 [2003]).

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

SUGGESTED ANSWER:

The objection should be denied. The evidence is admissible because the search and seizure was made incidental to a lawful warrantless arrest (*Manalili vs. Court of Appeals*, 280 SCRA 400 [1997]).

Search and Seizure; Warrantless Arrest (2008)

Having received tips the accused was selling narcotics, two police officers forced open the door of his room. Finding him sitting party dressed on the side of the bed, the officers spied two capsules on a night stand beside the bed. When asked, "Are these yours?", the accused seized the capsules and put them in his mouth. A struggle ensued, in the course of which the officer pounced on the accused, took him to a hospital where at their direction, a doctor forced an emetic solution though

a tube into the accused's stomach against his will.

This process induced vomiting. In the vomited matter were found two capsules which proved to contain heroin. In the criminal case, the chief evidence against the accused was the two capsules.

(a) As counsel for the accused, what constitutional rights will you invoke in his defense? (4%)

SUGGESTED ANSWER:

As counsel for the accused I would invoke the constitutional right to be secured against unreasonable searches and seizures (Art. III, Sec. 2 of the Constitution) which guarantees: (1) sanctity of the home, (2) inadmissibility of the capsules seized, (3) and inviolability of the person. A mere tip from a reliable source is not sufficient to justify warrantless arrest or search (*Peo vs. Nuevas*, G.R. No. 170233 Feb. 22, 2007).

(b) How should the court decide the case? (3%)

SUGGESTED ANSWER:

The court should declare the search and seizure illegal:

1. The entry into the accused's home was not a permissible warrantless action because the police had no personal knowledge that any crime was taking place.
2. Due to the invalid entry whatever evidence the police gathered would be inadmissible.
3. The arrest of the accused was already invalid and causing him to vomit while under custody was an unreasonable invasion of personal privacy (*U.S. vs. Montoya*, 473 US 531 [1985])

Search and Seizure; Warrantless Search (2010)

A witnessed two hooded men with baseball bats enter the house of their next door neighbor B. after a few seconds, he heard B shouting, "Huwag Pilo babayaran kita agad." Then A saw the two hooded men hitting B until the latter fell lifeless. The assailants escaped using a yellow motorcycle with a fireball sticker on it toward the direction of an exclusive village nearby. A reported the incident to PO1 Nuval. The following day, PO1 Nuval saw the motorcycle parked in the garage of a house at Sta. Ines Street inside the exclusive village. He inquired with the caretaker as to who owned the motorcycle. The caretaker named the brothers Pilo and Ramon Maradona who were then outside the country. PO1 Nuval insisted on getting inside the garage. Out of fear, the caretaker allowed him. PO1 Nuval took 2 ski masks and 2 bats beside the motorcycle. Was the search valid? What about the seizure? Decide with reasons. (4%)

SUGGESTED ANSWER:

The warrantless search and seizure was not valid. It was not made as an incident to a lawful warrantless arrest. (*People vs. Baula*, 344 SCRA 663 [2000]). The caretaker had no authority to waive the right of the brothers Pilo and Ramon Maradona to waive their right against unreasonable search and seizure. (*People vs. Damaso*, 212 SCRA 547 [1992].) the warrantless seizure of the ski masks and bats cannot be justified under the plain view doctrine, because they were seized after invalid intrusion in to the house. (*People vs. Bolasa*, 321 SCRA 459

[1999]).

ALTERNATIVE ANSWER:

No. the search and the seizure are invalid because there was no search warrant and it cannot be said to be a search incidental to a lawful arrest. It is the right of all individual to be secured against unreasonable searches and seizure by the government.

Searches and Seizure; Plain View Doctrine (2012)

a. When can evidence "in plain view" be seized without need of a search warrant? Explain. (2%)

SUGGESTED ANSWER:

Requisites of Plain View Doctrine:

1. The evidence was inadvertently discovered by the police who had the right to be where they were;
2. The evidence must be immediately apparent; and
3. Plain view justified seizure of the evidence without further search (*Del Rosario v. People*, 358 SCRA 372).

Privacy of Communication (2001)

"A" has a telephone line with an extension. One day, "A" was talking to "B" over the telephone. "A" conspired with his friend "C", who was at the end of the extension line listening to "A's" telephone conversation with "B" in order to overhear and tape-record the conversation wherein "B" confidentially admitted that with evident premeditation, he (B) killed "D" for having cheated him in their business partnership. "B" was not aware that the telephone conversation was being tap recorded. In the criminal case against "B" for murder, is the tape-recorded conversation containing his admission admissible in evidence? Why? (5%)

SUGGESTED ANSWER:

The tape-recorded conversation is not admissible in evidence. As held in *Salcedo- Ortanez vs. Court of Appeals*, 235 SCRA 111 (1994). Republic Act No. 4200 makes the taperecording of a telephone conversation done without the authorization of all the parties to the conversation, inadmissible in evidence. In addition, the taping of the conversation violated the guarantee of privacy of communications enunciated in Section 3, Article III of the Constitution.

Privacy of Communication (2009)

In criminal prosecution for murder, the prosecution presented, as witness, an employee of the Manila Hotel who produced in court a videotape recording showing the heated exchange between the accused and the victim that took place at the lobby of the hotel barely 30 minutes before the killing. The accused objects to the admission of the videotape recording on the ground that it was taken without his knowledge or consent, in violation of his right to privacy and the Anti-Wire Tapping law. Resolve the objection with reasons. (3%).

SUGGESTED ANSWER:

The objection should be overruled. What the law prohibits is the overhearing, intercepting, and recording of private communication. Since the exchange of heated words was not private, its videotape recording is not

prohibited (Navarro vs. Court of Appeals, 313 SCRA 153 [1999]).

ALTERNATIVE ANSWER:

The heated conversation at the lobby of the hotel is not privilege and is not protected under the right to privacy and anti-wiretapping law. Heated conversation is not privilege because it was uttered in a public place and it has to be revealed in open court to help in the prosecution of the case.

Liberty of Abode & Right to Travel (2012)

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

a. Mr. Violet challenges the conditions imposed by the Court of Appeals as violative of his liberty of abode and right to travel. Decide with reasons. (5%)

SUGGESTED ANSWER:

The right to change abode and the right to travel are not absolute. The liberty of changing abode may be unpaired upon order of the court. The order of the Court of Appeals is lawful, because the purpose is to ensure that the accused will be available whenever his presence is required. He is not being prevented from changing his abode. He is merely being required to inform the Court of Appeals if he does (**Yap vs. Court of Appeals, 358 SCRA 564**).

b. Are "liberty of abode" and "the right to travel" absolute rights? Explain. What are the respective exception/s to each right if any? (5%)

SUGGESTED ANSWER:

The liberty of abode and the right to travel are not absolute. The liberty of abode and of changing it can be imposed within the limits prescribed by law upon lawful order of the court. The right to travel may be unpaired in the interest of national security, public safety, or public health as may be provided by law (Section 6, Article III of the Constitution).

Freedom of Expression; Censorship (2003)

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

SUGGESTED ANSWER:

According to *Adiong v. COMELEC*, 207 SCRA 712 [1992], the prohibition is unconstitutional. It curtails the freedom of expression of individuals who wish to express their preference for a candidate by posting decals and stickers on their cars and to convince others to agree with them. It is also overbroad, because it encompasses private property and constitutes deprivation of property

without due process of law. Ownership of property includes the right to use. The prohibition is censorship, which cannot be justified.

Freedom of Speech; Clear and Present Danger Rule (2012)

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

a. Police officers who were monitoring the situation immediately approached Pedrong Pula and arrested him. He was prosecuted for seditious speech and was convicted. On appeal, Pedrong Pula argued he was merely exercising his freedom of speech and freedom of expression guaranteed by the Bill of Rights. Decide with reasons. (5%)

SUGGESTED ANSWER:

Pedrong Pula should be acquitted. His freedom of speech should not be limited in the absence of a clear and present danger of a substantive evil that the state had the right to prevent. He pretended to hurl a rock but did not actually throw it. He did not commit any act of lawless violence (**David v. Macapagal-Arroyo, 489 SCRA 160**).

Freedom of Speech; Prior Restraint (2014)

Surveys Galore is an outfit involved in conducting nationwide surveys. In one such survey, it asked the people about the degree of trust and confidence they had in several institutions of the government. When the results came in, the judiciary was shown to be less trusted than most of the government offices. The results were then published by the mass media. *Assension*, a trial court judge, felt particularly offended by the news. He then issued a show-cause order against *Surveys Galore* directing the survey entity to explain why it should not be cited in contempt for coming up with such a survey and publishing the results which were so unflattering and degrading to the dignity of the judiciary. *Surveys Galore* immediately assailed the show-cause order of *Judge Assension*, arguing that it is violative of the constitutional guaranty of freedom of expression. Is *Surveys Galore's* petition meritorious? (4%)

SUGGESTED ANSWER:

The petition of *Surveys Galore* is meritorious. Freedom of speech and freedom of the press may be identified with the liberty to discuss publicly and truthfully any matter of public interest without censorship and punishment. There should be no previous restraint on the communication of views or subsequent liability whether in libel suits, prosecution for sedition, or action for damages, or contempt proceedings unless there is a clear and present danger of substantive evil that Congress has a right to prevent (*Chavez v. Gonzales*, 545 SCRA 441 [2008]). Freedom of speech should not be impaired through the exercise of the power to punish for contempt of court

unless the statements in question is a serious and imminent threat to the administration of justice. Here, the publication of the result of the survey was not intended to degrade the Judiciary (*Cabansag vs. Fernandez*, 102 Phil. 152 [2012]).

Freedom of Speech; Commercial Speech; Prohibitions (2007)

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

(a) Police officers who were monitoring the situation immediately approached Pedrong Pula and arrested him. He was prosecuted for seditious speech and was convicted. On appeal, Pedrong Pula argued he was merely exercising his freedom of speech and freedom of expression guaranteed by the Bill of Rights. Decide with reasons. (5%)

SUGGESTED ANSWER:

Pedrong Pula should be acquitted. His freedom of speech should not be limited in the absence of a clear and present danger of a substantive evil that the state had the right to prevent. He pretended to hurl a rock but did not actually throw it. He did not commit any act of lawless violence. (*David vs. Macapagal-Arroyo*, 489 SCRA 160).

(b) What is "commercial speech"? Is it entitled to constitutional protection? What must be shown in order for government to curtail "commercial speech"? Explain. (3%)

SUGGESTED ANSWER:

Commercial speech is communication which involves only the commercial interest of the speaker and the audience, such as advertisements. (Black's Law dictionary, 9th ed., p.1529.) Commercial speech is entitled to constitutional protection. (*Ayer Productions Pty. Ltd. vs. Capulong*, 160 SCRA 861.) Commercial speech may be required to be submitted to a government agency for review to protect public interests by preventing false or deceptive claims. (*Pharmaceutical and Health Care Association of the Philippines vs. Duque*, 535 SCRA 265.)

(c) What are the two (2) basic prohibitions of the freedom of speech and of the press clause? Explain. (2%)

SUGGESTED ANSWER:

The two basic prohibitions on freedom of speech and freedom of the press are prior restraint and subsequent punishment (*Chavez vs. Gonzales*, 545 SCRA 441.)

Freedom of Speech; Commercial Speech (2012)

What is "commercial speech"? Is it entitled to constitutional protection? What must be shown in order for government to curtail "commercial speech"? Explain. (3%)

SUGGESTED ANSWER:

Commercial Speech is communication which involves only the commercial interests of the speaker and the audience such as advertisements (Black's Law Dictionary, 9th ed., p. 1529).

Commercial Speech is entitled to the Constitutional protection (*Ayer Productions Pty., Ltd. V. Capulong*, 160 SCRA 861).

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

Freedom of Speech; Private Parties; Prior Restraint (2007)

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

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

SUGGESTED ANSWER:

Destilleria Felipe Segundo cannot claim that its constitutional rights were infringed. In this case, a private association formed by advertising companies for self regulation was the one who ordered that the advertisement be pulled out, because Destilleria did not comply with the association's ethical guidelines. The guarantee of freedom of speech is a limitation on state action and not on the action of private parties (*Lloyd Corporation vs. Tanner*, 407 U.S. 551 [1972]). The mass media are private enterprises, and their refusal to accept any advertisement does not violate freedom of speech (*Times-Picayune Publishing Company vs. United States*, 345 U.S. 594 [1953]; *Columbia Broadcasting System, Inc. vs. Democrat Control Committee*, 412 U.S. 94 [1973]).

ALTERNATIVE ANSWER:

No, Destilleria Felipe Segundo may not claim that its constitutional rights, particularly freedom of expression, have been infringed. The constitutional guarantee of freedom of speech is a guarantee only against abridgment by the government and does not apply to private parties. (*People v. Marti*, G.R. No. 81561, January 18, 1991). Moreover, Destilleria freely joined the Philippine Advertising Council and is therefore bound by the ethical guidelines and decisions of that council.

ALTERNATIVE ANSWER:

No. Constitutional rights can be validly restricted to

promote good morals. Moreover, what is being exercised is commercial expression which does not enjoy the same extent of freedom as political or artistic speech. (Central Hudson Gas & Electric v. PSC, 447 U.S. 557 [1980]). The order for the withdrawal comes not from the State but from a private group of advertisers which is not within the coverage of the Bill of Rights.

(b) One of the militant groups, the Amazing Amazonas, call on all government-owned and controlled corporations (GOCC) to boycott any newspaper, radio or TV station that carries the "kinse anyos" advertisements. They call on all government nominees in sequestered corporations to block any advertising funds allocated for any such newspaper, radio or TV station. Can the GOCCs and sequestered corporations validly comply?

SUGGESTED ANSWER:

The government owned and controlled corporations and the government nominees in sequestered corporations cannot block any advertising funds allocated for any newspaper, radio or television station which carries the advertisements of Destilleria Felipe Segundo. Since they are government entities and officers, they are bound by the guarantee of freedom of speech. Freedom of speech extends to commercial establishments (Metromedia, Inc. vs. San Diego, 453 U.S. 490 [1981]). The mere fact that an advertisement is offensive cannot justify its suppression (Carey vs. Population Services International, 431 U.S. 678 [1977]). The blocking of advertising funds is a threat intended to prevent the exercise of freedom of speech of Destilleria Felipe Segundo through the fear of consequences. Such a threat qualifies as prior restraint (Rosden, The Law of Advertising, Vol. I, pp.5-13).

ALTERNATIVE ANSWER:

They may comply with such call as these entities may institute certain measures to promote a socially desirable end, namely, the prevention of the exploitation and abuse of women, especially those who are not yet of age.

ALTERNATIVE ANSWER:

The GOCCs and sequestered corporations may not be compelled to boycott or block advertising funds for media companies carrying the said advertisements. These companies may have existing contracts with the media companies concerned and non-compliance may result in breach that will open them to possible suits.

Freedom of Speech; Symbolic Expression (2008)

Nationwide protests have erupted over rising gas prices, including disruptive demonstrations in many universities, throughout the country. The Metro Manila State University, a public university, adopted a university-wide circular prohibiting public mass demonstrations and rallies within the campus. Offended by the circular, militant students spread word that on the following Friday, all students were to wear black T-shirts as a symbol of their protest both against high gas prices and the university ban on demonstrations. The effort was only moderately successful, with around 30% of the students heeding the call. Nonetheless, university officials were outraged and compelled the student leaders to explain why they should not be expelled for violating the circular against demonstrations.

The student leaders approached you for legal advice. They contended that they should not be expelled since they did not violate the circular, their protest action being neither a demonstration nor a rally since all they did was wear black T-shirts. What would you advise the students? (6%)

SUGGESTED ANSWER:

The wearing of black shirts is an exercise of freedom of expression and not necessarily freedom of assembly. Regardless of the distinction, in both cases, the Constitutional guaranty includes freedom from prior restraint and freedom from subsequent liability. There are three tests to determine whether or not there was valid government interference: (1) dangerous tendency rule; (2) balancing of interest test; and (3) clear and present danger test. In the Philippine jurisdiction, we adhere to the clear and present danger test (ABS-CBN Broadcasting Corp. vs. Comelec, G.R. No. 133486, Jan. 28, 2000). This test simply means that there is clear and present danger of a substantive evil which the State has the right to prevent.

Applying the clear and present danger test, the protest conducted by the students was only moderately successful and the wearing of black shirts was neither tumultuous nor disruptive. Thus, the substantive evil which the school authorities were trying to suppress did not even occur. Therefore, the prohibition imposed by the circular violates freedom from prior restraint while the threat of expulsion by the school authorities violates freedom from subsequent liability.

Freedom of Speech; Overbreadth Doctrine vs. Void for Vagueness (2010)

Compare and contrast "Overbreadth" doctrine from void-for vagueness doctrine.

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

Overbreadth and Void for Vagueness doctrine is used as test for the validity on their faces (FACIAL CHALLENGE) statutes in free speech cases (freedom of speech). It is not applicable in criminal cases.

Overbreadth doctrine decrees that governmental purpose may not be achieved by means which sweeps unnecessarily broadly and thereby invade the area of protected freedoms.

"Void for vagueness doctrine" which holds that "a law is facially invalid if men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of

law.

Doctrine of Void for Vagueness (2012)

a. What is the doctrine of "void for vagueness"? In what context can it be correctly applied? Not correctly applied? Explain (5%)

SUGGESTED ANSWER:

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

Overbreadth Doctrine (2012)

What is the doctrine of "overbreadth"? In what context can it be correctly applied? Not correctly applied? Explain (5%)

SUGGESTED ANSWER:

A statute is overbroad when a governmental purpose to control or prevent activities constitutionally subject to state regulations is sought to be achieved by means which sweep unnecessarily broadly an invade the area of protected freedom. It applies both to free speech cases and penal statutes. However, a facial challenge on the ground of overbreadth can only be made in free speech cases because of its chilling effect upon protected speech. A Facial challenge on the ground of overbreadth is not applicable to penal statutes, because in general they have an in terrorem effect (**Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council, 632 SCRA 146**). (NOTE: The word "overbreadth" should be read as "overbreath" because breath has no limit especially if it is bad breath).

Doctrine of Void for Vagueness (2012)

b. What is the doctrine of "void for vagueness"? In what context can it be correctly applied? Not correctly applied? Explain (5%)

SUGGESTED ANSWER:

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

The Concept of Facial Challenge (2015)

When is a facial challenge to the constitutionality of a law on the ground of violation of the Bill of Rights traditionally allowed? Explain your answer. (3%)

SUGGESTED ANSWER:

In United States (US) constitutional law, a facial challenge, also known as a First Amendment Challenge, is one that is launched to assail the validity of the statutes concerning not only protected speech, but also

other rights in the First Amendment. These include religious freedom, freedom of the press, and the right of the people to peacefully assemble, and to petition the Government for a redress of grievances. After all, the fundamental right to religious freedom, freedom of the press and peaceful assembly are but competent rights of the right to one's freedom of expression, as they are modes which one's thoughts are externalized.

Freedom of the Press; Actual Malice (2004)

The STAR, a national daily newspaper, carried an exclusive report stating that Senator XX received a house and lot located at YY Street, Makati, in consideration for his vote cutting cigarette taxes by 50%. The Senator sued the STAR, its reporter, editor and publisher for libel, claiming the report was completely false and malicious. According to the Senator, there is no YY Street in Makati, and the tax cut was only 20%. He claimed one million pesos in damages. The defendants denied "actual malice," claiming privileged communication and absolute freedom of the press to report on public officials and matters of public concern. If there was any error, the STAR said it would publish the correction promptly. Is there "actual malice" in STAR'S reportage? How is "actual malice" defined? Are the defendants liable for damages? (5%)

FIRST ALTERNATIVE ANSWER:

Since Senator XX is a public person and the questioned imputation is directed against him in his public capacity, in this case actual malice means the statement was made with knowledge that it was false or with reckless disregard of whether it was false or not (**Borja v. Court of Appeals, 301 SCRA 1 /1999**). Since there is no proof that the report was published with knowledge that it is false or with reckless disregard of whether it was false or not, the defendants are not liable for damage.

SECOND ALTERNATIVE ANSWER:

Since Senator XX is a public person and the questioned imputation is directed against him in his public capacity, in this case actual malice means the statement was made with knowledge that it was false or with reckless disregard of whether it was false or not (**Borja v. Court of Appeals, 301 SCRA 1 /1999**). Since it is a matter of public knowledge that there is no YY Street in Makati, the publication was made with reckless disregard of whether or not it is false. The defendants may be held liable for damages.

Freedom of the Press; Prior Restraint (2009)

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

KKK-TV filed a certiorari petition in court, raising the following issues:

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

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

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

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

SUGGESTED ANSWER:

In accordance with Chapter 2, Book VII of the Administrative Code of 1987, Memorandum Circular No. 98-17 must be filed with the University of the Philippines Law Center. It cannot be enforced until it has been filed with the University of the Philippines Law Center (*Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*, 541 SCRA 316 [2007]).

Freedom of the Press; Freedom of Circulation (2014)

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

order and the greater interest of the community. If you were the judge, how would you resolve the issue? (4%)

SUGGESTED ANSWER:

If I were the judge, I would rule that the distribution of the newspaper cannot be banned. Freedom of the news should be allowed although it induces a condition of unrest and stirs people to anger. Freedom of the press includes freedom of circulation (*Chavez v. Gonzales*, 545 SCRA 441 [2008]).

When governmental action that restricts freedom of the press is based on content, it is given the strictest scrutiny and the government must show that there is a clear and present danger of the substantive evil which the government has the right to prevent. The threats of violence and even the destruction of properties while hurting those selling the newspaper do not constitute a clear and present danger as to warrant curtailment of the right of *Deep Throat* to distribute the newspaper (*Chavez v. Gonzales*, 545 SCRA 441 [2008]).

Freedom of Religion; Flag Salute (2003)

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

SUGGESTED ANSWER:

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

Freedom of Religion; Benevolent Neutrality Test (2009)

(a) Angelina, a married woman, is a division chief in the Department of Science and Technology. She had been living with a married man, not her husband, for the last 15 years. Administratively charged with immorality and conduct prejudicial to the best interest to the service, she admits her live-in arrangement, but maintains that this conjugal understanding is in conformity with their religious beliefs. As members of the religious sect, Yahweh's Observers, they had executed a Declaration of Pledging Faithfulness which has been confirmed and blessed by their Council of Elders. At the formal investigation of the administrative case, the Grand Elder of the sect affirmed Angelina's testimony and attested to the sincerity of Angelina and her partner in the profession of their faith. If you were to judge this case, will you exonerate Angelina? Reasons. (3%)

SUGGESTED ANSWER:

Yes. (*Estrada vs Escritor*, August, 4, 2003 and June 22, 2006) – Right to freedom of religion must prevail. Benevolent neutrality recognizes that government must pursue its secular goals and interests, but at the same time, strive to uphold religious liberty to the greatest extent possible within flexible constitutional limits.

Although the morality contemplated by laws is secular, benevolent neutrality could allow for accommodation of morality based on religion, provided it does not offend compelling state interest.

Benevolent neutrality approach requires that the court make an individual determination and not dismiss the claim outright.

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

SUGGESTED ANSWER:

The case will not prosper. The expulsion/excommunication of members of a religious institution/organization is a matter best left to the discretion of the officials, and the laws and canons, of said institution/organization. (*Taruc v. Bishop dela Cruz, et al.* Mar. 10, 2005).

Right to Assembly; Permit Application; Freedom Parks (2006)

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

1. Does the SM have a remedy to contest the denial of its application for a permit? (2.5%)

SUGGESTED ANSWER:

Yes, SM has a remedy. Under B.P. Big. 880 (The Public Assembly Act of 1985), in the event of denial of the application for a permit, the applicant may contest the decision in an appropriate court of law. The court must decide within twenty-four (24) hours from the date of filing of the case. Said decision may be appealed to the appropriate court within forty-eight (48) hours after receipt of the same. In all cases, any decision may be appealed to the Supreme Court (*Bayan Muna v. Ermita, G.R. No. 169838, April 25, 2006*).

2. Does the availability of a Freedom Park justify the denial of SM's application for a permit? (2.5%)

SUGGESTED ANSWER:

No, the availability of a freedom park does not justify the denial of the permit. It does imply that no permits are required for activities in freedom parks. Under B.P. Big. 880, the denial may be justified only if there is clear and convincing evidence that the public assembly will create a clear and present danger to public order, public safety, public convenience, public morals or public health (*Bayan Muna v. Ermita, G.R. No. 169838, April 25, 2006*).

3. Is the requirement to apply for a permit to hold a rally a prior restraint on freedom of speech and assembly? (2.5%)

SUGGESTED ANSWER:

No, the requirement for a permit to hold a rally is not a prior restraint on freedom of speech and assembly. The Supreme Court has held that the permit requirement is valid, referring to it as regulation of the time, place, and manner of holding public assemblies, but not the content of the speech itself. Thus, there is no prior restraint, since the content of the speech is not relevant to the regulation (*Bayan Muna v. Ermita, G.R. No. 169838, April 25, 2006*).

4. Assuming that despite the denial of SM's application for a permit, its members hold a rally, prompting the police to arrest them. Are the arrests without judicial warrants lawful? (2.5%)

SUGGESTED ANSWER:

The arrests are unlawful. What is prohibited and penalized under Sec. 13 (a) and 14 (a) of B.P. Big 880 is "the holding of any public assembly as defined in this Act by any leader or organizer without having first secured that written permit where a permit is required from the office concerned x x x Provided, however, that no person can be punished or held criminally liable for participating in or attending an otherwise peaceful assembly." Thus, only the leader or organizer of the rally without a permit may be arrested without a warrant while the members may not be arrested, as they can not be punished or held criminally liable for attending the rally. However, under Section 12 thereof, when the public assembly is held without a permit where a permit is required, the said public assembly may be peacefully dispersed.

Right to Assembly; Permit (2007)

Batas Pambansa 880, the Public Assembly Law of 1985, regulates the conduct of all protest rallies in the Philippines.

(a) Salakay, Bayan! held a protest rally and planned to march from Quezon City to Luneta in Manila. They received a permit from the Mayor of Quezon City, but not from the Mayor of Manila. They were able to march in Quezon City and up to the boundary separating it from the City of Manila. Three meters after crossing the boundary, the Manila Police stopped them for posing a danger to public safety. Was this a valid exercise of police power?

SUGGESTED ANSWER:

Yes, the authorities are given the power to stop marchers

who do not possess a permit. However, mere exercise of the right to peaceably assemble is not considered as a danger to public safety. They could have been asked to disperse peacefully, but it should not altogether be characterized as posing a danger to public safety. (Bayan v. Ermita, G.R. No. 169848, April 25, 2006; David v. Arroyo, G.R. No. 171390, May 3, 2006).

ALTERNATIVE ANSWER:

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

ALTERNATIVE ANSWER:

No, this is not a valid exercise of police power. Police power has been defined as the power of promoting public welfare by restraining and regulating the use of liberty and property. (City of Manila v. Laguio, G.R. No. 118127, April 12, 2005). It is principally the Legislature that exercises the power but it may be delegated to the President and administrative agencies. Local government units exercise the power under the general welfare clause. In this case, if Salakay applied for a permit from the city government, the application must be approved or denied within two (2) working days from the date it was filed, failing which, the permit shall be deemed granted. (Section 16, B.P. Blg. 880). Even without a permit, the law does not provide for outright stopping of the march if the demonstrators, for example, were marching peacefully without impeding traffic.

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

SUGGESTED ANSWER:

Yes, the security police may stop the vehicles and the marchers but only to advise the leaders to secure their banners so that it will not pose a hazard to others. They may not be prevented from heading to their destination. The marchers may also be ordered to ride the vehicles so as not to inconvenience other uses of the Expressway.

ALTERNATIVE ANSWER:

Yes. While the protesters possess the right to freely express themselves, their actions may pose a safety risk to other motorists and therefore be the subject of regulation. The security police may undertake measures to prevent any hazard to other motorists but not altogether prevent the exercise of the right. So, to that extent, while the protesters maybe asked to remove the

banners which pose hazard to other motorists and prevent them from using the expressway as a venue for their march, the security force may not prevent them from proceeding to where they might want to go.

ALTERNATIVE ANSWER:

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

Right to Assembly; Public Teachers (2000)

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

a) Are employees in the public sector allowed to form unions? To strike? Why? (3%)

b) The teachers claim that their right to peaceably assemble and petition the government for redress of grievances has been curtailed. Are they correct? Why? (2%)

SUGGESTED ANSWER:

a) Section 8, Article III of the Constitution allows employees in the public sector to form unions. However, they cannot go on strike. As explained in Social Security System Employees Association v. Court of Appeals, 175 SCRA 686 [1989], the terms and conditions of their employment are fixed by law. Employees in the public sector cannot strike to secure concessions from their employer.

b. The teachers cannot claim that their right to peaceably assemble and petition for the redress of grievances has been curtailed. According to Bangalisan v. Court of Appeals, 276 SCRA 619 (1997), they can exercise this right without stoppage of classes.

Right to Assembly; Public Teachers (2002)

Ten public school teachers of Caloocan City left their classrooms to join a strike, which lasted for one month, to ask for teachers' benefits. The Department of Education, Culture and Sports charged them administratively, for which reason they were required to answer and formally investigated by a committee composed of the Division Superintendent of Schools as Chairman, the Division Supervisor as member and a teacher, as another member. On the basis of the evidence adduced at the formal investigation which amply established their guilt, the Director rendered a decision meting out to them the penalty of removal from office. The decision was affirmed by the DECS Secretary and the Civil Service

Commission. On appeal, they reiterated the arguments they raised before the administrative bodies, namely:

(a) Their strike was an exercise of their constitutional right to peaceful assembly and to petition the government for redress of grievances.

SUGGESTED ANSWER:

(a) According to *De la Cruz v. Court of Appeals*, 305 SCRA 303 (1999), the argument of the teachers that they were merely exercising their constitutional right to peaceful assembly and to petition the government for redress of grievance cannot be sustained, because such rights must be exercised within reasonable limits. When such rights were exercised on regular school days instead of during the free time of the teachers, the teachers committed acts prejudicial to the best interests of the service.

Right to Information; Matters of Public Concern (2009)

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

(a) Decide with reasons. (3%)

SUGGESTED ANSWER:

The petition of KMM must be denied. Diplomatic negotiations are privileged in order to encourage a frank exchange of exploratory ideas between the parties by shielding the negotiations from public view (*Akbayan Citizens Action Party vs. Aquino*, 558 SCRA 468 [2008]).

ALTERNATIVE ANSWER:

The information sought to be disclose by the parties is a diplomatic negotiation between States and is considered privileged. It cannot be subjected to public scrutiny. The interest protected being the national security and integrity of the State on how can it be trusted in terms of diplomatic secrets.

(b) Will your answer be the same if the information sought by KMM pertains to contracts entered into by the Government in its proprietary or commercial capacity? Why or why not? (3%)

SUGGESTED ANSWER:

KMM is entitled to have access to information pertaining to government contracts entered into by the Government in the exercise of its proprietary commercial capacity. The right to information under the Constitution does not exclude contracts of public interest and are not privileged (Section 7, Article III of the Constitution; *Valmonte vs.*

Belmonte, 170 SCRA 256 [1989]).

ALTERNATIVE ANSWER:

If what is sought is the final contract itself then the information must be open to the public for transparency and for awareness and information. But if what were sought were the negotiations or communications in arriving at the final contract, the information sought remains privileged. An interest need to be protected.

Rights of Suspects; Custodial Investigation; Extrajudicial Confession (2001)

Rafael, Carlos and Joseph were accused of murder before the Regional Trial Court of Manila. Accused Joseph turned state witness against his co-accused Rafael and Carlos, and was accordingly discharged from the information. Among the evidence presented by the prosecution was an extrajudicial confession made by Joseph during the custodial investigation, implicating Rafael and Carlos who, he said, together with him (Joseph), committed the crime. The extrajudicial confession was executed without the assistance of counsel. Accused Rafael and Carlos vehemently objected on the ground that said extrajudicial confession was inadmissible in evidence against them. Rule on whether the said extrajudicial confession is admissible in evidence or not. (5%)

FIRST ALTERNATIVE ANSWER:

According to *People vs. Balisteros*, 237 SCRA 499 (1994), the confession is admissible. Under Section 12, Article III of the Constitution, the confession is inadmissible only against the one who confessed. Only the one whose rights were violated can raise the objection as his right is personal.

SECOND ALTERNATIVE ANSWER:

According to *People vs. Jara*, 144 SCRA 516(1986), the confession is inadmissible. If it is inadmissible against the one who confessed, with more reason it should be inadmissible against others.

Rights of Suspects; Custodial Investigation; Right to Counsel (2000)

On October 1, 1985, Ramos was arrested by a security guard because he appeared to be "suspicious" and brought to a police precinct where in the course of the investigation he admitted he was the killer in an unsolved homicide committed a week earlier. The proceedings of his investigation were put in writing and dated October 1, 1985, and the only participation of counsel assigned to him was his mere presence and signature on the statement. The admissibility of the statement of Ramos was placed in issue but the prosecution claims that the confession was taken on October 1, 1985 and the 1987 Constitution providing for the right to counsel of choice and opportunity to retain, took effect only on February 2, 1987 and cannot be given retroactive effect. Rule on this. (3%)

SUGGESTED ANSWER:

The confession of Ramos is not admissible, since the counsel assigned to him did not advise him of his rights. The fact that his confession was taken before the effectivity of the 1987 Constitution is of no moment. Even prior to the effectivity of the 1987 Constitution, the

Supreme Court already laid down strict rules on waiver of the rights during investigation in the case of *People v. Galit*, 135 SCRA 465 (1985).

Rights of Suspects; Custodial Investigation; Right to Counsel; Receipt of Property Seized (2002)

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

A. The plastic bag and its contents are inadmissible in evidence being the product of an illegal search and seizure; (3%) and

B. The receipt he signed is also inadmissible as his rights under custodial investigation were not observed. (2%)
Decide the case with reasons.

SUGGESTED ANSWER:

A. It is admissible...

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

Rights of Suspects; Police Line-up (2012)

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

a. Brown, afraid of a "set up" against him, demanded that he be allowed to secure his lawyer and for him to be present during the police line-up. Is Brown entitled to counsel? Explain (5%)

SUGGESTED ANSWER:

Brown is not entitled to counsel during the police line-up. He was not yet being asked to answer for a criminal offense (*Gamboa v. Cruz*, 162 SCRA 642).

b. Would the answer in (a.) be the same if Brown was specifically invited by White because an eyewitness to the crime identified him as the perpetrator? Explain. (3%)

SUGGESTED ANSWER:

Brown would be entitled to the assistance of a lawyer. He was already considered as a suspect and was therefore entitled to the rights under custodial investigation (*People v. Legaspi*, 331 SCRA 95).

c. Briefly enumerate the so-called "Miranda Rights". (2%)

SUGGESTED ANSWER:

The Miranda warning means that a person in custody who will be interrogated must be informed of the following:

1. He has the right to remain silent;
2. Anything that can be used as evidence against him;
3. He has the right to have the counsel during the investigation; and
4. He must be informed that if he is indigent, a lawyer will be appointed to represent him
(*Miranda v. Arizona*, 384 U.S. 436).

Rights of Suspects; Right to Remain Silent (2013)

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

At the police station, the guard narrated to the police that he personally caught Arnold in possession of dried marijuana leaves. Arnold did not contest the guard's statement; he steadfastly remained silent and refused to give any written statement. Later in court, the guard testified and narrated the statements he gave the police over Arnold's counsel's objections. While Arnold presented his own witnesses to prove that his possession and apprehension had been set-up, he himself did not testify.

The court convicted Arnold, relying largely on his admission of the charge by silence at the police investigation and during trial.

From the constitutional law perspective, was the court correct in its ruling? (6%)

SUGGESTED ANSWER:

The court was wrong in relying in the silence of Arnold during the police investigation and during the trial. Under Article III, Section 12 of the 1987 Constitution, he had the right to remain silent. His silence cannot be taken as tacit admission; otherwise, his right to remain silent would be rendered nugatory. Considering that his right against self-incrimination protects his right to remain silent, he cannot be penalized for exercising it (*People v. Galvez*, 519 SCRA 521).

ALTERNATIVE ANSWER:

The court correctly convinced Arnold. There is no showing that the evidence for the prosecution was insufficient. When Arnold remained silent, he run the risk

of an inference of guilt from non-production of evidence in his behalf (**People v. Solis, 128 SCRA 217**).

Rights of Suspects; Custodial Investigation; When Commenced (2014)

The police got a report about a shooting incident during a town fiesta. One person was killed. The police immediately went to the scene and started asking the people about what they witnessed. In due time, they were pointed to *Edward Gunman*, a security guard, as the possible malefactor. *Edward* was then having refreshment in one of the eateries when the police approached him. They asked him if he had a gun to which question he answered yes. Then they asked if he had seen anybody shot in the vicinity just a few minutes earlier and this time he said he did not know about it. After a few more questions, one of the policemen asked *Edward* if he was the shooter. He said no, but then the policeman who asked him told him that several witnesses pointed to him as the shooter. Whereupon *Edward* broke down and started explaining that it was a matter of self-defense. *Edward* was eventually charged with murder. During his trial, the statements he made to the police were introduced as evidence against him. He objected claiming that they were inadmissible since he was not given his Miranda rights. On the other hand, the prosecution countered that there was no need for such rights to be given since he was not yet arrested at the time of the questioning. If you were the judge, how would you rule on the issue? (4%)

SUGGESTED ANSWER:

If I were the judge, I would rule that the confession is inadmissible. First, the rights under investigation in Section 12, Article III of the Constitution are applicable to any person under investigation for the commission of an offense. The investigation began when a policeman told *Edward* that several witnesses pointed to him as the shooter, because it started to focus on him as a suspect (*People v. Bariquit, 341 SCRA 600 [2000]*). Second, under Section 2 of Republic Act No. 7438, for a confession to be admissible, it must be in writing (*People v. Labtan, 320 SCRA 140 [1999]*).

Rights of the Accused; Right to Bail; Capital Offense (2006)

State whether or not the law is constitutional. Explain briefly.

2. A law denying persons charged with crimes punishable by reclusion perpetua or death the right to bail. (2%)

SUGGESTED ANSWER:

The law is invalid as it contravenes Section 13, Article III of the 1987 Constitution which provides that "all persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law." The accused may not be deprived of his constitutional right to bail even if charged with a capital offense where the evidence of guilt is not strong.

Rights of the Accused; Right to Bail; Matter of Right or a Matter of Discretion (Q7-2005)

a) State with reason(s) whether bail is a matter of right or a matter of discretion in the following cases: (4%)

a) The imposable penalty for the crime charged is *reclusion perpetua* and the accused is a minor;

SUGGESTED ANSWER:

If the accused is a minor where the imposable penalty for the crime charged is reclusion perpetua, bail would be a matter of right. Under Article 68 of the Revised Penal Code, when the offender is a minor under eighteen years of age, he is entitled to a penalty, depending on his age, lower by one or two degrees than that prescribed by law for the crime committed. The Constitution withholds the guaranty of bail from one who is accused of a capital offense where the evidence of guilt is strong. The obvious reason is that one who faces a probable death sentence has a particularly strong temptation to flee. This reason does not hold where the accused has been established without objection to be a minor who by law cannot be sentenced to death. (*Bravo v. Borja, G.R. No. L-65228, February 18, 1985*)

b) The imposable penalty for the crime charged is life imprisonment and the accused is a minor;

SUGGESTED ANSWER:

If the accused is a minor and the imposable penalty for the crime charged is life imprisonment, bail would not be a matter of right. In the instant case, assuming that evidence of guilt strong, bail shall be denied as the privileged mitigating circumstance of minority is not available for violation of special laws penalized by life imprisonment.

ALTERNATIVE ANSWER:

Although the Constitution mentions only reclusion perpetua, Rule 114 of the Rules of Court adds life imprisonment, and therefore, applying the *PRO REO DOCTRINE*, bail would still be a matter of right, since it is favorable to the accused.

c) The accused has been convicted of homicide on a charge of murder and sentenced to suffer an indeterminate penalty of from eight (8) years and one (1) day of prison mayor, as minimum, to twelve (12) years and four (4) months of reclusion temporal, as maximum.

SUGGESTED ANSWER:

If the accused has been convicted of homicide on a charge of murder and sentenced to suffer imprisonment of from 8 to 12 years, bail is a matter of discretion. Under Rule 114, Sec. 5, par. 1 of the Rules of Court, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail may be filed and acted upon by the appellate court. Admission to bail is discretionary.

Rights of the Accused; Right to Bail (2009)

William, a private American Citizen, a university graduate and frequent visitor to the Philippines, was inside the US embassy when he got into a heated argument with a private Filipino citizen. Then, in front of many shocked witnesses, he killed the person he was arguing with. The police came, and brought him to the nearest police

station. Upon reaching the station, the police investigator, in halting English, informed William of his Miranda rights, and assigned him an independent local counsel. William refused the services of the lawyer, and insisted that he be assisted by a Filipino lawyer currently based in the US. The request was denied, and the counsel assigned by the police stayed for the duration of the investigation. William protested his arrest.

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

SUGGESTED ANSWER:

William was not denied with his Miranda rights. True that he has the right to counsel preferably of his choice. But if he cannot afford the services of a counsel, he should be provided with one.

Moreover, the Miranda rights are available only during custodial investigation that is, from the moment the investigating officer begins to ask questions for the purpose of eliciting admissions, confessions or any information from the accused. therefore, it is proper that he was only informed of his right at the police station.

ALTERNATIVE ANSWER:

The fact that the police officer gave him the Miranda warning in halting English does not detract from its validity. Under Section 2(b) of Republic Act No. 7438, it is sufficient that the language used was known to and understood by him. William need not be given the Miranda warning before the investigation started. William was not denied his Miranda rights. It is not practical to require the police officer to provide a lawyer of his own choice from the United States (*Gamboa vs. Cruz*, 162 SCAR 642, [1998]).

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

SUGGESTED ANSWER:

William is not entitled to bail as a matter of right. His contention is not tenable. Observing the territorial jurisdiction of commission of the offense, the applicable law in the case is Philippine laws not the law of the country to where he is a national (Section 13, Art. III of the Constitution). Under our law, bail is not a matter of right if the felony or offense committed has an imposable penalty of reclusion perpetua or higher and the evidence of guilt is strong.

Rights of the Accused; Right to Bail; Double Jeopardy (2008)

JC, a major in the Armed Forces of the Philippine, is facing prosecution before the Regional Trial Court of Quezon City for the murder of his neighbor whom he suspected to have molested his (JC's) 15 year-old

daughter.

(a) Is JC entitled to bail? Why or why not? (3%)

SUGGESTED ANSWER:

As a general rule, bail is not a matter of right when the offense charged carries with an imposable penalty of reclusion perpetua or higher.

In the present case, JC is charged with murder which has a penalty of reclusion perpetua, hence he cannot be allowed bail. However, should the evidence of guilt be found weak after hearing, the court may in its discretion, fix bail for temporary liberty.

(b) Assume that upon being arraigned, JC entered a plea of guilty and was allowed to present evidence to prove mitigating circumstances. JC then testified to the effect that he stabbed the deceased in self-defense because the latter was strangling him and that he voluntarily surrendered to the authorities. Subsequently, the trial court rendered a decision acquittal violate JC's right against double jeopardy? Why or why not? (3%)

SUGGESTED ANSWER:

By presenting evidence of self-defense, JC effectively withdrew his plea of guilty (*Peo vs. Balisacan*, G.R. No. L-26376, Aug. 31, 1966). In the absence of a valid plea, an essential element for jurisdiction of the Court and first jeopardy was absent. Consequently, the court had no jurisdiction to acquit JC. Thus, an appeal by the prosecution would not violate the rule against second jeopardy.

ALTERNATIVE ANSWER:

Double jeopardy sets in when the first jeopardy has attached. There is already first jeopardy when the accused has validly entered his plea before the appropriate court having jurisdiction over the subject matter and his person and that he has been convicted or acquitted or that the case against him has been terminated without his express consent.

In the present case, JC validly entered his plea of guilty but during the presentation of evidence he submits evidence of self-defense. the consequence thereof is for the court to withdraw the plea of guilty and enter a plea of not guilty. The validity of entering his plea is not affected.

Therefore, his acquittal shall bar any similar indictment that may be filed against him because of double jeopardy.

Rights of the Accused; Presumption of Innocence (2004)

OZ lost five head of cattle which he reported to the police as stolen from his barn. He requested several neighbors, including RR, for help in looking for the missing animals. After an extensive search, the police found two head in RR's farm. RR could not explain to the police how they got hidden in a remote area of his farm. Insisting on his innocence, RR consulted a lawyer who told him he has a right to be presumed innocent under the Bill of Rights. But there is another presumption of theft arising from his unexplained possession of stolen cattle— under the

penal law. Are the two presumptions capable of reconciliation In this case? If so, how can they be reconciled? If not, which should prevail? (5%)

SUGGESTED ANSWER:

The two presumptions can be reconciled. The presumption of innocence stands until the contrary is proved. It may be overcome by a contrary presumption founded upon human experience. The presumption that RR is the one who stole the cattle of OZ is logical, since he was found in possession of the stolen cattle. RR can prove his innocence by presenting evidence to rebut the presumption. The burden of evidence is shifted to RR, because how he came into possession of the cattle is peculiarly within his knowledge. (*Dizon-Pamintuan v. People*, 234 SCRA 63 (1994)).

Rights of the Accused; Right to Counsel of His Choice (2005)

(1) Mariano was arrested by the NBI as a suspect in the shopping mall bombings. Advised of his rights, Mariano asked for the assistance of his relative, Atty. Santos. The NBI noticed that Atty. Santos was inexperienced, incompetent and inattentive. Deeming him unsuited to protect the rights of Mariano, the NBI dismissed Atty. Santos. Appointed in his place was Atty. Barroso, a bar topnotcher who was in the premises visiting a relative. Atty. Barroso ably assisted Mariano when the latter gave a statement. However, Mariano assailed the investigation claiming that he was deprived of counsel of his choice. Was the NBI correct in dismissing Atty. Santos and appointing Atty. Barroso in his stead? Is Mariano's statement, made with the assistance of Atty. Barroso, admissible in evidence? (5%)

ALTERNATIVE ANSWER:

The NBI was not correct in dismissing Atty. Santos and appointing Atty. Barroso in his stead. Article III, Section 12(1) of the 1987 Constitution requires that a person under investigation for the commission of an offense shall have no less than "competent and independent counsel preferably of his own choice." This is meant to stress the primacy accorded to the voluntariness of the choice under the uniquely stressful conditions of a custodial investigation. Thus, the lawyer called to be present during such investigation should be as far as reasonably possible, the choice of the individual undergoing questioning. The appointment of Atty. Barroso is questionable because he was visiting a relative working in the NBI and thus his independence is doubtful. Lawyers engaged by the police, whatever testimonials are given as proof of their probity and supposed independence, are generally suspect, as in many areas, the relationship between lawyers and law enforcement authorities can be symbiotic. Considering that Mariano was deprived of counsel of his own choice, the statement is inadmissible in evidence. (*People v. Januario*, G.R. No. 98252, February 7, 1997)

ALTERNATIVE ANSWER:

The NBI was correct in dismissing Atty. Santos as he was incompetent. The 1987 Constitution requires counsel to be competent and independent. Atty. Barroso, being a bar topnotcher ably assisted Mariano and there is no showing that his having a relative in the NBI

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

Rights of the Accused; Right to an Independent Counsel (2013)

A robbery with homicide had taken place and Lito, Badong and Rolliwere invited for questioning based on the information furnished by a neighbor that he saw them come out of the victim's house at about the time of the robbery/killing. The police confronted the three with this and other information they had gathered, and pointedly accused them of committing the crime.

Lito initially resisted, but eventually broke down and admitted his participation in the crime. Elated by this break and desirous of securing a written confession soonest, the police called City Attorney Juan Buan to serve as the trio's counsel and to advise them about their rights during the investigation.

Badong and Rolli, weakened in spirit by Lito's early admission, likewise admitted their participation. The trio thus signed a joint extra-judicial confession which served as the main evidence against them at their trial. They were convicted based on their confession.

Should the judgment of conviction be affirmed or reversed on appeal? (5%)

SUGGESTED ANSWER:

The judgment of conviction should be reversed on appeal. It relied mainly on the extra-judicial confession of the accused. The lawyer assisting them must be independent. City Attorney Juan Buan is not independent. As City Attorney, he provided legal support to the City Mayor in performing his duties, which include the maintenance of peace and order (*People v. Sunga*, 399 SCRA 642)

Rights of the Accused; Right to Speedy Trial (2000)

Charged by Francisco with libel, Pablo was arraigned on January 3, 2000. Pre-trial was dispensed with and continuous trial was set for March 7, 8 and 9, 2000. On the first setting, the prosecution moved for its postponement and cancellation of the other settings because its principal and probably only witness, the private complainant Francisco, suddenly had to go abroad to fulfill a professional commitment. The judge instead dismissed the case for failure to prosecute.

a) Would the grant of the motion for postponement have violated the accused's right to speedy trial? (2%)

SUGGESTED ANSWER:

The grant of the motion for postponement would not have violated the right of the accused to speedy trial. As held in *People v. Leviste*, 255 SCRA 238 (1996), since the motion for postponement was the first one requested, the need for the offended party to attend to a professional commitment is a valid reason, no substantial right of the accused would be prejudiced, and the prosecution should be afforded a fair opportunity to prosecute its case, the motion should be granted.

ALTERNATIVE ANSWER:

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

Rights of the Accused; Self-Incrimination (2000)

b) A man was shot and killed and his killer fled. Moments after the shooting, an eyewitness described to the police that the slayer wore white pants, a shirt with floral design, had boots and was about 70 kilos and 1.65 meters. Borja, who fit the description given, was seen nearby. He was taken into custody and brought to the police precinct where his pants, shirt and boots were forcibly taken and he was weighed, measured, photographed, fingerprinted and subjected to paraffin testing. At his trial, Borja objected to the admission in evidence of the apparel, his height and weight, his photographs, fingerprints comparison and the results of the paraffin test, asserting that these were taken in violation of his right against self-incrimination. Rule on the objection. (2%)

SUGGESTED ANSWER:

b) The objection of Borja is not tenable. As held in *People v. Paynor*, 261 SCRA 615 (1996), the rights guaranteed by Section 12, Article III of the Constitution applies only against testimonial evidence. An accused may be compelled to be photographed or measured, his garments may be removed, and his body may be examined.

Rights of the Accused; Self-Incrimination (2006)

Select the best answer and explain.

1. An accused's right against self-incrimination is violated in the following cases: (5%)

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

SUGGESTED ANSWER:

The best answer is c) when he is ordered to produce a sample of his handwriting to be used as evidence that he

is the author of a letter wherein he agreed to kill the victim. Under Article III, Section 17 of the 1987 Constitution, "no person shall be compelled to be a witness against himself." Since the provision prohibits compulsory testimonial incrimination, it does not matter whether the testimony is taken by oral or written means as either way it involves the USE OF INTELLECTUAL FACULTIES. The purpose of the privilege is to avoid and prohibit thereby the repetition and recurrence of compelling a person, in a criminal or any other case, to furnish the missing evidence necessary for his conviction (*Bermudez v. Castillo*, Per Rec. No. 714-A, July 26, 1937; *Beltran v. Samson*, G.R. No. 32025, September 23, 1929).

Rights of the Accused; Self Incrimination (2010)

A, the wife of an alleged victim of enforced disappearance, applied for the issuance of a writ of amparo before a Regional Trial Court in Tarlac. Upon motion of A, the court issued inspection and production orders addressed to the AFP chief of Staff to allow entry at Camp Aquino and permit the copying of relevant documents, including the list of detainees, if any. Accompanied by court-designated Commission on Human Rights (CHR) lawyers, A took photographs of a suspected isolation cell where her husband was allegedly seen being held for three days and tortured before he finally disappeared. The CHR lawyers requested one Lt. Valdez for a photocopy of the master plan of Camp Aquino and to confirm in writing that he had custody of the master plan. Lt. Valdez objected on the ground that it may violate his right against self-incrimination. Decide with reasons. (4%).

SUGGESTED ANSWER:

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

ALTERNATIVE ANSWER:

The objection is without merit. Right against self-incrimination is not violated because the right is simply against testimonial compulsion. But the prohibition also extends 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 the same such as in this case.

Pursuant to the production order issued by the court, there can be compulsion for the production of documents sought in the order.

Rights of the Accused; Self-incrimination (2014)

Alienmae is a foreign tourist. She was asked certain questions in regard to a complaint that was filed against her by someone who claimed to have been defrauded by her. *Alienmae* answered all the questions asked, except in regard to some matters in which she invoked her right against self-incrimination. When she was pressed to elucidate, she said that the questions being asked might

tend to elicit incriminating answers insofar as her home state is concerned. Could *Alienmae* invoke the right against self-incrimination if the fear of incrimination is in regard to her foreign law? (4%)

SUGGESTED ANSWER:

Alienmae can invoke her right against self-incrimination even if it is in regard to her foreign law, if her home state is a party to the International Covenant on Civil and Political Rights. Article 14 (3) (g) of the said Covenant provides:

"In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

xxx

(g) Not to be compelled to testify against himself or to confess guilt"

Double Jeopardy (2000)

Charged by Francisco with libel, Pablo was arraigned on January 3, 2000. Pre-trial was dispensed with and continuous trial was set for March 7, 8 and 9, 2000. On the first setting, the prosecution moved for its postponement and cancellation of the other settings because its principal and probably only witness, the private complainant Francisco, suddenly had to go abroad to fulfill a professional commitment. The judge instead dismissed the case for failure to prosecute.

a) Would the reversal of the trial court's assailed dismissal of the case place the accused in double jeopardy? (3%)

SUGGESTED ANSWER:

a) Since the postponement of the case would not violate the right of the accused to speedy trial, the precipitate dismissal of the case is void. The reversal of the dismissal will not place the accused in double Jeopardy.

ALTERNATIVE ANSWER:

a) Since the dismissal of the case is valid, its reversal will place the accused in double jeopardy.

Double Jeopardy (2001)

For the death of Joey, Erning was charged with the crime of homicide before the Regional Trial Court of Valenzuela. He was arraigned. Due to numerous postponements of the scheduled hearings at the instance of the prosecution, particularly based on the ground of unavailability of prosecution witnesses who could not be found or located, the criminal case was pending trial for a period of seven years. Upon motion of accused Erning who invoked his right to speedy trial, the court dismissed the case. Eventually, the prosecution witnesses surfaced, and a criminal case for homicide, involving the same incident was filed anew against Erning. Accused Erning moved for dismissal of the case on the ground of double jeopardy. The prosecution objected, submitting the reason that it was not able to present the said witnesses earlier because the latter went into hiding out of fear. Resolve the motion. (5%)

SUGGESTED ANSWER:

The motion should be granted. As held in *Caes* vs. Intermediate Appellate Court, 179 SCRA 54 (1989), the dismissal of a criminal case predicated on the right of the

accused to a speedy trial amounts to an acquittal for failure of the prosecution to prove his guilt and bars his subsequent prosecution for the same offense.

Double Jeopardy (2002)

A Tamaraw FX driven by Asiong Cascasero, who was drunk, sideswiped a pedestrian along EDSA in Makati City, resulting in physical injuries to the latter. The public prosecutor filed two separate informations against Cascasero, the first for reckless imprudence resulting in physical injuries under the Revised Penal Code, and the second for violation of an ordinance of Makati City prohibiting and penalizing driving under the influence of liquor. Cascasero was arraigned, tried and convicted for reckless imprudence resulting in physical injuries under the Revised Penal Code. With regard to the second case (i.e., violation of the city ordinance), upon being arraigned, he filed a motion to quash the information invoking his right against double jeopardy. He contended that, under Art. III, Section 21 of the Constitution, if an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act. He argued that the two criminal charges against him stemmed from the same act of driving allegedly under the influence of liquor which caused the accident. Was there double jeopardy? Explain your answer (5%)

FIRST ALTERNATIVE ANSWER:

Yes, there is double jeopardy. Under the second sentence of Article III, Section 21 of the Constitution, if an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act. In this case, the same act is involved in the two cases. The reckless imprudence which resulted in physical injuries arose from the same act of driving under the influence of liquor. In *Yap v. Luterio*, G.R. No. L-12669, April 30, 1959, the Supreme Court held that an accused who was acquitted of driving recklessly in violation of an ordinance could not be prosecuted for damage to property through reckless imprudence because the two charges were based on the same act. In *People v. Relova*, 148 SCRA 292 (1987), it was held that when there is identity in the act punished by a law and an ordinance, conviction or acquittal under either shall bar prosecution under the other.

SECOND ALTERNATIVE ANSWER:

There is no double jeopardy because the act penalized under the Revised Penal Code is different from the act penalized by the ordinance of Makati City. The Revised Penal Code penalizes reckless imprudence resulting in physical injuries, while the ordinance of Makati City penalizes driving under the influence of liquor.

Writ of Amparo (2013)

Conrad is widely known in the neighborhood as a drug addict. He is also suspected of being a member of the notorious "Akyat-Condo Gang" that has previously broken into and looted condominium units in the area.

Retired Army Colonel Sangre – who is known as an anti-terrorism fighter who disdained human and constitutional rights and has been nicknamed "terror of Mindanao" – is

now the Head of Security of Capricorn Land Corporation, the owner and developer of Sagittarius Estates where a series of robberies has recently taken place.

On March 1, 2013, Conrad informed his mother, Vannie, that uniformed security guards had invited him for a talk in their office but he refused to come. Later that day, however, Conrad appeared to have relented; he was seen walking into the security office flanked by two security guards. Nobody saw him leave the office afterwards.

Conrad did not go home that night and was never seen again. The following week and after a week-long search, Vannie feared the worst because of Col. Sangre's reputation. She thus reported Conrad's disappearance to the police. When nothing concrete resulted from the police investigation, Vannie – at the advice of counsel – filed a petition for a writ of amparo to compel Col. Sangre and the Sagittarius Security Office to produce Conrad and to hold them liable and responsible for Conrad's disappearance.

(A) Did Vannie's counsel give the correct legal advice? (6%)

SUGGESTED ANSWER:

The advice of Vannie's counsel that she file a petition for a writ of amparo is not correct. In order that a Writ of Amparo be availed of against a private individual for the disappearance of someone, the involvement of the government is indispensable. There is no showing of any participation of the government in Conrad's disappearance (**Navia v. Pardico, 673 SCRA 618**).

(B) If the petition would prosper, can Col. Sangre be held liable and/or responsible for Conrad's disappearance? (6%)

SUGGESTED ANSWER:

No, Col. Sangre cannot be held responsible for the disappearance of Conrad. Command responsibility has no applicability to an Amparo proceeding (**Rubrico v. Macapagal-Arroyo, 613 SCRA 233**). It may be established merely to enable the court to craft the appropriate remedies against the responsible parties (**Balao v. Macapagal-Arroyo, 662 SCRA 312**).

ALTERNATIVE ANSWER:

Although the Writ of Amparo does not pinpoint criminal culpability for a disappearance, it determines responsibility, or at least accountability, for the purpose of imposing appropriate remedy. Responsibility refers to the extent the actors have been established to have participated in an enforced disappearance, as a measure of the remedy, to be crafted, such as the directive to file the appropriate criminal and civil cases against the responsible parties (**Razon, Jr. v. Tagitis, 606 SCRA 598**).

CITIZENSHIP

Effect of Oath of Allegiance (2004)

(4-a) TCA, a Filipina medical technologist, left in 1975 to work in ZOZ State. In 1988 she married ODH, a citizen of ZOZ. Pursuant to ZOZ's law, by taking an oath of allegiance, she acquired her husband's citizenship. ODH died in 2001, leaving her financially secured. She returned home in 2002, and sought elective office in 2004 by running for Mayor of APP, her hometown. Her opponent sought to have her disqualified because of her ZOZ citizenship. She replied that although she acquired ZOZ's citizenship because of marriage, she did not lose her Filipino citizenship. Both her parents, she said, are Filipino citizens. Is TCA qualified to run for Mayor? (5%)

SUGGESTED ANSWER:

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

Effect of Repatriation (2002)

A was born in the Philippines of Filipino parents. When martial law was declared in the Philippines on September 21, 1972, he went to the United States and was naturalized as an American citizen. After the EDSA Revolution, he came home to the Philippines and later on reacquired Philippine citizenship by repatriation. Suppose in the May 2004 elections he is elected Member of the House of Representatives and a case is filed seeking his disqualification on the ground that he is not a natural-born citizen of the Philippines, how should the case against him be decided? Explain your answer. (5%)

SUGGESTED ANSWER:

The case should be decided in favor of A. As held in *Bengson v. House of Representatives Electoral Tribunal*, 357 SCRA 545 (2001), repatriation results in the recovery of the original nationality. Since A was a natural-born Filipino citizen before he became a naturalized American citizen, he was restored to his former status as a natural-born Filipino when he repatriated.

Effect of Repatriation (2003)

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

SUGGESTED ANSWER:

Cruz was qualified to run as representative of the First District of Pampanga. Since his parents were Filipino citizens, he was a natural born citizen. Although he became a naturalized American citizen, under the ruling in *Bengson v. House of Representatives Electoral*

Tribunal. 357 SCRA 545 [2001], by virtue of his repatriation, Cruz was restored to his original status as a natural-born Filipino citizen.

Effect of Reacquisition of Philippine Citizenship (2009)

Warlito, a natural-born Filipino, took up permanent residence in the United States, and eventually acquired American citizenship. He then married Shirley, an American, and sired three children. In August 2009, Warlito decided to visit the Philippines with his wife and children: Johnny, 23 years of age; Warlito Jr., 20; and Luisa 17. While in the Philippines, a friend informed him that he could reacquire Philippine citizenship without necessarily losing US nationality. Thus, he took the oath of allegiance required under RA no. 9225.

(a) Having reacquired Philippine citizenship, is Warlito a natural born or naturalized Filipino Citizen today? Explain your answer (3%).

SUGGESTED ANSWER:

NATURAL BORN. Reacquisition of Philippine Citizenship under RA no. 9225 will restore him back of his former status as a natural-born citizen (Bengzon vs. House of Representatives Electoral Tribunal, 357 SCRA 545 [2001]; R.A. 2630).

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

SUGGESTED ANSWER:

Shirley will not become a Filipino citizen, because under RA 9225, Warlito's reacquisition of Philippine citizenship did not extend its benefits to Shirley. She should instead file with the Bureau of Immigration a petition for cancellation of her alien certificate of registration on the ground that in accordance with Section 15 of the Naturalization Law, because of her Marriage to Warlito, she should be deemed to have become a Filipino Citizen. She must allege and prove that she possesses none of the disqualifications to become a naturalized Filipino citizen (Burca vs. Republic, 51 SCRA 248 [1973]).

ALTERNATIVE ANSWER:

NO. Shirley will not become a Filipino Citizen because only Warlito's unmarried children whether legitimate, illegitimate or adopted, below 18 years of age shall be entitled to derivative Philippine citizenship. Shirley may acquire Philippine citizenship in the most speedy procedure through JUDICIAL NATURALIZATION under CA no. 473, as amended.

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

SUGGESTED ANSWER:

Only LUISA shall acquire Philippine Citizenship upon the reacquisition of her father's Filipino citizenship under RA no. 9225. The unmarried children, whether legitimate, illegitimate or adopted, below 18 years of age shall be entitled to derivative Philippine citizenship.

Effects of Philippine Bill of 1902 (2001)

No I - From mainland China where he was born of Chinese parents, Mr. Nya Tsa Chan migrated to the Philippines in 1894. As of April 11, 1899, he was already a permanent resident of the Philippine Islands and continued to reside in this country until his death. During his lifetime and when he was already in the Philippines, Mr. Nya Tsa Chan married Charing, a Filipina, with whom he begot one son, Hap Chan, who was born on October 18, 1897. Hap Chan got married also to Nimfa, a Filipina, and one of their children was Lacqui Chan who was born on September 27, 1936. Lacqui Chan finished the course Bachelor of Science in Commerce and eventually engaged in business. In the May 1989 election, Lacqui Chan ran for and was elected Representative (Congressman). His rival candidate, Ramon Deloria, filed a quo warranto or disqualification case against him on the ground that he was not a Filipino citizen. It was pointed out in particular, that Lacqui Chan did not elect Philippine citizenship upon reaching the age of 21. Decide whether Mr. Lacqui Chan suffers from a disqualification or not. (5%)

SUGGESTED ANSWER:

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

Electing Philippine Citizenship (2006)

1. Atty. Emily Go, a legitimate daughter of a Chinese father and a Filipino mother, was born in 1945. At 21, she elected Philippine citizenship and studied law. She passed the bar examinations and engaged in private practice for many years. The Judicial and Bar Council nominated her as a candidate for the position of Associate Justice of the Supreme Court. But her nomination is being contested by Atty. Juris Castillo, also an aspirant to the position. She claims that Atty. Emily Go is not a natural born citizen, hence, not qualified to be appointed to the Supreme Court. Is this contention correct? (5%)

SUGGESTED ANSWER:

The contention is not correct. Under Article IV, Section 1(3) of the 1987 Constitution, it is provided that those born before January 17, 1973 of Filipino mothers, who elect Philippine Citizenship upon reaching the age of majority are Filipino citizens. Atty. Emily Go was born of a Filipino mother in 1945 and elected citizenship upon reaching the age of 21. She is a natural born Filipino citizen as provided by Article IV, Section 2 of the Constitution — "x x x those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens." Hence she is qualified to be appointed to the Supreme Court.

Electing Philippine Citizenship; When Proper (2006)

2. Atty. Richard Chua was born in 1964. He is a legitimate son of a Chinese father and a Filipino mother. His father became a naturalized Filipino citizen when Atty. Chua was still a minor. Eventually, he studied law and was allowed by the Supreme Court to take the bar examinations, subject to his submission to the Supreme Court proof of his Philippine citizenship. Although he never complied with such requirement, Atty. Chua practiced law for many years until one Noel Eugenio filed with the Supreme Court a complaint for disbarment against him on the ground that he is not a Filipino citizen. He then filed with the Bureau of Immigration an affidavit electing Philippine citizenship. Noel contested it claiming it was filed many years after Atty. Chua reached the age of majority. Will Atty. Chua be disbarred? Explain. (5%)

SUGGESTED ANSWER:

No, Atty. Chua will not be disbarred. Atty. Chua is already a Filipino citizen and there was no need for him to file the affidavit electing Filipino citizenship. An election of Philippine citizenship presupposes that the person electing is an alien. His father, however, already became a Filipino citizen when Atty. Chua was still a minor and thus, he was already a Filipino before the age of majority (Co v. HRET, G.R. Nos. 92191-92, July 30, 1991).

Residency Requirements; Elective Official (2005)

(1) In the May 8, 1995 elections for local officials whose terms were to commence on June 30, 1995, Ricky filed on March 20, 1995 his certificate of candidacy for the Office of Governor of Laguna. He won, but his qualifications as an elected official was questioned. It is admitted that he is a repatriated Filipino citizen and a resident of the Province of Laguna. To be qualified for the office to which a local official has been elected, when at the latest should he be: (5%) (a) A Filipino Citizen? Explain.

SUGGESTED ANSWER:

The citizenship requirement is to be possessed by an elective official at the latest as of the time he is proclaimed and at the start of the term of office to which he has been elected. Section 39 of the Local Government Code, which enumerates the qualifications of elective local government officials, does not specify any particular date or time when the candidate must possess citizenship. (Frialdo v. COMELEC, G.R. No. 120295, June 28, 1996) (b) A resident of the locality? Explain.

SUGGESTED ANSWER:

Under Section 39 of the Local Government Code, an individual must possess the residency requirement in the locality where he intends to run at least one year immediately preceding the day of election.

Status; Legitimate Child (2003)

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

SUGGESTED ANSWER:

Miguel Sin is a Filipino citizen because he is the legitimate child of a Filipino mother. Under Article IV,

Section 4 of the 1987 Constitution, his mother retained her Philippine citizenship despite her marriage to an alien husband, and according to Article IV, Section 1(2) of the 1987 Constitution, children born of a Filipino mother are Filipino citizens.

Ways of Reacquiring Citizenship (2000)

Cruz, a Filipino by birth, became an American citizen. In his old age he has returned to the country and wants to become a Filipino again. As his lawyer, enumerate the ways by which citizenship may be reacquired. (2%)

SUGGESTED ANSWER:

Cruz may reacquire Philippine citizenship in the following ways:

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

Dual Citizenship vs. Dual Allegiance (2009)

TRUE OR FALSE.

e. Dual citizenship is not the same as dual allegiance

SUGGESTED ANSWER:

TRUE. An individual may have 2 or more citizenship but owe allegiance to one State. Taking for example RA no. 9225 providing for retention of Philippine citizenship among natural born Filipino citizens.

Dual citizenship arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by those states and is involuntary.

Dual allegiance refers to the situation in which a person simultaneously owes by some positive and voluntary act, loyalty to two or more states (Mercado vs. Manzano, 307 SCRA 630 [1999]).

Marriage of a Citizen to an Alien; Effect on Citizenship (2014)

Rosebud is a natural-born Filipino woman who got married to *Rockcold*, a citizen of *State Frozen*. By virtue of the laws of *Frozen*, any person who marries its citizens would automatically be deemed its own citizen. After ten years of marriage, *Rosebud*, who has split her time between the Philippines and *Frozen*, decided to run for Congress. Her opponent sought her disqualification, however, claiming that she is no longer a natural-born citizen. In any event, she could not seek elective position since she never renounced her foreign citizenship pursuant to the Citizenship Retention and Reacquisition Act (R.A. No. 9225). Is *Rosebud* disqualified to run by reason of citizenship? (4%)

SUGGESTED ANSWER:

Rosebud remained a natural born Filipino citizen even if under the laws of the *Frozen*, she became a citizen of it because of her marriage to *Rockcold*. Under Section 4, Article IV of the Constitution, she retained her Philippine citizenship.

Rosebud cannot seek elective office. Under Section 5(2) of Republic Act No. 9225, even those who retained their

Philippine citizenship by birth and acquired foreign citizenship by virtue of marriage to a foreign spouse are required to renounce their foreign citizenship (*Sobejana-Condon v. Commission on Elections*, 678 SCRA 267 [2012]).

ALTERNATIVE ANSWER:

No, *Rosebud* is not disqualified.

She became a dual citizen, not on the basis of the provisions of Republic Act No. 9225, but by reason of the automatic operation of the citizenship laws of State Frozen, of which her husband, *Rockcold*, was a citizen. The requirement regarding the renunciation of her foreign citizenship under that law cannot therefore be made to apply to her.

It does not appear that she ever renounced her natural-born Filipino citizenship upon her marriage to *Rockcold*. Accordingly, she cannot be considered as ever having lost it. She is therefore not disqualified to run for Congress by reason of citizenship.

Jus Sanguinis (2015)

Discuss the evolution of the principle of jus sanguinis as basis of Filipino citizenship under the 1935, 1973, and 1987 Constitutions. (3%)

SUGGESTED ANSWER:

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

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

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

(Note: The 1935 and the 1973 Constitutions are not included in the coverage of the examinations).

ACCOUNTABILITY OF PUBLIC OFFICERS

Abandonment of Office (2000)

No VII. Alcantara was elected barangay chairman and later president of the Association of Barangay Councils in

his municipality. In that capacity, he was appointed by the President as member of the Sangguniang Bayan of his municipality. Later, the Secretary of Interior and Local Governments appointed Alcantara as member of the Sangguniang Panlalawigan of their province to meet a reorganizational contingency, and Mendoza took his place in the Sangguniang Bayan. Alcantara then wrote a letter of resignation from the Sangguniang Bayan addressed to the Mayor of the municipality, ceased functioning as member thereof and assumed office and performed his functions as member of the Sangguniang Panlalawigan. Later, the reorganization of the Sangguniang Panlalawigan and the appointment of Mendoza were voided. Can Alcantara reassume office as member of the Sangguniang Bayan or has he lost it because of resignation? abandonment? Explain. (5%)

SUGGESTED ANSWER:

Alcantara cannot reassume office as member of the Sangguniang Bayan. As held in *Sangguniang Bayan of San Andres v. Court of Appeals*, 284 SCRA 276 (1998), Alcantara should be deemed to have abandoned his position as member of the Sangguniang Bayan. His intention to abandon his position is shown by his failure to perform his function as member of the Sangguniang Bayan, his failure to collect the salary for the position, his failure to object to the appointment of his replacement, and his failure to initiate any act to reassume his post after the reorganization of the Sangguniang Bayan was voided. Alcantara effected his intention by his letter of resignation, his assumption of office as member of the Sangguniang Panlalawigan, his discharge of his duties as its member, and his receipt of the salary for such post. Alcantara cannot be deemed to have lost his office as member of the Sangguniang Bayan by resignation. Under Section 82 of the Local Government Code, the resignation should be submitted to the Sangguniang Bayan. He submitted it to the Mayor instead, and the resignation was not accepted.

Discipline; Clemency; Doctrine of Condonation (2000)

A provincial governor duly elected to office was charged with disloyalty and suspended from office pending the outcome of the formal investigation of the charges against him. The Secretary of Interior and Local Governments found him guilty as charged and removed him from office. He filed a petition before the Supreme Court questioning his removal. While the case was pending before the Supreme Court, he filed his certificate of candidacy for the position of Governor and won, and was proclaimed Governor. He claims his reelection to the position of Governor has rendered the pending administrative case against him moot and academic. Is he correct? Explain. (5%)

SUGGESTED ANSWER:

Yes, the re-election of the governor has rendered the pending administrative case against him moot. As explained in *Aguinaldo v. Santos*, 212 SCRA 768 (1992), a local elective official cannot be removed from office for misconduct committed during his previous term, because each term is separate and the people by re-electing him are deemed to have forgiven his misconduct.

Discipline; Preventive Suspension & Appeal; entitlement to salary pendent (2001)

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

a) Can Alfonso Beit claim salary for the period that his case was pending investigation? Why? (3%)

b) Can he claim salary for the period that his case was pending appeal? Why? (2%)

SUGGESTED ANSWER;

a) Alfonso Beit cannot claim any salary for the period of his preventive suspension during the pendency of the investigation. As held in Gloria vs. Court of Appeals, 306 SCRA 287 (1997), under Section 52 of the Civil Service Law, the provision for payment of salaries during the period of preventive suspension during the pendency of the investigation has been deleted. The preventive suspension was not a penalty. Its imposition was lawful, since it was authorized by law.

b) If the penalty was modified because Alfonso Beit was exonerated of the charge that was the basis for the decision ordering his dismissal, he is entitled to back wages, otherwise, this would be tantamount to punishing him after exoneration from the charge which caused his dismissal. [Gloria vs. Court of Appeals, 306 SCRA 287 (1997)]. If he was reprimanded for the same charge which was the basis of the decision ordering his dismissal, Alfonso Beit is not entitled to back wages, because he was found guilty, and the penalty was merely commuted. (Dela Cruz vs. Court of Appeals, 305 SCRA 303 (1998)).

Discipline; Preventive Suspension (2002)

Simeon Valera was formerly a Provincial Governor who ran and won as a Member of the House of Representatives for the Second Congressional District of Iloilo. For violation of Section 3 of the Anti-Graft and Corrupt Practices Act (R.A. No.3019), as amended, allegedly committed when he was still a Provincial Governor, a criminal complaint was filed against him before the Office of the Ombudsman for which, upon a finding of probable cause, a criminal case was filed with the Sandiganbayan. During the course of trial, the Sandiganbayan issued an order of preventive suspension for 90 days against him. Representative Valera questioned the validity of the Sandiganbayan order on the ground that, under Article VI, Section 16(3) of the Constitution, he can be suspended only by the House of Representatives and that the criminal case against him did not arise from his actuations as a member of the House of Representatives. Is Representative Valera's contention correct? Why? (5%)

SUGGESTED ANSWER:

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

Discipline; Preventive Suspension (2009)

Maximo, an employee of the Department of education, is administratively charged with dishonesty and gross misconduct. During the formal investigation of the charges, the Secretary of Education preventively suspended him for a period of 60 days. On the 60th day of the preventive suspension, the Secretary rendered a verdict, finding Maximino guilty, and ordered his immediate dismissal from the service.

Maximino appealed to the Civil Service Commission which affirmed the Secretary's decision. Maximo then elevated the matter to the Court of Appeals. The CA reversed the CSC decision, exonerating Maximino. The secretary of education then petitions the Supreme Court for the review of the CA decision.

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

SUGGESTED ANSWER:

The Secretary of Education is not the proper party to seek review of the decision of the Court of Appeals, because he is the one who heard the case and imposed the penalty. Being the disciplinary authority, the Secretary of Education should be impartial and should not actively participate in prosecuting Maximino (National Appellate Board of the National Police Commission vs. Mamauag, 446 SCRA 624 [2005]).

(b) If the SC affirms the CA decision, is Maximino entitled to recover back salaries corresponding to the entire period he was out of the service? Explain your answer. (3%)

SUGGESTED ANSWER:

As a general rule, Maximo is not entitled to recover back salaries corresponding to the entire period he was out of the service because of the NO WORK NO PAY RULE. But if it is found that he is illegally dismissed or suspended he is entitled to back wages and other monetary benefits from the time of his illegal dismissal or suspension up to his reinstatement.

ALTERNATIVE ANSWER:

Maximo cannot recover back salaries during his preventive suspension. The law does not provide for it. Preventive suspension is not a penalty. During the preventive suspension, he was not yet out of service. However, he is entitled to back wages from the time of

his dismissal until his reinstatement. The enforcement of the dismissal pending appeal was punitive, and he was exonerated (Gloria vs. Court of Appeals, 306 SCRA 287 [1999]).

Discipline; Preventive Suspension; Nature (2015)

Senator Fleur De Lis is charged with plunder before the Sandiganbayan. After finding the existence of probable cause, the court issues a warrant for the Senator's arrest. The prosecution files a motion to suspend the Senator relying on Section 5 of the Plunder Law. According to the prosecution, the suspension should last until the termination of the case. Senator Lis vigorously opposes the motion contending that only the Senate can discipline its members; and that to allow his suspension by the Court would violate the principle of separation of powers. Is Senator Lis's contention tenable? Explain. (4%)

SUGGESTED ANSWER:

The contention of Senator Fleur de Lis is not tenable. The suspension is contemplated in Subsection 3, Section 16, Article VI of the Constitution erring member. The suspension imposed under Section 5 of the Plunder Law is not a penalty but a preventive measure. The doctrine of separation of powers cannot be deemed to have excluded Members of the Congress from the application of the Plunder Law. The law itself does not exclude Members of the Congress from its coverage. The Sandiganbayan did not err in issuing the preventive suspension order. (Santiago v. Sandiganbayan, 756 SCRA 636 [2001]).

Elective and Appointive Officials: disciplinary authority (2004)

CTD, a Commissioner of the National Labor Relations Commission (NLRC), sports a No. 10 car plate. A disgruntled litigant filed a complaint against him for violation of the Anti-Graft and Corrupt Practices Act before the Ombudsman. CTD now seeks to enjoin the Ombudsman in a petition for prohibition, alleging that he could be investigated only by the Supreme Court under its power of supervision granted in the Constitution. He contends that under the law creating the NLRC, he has the rank of a Justice of the Court of Appeals, and entitled to the corresponding privileges. Hence, the OMB has no jurisdiction over the complaint against him. Should CTD's petition be granted or dismissed? Reason briefly. (5%)

SUGGESTED ANSWER:

The petition of CTD should be dismissed. Section 21 of the Ombudsman Act vests the Office of the Ombudsman with disciplinary authority over all elective and appointive officials of the government, except officials who may be removed only by impeachment, Members of Congress, and the Judiciary. While CTD has the rank of a Justice of the Court of Appeals, he does not belong to the Judiciary but to the Executive Department. This simply means that he has the same compensation and privileges as a Justice of the Court of Appeals. If the Supreme Court were to investigate CTD, it would be performing a non-judicial function. This will violate the principle of separation of powers. (Noblejas v. Teehankee, 23 SCRA 405 [1968])

Elective Public Officer; De Facto Officer (2000)

In the elections of May 1992, Cruz and Santos were the candidates for the office of Municipal Mayor, the term of which was to expire on June 30, 1995. Finding that he won by a margin of 20 votes, the Municipal Board of Canvassers proclaimed Cruz as the duly elected Mayor. Santos filed an election protest before the Regional Trial Court (RTC) which decided that it was Santos who had the plurality of 30 votes and proclaimed him the winner. On motion made, the RTC granted execution pending the appeal of Cruz to the COMELEC (Comelec) and on this basis. Santos assumed office and served as Municipal Mayor. In time, the Comelec reversed the ruling of the RTC and instead ruled that Cruz won by a margin of 40 votes and proclaimed him the duly elected Municipal Mayor.

a) It is now beyond June 30, 1995. Can Cruz still hold office for the portion of the term he has failed to serve? Why? (3%)

b) Was Santos a usurper and should he pay back what he has received while holding the office as Municipal Mayor? Why? (2%)

SUGGESTED ANSWER:

a) Cruz can no longer hold office for the portion of the term he failed to serve since his term has expired.

b) Santos was not a usurper. He was a de facto officer, since he had a color of election to the office of Municipal Mayor by virtue of the decision in the election protest. Hence, he is entitled to the emoluments of the office.

Elective Public Officers; De Facto Officer; effects (2004)

AVE ran for Congressman of QU province. However, his opponent, BART, was the one proclaimed and seated as the winner of the election by the COMELEC. AVE filed seasonably a protest before HRET (House of Representatives Electoral Tribunal). After two years, HRET reversed the COMELEC's decision and AVE was proclaimed finally as the duly elected Congressman. Thus, he had only one year to serve in Congress. Can AVE collect salaries and allowances from the government for the first two years of his term as Congressman? Should BART refund to the government the salaries and allowances he had received as Congressman? What will happen to the bills that BART alone authored and were approved by the House of Representatives while he was seated as Congressman? Reason and explain briefly. (5%)

SUGGESTED ANSWER:

B. AVE cannot collect salaries and allowances from the government for the first two years of his term, because in the meanwhile BART collected the salaries and allowances. BART was a de facto officer while he was in possession of the office. To allow AVE to collect the salaries and allowances will result in making the government pay a second time. (Mechem, A Treatise on the Law of Public Offices and Public Officers, [1890] pp. 222-223.) BART is not required to refund to the government the salaries and allowances he received. As a de facto officer, he is entitled to the salaries and allowances because he rendered services during his

incumbency. (Rodriguez v. Tan, 91 Phil. 724 119520. The bills which BART alone authored and were approved by the House of Representatives are valid because he was a de facto officer during his incumbency. The acts of a de facto officer are valid insofar as the public is concerned. (People v. Garcia, 313 SCRA 279 [1999].

Graft and Corruption; Prescription of Crime (2002)

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

(a) Does the criminal offense committed prescribe? (2%)

(b) Does the right of the government to recover the illegally acquired wealth prescribe? (3%)

SUGGESTED ANSWER:

(a) A violation of Section 3(b) and (c) of the Anti-Graft and Corrupt Practices Act prescribes. As held in Presidential Ad-Hoc Fact-Finding Committee on Behest Loans v. Desierto, 317 SCRA 272 (1999), Article XI, Section 15 of the Constitution does not apply to criminal cases for violation of the Anti-Graft and Corrupt Practices Act

(b) Article XI, Section 15 of the Constitution provides that the right of the State to recover properties unlawfully acquired by public officials or employees, or from them or from their nominees or transferees, shall not be barred by prescription.

Impeachment; Cronyism (2000)

Is cronyism a legal ground for the impeachment of the President? Explain. (5%)

SUGGESTED ANSWER:

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

Ombudsman: Power to Suspend; Preventive Suspension (2004)

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

A. Aggrieved, WOW petitioned the Court of Appeals to annul the preventive suspension order on the ground that the Ombudsman could only recommend but not impose the suspension. Moreover, according to WOW, the suspension was imposed without any notice or hearing, in violation of due process. Is the petitioner's contention meritorious? Discuss briefly. (5%)

SUGGESTED ANSWER:

The contention of Director WOW is not meritorious. The suspension meted out to him is preventive and not punitive. Section 24 of Republic Act No. 6770 grants the Ombudsman the power to impose preventive suspension up to six months. Preventive suspension maybe imposed without any notice or hearing. It is merely a preliminary step in an administrative investigation and is not the final determination of the guilt of the officer concerned. (Garcia v. Mojica, 314 SCRA 207 [1999]).

B. For his part, the Ombudsman moved to dismiss WOW's petition. According to the Ombudsman the evidence of guilt of WOW is strong, and petitioner failed to exhaust administrative remedies. WOW admitted he filed no motion for reconsideration, but only because the order suspending him was immediately executory. Should the motion to dismiss be granted or not? Discuss briefly. (5%)

SUGGESTED ANSWER:

B. The motion to dismiss should be denied. Since the suspension of Director WOW was immediately executory, he would have suffered irreparable injury had he tried to exhaust administrative remedies before filing a petition in court (University of the Philippines Board of Regents v. Rasul, 200 SCRA 685 [1991]- Besides, the question involved is purely legal. (Azarcon v. Bunagan, 399 SCRA 365 [2003]).

Ombudsman; Power to Investigate (2003)

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

SUGGESTED ANSWER:

No, the Ombudsman cannot entertain the complaint. As stated in the case of In re: Laureta. 148 SCRA 382 [1987], pursuant to the principle of separation of powers, the correctness of the decisions of the Supreme Court as final arbiter of all justiciable disputes is conclusive upon all other departments of the government; the Ombudsman has no power to review the decisions of the Supreme Court by entertaining a complaint against the Justices of the Supreme Court for knowingly rendering an unjust decision.

SECOND ALTERNATIVE ANSWER:

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

Ombudsman; Power to Impose Penalties (2009)

TRUE OR FALSE.

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

recommendatory.

SUGGESTED ANSWER:

FALSE. Under Section 15(3) of the Ombudsman Act, the Ombudsman has the power to ensure compliance with the imposition of penalty on public officers it finds at fault by virtue of its disciplinary authority (Office of the Ombudsman vs. Madriaga, 503 SCRA 631 [2006]).

Ombudsman; Power and Jurisdiction (2012)

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

a. Judge Red refused to recognize the authority of the Office of the Ombudsman over him because according to him, any administrative action against him or any court official or employee falls under the exclusive jurisdiction of the Supreme Court. Decide with reasons. (5%)

SUGGESTED ANSWER:

Since the complaint refers to the performance of the duties of Judge Red, Ombudsman Grey should not act on it and should refer it to the Supreme Court. His investigation will encroach upon the exclusive power of administrative supervision of the Supreme Court over all courts (**Maceda v. Vasquez, 221 SCRA 464**).

b. Does the Ombudsman have authority to conduct investigation over crimes or offenses committed by public officials that are NOT in connection or related at all to the official's discharge of his duties and functions? Explain. (3%)

SUGGESTED ANSWER:

The Ombudsman can investigate crimes or offenses committed by public officers which are connected in the performance of their duties. Under Section 13 (1), Article XI of the Constitution, the Ombudsman can investigate any act or omission of a public official which is illegal (**Deloso v. Domingo, 191 SCRA 545**).

c. Who are required by the Constitution to submit a declaration under oath of his assets, liabilities, and net worth? (2%)

SUGGESTED ANSWER:

All public officers and employees are required to submit a declaration under oath of their assets, liabilities and net worth (Section 17, Article XI of the Constitution).

Prohibition On Elective Officer to Hold Public Office (2002)

X was elected provincial governor for a term of three years. He was subsequently appointed by the President of the Philippines serving at her pleasure, as concurrent Presidential Assistant for Political Affairs in the Office of the President, without additional compensation. Is X's appointment valid? (5%)

SUGGESTED ANSWER:

The appointment of X is not valid, because the position of Presidential Assistant for Political Affairs is a public office. Article IX-B Section 7 of the Constitution provides that no elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure. As held in *Flores v. Drilon*, 223 SCRA 568 (1993), since an elective official is ineligible for an appointive position, his appointment is not valid.

ADMINISTRATIVE LAW

Alter Ego Principle (2013)

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

Should the petition be granted? (5%)

SUGGESTED ANSWER:

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

Exhaustion of Administrative Remedies (2000)

a) Explain the doctrine of exhaustion of administrative remedies. (2%)

b) Give at least three (3) exceptions to its application. (3%)

SUGGESTED ANSWER:

A.) The doctrine of exhaustion of administrative remedies means that when an adequate remedy is available within the Executive Department, a litigant must first exhaust this remedy before he can resort to the courts. The purpose of the doctrine is to enable the administrative agencies to correct themselves if they have committed an error. (*Rosales v. Court of Appeals*, 165 SCRA 344 [1988])

B.) The following are the exceptions to the application of the doctrine of exhaustion of administrative remedies:

1. The question involved is purely legal;
2. The administrative body is in estoppel;
3. The act complained of is patently illegal;
4. There is an urgent need for Judicial intervention;
5. The claim involved is small;
6. Grave and irreparable injury will be suffered;
7. There is no other plain, speedy and adequate remedy;
8. Strong public interest is involved;
9. The subject of the controversy is private law;
10. The case involves a quo warranto proceeding (*Sunville Timber Products, Inc. v. Abad*, 206 SCRA 482 [1992]);

11. The party was denied due process (Samahang Magbubukid ng Kapdula, Inc. v. Court of Appeals, 305 SCRA 147 [1999]);
12. The decision is that of a Department Secretary. (Nazareno v. Court of Appeals, G.R. No. 131641, February 23, 2000);
13. Resort to administrative remedies would be futile (University of the Philippines Board of Regents v. Rasul 200 SCRA 685 [1991]);
14. There is unreasonable delay (Republic v. Sandiganbayan, 301 SCRA 237 [1999]);
15. "The action involves recovery of physical possession of public land (Gabrito u. Court of Appeals, 167 SCRA 771 [1988]);
16. The party is poor (Sabello v. Department of Education, Culture and Sports, 180 SCRA 623 [1989]); and
17. The law provides for immediate resort to the court (Rulian v Valdez, 12 SCRA 501 [1964]).
{Note: The examinee should be given full credit if he gives three of the abovementioned exceptions.}

Exhaustion of Administrative Remedies (2015)

The Secretary of the Department of Environment and Natural Resources (DENR) issued Memorandum Circular No. 123-15 prescribing the administrative requirements for the conversion of a timber license agreement (TLA) into an Integrated Forestry Management Agreement (IFMA). ABC Corporation, a holder of a TLA which is about to expire, claims that the conditions for conversion imposed by the said circular are unreasonable and arbitrary and a patent nullity because it violates the non-impairment clause under the Bill of Rights of the 1987 Constitution.

ABC Corporation goes to court seeking the nullification of the subject circular. The DENR moves to dismiss the case on the ground that ABC Corporation has failed to exhaust administrative remedies which is fatal to its cause of action. If you were the judge, will you grant the motion? Explain. (4%)

SUGGESTED ANSWER:

The motion to dismiss should be denied. The doctrine of exhaustion of administrative remedies applies only to judicial review of decisions of administrative agencies in the exercise of their quasi-judicial power. It has no application to their exercise of rule-making power. (Holy Spirit Homeowners Association, Inc. v Defensor, 497 SCRA 581 [2006]).

Judicial Review of Administrative Action (2001)

Give the two (2) requisites for the judicial review of administrative decision/actions, that is, when is an administrative action ripe for Judicial review? (5%)

SUGGESTED ANSWER:

The following are the conditions for ripeness for judicial review of an administrative action:

1. The administrative action has already been fully completed and, therefore, is a final agency action; and

2. All administrative remedies have been exhausted. [Gonzales, Administrative Law, Rex Bookstore: Manila, p. 136 (1979)].

Power of the President to Reorganize Administrative Structure (2003)

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

SUGGESTED ANSWER:

The contention of the employees is not correct. As held in Buklod ng Kawaning EHB v. Zamora. 360 SCRA 718 [2001], Section 31, Book III of the Administrative Code of 1987 has delegated to the President continuing authority to reorganize the administrative structure of the Office of the President to achieve simplicity, economy and efficiency. Since this includes the power to abolish offices, the President can abolish the Office of the Presidential Spokesman, provided it is done in good faith. The President can also abolish the Bureau in the Department of Interior and Local Governments, provided it is done in good faith because the President has been granted continuing authority to reorganize the administrative structure of the National Government to effect economy and promote efficiency, and the powers include the abolition of government offices. (Presidential Decree No. 1416, as amended by Presidential Decree No. 1772; Larin v. The Executive Secretary. 280 SCRA 713 [1997]).

Rules and Regulations; Due Process (2000)

The Maritime Industry Authority (MARINA) issued new rules and regulations governing pilotage services and fees, and the conduct of pilots in Philippine ports. This it did without notice, hearing nor consultation with harbor pilots or their associations whose rights and activities are to be substantially affected. The harbor pilots then filed suit to have the new MARINA rules and regulations declared unconstitutional for having been issued without due process. Decide the case. (5%)

SUGGESTED ANSWER:

The issuance of the new rules and regulations violated due process. Under Section 9, Chapter II, Book VII of the Administrative Code of 1987, as far as practicable, before adopting proposed rules, an administrative agency should publish or circulate notices of the proposed rules and afford interested parties the opportunity to submit their views; and in the fixing of rates, no rule shall be valid unless the proposed rates shall have been published in a newspaper of general circulation at least two weeks before the first hearing on them. In accordance with this provision, in Commissioner of Internal Revenue v CA, 261 SCRA 236 (1996), it was held that when an administrative rule substantially increases the burden of those directly affected, they should be accorded the chance to be heard before its issuance.

ALTERNATIVE ANSWER:

Submission of the rule to the University of the Philippines Law Center for publication is mandatory. Unless this requirement is complied with, the rule cannot be enforced.

Government Agency vs. Government Instrumentality (2005)

(3) State with reason(s) which of the following is a government agency or a government instrumentality:

- a. Department of Public Works and Highways;
- b. Bangko Sentral ng Pilipinas;
- c. Philippine Ports Authority;
- d. Land Transportation Office;
- e. Land Bank of the Philippines. (5%)

SUGGESTED ANSWER:

An INSTRUMENTALITY refers to any agency of the national government not integrated within the departmental framework, vested with special functions or jurisdiction by law, with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. (Iron and Steel Authority v. Court of Appeals, G.R. No. 102976, October 25, 1995) AGENCY under the administrative code is any department, bureau, office, commission, authority or officer of the national government, authorized by law or executive order to make rules, issue licenses, grant rights or privileges, and adjudicate cases; research institutions with respect to licensing functions; government corporations with respect to functions regulating private rights, privileges, occupation or business, and officials in the exercise of the disciplinary powers as provided by law. There is NO PRACTICAL DISTINCTION between an instrumentality and agency, for all intents and purposes. A distinction, however, may be made with respect to those entities possessing a separate charter created by statute.

- a. DPWH is an agency. It does not possess a separate charter.
- b. BSP is an instrumentality because it was incorporated under the new Central Bank Law (R.A. No. 7653)
- c. PPA can be defined as both an instrumentality and an agency because it was incorporated by special law and it has its own charter, yet it is integrated with the DOTC.
- d. LTO is an agency. It is an office of the DOTC.
- e. LBP is an instrumentality having a charter under a special law and is a government financial institution (GFI) independent of any department of government.

Quasi-Judicial Body or Agency (2006)

3. What is a quasi-judicial body or agency? (2.5%)

SUGGESTED ANSWER:

A quasi-judicial body or agency is an administrative body with the power to hear, determine or ascertain facts and decide rights, duties and obligations of the parties by the application of rules to the ascertained facts. By this power, quasi-judicial agencies are enabled to interpret and apply implementing rules and regulations promulgated by them and laws entrusted to their administration.

ELECTION LAWS

2nd Placer Rule (2003)

No VIII - In the municipal mayoralty elections in 1980, the candidate who obtained the highest number of votes was subsequently declared to be disqualified as a candidate and so ineligible for the office to which he was elected. Would this fact entitle a competing candidate who obtained the second highest number of votes to ask and to be proclaimed the winner of the elective office? Reasons.

SUGGESTED ANSWER:

According to *Trinidad v. COMELEC*, 315 SCRA 175 [1999], if the candidate who obtained the highest number of votes is disqualified, the candidate who obtained the second highest number of votes cannot be proclaimed the winner. Since he was not the choice of the people, he cannot claim any right to the office.

Effect of Filing of Certificate of Candidacy; Appointive Officer vs Elective Officer (2002)

A, a City Legal Officer, and B, a City Vice-Mayor, filed certificates of candidacy for the position of City Mayor in the May 14, 2001 elections.

- a) Was A ipso facto considered resigned and, if so, effective on what date? (2%)
- b) Was B ipso facto considered resigned and, if so, effective on what date? (3%) In both cases, state the reason or reasons for your answer.

SUGGESTED ANSWER:

A) A was considered ipso facto resigned upon the filing of his certificate of candidacy, because being a City Legal Officer, he is an appointive official. Section 66 of the Omnibus Election Code provides that any person holding a public appointive office shall be considered ipso facto resigned upon the filing of his certificate of candidacy.

B) B is not considered ipso facto resigned. Section 67 of the Omnibus Election Code considers any elective official ipso facto resigned from office upon his filing of a certificate of candidacy for any office other than the one he is holding except for President and Vice-President, was repealed by the Fair Election Act

Effect of Filing of Certificate of Candidacy; Fair Election Act (2003)

No X - (a) Pedro Reyes is an incumbent Vice-Mayor of Quezon City. He intends to run in the regular elections for the position of City Mayor of Quezon City whose incumbent mayor would have fully served three consecutive terms by 2004. Would Pedro Reyes have to give up his position as Vice-Mayor-

- (1) Once he files his certificate of candidacy; or
- (2) When the campaign period starts; or
- (3) Once and if he is proclaimed winner in the election; or
- (4) Upon his assumption to the elective office; or
- (5) None of the above. Choose the correct answer
- (b) If Pedro Reyes were, instead, an incumbent Congressman of Quezon City, who intends to seek the mayoralty post in Quezon City, would your choice of

answer in no.(1) above be the same? If not, which would be your choice?

SUGGESTED ANSWER:

(a) The correct answer is (5). Section 14 of the Fair Election Act repealed Section 67 of the Omnibus Election Code, which provided that any elected official, whether national or local, who runs for any office other than the one he is holding in a permanent capacity, except for President and Vice President, shall be considered ipso facto resigned from his office upon the filing of his certificate of candidacy. Section 14 of the Fair Election Act likewise rendered ineffective the first proviso in the third paragraph of Section 11 of Republic Act No. 8436. Consequently, Pedro Reyes can run for Mayor without giving up his position as Vice-Mayor. He will have to give up his position as Vice-Mayor upon expiration of his term as Vice-Mayor on June 30, 2004.

(Note: The question did not ask the examinee to explain the reason for his choice and the general instructions requires such discussion only to a "yes" or "no" answer.)

(b) The answer is the same if Pedro Reyes is a Congressman of Quezon City, because the repeal of Section 67 of the Omnibus Election Code covers both elective national and local officials.

Petition for Disqualification; Jurisdiction (2012)

Mayor Pink is eyeing re-election in the next mayoralty race. It was common knowledge in the town that Mayor Pink will run for re-election in the coming elections. The deadline for filing of Certificate of Candidacy (CoC) is on March 23 and the campaign period commences the following day. One month before the deadline, Pink has yet to file her CoC, but she has been going around town giving away sacks of rice with the words "Mahal Tayo ni Mayor Pink" printed on them, holding public gatherings and speaking about how good the town is doing, giving away pink t-shirts with "Kay Mayor Pink Ako" printed on them.

a. Mr. Green is the political opponent of Mayor Pink. In April, noticing that Mayor Pink had gained advantage over him because of her activities before the campaign period, he filed a petition to disqualify Mayor Pink for engaging in an election campaign outside the designated period.

1. Which is the correct body to rule on the matter? Comelec en banc, or Comelec division? Answer with reasons. (2%)

SUGGESTED ANSWER:

It is the Commission on Elections en banc which should decide the petition. Since it involves the exercise of the administrative powers of the Commission on Elections, Section 3, Article IX-C of the Constitution is not applicable (**Baytan v. Commission on Elections, 396 SCRA 703**).

2. Rule on the petition. (5%)

SUGGESTED ANSWER:

The petition should be denied. Under Section 80 of the Omnibus Election Code, to be liable for premature campaigning, he must be a candidate. Unless he filed his

certificate of candidacy, he is not a candidate (**Lanot v. Commission on Elections, 507 SCRA 114**).

Pre-Proclamation Contest (2008)

The 1st Legislative District of South Cotabato is composed of General Santos and three municipalities including Polomolok. During the canvassing proceedings before the District Board of Canvassers in connection with the 2007 congressional elections, candidate MP objected to the certificate of canvass for Polomolok on the ground that it was obviously manufactured, submitting as evidence the affidavit of mayoralty candidate of Polomolok. The Certificate of canvass for General Santos was likewise objected to by MP on the basis of the confirmed report of the local NAMFREL that 10 elections returns from non-existent precincts were included in the certificate. MP moved that the certificate of canvass for General Santos be corrected to exclude the results from the non-existent precincts. The District Board of Canvassers denied both objections and ruled to include the certificate of canvass. May MP appeal the rulings to the COMELEC? Explain. (6%)

SUGGESTED ANSWER:

NO. COMELEC's Jurisdiction over pre-proclamation cases pertains only to elections of regional, provincial and city officials. (Sec. 15, RA 7166) – No pre-proclamation cases in election of national officials. For purposes of the elections for President, V-President, Senator and Member of the House of Representatives, no pre-proclamation cases shall be allowed on matters relating to the preparation, transmission, receipt, custody and appreciation of the election returns or the certificates of canvass, as the case may be.

ALTERNATIVE ANSWER:

Yes. a party adversely affected by the ruling of the board shall immediately inform the board if he intends to appeal said ruling to the COMELEC. The party adversely affected by the ruling may file a verified notice of appeal with the board within a non-extendible period of 5 days.

Election Protest vs. Quo Warranto (2001)

No XVII - Under the Omnibus Election Code (B.P. 881, as amended), briefly differentiate an election protest from a quo warranto case, as to who can file the case and the respective grounds therefor. (5%)

SUGGESTED ANSWER:

An ELECTION PROTEST maybe filed by a losing candidate for the same office for which the winner filed his certificate of candidacy. A QUO WARRANTO CASE may be filed by any voter who is a registered voter in the constituency where the winning candidate sought to be disqualified ran for office. In an election contest, the issues are: (a) who received the majority or plurality of the votes which were legally cast and (b) whether there were irregularities in the conduct of the election which affected its results. In a quo warranto case, the issue is whether the candidate who was proclaimed elected should be disqualified because of ineligibility or disloyalty to the Philippines.

Election Protest vs. Quo Warranto (Q5-2006)

Differentiate an election protest from an action for quo warranto. (2.5%)

SUGGESTED ANSWER:

An ELECTION PROTEST is a proceeding whereby a losing candidate for a particular position contests the results of the election on grounds of fraud, terrorism, irregularities or illegal acts committed before, during or after the casting and counting of votes. On the other hand, a PETITION FOR QUO WARRANTO is filed by any registered voter to contest the election of any candidate on grounds of ineligibility or disloyalty to the Republic of the Philippines.

Election Protest; Substitution; Quo Warranto (2009)

Despite lingering questions about his Filipino citizenship and his one-year residence in the district, Gabriel filed his certificate of candidacy for congressman before the deadline set by law. His opponent, Vito, hires you as lawyer to contest Gabriel's candidacy.

(a) Before Election Day, what action or actions will you institute against Gabriel, and before which court, commission or tribunal will you file such action/s? Reasons. (2%).

SUGGESTED ANSWER:

File with COMELEC in division, a petition to deny due course or to cancel Certificate of Candidacy within 25 days from the time of filing of the COC on the ground of material representation contained in the certificate is false; or file a petition with the COMELEC in division to cancel the COC because he is a nuisance candidate. There must be a showing that:

- a. The COC was filed to put the election process in a mockery or disrepute
- b. Cause confusion among voters by similarity of names of registered candidates
- c. By other circumstances or acts which demonstrate that a candidate has no bona fide intention to run for the office for which his certificate of candidacy has been filed, and thus prevent a faithful determination of the true will of the electorate.

(b) If, during the pendency of such action/s but before election day, Gabriel withdraws his certificate of candidacy, can he be substituted as candidate? If so, by whom and why? If not, why or why not?

SUGGESTED ANSWER:

No. when the candidate who withdraws is an independent candidate, he cannot be substituted. Under the law, if after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who dies, withdrew or was disqualified not later than mid-day of the day of the

election (sec.76, OEC).

Since there is no showing in the present case that Gabriel is a member of a registered political party, in no moment could he be substituted if he withdraws his COC.

(c) If the action/s instituted should be dismissed with finality before the election, and Gabriel assumes office after being proclaimed the winner in the election, can the issue of his candidacy and/or citizenship and residence still be questioned? If so, what action or actions may be filed and where? If not, why not? (2%)

SUGGESTED ANSWER:

Yes, a petition for quo warranto may be filed with the House of Representative Electoral Tribunal questioning his eligibility to continue to hold such elective position.

A quo warranto proceeding may be filed by any citizen of the Philippine questioning the eligibility of an elective officer with respect to his continued possession of the qualifications of age, citizenship, and residency, as the case may be. Should the action prosper and a decision be rendered against the elective official, the latter shall be removed from office leaving the position vacant.

Moreover, the Sole judge to hear and decide concerning the election, returns and qualification of the members of the House of Representative is the HRET. The HRET shall have jurisdiction over the election contest when the candidate has been proclaimed, taken his oath and assumed to office.

Quo Warranto; Elective vs. Appointive (2012)

b. Distinguish briefly between Quo Warranto in elective office and Quo Warranto in appointive office. (3%)

SUGGESTED ANSWER:

In quo warranto in elective office, the issue is the ineligibility of the elected candidates (Section 3(e), Rule 1 of the Rules of Procedure in Election Cases). If he is ineligible, the candidate who got the second highest number of votes cannot be proclaimed elected (**Sinsuat v. Commission on Elections, 492 SCRA 264**). A voter may file a petition for quo warranto against an elected candidate. The petition should be filed within 10 days after the proclamation of the elected candidate.

In quo warranto in appointive office, the issue is the legality of the appointment. The court will decide who between the parties has the legal title to the office (Nachura, Outline Reviewer in Political Law, p. 567).

It is the Solicitor General, a public prosecutor, or a person claiming to be entitled to the public office can file a petition for quo warranto against an appointive official (Sections 2 and 5, Rule 66 of the Rules of Court). The petition should be filed within one year after the cause of the petition accrued (Section 11, Rule 66 of the Rules of Court).

Petition for Disqualification; Sec. 68 vs. Sec. 78 (2015)

(2) How do you differentiate the petition filed under Section 68 from the petition filed under Section 78, both of the Omnibus Election Code? (3%)

SUGGESTED ANSWER:

(1) In addition to the rule cited above that a certificate of candidacy which is denied or cancelled under Section 78 of the Omnibus Election Code would make said certificate of candidacy void ab initio (which would preclude the application of the rules on succession for purposes of replacing him upon his disqualification because, up to that point of his disqualification, he shall be considered merely as a de facto officer), unlike in the case of disqualification under Section 68 of the Omnibus Election Code, which would give rise to the de jure officership of the disqualified candidate up to his point of disqualification, the other basic distinctions between petitions for disqualification of candidates and petitions to reject or cancel certificate of candidacy are as follows: Under Section 68 of the Omnibus Election Code, a candidate may be disqualified if he commits any of the election offenses or "prohibited acts" specified therein, or if he is a permanent resident of or an immigrant to a foreign country.

On the other hand, under Section 78 of the same law, a certificate of candidacy may be denied due course or cancelled if found to be containing material misrepresentations which are false and deliberately made. These would include possession of natural born status, registration as a voter, and eligibility, as when one, although precluded from running for a fourth term because of the three-term limit rule, claims to be nonetheless qualified, or when one claims to be eligible despite his disqualification on the basis of an accessory penalty imposed upon him in connection with his conviction in a criminal case.

A petition for disqualification under Section 68 may be filed at any time after the last day for filing of the certificates of candidacy but not later than the candidate's proclamation should he win in the elections, while a petition to deny due course to or cancel a certificate of candidacy under Section 78 must be filed within five days, but not later than twenty-five days from the time of the filing of the certificate of candidacy.

While a person who is disqualified under Section 68 is merely prohibited to continue as a candidate, the person whose certificate is cancelled or denied due course under Section 78 is not treated as a candidate at all. Thus, a candidate disqualified under Section 68 may be validly substituted but only by an official candidate of his registered or accredited party.

Expiration of Term; Effects (2000)

In the elections of May 1992, Cruz and Santos were the candidates for the office of Municipal Mayor, the term of which was to expire on June 30, 1995. Finding that he won by a margin of 20 votes, the Municipal Board of Canvassers proclaimed Cruz as the duly elected Mayor. Santos filed an election protest before the Regional Trial

Court (RTC) which decided that it was Santos who had the plurality of 30 votes and proclaimed him the winner. On motion made, the RTC granted execution pending the appeal of Cruz to the COMELEC (Comelec) and on this basis. Santos assumed office and served as Municipal Mayor. In time, the Comelec reversed the ruling of the RTC and instead ruled that Cruz won by a margin of 40 votes and proclaimed him the duly elected Municipal Mayor.

a) It is now beyond June 30, 1995. Can Cruz still hold office for the portion of the term he has failed to serve? Why? (3%)

SUGGESTED ANSWER:

a) As held in *Malaluan v. COMELEC*, 254 SCRA 397 (1996). Cruz can no longer hold office for the portion of the term he failed to serve since his term has expired.

Recall (2002)

No XVI. Suppose the people of a province want to recall the provincial governor before the end of his three-year term of office,

A. On what ground or grounds can the provincial governor be recalled? (1%)

B. How will the recall be initiated? (2%)

C. When will the recall of an elective local official be considered effective? (2%)

SUGGESTED ANSWER:

In accordance with Section 69 of the Local Government Code, the Governor can be recalled for LOSS OF CONFIDENCE. Under Section 70 of the Local Government Code, the recall may be initiated by a resolution adopted by a majority of all the members of the preparatory recall assembly, which consists of all the mayors, the vice-mayors, and the sangguniang members of the municipalities and component cities, or by a written petition signed by at least twenty-five per cent (25%) of the total number of registered voters in the province. According to Section 72 of the Local Government Code, the recall of an elective local official shall take effect upon the election and proclamation of a successor in the person of the candidate receiving the highest number of votes cast during the election on recall.

Three-Term Limit Rule (2001)

In the May 1992 elections, Manuel Manalo and Segundo Parate were elected as Mayor and Vice Mayor, respectively. Upon the death of Manalo as incumbent municipal mayor, Vice Mayor Segundo Parate succeeded as mayor and served for the remaining portion of the term of office. In the May 1995 election, Segundo Parate ran for and won as mayor and then served for the full term. In the May 1998 elections, Parate ran for reelection as Mayor and won again. In the May 2001 election, Segundo Parate filed his certificate of candidacy for the same position of mayor, but his rival mayoralty candidate sought his disqualification alleging violation of the three-term limit for local elective officials provided for in the Constitution and in the Local Government Code. Decide whether the disqualification case will prosper or not. (5%)

SUGGESTED ANSWER:

The disqualification case should be dismissed. As held in *Borja vs. COMELEC*, 295 SCRA157 (1996), in computing the three-term limitation imposed upon elective local officials, only the term for which he was elected to should be considered. The term which he served as a result of succession should not be included. It is not enough that the official has served three consecutive terms. He must have been elected to the same position three consecutive times.

Three-Term Limit; from Municipality to Newly-Created City (2005)

2. Manuel was elected Mayor of the Municipality of Tuba in the elections of 1992, 1995 and 1998. He fully served his first two terms, and during his third term, the municipality was converted into the component City of Tuba. The said charter provided for a holdover and so without interregnum Manuel went on to serve as the Mayor of the City of Tuba. In the 2001 elections, Manuel filed his certificate of candidacy for City Mayor. He disclosed, though, that he had already served for three consecutive terms as elected Mayor when Tuba was still a municipality. He also stated in his certificate of candidacy that he is running for the position of Mayor for the first time now that Tuba is a city. Reyes, an adversary, ran against Manuel and petitioned that he be disqualified because he had already served for three consecutive terms as Mayor. The petition was not timely acted upon, and Manuel was proclaimed the winner with 20,000 votes over the 10,000 votes received by Reyes as the only other candidate. It was only after Manuel took his oath and assumed office that the COMELEC ruled that he was disqualified for having ran and served for three consecutive terms. (5%)

(a) As lawyer of Manuel, present the possible arguments to prevent his disqualification and removal.

SUGGESTED ANSWER:

As lawyer of Manuel, I would argue that he should not be disqualified and removed because he was a three-term mayor of the municipality of Tuba, and, with its conversion to a component city, the latter has a totally separate and different corporate personality from that of the municipality. Moreover, as a rule, in a representative democracy, the people should be allowed freely to choose those who will govern them. Having won the elections, the choice of the people should be respected.

(b) How would you rule on whether or not Manuel is eligible to run as Mayor of the newly-created City of Tuba immediately after having already served for three (3) consecutive terms as Mayor of the Municipality of Tuba?

SUGGESTED ANSWER:

Manuel is not eligible to run as mayor of the city of Tuba. The 1987 Constitution specifically included an exception to the people's freedom to choose those who will govern them in order to avoid the evil of a single person accumulating excessive power over a particular territorial jurisdiction as a result of a prolonged stay in the same office. To allow Manuel to vie for the position of city mayor after having served for three consecutive terms as a municipal mayor would obviously defeat the very intent of the framers when they wrote this exception. Should he be allowed another three consecutive terms as mayor of

the City of Tuba, Manuel would then be possibly holding office as chief executive over the same territorial jurisdiction and inhabitants for a total of eighteen consecutive years. This is the very scenario sought to be avoided by the Constitution, if not abhorred by it. (*Latasa v. COMELEC*, G.R. No. 154829, December 10, 2003)

(c) Assuming that Manuel is not an eligible candidate, rebut Reyes' claim that he should be proclaimed as winner having received the next higher number of votes.

ALTERNATIVE ANSWER:

Reyes cannot be proclaimed winner for receiving the second highest number of votes. The Supreme Court has consistently ruled that the fact that a plurality or a majority of the votes are cast for an ineligible candidate at a popular election, or that a candidate is later declared to be disqualified to hold office, does not entitle the candidate who garnered the second highest number of votes to be declared elected. The same merely results in making the winning candidate's election a nullity. In the present case, 10,000 votes were cast for private respondent Reyes as against the 20,000 votes cast for petitioner Manuel. The second placer is obviously not the choice of the people in this particular election. The permanent vacancy in the contested office should be filled by succession. (*Labo v. COMELEC*, G.R. No. 105111, July 3, 1992)

ALTERNATIVE ANSWER:

Reyes could not be proclaimed as winner because he did not win the election. To allow the defeated candidate to take over the Mayoralty despite his rejection by the electorate is to disenfranchise the electorate without any fault on their part and to undermine the importance and meaning of democracy and the people's right to elect officials of their choice. (*Benito v. COMELEC*, G.R. No. 106053, August 17, 1994)

Three-Term Limit; Congressmen (2001)

No V - During his third term, "A", a Member of the House of Representatives, was suspended from office for a period of 60 days by his colleagues upon a vote of two-thirds of all the Members of the House. In the next succeeding election, he filed his certificate of candidacy for the same position. "B", the opposing candidate, filed an action for disqualification of "A" on the ground that the latter's, candidacy violated Section 7. Article VI of the Constitution which provides that no Member of the House of Representatives shall serve for more than three consecutive terms. "A" answered that he was not barred from running again for that position because his service was interrupted by his 60- day suspension which was involuntary. Can 'A', legally continue with his candidacy or is he already barred? Why? (5%)

SUGGESTED ANSWER:

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

Three Term Limit; Contest; Substitution (2008)

Abdul ran and won in the May 2001, 2004, and 2007 elections for Vice-Governor of Tawi-Tawi. After being proclaimed Vice-Governor in the 2004 elections, his opponent, Khalil, filed an election protest before the Commission on Election. Ruling with finality on the protest, the COMELEC declared khalil as the duly elected Vice-Governor though the decision was promulgated only in 2007, when Abdul had fully served his 2004-2007 term and was in fact already on his 2007-2010 term as Vice-Governor.

(a) Abdul now consults you if he can still run for Vice-Governor of Tawi-Tawi in the forthcoming May 2010 election on the premise that he could not be considered as having served as Vice-Governor from 2004-2007 because he was not duly elected to the post, as he assumed office merely as presumptive winner and that presumption was later overturned when COMELEC decided with finality that had lost in the May 2004 elections. What will be your advice? (3%).

SUGGESTED ANSWER:

Will advise Abdul that he can no longer run for Vice-Governor in the forthcoming May 2010 election because there is no interruption of service of his 2004-2007 term. He is considered to have already served and thereof it is counted in the consecutiveness of his term of office. (Ong v. Alegre, Jan. 23, 2006).

(b) Abdul also consults you whether his political party can validly nominate his wife as substitute candidate for Vice-Governor of Tawi-Tawi in May 2010 election in case the COMELEC disqualifies him and denies due course to or cancels his certificate of candidacy in view of a false material representation therein. What will be your advice? (3%)

SUGGESTED ANSWER:

I will advise him that his wife can be a substitute if his wife is a member of the political party and is certified by such political party that she is going to substitute Abdul as candidate for Vice-Governor and that the substitution must be made within the prescribed period provided by law. Provided further that his wife is eligible to hold public office meaning she has all the qualifications and none of the disqualifications.

Vacancy; Effect of Vice-Mayor Acting As Mayor (2002)

No XIV. Suppose A, a Municipal Mayor, went on a sick leave to undergo medical treatment for a period of four (4) months. During that time

A. Will B, the Municipal Vice-Mayor, be performing executive functions? Why? (2%)

B. Will B at the same time be also performing legislative functions as presiding officer of the Sangguniang Bayan? Why? (3%)

SUGGESTED ANSWER:

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

executive functions, because the functions of the Municipal Mayor are executive.

B. The Municipal Vice-Mayor cannot continue as presiding officer of the Sangguniang Bayan while he is acting Municipal Mayor. In accordance with *Gamboa v. Aguirre*, 310 SCRA 867 (1999), under the Local Government Code, the Vice-Municipal Mayor was deprived of the power to preside over the Sangguniang Bayan and is no longer a member of it. The temporary vacancy in the office of the Municipal Mayor creates a corresponding temporary vacancy in the Office of the Municipal Vice-Mayor when he acts as Municipal Mayor. This constitutes inability on his part to preside over the sessions of the Sangguniang Bayan.

Rule on Succession; Vacancy; Mayor (2015)

(1) Gandang Bai filed her certificate of candidacy (COC) for municipal mayor stating that she is eligible to run for the said position. Pasyo Maagap, who also filed his COC for the same position, filed a petition to deny due course or cancel Bai's COC under Section 78 of the Omnibus Election Code for material misrepresentation as before Bai filed her COC, she had already been convicted of a crime involving moral turpitude. Hence, she is disqualified perpetually from holding any public office or from being elected to any public office. Before the election, the COMELEC cancelled Bai's COC but her motion for reconsideration (MR) remained pending even after the election. Bai garnered the highest number of votes followed by Pasyo Maagap, who took his oath as Acting Mayor. Thereafter, the COMELEC denied Bai's MR and declared her disqualified for running for Mayor. P. Maagap asked the Department of Interior and Local Government Secretary to be allowed to take his oath as permanent municipal mayor. This request was opposed by Vice Mayor Umaasa, invoking the rule on succession to the permanent vacancy in the Mayor's office. Who between Pasyo Maagap and Vice Mayor Umaasa has the right to occupy the position of Mayor? Explain your answer. (5%)

SUGGESTED ANSWER:

(1) Pasyo Maagap would be entitled to occupy the position of Mayor upon the disqualification of Gandang Bai on the basis of the petition to deny due course or cancel her certificate of candidacy under the provisions of Section 78 of the Omnibus Election Code.

The rule is that "(a)n ineligible candidate who receives the highest number of votes is a wrongful winner. By express legal mandate, he could have been a candidate in the first place, but by virtue of the lack of material time or any other intervening circumstances, his ineligibility might not have been passed upon prior to election date. Consequently, he may have had the opportunity to hold himself out to the electorate as a legitimate and duly qualified candidate. However, notwithstanding the outcome of ballots cast in his favor cannot cure the defect of failure to qualify with the substantive legal requirements of eligibility to run for public office." (*Maquiling v. Commission on Elections*, G.R. No. 195649, April 16, 2013).

Accordingly, Gandang Bai "being a non-candidate, the votes cast in his favor should not have been counted." This leaves Pasyo Maagap as the "qualified candidate who obtained the highest number of votes. Therefore, the rule on succession under the Local Government Code will not apply," (Maquiling v. Commission on Elections, G.R. No. 195649, April 16, 2013).

Rule on Succession; Vacancy; SB (2002)

A vacancy occurred in the sangguniang bayan of a municipality when X, a member, died. X did not belong to any political party. To fill up the vacancy, the provincial governor appointed A upon the recommendation of the sangguniang panlalawigan. On the other hand, for the same vacancy, the municipal mayor appointed B upon the recommendation of the sangguniang bayan. Which of these appointments is valid? (5%)

SUGGESTED ANSWER:

As held in *Farinas v. Barba*, 256 SCRA 396 (1996), neither of the appointments is valid. Under Section 45 of the Local Government Code, in case of a permanent vacancy in the Sangguniang Bayan created by the cessation in office of a member who does not belong to any political party, the Governor shall appoint a qualified person recommended by the Sangguniang Bayan. Since A was not recommended by the Sangguniang Bayan, his appointment by the Governor is not valid. Since B was not appointed by the Governor but by the Municipal Mayor, his appointment is also not valid.

Rule on Succession; Vacancy: Recall (2010)

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

(a) Who shall succeed Governor Diy in his office as Governor?

SUGGESTED ANSWER:

The candidate who received the highest number of votes in the recall will succeed Governor Diy (Section 72 of the Local Government Code).

(b) Can Governor Diy run again as governor in the next election?

SUGGESTED ANSWER:

Yes, because recall election is an interruption of the consecutiveness of the term of office it cannot be counted. A recall election is a mid-way election and the term is not completed when one is conducted. The third term of Governor Diy should not be included in computing the three-term limit. (*Lonzanida vs. Commission on Elections*, 311 SCRA 602 [1999]).

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

SUGGESTED ANSWER:

Governor Diy cannot refuse to run in the recall election. He is automatically considered as a duly registered candidate. (Section 71, Local Government Code).

ALTERNATIVE ANSWER:

YES, Governor Diy is not compelled to run in a recall election. Recall election is called because the electorate

has lost confidence to the elective official. He may instead resign from his position.

Rule on Succession; Vacancy: Sangguniang Panlalawigan (2008)

On August 8, 2008, the Governor of Bohol died and Vice-Governor Cesar succeeded him by operation of law. Accordingly, Benito, the highest ranking member of the Sangguniang Panlalawigan was elevated to the position of Vice-Governor. By the elevation of Benito to the Office of Vice-Governor, a vacancy in the Sangguniang Panlalawigan was created. How should the vacancy be filled?

SUGGESTED ANSWER:

The vacancy shall be filled in the following manner:

1. If Benito is affiliated with a political party, the vacancy in the Sangguniang Panlalawigan shall be filled by a nomination and certificate of membership of the appointee from the highest official of the political party. (must be filled with someone who belongs to the political party to maintain the party representation as willed by the people in the election).
2. If Benito is not affiliated with a political party, the vacancy shall be filled by the PRESIDENT through the executive secretary.

LOCAL GOVERNMENT

Boundary Dispute Resolution; LGU; RTC's Jurisdiction (2005)

1 - There was a boundary dispute between Duenas, a municipality, and Passi, an independent component city, both of the same province. State how the two local government units should settle their boundary dispute. (5%)

SUGGESTED ANSWER:

Boundary disputes between local government units should, as much as possible, be settled amicably. After efforts at settlement fail, then the dispute may be brought to the appropriate Regional Trial Court in the said province. Since the Local Government Code is silent as to what body has exclusive jurisdiction over the settlement of boundary disputes between a municipality and an independent component city of the same province, the Regional Trial Courts have general jurisdiction to adjudicate the said controversy. (*Mun. of Kananga v. Madrona*, G.R. No. 141375, April 30, 2003)

Boundary Dispute Resolution; LGU; RTC (2010)

TRUE OR FALSE.

c. Boundary disputes between and among municipalities in the same province may be filed immediately with the RTC.

SUGGESTED ANSWER:

FALSE. Should be referred for settlement to the SANGGUNIAN PANLALAWIGAN concerned (see. Sec.

118, RA No.7160; Municipality of Sta. Fe vs. Municipality of Artao, 533 SCRA 586 [2007]).

Internal Revenue Allotment Fund (2007)

The Provincial Governor of Bataan requested the Department of Budget and Management (DBM) to release its Internal Revenue Allocation (IRA) of P100 million for the current budget year. However, the General Appropriations Act provided that the IRA may be released only if the province meets certain conditions as determined by an Oversight Council created by the President.

(a) Is this requirement valid?

SUGGESTED ANSWER:

No, this requirement is not valid. Under the 1987 Constitution, it is provided that "local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them." As held in the case of *Alternative Center for Organizational Reforms and Development, et.al. v. Zamora*, G.R. No. 144256 (June 08, 2005), a basic feature of local fiscal autonomy is the automatic release of the shares of LGUs in the national internal revenue. The Local Government Code specifies further that the release shall be made directly to the LGU concerned within five (5) days after every quarter of the year and "shall not be subject to any lien or holdback that may be imposed by the national government for whatever purpose."

(b) The Provincial Governor is a party-mate of the President. May the Bataan Representative instead file a petition to compel the DBM to release the funds?

SUGGESTED ANSWER:

Yes. A congressman from a particular LGU may validly have standing to demand that IRA for his province be released in accordance with the Constitution and the Local Government Code. As a representative of his province, he has a responsibility towards his constituencies who can expect no less than faithful compliance with the Constitution. Moreover, the issue presented could be characterized as involving transcendental importance to the people and the local government units which had been guaranteed greater local autonomy.

Confiscation of Driver's License; MMDA (2010)

TRUE OR FALSE.

d. The MMDA is authorized to confiscate a driver's license in the enforcement of traffic regulations.(0.5%)

SUGGESTED ANSWER:

False. Since Republic Act No. 7924 does not grant the Metropolitan Manila Development Authority to enact ordinances, the grant to it by Section 5(f) of Republic Act No. 7924 of the power to confiscate driver's license without the need of any other law is an authorized exercise.

ALTERNATIVE ANSWER:

TRUE. The confiscation of driver's license by MMDA is part of its executive function to enforce the law.

Creation of New Local Government Units; Plebiscite Requirement (2004)

MADAKO is a municipality composed of 80 barangays, 30 west of Madako River and 50 east thereof. The 30 western barangays, feeling left out of economic initiatives, wish to constitute themselves into a new and separate town to be called Masigla.

A. Granting that Masigla's proponents succeed to secure a law in their favor, would a plebiscite be necessary or not? If it is necessary, who should vote or participate in the plebiscite? Discuss briefly. (5%)

SUGGESTED ANSWER:

A plebiscite is necessary, because this is required for the creation of a new municipality. (Section 10, Article X of the 1987 Constitution.) The voters of both Madako and Masigla should participate in the plebiscite, because both are directly affected by the creation of Masigla. The territory of Madako will be reduced. (*Tan v. COMELEC*, 142 SCRA 727 [1986].)

Creation of Province; Contiguous Land Requirement (2014)

From an existing province, *Wideland*, Congress created a new province, *Hundred Isles*, consisting of several islands, with an aggregate area of 500 square kilometres. The law creating Hundred Isles was duly approved in a plebiscite called for that purpose. *Juan*, a taxpayer and a resident of *Wideland*, assailed the creation of *Hundred Isles* claiming that it did not comply with the area requirement as set out in the Local Government Code, i.e., an area of at least 2,000 square kilometres. The proponents justified the creation, however, pointing out that the Rules and Regulations Implementing the Local Government Code states that "the land area requirement shall not apply where the proposed province is composed of one (1) or more islands." Accordingly, since the new province consists of several islands, the area requirement need not be satisfied. How tenable is the position of the proponents? (4%)

SUGGESTED ANSWER:

The position of the proponents is tenable. The Supreme Court has clarified that, when a province is composed of one or more islands, its creation need not comply with the 2,000 square kilometer contiguous territory requirement under the provisions of the Local Government Code. Article 9 (2) of the Implementing Rules and Regulations of the Local Government Code provided the exemption. Sections 442 and 450 of the Local Government Code exempted municipalities and component cities from the area requirement if they consist of one or more islands. While there is no similar provision for provinces, there is no reason why the exemption should not apply to them. There is a greater likelihood that an island or group of islands will form part of the area of a province (*Navarro v. Ermita*, 648 SCRA 400 [2011]).

De Facto Public Corporations; Effect (2004)

MADAKO is a municipality composed of 80 barangays, 30 west of Madako River and 50 east thereof. The 30 western barangays, feeling left out of economic initiatives,

wish to constitute themselves into a new and separate town to be called Masigla. A law is passed creating Masigla and a plebiscite is made in favor of the law.

B. Suppose that one year after Masigla was constituted as a municipality, the law creating it is voided because of defects. Would that invalidate the acts of the municipality and/or its municipal officers? Explain briefly. (5%)

SUGGESTED ANSWER:

Although the municipality cannot be considered as a de facto corporation, because there is no valid law under which it was created, the acts of the municipality and of its officers will not be invalidated, because the existence of the law creating it is an operative fact before it was declared unconstitutional. Hence, the previous acts of the municipality and its officers should be given effect as a matter of fairness and justice. (Municipality of Malabang v. Benito, 27 SCRA 533 [1969])

De facto Municipal Corporation vs. Municipal Corporation by Estoppel (2010)

Define/Explain

(b) De facto municipal corporation

SUGGESTED ANSWER:

DE FACTO MUNICIPAL CORPORATION –

De facto municipal corporation is a public corporation that exists although it has not complied with the statutory requirements like:

- a. Authorization by a valid law
- b. A colorable and bona fide attempt to organize under a valid law
- c. An assumption of powers conferred under the law

It primarily attends to the needs of the general welfare.

(c) Municipal corporation by estoppels

SUGGESTED ANSWER:

MUNICIPAL CORPORATION BY ESTOPPELS- A municipal corporation by estoppels is a corporation which is so defectively formed as not to be a de facto corporation but is considered a corporation in relation to someone who dealt with it and acquiesced in its exercise of its corporate functions or entered into a contract with it. (Martin, Public Corporations, 1985 ed., p.20)

Ordinance Validity; Disapproval (2009)

The Municipality of Bulalakaw, Leyte, passed ordinance no. 1234, authorizing the expropriation of two parcels of land situated in the poblacion as the site of a freedom park, and appropriating the funds needed therefor. Upon review, the Sangguniang Panlalawigan of Leyte disapproved the ordinance because the municipality has an existing freedom park which, though smaller in size, is still suitable for the purpose, and to pursue expropriation would be needless expenditure of the people's money. Is the disapproval of the ordinance correct? Explain your answer. (2%).

SUGGESTED ANSWER:

The Local Government Unit can exercise the power of eminent domain only pursuant to an ordinance. Ordinances passed by legislative body of a municipality

are subject to review by the Sangguniang Panlalawigan. The review by the SP is only to determine whether or not the ordinance is beyond the power conferred upon the Sangguniang Bayan (Municipality). The SP will declare the ordinance invalid if it goes beyond the power granted to it.

The power of eminent domain is granted to the Municipality and it is within their competence to determine the necessity to expropriate private property for public purpose. This determination is not within the review powers of the SP.

Therefore, the disapproval of the ordinance is incorrect.

Law fixing the terms of local elective officials (Q4-2006)

State whether or not the law is constitutional. Explain briefly.

3. A law fixing the terms of local elective officials, other than barangay officials, to 6 years. (2%)

SUGGESTED ANSWER:

The law is invalid. Under Article X, Section 8 of the 1987 Constitution, "the term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms." The law clearly goes against the aforesaid constitutional requirement of three year terms for local officials except for barangay officials.

Ordinance; Validity; Closure or Lease of Properties for Public Use (2003)

No XI - An aggrieved resident of the City of Manila filed mandamus proceedings against the city mayor and the city engineer to compel these officials to remove the market stalls from certain city streets which they had designated as flea markets. Portions of the said city streets were leased or licensed by the respondent officials to market stallholders by virtue of a city ordinance. Decide the dispute.

FIRST ALTERNATIVE ANSWER:

The petition should be granted. In accordance with Macasiano v. Diokno, 212 SCRA 464 [1992], since public streets are properties for public use and are outside the commerce of man, the City Mayor and the City Engineer cannot lease or license portions of the city streets to market stallholders.

SECOND ALTERNATIVE ANSWER:

The petition should be denied. Under Section 21(d) of the Local Government Code, a city may by ordinance temporarily close a street so that a flea market may be established.

Ordinance Validity; Regulation of Disco Pubs (2010)

The Sangguniang Panlungsod of Pasay City passed an ordinance requiring all disco pub owners to have all their hospitality girls tested for the AIDS virus. Both disco pub owners and the hospitality girls assailed the validity of the ordinance for being violative of their constitutional rights to privacy and to freely choose a calling or business. Is the ordinance valid? Explain.

SUGGESTED ANSWER:

The ordinance is a valid exercise of police power. The right to privacy yields to certain paramount rights of the public and defers to the exercise of police power. The ordinance is not prohibiting the disco pub owners and the hospitality girls from pursuing their calling or business but is merely regulating it. (Social Justice Society vs. Dangerous Drugs Board, 570 SCRA 410 [2008]). This ordinance is a valid exercise of police power, because its purpose is to safeguard public health. (Beltran vs. Secretary of Health, 476 SCRA 168 [2005]).

ALTERNATIVE ANSWER:

Jurisprudence dictates that an ordinance to be a valid exercise of police power it:

1. Must not contravene the constitution;
2. Must not be unfair nor oppressive;
3. Must be reasonable;
4. Must not prohibit what is allowed but may regulate;
5. Must be applicable within its territorial jurisdiction or limits
6. Must be general in application and consistent with public policy
7. And that the interest of the general public requires the interference and that the means employed is reasonably necessary for the accomplishment of its purpose

Under the present case, the objective of the ordinance is to secure the health and safety of its populace. AIDS is an incurable disease that is very harmful to the health. However, how good the intention is the exercise of police power is not absolute. The interference has to be lawful which is absent in the present case.

Power; Eminent Domain; LGU; Right to Exercise (2005)

The Sangguniang Bayan of the Municipality of Santa, Ilocos Sur passed Resolution No. 1 authorizing its Mayor to initiate a petition for the expropriation of a lot owned by Christina as site for its municipal sports center. This was approved by the Mayor. However, the Sangguniang Panlalawigan of Ilocos Sur disapproved the Resolution as there might still be other available lots in Santa for a sports center. Nonetheless, the Municipality of Santa, through its Mayor, filed a complaint for eminent domain. Christina opposed this on the following grounds: (a) the Municipality of Santa has no power to expropriate; (b) Resolution No. 1 has been voided since the Sangguniang Panlalawigan disapproved it for being arbitrary; and (c) the Municipality of Santa has other and better lots for that purpose. Resolve the case with reasons. (5%)

SUGGESTED ANSWER:

Under Section 19 of R.A. No. 7160, the power of eminent domain is explicitly granted to the municipality, but must be exercised through an ordinance rather than through a resolution. (Municipality of Paranaque v. V.M. Realty Corp., G.R. No. 127820, July 20, 1998) The Sangguniang Panlalawigan of Ilocos Sur was without the authority to disapprove Resolution No. 1 as the

municipality clearly has the power to exercise the right of eminent domain and its Sangguniang Bayan the capacity to promulgate said resolution. The only ground upon which a provincial board may declare any municipal resolution, ordinance or order invalid is when such resolution, ordinance or order is beyond the powers conferred upon the council or president making the same. Such is not the situation in this case. (Moday v. Court of Appeals, G.R. No. 107916, February 20, 1997) The question of whether there is genuine necessity for the expropriation of Christina's lot or whether the municipality has other and better lots for the purpose is a matter that will have to be resolved by the Court upon presentation of evidence by the parties to the case.

Reclassification of Land (2010)

b. Re-classification of land by a local government unit may be done through a resolution.

SUGGESTED ANSWER:

FALSE. Re-classification of land must be done through an ORDINANCE (Section 2, Local Government Code; Department of Agrarian Reform vs. Polo Coconut Plantation Company, Inc., 564 SCRA 78[2008]).

Powers of Barangay Assembly (2003)

Can a Barangay Assembly exercise any police power?

SUGGESTED ANSWER:

No, the Barangay Assembly cannot exercise any police power. Under Section 398 of the Local Government Code, it can only recommend to the Sangguniang Barangay the adoption of measures for the welfare of the barangay and decide on the adoption of an initiative.

Powers; Liga ng mga Barangay (2003)

Can the Liga ng mga Barangay exercise legislative powers?

SUGGESTED ANSWER:

The Liga ng Mga Barangay cannot exercise legislative powers. As stated in Bito-Onon v. Fernandez, 350 SCRA 732 [2001], it is not a local government unit and its primary purpose is to determine representation of the mga in the sanggunians; to ventilate, articulate, and crystallize issues affecting barangay government administration; and to secure solutions for them through proper and legal means.

LGU's; Emergency Powers (2015)

Typhoon Bangis devastated the Province of Sinaguala. Roads and bridges were destroyed which impeded the entry of vehicles into the area. This caused food shortage resulting in massive looting of grocery stores and malls. There is power outage also in the area. For these reasons, the governor of the province declares a state of emergency in their province through Proclamation No. 1. He also invoked Section 465 of the Local Government Code of 1991 (R.A. No. 7160) which vests on the provincial governor the power to carryout emergency measures during man-made and natural disasters and calamities, and to call upon the appropriate national law enforcement agencies to suppress disorder and lawless violence. In the same proclamation, the governor called upon the members of the Philippine National Police, with

the assistance of the Armed Forces of the Philippines, to set up checkpoints and chokepoints, conduct general searches and seizures including arrests, and other actions necessary to ensure public safety. Was the action of the provincial governor proper? Explain. (4%)

SUGGESTED ANSWER:

The action of the Provincial Governor is not valid. It is only the President who is authorized to exercise emergency powers under Section 23, Article VI of the Constitution and to call out the Armed Forces of the Philippines under Section 1, Article VII of the Constitution. Section 465 of the Local Government Code does not sanction his actions. It refers to the calamities and disasters. Looting is not a calamity or disaster. The power under Article 465 of the Local Government Code to call upon national law enforcement agencies to suppress lawless violence is not applicable. The Armed Forces of the Philippines is not a national law enforcement agency. (*Kulayan v. Tan*, 675 SCRA 482 [2012]).

NATIONAL ECONOMY AND PATRIMONY

Acquisition of Lands (2000)

a) Andy Lim, an ethnic Chinese, became a naturalized Filipino in 1935. But later he lost his Filipino citizenship when he became a citizen of Canada in 1971. Wanting the best of both worlds, he bought, in 1987, a residential lot in Forbes Park and a commercial lot in Binondo. Are these sales valid? Why? (3%)

SUGGESTED ANSWER:

No, the sales are not valid. Under Section 8, Article XII of the Constitution, only a naturalborn citizen of the Philippines who lost his Philippine citizenship may acquire private land. Since Andy Lim was a former naturalized Filipino citizen, he is not qualified to acquire private lands.

Acquisition of Lands by Hereditary Succession (2002)

A, a Filipino citizen, and his wife B, a Japanese national, bought a five-hectare agricultural land from X, a Filipino citizen. The couple later executed a deed of donation over the same land in favor of their only child C. A year later, however, C died in vehicular accident without leaving a last will and testament. Now, X brought suit to recover the land on the ground that B, being an alien, was not qualified to buy the land when B and A jointly bought the land from him and that, upon the death of C, the land was inherited by his parents but B cannot legally acquire and/or inherit it. How should the case be decided? If X filed the suit against C when the latter was still alive, would your answer be the same? Why? (5%)

SUGGESTED ANSWER:

X cannot recover the land whether from C or A and B. Under Article IV, Section 1 (2) of the Constitution, C is a Filipino citizen since his father is a Filipino. When A and B donated the land to C, it became property of a Filipino citizen. As held in *Halili v. Court of Appeals*, 287 SCRA 465 (1998), the sale of land to an alien can no longer be annulled if it has been conveyed to a Filipino citizen.

Since C left no will and his parents are his heirs, in accordance with Article XII, Section 7 of the Constitution, B can acquire the land by hereditary succession.

Lease of Private Agricultural Lands (2001)

A is an alien. State whether, in the Philippines, he:

a) Can be a lessee of a private agricultural land, (3%)

SUGGESTED ANSWER:

Yes, an alien can be a lessee of private agricultural land. As stated in *Krivenko vs. Register of Deeds of Manila*, 79 Phil. 461 (1947), aliens can lease private agricultural land, because they are granted temporary rights only and this is not prohibited by the Constitution.

Acquisition of Lands (2009)

TRUE OR FALSE.

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

SUGGESTED ANSWER:

FALSE. Aliens can acquire private lands in the Philippines through hereditary succession (intestate succession only [Sec. 7, Art. XII]) and former natural-born citizens can also be a transferee but with limitations. 5,000 square meters for urban and 3 hectares for rural (Sec.8 Art. XII).

Constitutional Prohibition (2004)

B. EAP is a government corporation created for the purpose of reclaiming lands including foreshore and submerged areas, as well as to develop, improve, acquire, lease and sell any and all kinds of lands. A law was passed transferring title to EAP of lands already reclaimed in the foreshore and offshore areas of MM Bay, particularly the so-called Liberty Islands, as alienable and disposable lands of the public domain. Titles were duly issued in EAP's name. Subsequently, EAP entered into a joint venture agreement (JVA) with ARI, a private foreign corporation, to develop Liberty Islands. Additionally, the JVA provided for the reclamation of 250 hectares of submerged land in the area surrounding Liberty Islands. EAP agreed to sell and transfer to ARI a portion of Liberty Islands and a portion of the area to be reclaimed as the consideration for ARI's role and participation in the joint venture, upon approval by the Office of the President. Is there any constitutional obstacle to the sale and transfer by EAP to ARI of both portions as provided for in the JVA? (5%)

SUGGESTED ANSWER:

B. ARI cannot acquire a portion of Liberty Islands because, although EAP has title to Liberty Islands and thus such lands are alienable and disposable land, they cannot be sold, only leased, to private corporations. The portion of the area to be reclaimed cannot be sold and transferred to ARI because the seabed is inalienable land of the public domain. (Section 3, Article XII of the 1987 Constitution; *Chavez v. Public Estates Authority*, 384 SCRA 152 [2002]).

Ownership; Hydro-Electric Powerplant (2015)

Pursuant to its mandate to manage the orderly sale, disposition and privatization of the National Power Corporation's (NPC) generation assets, real estate and

other disposable assets, the Power Sector Assets and Liabilities Management (PSALM) started the bidding process for the privatization of Angat Hydro Electric Power Plant (AHEPP). After evaluation of the bids, K-Pop Energy Corporation, a South Korean Company, was the highest bidder. Consequently, a notice of award was issued to K-Pop. The Citizens' Party questioned the sale arguing that it violates the constitutional provisions on the appropriation and utilization of a natural resource which should be limited to Filipino citizens and corporations which are at least 60% Filipino-owned. The PSALM countered that only the hydroelectric facility is being sold and not the Angat Dam; and that the utilization of water by a hydroelectric power plant does not constitute appropriation of water from its natural source of water that enters the intake gate of the power plant which is an artificial structure. Whose claim is correct? Explain. (4%)

SUGGESTED ANSWER:

The PSALM is correct. Foreign ownership of a hydroelectric power plant is not prohibited by the Constitution. The PSALM will retain ownership of Angat Dam. Angat Dam will trap the natural flow of the water from the river. The water supplied by PSALM will then be used for power generation. Once the water is removed from its natural source, it ceases to be part of the natural resources of the Philippines and may be acquired by foreigners. (Initiatives for Dialogue and Empowerment through Alternative Legal Services, Inc. v. Power Sector Assets and Liabilities Management Corporation, 682 SCRA 602 [2012]).

Chinese citizens; Engaging in Retail Trade (2006)

State whether or not the following laws are constitutional. Explain briefly.

4. A law prohibiting Chinese citizens from engaging in retail trade. (2%)

SUGGESTED ANSWER:

The law is invalid as it singles out and deprives Chinese citizens from engaging in retail trade. In *Ichong v. Hernandez*, G.R. No. L-7995, May 31, 1957, the court held that the Treaty of Amity between the Republic of the Philippines and the Republic of China guarantees equality of treatment to the Chinese nationals "upon the same terms as the nationals of any other country." Thus, the court ruled therein that the nationals of China are not discriminated against because nationals of all other countries, except those of the United States, who are granted special rights by the Constitution, are all prohibited from engaging in the retail trade. In the case at bar, the law discriminates only against Chinese citizens and thus violates the equal protection clause.

Exploration, development, and utilization of natural resources (2006)

State whether or not the law is constitutional. Explain briefly.

5. A law creating a state corporation to exploit, develop, and utilize compressed natural gas. (2%)

SUGGESTED ANSWER:

The law is valid as under Article XII, Section 2 of the 1987 Constitution, the exploration, development, and utilization of natural resources shall be under the full

control and supervision of the State. It is also provided that the State may directly undertake such activities or it may enter into co-production, joint venture or sharing agreements with Filipino citizens or corporations or associations, at least 60% Filipino-owned. Furthermore, the President may enter into agreements with foreign-owned corporations involving technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum and other mineral oils, according to terms and conditions provided by law. A state corporation, unlike a private corporation, may be created by special law and placed under the control of the President, subject to such conditions as the creating statute may provide.

Grandfather Rule (2015)

BD Telecommunications, Inc. (BDTI), a Filipino-owned corporation, sold its 1,000 common shares of stock in the Philippine Telecommunications Company (PTC), a public utility, to Australian Telecommunications (AT), another stockholder of the PTC which also owns 1,000 common shares. A Filipino stockholder of PTC questions the sale on the ground that it will increase the common shares of AT, a foreign company, to more than 40% of the capital (stock) of PTC in violation of the 40% limitation of foreign ownership of a public utility. AT argues that the sale does not violate the 60-40 ownership requirement in favor of Filipino citizens decreed in Section II, Article XII of the 1987 Constitution because Filipinos still own 70% of the capital of the PTC. AT points to the fact that it owns only 2,000 common voting shares and 1,000 non-voting preferred shares while Filipino stockholders own 1,000 common shares and 6,000 preferred shares, therefore, Filipino stockholders still own a majority of the outstanding capital stock of the corporation, and both classes of shares have a par value of Php 20.00 per share. Decide. (5%)

SUGGESTED ANSWER:

"The application of the Grandfather Rule is justified by the circumstances of the case to determine the nationality of petitioners... the use of the (Grandfather Rule as a "supplement" to the Control Test is not proscribed by the Constitution...")

"The Grandfather Rule, standing alone, should not be used to determine the Filipino ownership and control in a corporation, as it could result in an otherwise foreign corporation rendered qualified to perform nationalized or partly nationalized activities. Hence, it is only when the Control Test is first complied with that the Grandfather Rule may be applied. Put in another manner, if the subject corporation's Filipino equity falls below the threshold 60%, the corporation is immediately considered foreign owned, in which case, the need to resort to the Grandfather Rule disappears. On the other hand, a corporation that complies with the 60-40 Filipino to foreign equity requirement can be considered a Filipino corporation if there is no doubt as to who has the "beneficial ownership" and "control" of the corporation. In that instance, there is no need for a dissection or further inquiry on the ownership of the corporate shareholders in both the investing and investee corporation or the

application of the Grandfather Rule. As a corollary rule, even if the 60-40 Filipino to foreign equity ratio is apparently met by the subject or investee corporation, a resort to the Grandfather Rule is necessary if doubt exists as to the locus of the "beneficial ownership" and "control." (Narra Nickel Mining and Development Corporation v. Redmont Consolidated Mines Corporation, G.R. No. 195580, January 28, 2015). "...the "doubt" that demands the application of the Grandfather Rule in addition to or in tandem with the Control Test is not confined to, or more bluntly, does not refer to the fact that the apparent Filipino ownership of the corporation's equity falls below the 60% threshold. Rather, "doubt" refers to various indicia that the "beneficial ownership" and "control" of the corporation do not in fact reside in Filipino shareholders but in foreign stakeholders. As provided in DOJ Opinion No. 165, Series of 1984, which applied the pertinent provisions of the Anti-Dummy Law in relation to the minimum Filipino equity requirement in the Constitution, "significant indicators of the dummy status" have been recognized in view of reports "that some Filipino investors or businessmen are being utilized or [are] allowing themselves to be used as dummies by foreign investors" specifically in joint ventures for national resource exploitation. These indicators are:

- "1. That the foreign investors provide practically all the funds for the joint investment undertaken by these Filipino businessmen and their foreign partner;
2. That the foreign investors undertake to provide practically all the technological support for the joint venture;
3. That the foreign investors, while being minority stockholders, manage the company and prepare all economic viability studies." (Narra Nickel Mining and Development Corporation v. Redmont Consolidated Mines Corporation, G.R. No. 195580, January 28, 2015).

(Note: This question should have been asked in Mercantile Law. We respectfully ask that answers featuring the foregoing discussion should be accepted as correct).

SOCIAL JUSTICE AND HUMAN RIGHTS

Commission on Human Rights; Power to issue TRO (2001)

In order to implement a big government flood control project, the Department of Public Works and Highways (DPWH) and a local government unit (LGU) removed squatters from the bank of a river and certain esteros for relocation to another place. Their shanties were demolished. The Commission on Human Rights (CHR) conducted an investigation and issued an order for the DPWH and the LGU to cease and desist from effecting the removal of the squatters on the ground that the human rights of the squatters were being violated. The DPWH and the LGU objected to the order of the CHR. Resolve which position is correct. Reasons (5%)

SUGGESTED ANSWER;

The position of the Department of Public Works and Highways and of the local government unit is correct. As held in *Export Processing Zone Authority v. Commission on Human Rights*, 208 SCRA 125 (1992), no provision in the Constitution or any law confers on the Commission on Human Rights jurisdiction to issue temporary restraining orders or writs of preliminary injunction. The Commission on Human Rights has no judicial power. Its powers are merely investigatory.

Commission on Human Rights; Power; Limitations (2005)

(2) Squatters and vendors have put up structures in an area intended for a People's Park, which are impeding the flow of traffic in the adjoining highway. Mayor Cruz gave notice for the structures to be removed, and the area vacated within a month, or else, face demolition and ejectment. The occupants filed a case with the Commission on Human Rights (CHR) to stop the Mayor's move. The CHR then issued an "order to desist" against Mayor Cruz with warning that he would be held in contempt should he fail to comply with the desistance order. When the allotted time lapsed, Mayor Cruz caused the demolition and removal of the structures. Accordingly, the CHR cited him for contempt. (5%)

(a) What is your concept of Human Rights? Does this case involve violations of human rights within the scope of the CHR's jurisdiction?

SUGGESTED ANSWER:

Under the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights, the scope of human rights includes "those that relate to an individual's social, economic, cultural, political and civil relations... along with what is generally considered to be his inherent and inalienable rights, encompassing almost all aspects of life." In the case at bar, the land adjoins a busy national highway and the construction of the squatter shanties impedes the flow of traffic. The consequent danger to life and limb cannot be ignored. It is paradoxical that a right which is claimed to have been violated is one that cannot, in the first place, even be invoked, if it is, in fact, extant. Based on the circumstances obtaining in this instance, the CHR order for demolition do not fall within the compartment of human rights violations involving civil and political rights intended by the Constitution. (*Simon v. Commission on Human Rights*, G.R. No. 100150, January 5, 1994)

(b) Can the CHR issue an "order to desist" or restraining order?

SUGGESTED ANSWER:

The CHR may not issue an "order to desist" or restraining order. The constitutional provision directing the CHR to provide for preventive measures to those whose human rights have been violated or need protection may not be construed to confer jurisdiction on the Commission to issue a restraining order or writ of injunction for, if that were the intention, the Constitution would have expressly said so. Jurisdiction is conferred only by the Constitution or by law. It is never derived by

implication. (*Export Processing Zone Authority v. Commission on Human Rights*, G.R. No. 101476, April 14, 1992)

(c) Is the CHR empowered to declare Mayor Cruz in contempt? Does it have contempt powers at all?

SUGGESTED ANSWER:

The CHR does not possess adjudicative functions and therefore, on its own, is not empowered to declare Mayor Cruz in contempt for issuing the "order to desist." However, under the 1987 Constitution, the CHR is constitutionally authorized, in the exercise of its investigative functions, to "adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court." Accordingly, the CHR, in the course of an investigation, may only cite or hold any person in contempt and impose the appropriate penalties in accordance with the procedure and sanctions provided for in the Rules of Court. (*Carino v. Commission on Human Rights*, G.R. No. 96681, December 2, 1991)

Women (2000)

b) What are the provisions of the Constitution on women? (2%)

SUGGESTED ANSWER:

b) The following are the provisions of the Constitution on women:

1. "It (the State) shall equally protect the life of the mother and the life of the unborn from conception." (Section 12, Article II)
2. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men." (Section 14, Article II)
3. "The State shall protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such faculties and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation." (Section 14, Article XIII)

EDUCATION, SCIENCE AND TECHNOLOGY, ARTS

Education; Right to Choose Profession (2000)

Undaunted by his three failures in the National Medical Admission Test (NMAT), Cruz applied to take it again but he was refused because of an order of the Department of Education, Culture and Sports (DECS) disallowing flunkers from taking the test a fourth time. Cruz filed suit assailing this rule raising the constitutional grounds of accessible quality education, academic freedom and equal protection. The government opposes this, upholding the constitutionality of the rule on the ground of exercise of police power. Decide the case discussing the grounds raised. (5%)

SUGGESTED ANSWER:

As held in *Department of Education, Culture and Sports v. San Diego*, 180 SCRA 533 (1989), the rule is a valid exercise of police power to ensure that those admitted to the medical profession are qualified. The arguments of Cruz are not meritorious. The right to quality education and academic freedom are not absolute. Under Section 5(3), Article XIV of the Constitution, the right to choose a profession is subject to fair, reasonable and equitable admission and academic requirements. The rule does not violate equal protection. There is a substantial distinction between medical students and other students. Unlike other professions, the medical profession directly affects the lives of the people.

Education; Right to Quality Education (2003)

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

SUGGESTED ANSWER:

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

Education; Academic Freedom (2008)

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

SUGGESTED ANSWER:

The law is unconstitutional because creating occupation against the will of the student in making a living is a form of involuntary servitude, not constitutionally encourage.

The Constitution provides that every citizen has the right to select a profession or a course of study, subject to a fair, reasonable and equitable admission and academic requirements.

Although the freedom to choose a profession can be regulated, the limitation should not be oppressive, unreasonable and unfair so as to restrict the freedom of choice. It is not for the State to decide what a student would take up in college. But if it were for national security in order to defend the State then a compulsory rendition of military service may be made through a law.

Education; Academic Freedom (2007)

TRUE OR FALSE.

(b) The 1987 Constitution has increased the scope of academic freedom recognized under the previous Constitution.

SUGGESTED ANSWER:

The statement is true. The 1987 Constitution provides that academic freedom shall be enjoyed in all institutions of higher learning. This is more expansive in scope than the 1973 Constitution which stated that: All institutions of higher learning shall enjoy academic freedom. While the 1973 Charter suggests that academic freedom was institutional in the sense that it belonged to the colleges and universities, the present Charter gives the guaranty to all other components of the institution, including faculty and possibly students.

ALTERNATIVE ANSWER:

The statement is false. The scope of academic freedom remains the same. Article XIV, Section 5 (2) of the Constitution provides that academic freedom shall be enjoyed in all institutions of higher learning. As held in *U.P. Board of Regents v. Court of Appeals, G.R. No. 134629, August 31, 1999*, "This (provision) is nothing new. The 1935 and the 1973 Constitution likewise provided for academic freedom or, more precisely, for the institutional autonomy of universities and institutions of higher learning."

Education; Academic Freedom (2013)

Bobby, an incoming third year college student, was denied admission by his university, a premiere educational institution in Manila, after he failed in three (3) major subjects in his sophomore year. The denial of admission was based on the university's rules and admission policies.

Unable to cope with the depression that his non-admission triggered, Bobby committed suicide. His family sued the school for damages, citing the school's grossly unreasonable rules that resulted in the denial of admission. They argued that these rules violated Bobby's human rights and the priority consideration that the Constitution gives to the education of the youth.

You are counsel for the university. Explain your arguments in support of the university's case. (6%)

Suggested Answer:

I shall agree that under Article XIV, Section 5 (2) of the Constitution, the educational institution enjoys academic freedom. Academic Freedom includes its rights to prescribe academic standards, policies and qualifications for the admission of a student (**University of San Agustin, Inc. v. Court of Appeals, 230 SCRA 761**).

Education; Communication and Instruction (2007)

TRUE OR FALSE.

(a) For purposes of communication and instruction, the official languages of the Philippines are English and Filipino, until otherwise

SUGGESTED ANSWER:

The statement is false. Article XIV, Section 7 of the 1987 Constitution provides that for "purposes of communication and instruction, the official languages of

the Philippines are Filipino and, until otherwise provided by law, English." Thus, while Filipino will always be an official language, Congress may, by law, remove English as the other official language. Hence, the statement is false as the continuation of English as an official language is subject to the control and discretion of Congress.

ALTERNATIVE ANSWER:

The statement is true. To be more precise, however, what is only to remain as official until otherwise provided by law is English. Filipino will always be an official language under the Charter.

Education; Teaching of Religion (2010)

To instill religious awareness in the Students of Dona Trinidad High School, a public school in Bulacan, the Parent-

Teacher's Association of the school contributed funds for the construction of a grotto and a chapel where ecumenical religious services and seminars are being held after school hours. The use of the school grounds for these purposes was questioned by a parent who does not belong to any religious group. As his complaint was not addressed by the school officials, he filed an administrative complaint against the principal before the DECS. Is the principle liable?

SUGGESTED ANSWER:

The principal is liable. Although the grotto and the chapel can be used by different religious sects without discrimination, the land occupied by the grotto and the chapel will be permanently devoted to religious use without being required to pay rent. This violates the prohibition against the establishment of religion enshrined in Section 5 of the Bill of Rights. (Opinion No.12 of the Secretary of Justice dated February 2, 1979). Although religion is allowed to be taught in public elementary and high schools, it should be without additional cost to the government. (Section 3(3), Article XIV of the Constitution).

Education; Foreign Ownership (2009)

TRUE OR FALSE.

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

SUGGESTED ANSWER:

TRUE. If it is established by religious groups and mission boards. (Sec.4(2), Art. XIV).

As a general rule, educational institution must be owned exclusively to citizens of the Philippines or qualified corporation at least 60% of the capital of which is owned by Filipino citizen.

However, 100% foreign owned educational institution may be established here in the Philippines for religious groups and mission boards.

Education: Scholarship Grants (2007)

The Department of Education (DepEd) requires that any school applying for a tuition fee increase must, as a condition for the increase, offer full tuition scholarships to

students from low-income families. The Sagrada Familia Elementary School is a Catholic school and has applied for a tuition fee increase. Under this regulation by the DepEd, it will end up giving tuition scholarships to a total of 21 students next year. At a cost of P50,000 per student, the school will lose a total of P1.05 million for next year.

a. Is this DepEd requirement valid?

SUGGESTED ANSWER:

The requirement is valid. Under Section 7 of Presidential Decree No. 451, as a condition to the grant of any increase in tuition, private schools with a total enrollment at least 1,000 are required to provide scholarships to poor but deserving students at the rate of one scholarship for every 500 students enrolled.

ALTERNATIVE ANSWER:

No. It constitutes deprivation of property without due process of law. The law is confiscatory as it unduly shifts the burden of providing for the welfare of the poor to the private sector. The objective may be laudable but the means would be arbitrary and unreasonable. (Quezon City v. Judge Ericta, G.R. No. 34195, June 24, 1983).

b. If instead the DepEd requires a full tuition scholarship for the highest ranking students in each grade, determined solely on the basis of academic grades and rank, will the DepEd requirement be valid?

SUGGESTED ANSWER:

No, would still constitute a deprivation of property without due process of law. (Balacuit v. CFI, G.R. no. 38429, June 30, 1988).

ALTERNATIVE ANSWER:

Yes. Here, the matter may be considered as a reasonable regulation exacted from those who seek some form of accommodation from the government. (Telebap v. COMELEC, G.R. No. 132922, April 21, 1998). In exchange for what they get as a concession from the State, these institutions may be required to shoulder part of the cost of promoting quality education for deserving citizens.

ALTERNATIVE ANSWER:

The requirement will be void, because under section 7 of Presidential Decree No. 44, the grant of scholarships by the private schools to the students with scholastic distinctions is left to the determination of the private schools.

Education; Study of Religion (2008)

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

(a) Does the offer violate the constitutional prohibition against the establishment of religion?

SUGGESTED ANSWER:

No. the offer is valid, under the constitution, at the option

expressed in writing by the parents or guardians, religion shall be allowed to be taught to their children or wards in public elementary and high schools within the regular class hours by instructors designated or approved by the religious authorities of the religion to which the children or wards belong, without additional cost to the Government (Sec. 3(3), Art. XIV).

(b) The parents of evangelical Christian students, upon learning of the offer, demanded that they too be entitled to have their children instructed in their own religious faith during class hours. The principal, a devout Catholic, rejected the request. As counsel for the parents of the evangelical students how would you argue in support of their position? (3%)

SUGGESTED ANSWER:

The rejection made by the principal is in violation equal protection of the laws. The option given by the constitution to teach religion in public schools is without distinction to what religion should only be taught. It does not discriminate neither should the principal.

For classification to be valid the following requisite must be present:

- a. Classification is based on substantial distinction
- b. It must be germane to the purpose of the law
- c. Must apply equally to all members of the same class
- d. Not limited to existing conditions

GENERAL PROVISIONS

Philippine Flag (2006)

State whether or not the law is constitutional. Explain briefly.

1. A law changing the design of the Philippine flag. (2%)

ALTERNATIVE ANSWER:

The law is invalid considering that under Article XVI, Section 1 of the 1987 Constitution, the flag of the Philippines shall be red, white, and blue, with a sun and three stars, as consecrated and honored by the people and recognized by law. Since the Constitution itself prescribes the design, it can only be changed by constitutional amendment.

ALTERNATIVE ANSWER:

The law is valid, provided that the new design does not change the elements and color scheme of the flag as stated in the Constitution, and the flag is consecrated and honored by the people. Since the Constitution itself states that the flag must be recognized by law, it implies that certain aspects of the flag are subject to change through legislative action.

National Anthem (2009)

TRUE OR FALSE.

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

SUGGESTED ANSWER:

TRUE. Under the constitution, Congress may, by law, adopt a NEW NAME FOR THE COUNTRY, A NATIONAL ANTHEM, OR A NATIONAL SEALS, which shall all be truly reflective and symbolic of the ideals, history and traditions of the people. Such law shall take effect only upon its ratification by the people in a NATIONAL REFERENDUM (Section 2, Article XVI of the Constitution).

PUBLIC INTERNATIONAL LAW**Sources of International Law; Primary & Subsidiary Sources (2003)**

State your general understanding of the primary sources and subsidiary sources of international law, giving an illustration of each.

SUGGESTED ANSWER:

Under Article 38 of the Statute of the International Court of Justice, the PRIMARY

SOURCES of international law are the following:

1. International conventions, e.g., Vienna Convention on the Law of Treaties.
 2. International customs, e.g., sabotage, the prohibition against slavery, and the prohibition against torture.
 3. General principles of law recognized by civilized nations, e.g., prescription, res judicata, and due process.
- The SUBSIDIARY SOURCES of international law are judicial decisions, subject to the provisions of Article 59, e.g., the decision in the Anglo-Norwegian Fisheries Case and Nicaragua v. United States, and TEACHINGS of the most highly qualified publicists of various nations, e.g., Human Rights in International Law by Lauterpacht and International Law by Oppenheim -Lauterpacht.

ALTERNATIVE ANSWER:

Reflecting general international law, Article 38(1) of the Statute of the International Court of Justice is understood as providing for international convention, international custom, and general principles of law as primary sources of international law, while indicating that judicial decisions and teachings of the most highly qualified publicists as "subsidiary means for the determination of the rules of law." The primary sources may be considered as formal sources in that they are the methods by which norms of international law are created and recognized. A conventional or treaty norm comes into being by established treaty-making procedures and a customary norm is the product of the formation of general practice accepted as law. By way of illustrating International Convention as a source of law, we may refer to the principle embodied in Article 6 of the Vienna Convention on the Law of Treaties which reads: "Every State possesses capacity to conclude treaties". It tells us what the law is and the process or method by which it came into being. International Custom may be concretely illustrated by pacta sunt servanda, a customary or general norm which came about through extensive and consistent practice by a great number of states recognizing it as obligatory. The subsidiary means serves as evidence of law. A decision of the International Court of Justice, for example, may serve as material evidence

confirming or showing that the prohibition against the use of force is a customary norm, as the decision of the Court has demonstrated in the Nicaragua Case. The status of a principle as a norm of international law may find evidence in the works of highly qualified publicists in international law, such as McNair, Kelsen or Oppenheim.

Sources of International Law (2012)

- a. What are the sources of International Law? (2%)

SUGGESTED ANSWER:

The following are the sources of international law:

1. International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
2. International Custom, as evidence of a general practice accepted as law;
3. The general principles of law recognized by civilized nations;

Opinio Juris (2008)

- a. The legal yardstick in determining whether usage has become customary international law is expressed in the maxim *opinio juris sive necessitates* or *opinio juris* for short. What does the maxim mean? (3%)

SUGGESTED ANSWER:

Opinio juris sive necessitates means the common belief among states and actors that a certain practice is obligatory. This is the subjective or psychological requirement of customary law that makes state practice a binding rule of customary international law.

Opinio Juris (2012)

- b. What is *opinio juris* in International Law? (1%)

SUGGESTED ANSWER:

To establish customary international law, two elements must concur: general state practice and *opinio juris sive necessitates*. State practice refers to the continuous repetition of the same or similar kind of acts or norms by states. *Opinio Juris* requires that the state practice or norm be carried out in such a way as to be evidence of the belief that it is obligatory by the existence of a rule of law requiring it (**Bayan Muna v. Romulo, 641 SCRA 244**).

Hard Law vs. Soft Law (2008)

TRUE OR FALSE

- b. Under the International law, differentiate hard law from soft law. (3%)

SUGGESTED ANSWER:

Hard law refers to binding international legal norms or those which have coercive character. Examples of hard law are the provisions of the:

- a. UN Charter
- b. The Vienna convention on diplomatic relations
- c. The Geneva Conventions of 1949

Soft law refers to norms that are non-binding in character. Soft law usually serves as a precursor of hard law. the Universal Declaration of Human Rights (UDHR) is one such example. It was a soft law when it was adopted by resolution of the UN General Assembly in

1948, but it has led to the development of Hard Law with the adoption of 2 binding covenants on human rights, i.e., the ICCPR and ICESCR.

Examples of soft law are:

- a. Resolutions of the UN General Assembly
- b. Draft of the International Law Commission.

ALTERNATIVE ANSWER:

b) "Hard Law" refers to international agreements formalized as treaties, established customary international law and generally accepted principles common to the major legal systems of the world.

"Soft Law" has reference to international agreements not covered by treaties and therefore not covered by the Vienna Convention. They are sometimes referred to as "non-treaty agreements" or emerging law. In addition "Soft Law" also refers to administrative rules which guide the practice of states in relation to international organizations. (Pharmaceutical Health care Assn. vs. Duque, G.R. No. 173034, Oct. 9, 2007.)

Principle of Attribution or Imputation (2010)

A, a British photojournalist, was covering the violent protests of the Thai Red-Shirts Movement in Bangkok. Despite warnings given by the Thai Prime Minister to foreigners, specially journalists, A moved around the Thai capital. In the course of his coverage, he was killed with a stray bullet which was later identified as having come from the ranks of the Red-Shirts. The wife of A sought relief from Thai authorities but was refused assistance.

(A) Is there state responsibility on the part of Thailand?

SUGGESTED ANSWER:

No, there is no state responsibility on the part of Thailand because the acts of the Thai Red-Shirts were not the acts of Thailand. Under the Principle of Attribution or Imputation, a State only incurs liability for individual acts or omission which can be attributed to it. The Thai Red-Shirts are not its officials, agents, or representatives and they were not acting on the instructions of, or under the direction or control of, the Thai Government. (R. Sarmiento, Public International Law Bar Reviewer, 2009 Revised Edition, pp. 65-66)

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

SUGGESTED ANSWER:

Unless the Red-Shirts become the new Government of Thailand or Thailand acknowledges and adopts the conduct of the Red-Shirts as its own, the victim's family has no appropriate remedy under international law. Their remedy, if any, is only available under the domestic laws of Thailand by the institution of the appropriate criminal cases against the persons responsible for A's killing and the filing of an action to recover damages arising from A's death.

Principle of Auto-Limitation (2009)

William, a private American Citizen, a university graduate and frequent visitor to the Philippines, was inside the US embassy when he got into a heated argument with a

private Filipino citizen. Then, in front of many shocked witnesses, he killed the person he was arguing with. The police came, and brought him to the nearest police station. Upon reaching the station, the police investigator, in halting English, informed William of his Miranda rights, and assigned him an independent local counsel. William refused the services of the lawyer, and insisted that he be assisted by a Filipino lawyer currently based in the US. The request was denied, and the counsel assigned by the police stayed for the duration of the investigation.

William protested his arrest.

(a) He argued that since the incident took place inside the US embassy, Philippine courts have no jurisdiction because the US embassy grounds are not part of the Philippine Territory; thus, technically, no crime under the Philippine law was committed. Is William correct? Explain your answer? (3%)

SUGGESTED ANSWER:

No, William is not correct. While Article 22 of the Vienna Convention on Diplomatic Relations provides that the premises of a diplomatic mission shall be inviolable, and may not be entered by the police or by any other agent of the receiving State, except with the consent of the Ambassador or the head of the mission, it does not alter the fact, however, that such premises are still part of Philippine territory. The concept of "extritoriality," under which diplomatic premises are deemed to be part of the sovereign territory of the sending State, has not been adopted in the Vienna Convention. Hence, a crime committed on or within such premises by a private person like Williams who enjoys no diplomatic immunity falls within the jurisdiction of Philippine courts.

ALTERNATIVE ANSWER:

William is not correct. The premises occupied by the United States Embassy do not constitute territory of the United States but of the Philippines. Crimes committed within them are subject to the territorial jurisdiction of the Philippines. Since William has no diplomatic immunity, the Philippines can prosecute him if it acquires custody over him (Reagan vs. Commissioner of Internal Revenue, 30 SCRA 968 [1969]).

Diplomatic Immunity (2000)

A foreign ambassador to the Philippines leased a vacation house in Tagaytay for his personal use. For some reason, he failed to pay rentals for more than one year. The lessor filed an action for the recovery of his property in court.

a) Can the foreign ambassador invoke his diplomatic immunity to resist the lessor's action? (3%)

b) The lessor gets hold of evidence that the ambassador is about to return to his home country. Can the lessor ask the court to stop the ambassador's departure from the Philippines? (2%)

SUGGESTED ANSWER:

a) No, the foreign ambassador cannot invoke his diplomatic immunity to resist the action, since he is not using the house in Tagaytay City for the purposes of his mission but merely for vacation. Under Article 3(l)(a) of the Vienna Convention on Diplomatic Relations, a

diplomatic agent has no immunity in case of a real action relating to private immovable property situated in the territory of the receiving State unless he holds it on behalf of the sending State for purposes of the mission.

b) No, the lessor cannot ask the court to stop the departure of the ambassador from the Philippines. Under Article 29 of the Vienna Convention, a diplomatic agent shall not be liable to any form of arrest or detention. (per Dondee) The grounds cited by YZ is tenable on the basis that the precept that a State cannot be sued in the courts of a foreign state is a longstanding rule of customary international law then closely identified with the personal immunity of a foreign sovereign from suit and, with the emergence of democratic states, made to attach not just to the person of the head of state, or his representative, but also distinctly to the state itself in its sovereign capacity. If the acts giving rise to a suit are those of a foreign government done by its foreign agent, although not necessarily a diplomatic personage, but acting in his official capacity, the complaint could be barred by the immunity of the foreign sovereign from suit without its consent. Suing a representative of a state is believed to be, in effect, suing the state itself. (KHOSROW MINUCHER vs. COURT OF APPEALS, G.R. No. 142396. February 11, 2003)

Diplomatic Immunity (2001)

Dr. Velen, an official of the World Health Organization (WHO) assigned in the Philippines, arrived at the Ninoy Aquino International Airport with his personal effects contained in twelve crates as unaccompanied baggage. As such, his personal effects were allowed free entry from duties and taxes, and were directly stored at Arshaine Corporation's warehouse at Makati, pending Dr. Velen's relocation to his permanent quarters. At the instance of police authorities, the Regional Trial Court (RTC) of Makati issued a warrant for the search and seizure of Dr. Velen's personal effects in view of an alleged violation of the Tariff and Custom's Code. According to the police, the crates contained contraband items. Upon protest of WHO officials, the Secretary of Foreign Affairs formally advised the RTC as to Dr. Velen's immunity. The Solicitor General likewise joined Dr. Velen's plea of immunity and motion to quash the search warrant. The RTC denied the motion. Is the denial of the motion to quash proper? (5%)

SUGGESTED ANSWER:

The denial of the motion is improper. As held in *World Health Organization vs. Aquino*, 48 SCRA 242 (1972), as an official of the World Health Organization, Dr. Velen enjoyed diplomatic immunity and this included exemption from duties and taxes. Since diplomatic immunity involves a political question, where a plea of diplomatic immunity is recognized and affirmed by the Executive Department, it is the duty of the court to accept the claim of immunity.

Diplomatic Immunity (2003)

A group of high-ranking officials and rank-and-file employees stationed in a foreign embassy in Manila were arrested outside embassy grounds and detained at Camp Crame on suspicion that they were actively

collaborating with "terrorists" out to overthrow or destabilize the Philippine Government. The Foreign Ambassador sought their immediate release, claiming that the detained embassy officials and employees enjoyed diplomatic immunity. If invited to express your legal opinion on the matter, what advice would you give?

SUGGESTED ANSWER:

I shall advise that the high-ranking officials and rank-and-file employees be released because of their diplomatic immunity. Article 29 of the Vienna Convention on Diplomatic Relations provides: "The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention." Under Article 37 of the Vienna Convention on Diplomatic Relations, members of the administrative and technical staff of the diplomatic mission, shall, if they are not nationals of or permanent residents in the receiving State, enjoy the privileges and immunities specified in Article 29. Under Article 9 of the Vienna Convention on Diplomatic Relations, the remedy is to declare the high-ranking officials and rank-and-file employees *personae non gratae* and ask them to leave.

ALTERNATIVE ANSWER:

Under the Vienna Convention on Diplomatic Relations, a diplomatic agent "shall not be liable to any form of arrest or detention (Article 29) and he enjoys immunity from criminal jurisdiction (Article 31). This immunity may cover the "high-ranking officials" in question, who are assumed to be diplomatic officers or agents. With respect to the "rank-and-file employees" they are covered by the immunity referred to above, provided they are not nationals or permanent residents of the Philippines, pursuant to Article 37(2) of the said Convention. If the said rank-and-file employees belong to the service staff of the diplomatic mission (such as drivers) they may be covered by the immunity (even if they are not Philippine nationals or residents) as set out in Article 37(3), if at the time of the arrest they were in "acts performed in the course of their duties." If a driver was among the said rank-and-file employees and he was arrested while driving a diplomatic vehicle or engaged in related acts, still he would be covered by immunity.

Diplomatic Immunity (2004)

A. MBC, an alien businessman dealing in carpets and caviar, filed a suit against policemen and YZ, an attache of XX Embassy, for damages because of malicious prosecution. MBC alleged that YZ concocted false and malicious charges that he was engaged in drug trafficking, whereupon narcotics policemen conducted a "buy-bust" operation and without warrant arrested him, searched his house, and seized his money and jewelry, then detained and tortured him in violation of his civil and human rights as well as causing him, his family and business serious damages amounting to two million pesos. MBC added that the trial court acquitted him of the drug charges. Assailing the court's jurisdiction: YZ now moves to dismiss the complaint, on the ground that (1) he is an embassy officer entitled to diplomatic immunity; and that (2) the suit is really a suit against his home state without its consent. He presents diplomatic notes from XX Embassy certifying that he is an accredited embassy officer recognized by the Philippine

government. He performs official duties, he says, on a mission to conduct surveillance on drug exporters and then inform local police officers who make the actual arrest of suspects. Are the two grounds cited by YZ to dismiss the suit tenable? (5%)

SUGGESTED ANSWER:

A. The claim of diplomatic immunity of YZ is not tenable, because he does not possess an acknowledged diplomatic title and is not performing duties of a diplomatic nature. However, the suit against him is a suit against XX without its consent. YZ was acting as an agent of XX and was performing his official functions when he conducted surveillance on drug exporters and informed the local police officers who arrested MBC. He was performing such duties with the consent of the Philippine government, therefore, the suit against YZ is a suit against XX without its consent. (*Minucher v. Court of Appeals*, 397 SCRA 244 [1992]).

Diplomatic Immunity; Ambassador (2005)

(1) Italy, through its Ambassador, entered into a contract with Abad for the maintenance and repair of specified equipment at its Embassy and Ambassador's Residence, such as air conditioning units, generator sets, electrical facilities, water heaters, and water motor pumps. It was stipulated that the agreement shall be effective for a period of four years and automatically renewed unless cancelled. Further, it provided that any suit arising from the contract shall be filed with the proper courts in the City of Manila. Claiming that the Maintenance Contract was unilaterally, baselessly and arbitrarily terminated, Abad sued the State of Italy and its Ambassador before a court in the City of Manila. Among the defenses, they raised were "sovereign immunity" and "diplomatic immunity." (5%)

(a) As counsel of Abad, refute the defenses of "sovereign immunity" and "diplomatic immunity" raised by the State of Italy and its Ambassador.

SUGGESTED ANSWER:

As counsel for Abad, I will argue that sovereign immunity will not lie as it is an established rule that when a State enters into a contract, it waives its immunity and allows itself to be sued. Moreover, there is a provision in the contract that any suit arising therefrom shall be filed with the proper courts of the City of Manila. On the issue of diplomatic immunity, I will assert that the act of the Ambassador unilaterally terminating the agreement is tortuous and done with malice and bad faith and not a sovereign or diplomatic function.

(b) At any rate, what should be the court's ruling on the said defenses?

SUGGESTED ANSWER:

The court should rule against said defenses. The maintenance contract and repair of the Embassy and Ambassador's Residence is a contract in *jus imperii*, because such repair of said buildings is indispensable to the performance of the official functions of the Government of Italy. Hence, the contract is in pursuit of a sovereign activity in which case, it cannot be deemed to have waived its immunity from suit. On the matter of

whether or not the Ambassador may be sued, Article 31 of the Vienna Convention on Diplomatic Relations provides that a diplomatic agent enjoys immunity from the criminal, civil and administrative jurisdiction of the receiving state except if the act performed is outside his official functions, in accordance with the principle of functional necessity. In this case, the act of entering into the contract by the Ambassador was part of his official functions and thus, he is entitled to diplomatic immunity. (*Republic of Indonesia v. Vinzon*, G.R. No. 154705, June 26, 2003).

Diplomatic Immunity (2013)

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

CBM contested the termination and filed a complaint against Kafiristan before the Regional Trial Court of Makati. The Ambassador wants you to file a motion to dismiss on the ground of state immunity from suit and to oppose the position that under Section 10 of the Agreement, Kafiristan expressly waives its immunity from suit.

Under these facts, can the Embassy successfully invoke immunity from suit? (6%)

SUGGESTED ANSWER:

Yes, the Embassy can invoke immunity from suit. Section 10 of the Maintenance Agreement is not necessarily a waiver of the sovereign immunity from suit. It was meant to apply in case the Republic of Kafiristan elects to sue in the local courts or waives its immunity by a subsequent act. The establishment of a diplomatic mission is a sovereign function. This encompasses its maintenance and upkeep. The Maintenance Agreement was in pursuit of a sovereign activity (*Republic of the Indonesia v. Vinzon*, 405 SCRA 126).

Diplomatic Immunity; Ambassadors (2014)

Ambassador Gaylor is *State Juvenus'* diplomatic representative to *State Hinterlands*. During one of his vacations, *Ambassador Gaylor* decided to experience for himself the sights and sounds of *State Paradise*, a country known for its beauty and other attractions. While in *State Paradise*, *Ambassador Gaylor* was caught in the company of children under suspicious circumstances. He was arrested for violation of the strict anti-pedophilia statute of *State Paradise*. He claims that he is immune from arrest and incarceration by virtue of his diplomatic immunity. Does the claim of *Ambassador Gaylor* hold water? (4%)

SUGGESTED ANSWER:

Ambassador Gaylor cannot invoke his diplomatic immunity. In accordance with Paragraph 1, Article 31 of the Vienna Convention of Diplomatic Relations, since State Paradise is not his receiving state, he does not enjoy diplomatic immunity within its territory. Under Paragraph 1, Article 40 of the Vienna Convention of Diplomatic Relations, he cannot be accorded diplomatic immunity in State Paradise, because he is not passing through it to take up or return to his post or to return to State Juvenus.

Executive Agreements; Binding Effect (2003)

An Executive Agreement was executed between the Philippines and a neighboring State. The Senate of the Philippines took it upon itself to procure a certified true copy of the Executive Agreement and, after deliberating on it, declared, by a unanimous vote, that the agreement was both unwise and against the best interest of the country. Is the Executive Agreement binding (a) from the standpoint of Philippine law and (b) from the standpoint of international law? Explain

SUGGESTED ANSWER:

(a) As to Philippine law, the Executive Agreement is binding....

(b) The Executive Agreement is also binding from the standpoint of international law. As held in *Bavan v. Zamora*, 342 SCRA 449 [2000], in international law executive agreements are equally binding as treaties upon the States who are parties to them. Additionally, under Article 2(1)(a) of the Vienna Convention on the Law of Treaties, whatever may be the designation of a written agreement between States, whether it is indicated as a Treaty, Convention or Executive Agreement, is not legally significant. Still it is considered a treaty and governed by the international law of treaties.

Executive Agreement; Treaty; Formalities (2012)

President Black of the Republic of Pasensya (RP) had a telephone conversation with President Blue of the People's Republic of Conquerors (PRC). In that conversation, both leaders agreed that they will both pull-out all their vessels, civilian or otherwise, sea crafts and other ships from the hotly disputed Kalmado Shoal area within eight (8) days in order to de-escalate the situation. After eight days, all RP ships and vessels have left the area. However, several military and civilian ships carrying the PRC flag remained in the area and began construction of a dock that could provide fuel and other supplies to vessels passing by.

c. Assuming that President Black and President Blue both had full capacity to represent their states and negotiate with each other under their respective systems of government, and further assuming that both leaders acknowledge the existence of the conversation, is the verbal agreement via telephone binding under international law? Explain. (5%)

SUGGESTED ANSWER:

The verbal agreement by telephone is binding between the parties on the basis of customary international law. In 1992, the dispute between Denmark and Finland about the construction of a bridge was settled by a telephone

conversation between the Danish and the Finnish Ministers. In return for payment by Denmark, Finland agreed to discontinue the case it filed (**Aust, Modern Treaty Law and Practice, p. 7**).

d. Assuming the answer to (a.) is in affirmative, does that agreement constitute a Treaty under the 1969 Vienna Convention on the Law on Treaties? (2%)

SUGGESTED ANSWER:

The verbal agreement does not constitute a treaty under the Vienna Convention on the Law of Treaties. Article 3 requires that for an International Agreement to be a treaty, it must be in written form.

Executive Agreements (2015)

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

Senator Maagap questioned the constitutionality of the said Executive Agreements and demanded that the Executive Agreements be submitted to the Senate for ratification pursuant to the Philippine Constitution. Is Senator Maagap correct? Explain. (4 %)

SUGGESTED ANSWER:

The Executive Agreement allowing the Republic of Kroi Sha to establish its embassy and consular offices within Metro Manila is valid without need of submitting it to the Senate for ratification. Executive Agreements are not treaties and are valid without the need of concurrence by the Senate in its ratification. (*Commission of Customs v. Eastern Sea Trading*, 35 SCRA 345 [1961]).

The Executive Agreement with the Republic of Kroi Sha allowing it to bring to the Philippines its military complement, warships and armaments from time to time for training exercises with the Philippine military forces must be submitted to the Senate for concurrence in its ratification. Under Section 25, Article XVIII of the Constitution a treaty duly concurred in by the Senate is required even for the temporary presence of foreign troops. (*Bayan b. Zamora*, 342 SCRA 449 [2000]).

Extradition; Grounds (2002)

John is a former President of the Republic X, bent on regaining power which he lost to President Harry in an election. Fully convinced that he was cheated, he set out to destabilize the government of President Harry by means of a series of protest actions. His plan was to

weaken the government and, when the situation became ripe for a take-over, to assassinate President Harry. William, on the other hand, is a believer in human rights and a former follower of President Harry. Noting the systematic acts of harassment committed by government agents against farmers protesting the seizure of their lands, laborers complaining of low wages, and students seeking free tuition, William organized groups which held peaceful rallies in front of the Presidential Palace to express their grievances. On the eve of the assassination attempt, John's men were caught by members of the Presidential Security Group. President Harry went on air threatening to prosecute plotters and dissidents of his administration. The next day, the government charged John with assassination attempt and William with inciting to sedition. John fled to Republic A. William, who was in Republic B attending a lecture on democracy, was advised by his friends to stay in Republic B. Both Republic A and Republic B have conventional extradition treaties with Republic X. If Republic X requests the extradition of John and William, can Republic A deny the request? Why? State your reason fully. (5%)

SUGGESTED ANSWER:

Republic A can refuse to extradite John, because his offense is a political offense. John was plotting to take over the government and the plan of John to assassinate President Harry was part of such plan. However, if the extradition treaty contains an attentat clause, Republic A can extradite John, because under the attentat clause, the taking of the life or attempt against the life of a head of state or that of the members of his family does not constitute a political offense and is therefore extraditable.

FIRST ALTERNATIVE ANSWER:

Republic A may or can refuse the request of extradition of William because he is not in its territory and thus it is not in the position to deliver him to Republic X. Even if William were in the territorial jurisdiction of Republic A, he may not be extradited because inciting to sedition, of which he is charged, constitutes a political offense. It is a standard provision of extradition treaties, such as the one between Republic A and Republic X, that political offenses are not extraditable.

SECOND ALTERNATIVE ANSWER:

Republic B can deny the request of Republic X to extradite William, because his offense was not a political offense. On the basis of the predominance or proportionality test his acts were not directly connected to any purely political offense.

Extradition; Retroactive Application (Q2- 2005)

(1) The Philippines and Australia entered into a Treaty of Extradition concurred in by the Senate of the Philippines on September 10, 1990. Both governments have notified each other that the requirements for the entry into force of the Treaty have been complied with. It took effect in 1990. The Australian government is requesting the Philippine government to extradite its citizen, Gibson, who has committed in his country the indictable offense of Obtaining Property by Deception in 1985. The said offense is among those enumerated as extraditable in the Treaty. For his defense, Gibson asserts that the

retroactive application of the extradition treaty amounts to an ex post facto law. Rule on Gibson's contention. (5%)

SUGGESTED ANSWER:

Gibson is incorrect. In *Wright v. Court of Appeals*, G.R. No.113213, August 15,1994, it was held that the retroactive application of the Treaty of Extradition does not violate the prohibition against ex post facto laws, because the Treaty is neither a piece of criminal legislation nor a criminal procedural statute. It merely provided for the extradition of persons wanted for offenses already committed at the time the treaty was ratified.

Extradition: Double Criminality (2007)

Lawrence is a Filipino computer expert based in Manila who invented a virus that destroys all the files stored in a computer. Assume that in May 2005, this virus spread all over the world and caused \$50 million in damage to property in the United States, and that in June 2005, he was criminally charged before United States courts under their anti-hacker law. Assume that in July 2005, the Philippines adopted its own anti-hacker law, to strengthen existing sanctions already provided against damage to property. The United States has requested the Philippines to extradite him to US courts under the RP-US Extradition Treaty.

a. Is the Philippines under an obligation to extradite Lawrence? State the applicable rule and its rationale.

SUGGESTED ANSWER:

The Philippines is under no obligation to extradite Lawrence. Under the principle of dual or double criminality, the crime must be punishable in both the requesting and requested states to make it extraditable. In this case, only the United States had anti-hacker law at the time of the commission of the crime in May 2005. The rationale for the principle of dual criminality rests "in part on the basic principle of reciprocity" and "in part of the maxim nulla poena sine lege." (LA Shearer, 1971 *Extradition in International Law*, Manchester University Press, Manchester, p. 137.)

ALTERNATIVE ANSWER:

Even if there was no anti-hacker law in the Philippines when the United States requested the extradition of Lawrence, if the act is similar to malicious mischief under Article 327 of the Revised Penal Code, The Philippines will be under the obligation to extradite Lawrence (Coquia and Defensor, *International law and World Organizations*, 4th ed. P.342).

b. Assume that the extradition request was made after the Philippines adopted its anti-hacker legislation. Will that change your answer?

SUGGESTED ANSWER:

The Philippines will be under the obligation to extradite Lawrence. Both the Philippines and the United States have an anti-hacker law. The requirement of double criminality is satisfied even if the act was not criminal in the requested state at the time of its occurrence if it was criminal at the time that the request was made (Bassouni, *International Extradition*, 4th ed. p.469).

ALTERNATIVE ANSWER:

The Philippines is under no obligation to extradite Lawrence. The rule is that the crime must be punishable in both countries at the time of the commission of the offense. Since there was yet no such crime in the Philippines at the time when the acts complained of were done, in so far as the Philippines is concerned, Lawrence did not commit any crime; hence, an extradition of Lawrence is tantamount to an ex post facto application of the Philippine anti-hacker law, prohibited by section 22, Article III of the 1987 Constitution.

Flag State vs. Flag of Convenience (2004)

A. Distinguish briefly but clearly between: (3) The flag state and the flag of convenience.

SUGGESTED ANSWER:

FLAG STATE means a ship has the nationality of the flag of the state it flies, but there must be a genuine link between the state and the ship. (Article 91 of the Convention on the Law of the Sea.) FLAG OF CONVENIENCE refers to a state with which a vessel is registered for various reasons such as low or non-existent taxation or low operating costs although the ship has no genuine link with that state. (Harris, Cases and Materials on International Law, 5th ed., 1998, p. 425.)

International Convention; Law of the Sea (2004)

En route to the tuna fishing grounds in the Pacific Ocean, a vessel registered in Country TW entered the Balintang Channel north of Babuyan Island and with special hooks and nets dragged up red corals found near Batanes. By international convention certain corals are protected species, just before the vessel reached the high seas, the Coast Guard patrol intercepted the vessel and seized its cargo including tuna. The master of the vessel and the owner of the cargo protested, claiming the rights of transit passage and innocent passage, and sought recovery of the cargo and the release of the ship. Is the claim meritorious or not? Reason briefly. (5%)

SUGGESTED ANSWER:

The claim of innocent passage is not meritorious. While the vessel has the right of innocent passage, it should not commit a violation of any international convention. The vessel did not merely navigate through the territorial sea, it also dragged red corals in violation of the international convention which protected the red corals. This is prejudicial to the good order of the Philippines. (Article 19(2) of the Convention on the Law of the Sea)

International Court of Justice (Q9-2006)

1. Where is the seat of the International Court of Justice? (1%)

SUGGESTED ANSWER:

1. The seat of the International Court of Justice is at the Hague or elsewhere, as it may decide, except during the judicial vacations the dates and duration of which it shall fix (I.C.J. Statute, Art. 22).

2. How many are its members? (1%)

SUGGESTED ANSWER:

The Court is composed of fifteen members who must be of high moral character and possess the qualifications required in their respective countries for appointment to the highest judicial office or are juris consults of

recognized competence in international law (I.C.J. Statute, Art. 2).

3. What is the term of their office? (1%)

SUGGESTED ANSWER:

They are elected for a term of nine years, staggered at three-year intervals by dividing the judges first elected into three equal groups and assigning them by lottery terms of three, six and nine years respectively. Immediate re-election is allowed (I.C.J. Statute, Art. 13).

4. Who is its incumbent president? (1%)

SUGGESTED ANSWER:

The incumbent President is Rosalyn Higgins.

5. What is his/her nationality? (1 %)

SUGGESTED ANSWER:

She is a national of the United Kingdom or a British subject. (NOTE: Since questions IX(4) and IX(5) do not test the examinees' knowledge of the law, it is suggested that they be disregarded)

6. In 1980, the United States filed with the International Court of Justice a complaint against Iran alleging that the latter is detaining American diplomats in violation of International Law. Explain how the International Court of Justice can acquire jurisdiction over these contending countries. (5%)

SUGGESTED ANSWER:

Under Article 36 of the I.C.J. Statutes, both parties must agree to submit themselves to the jurisdiction of the International Court of Justice.

International Court of Justice vs. Int'l Criminal Court (2010)

Compare and contrast the jurisdiction of the International Criminal Court (ICC) and International Court of Justice (ICJ). (3%)

SUGGESTED ANSWER:

The jurisdiction of the International Criminal Court (ICC) primarily deals with the prosecution of individuals for core international crimes, while the jurisdiction of the International Court of Justice (ICJ) deals with contentious proceedings between States.

As to subject matter jurisdiction (*ratione materiae*), the jurisdiction of the ICC is limited to the most serious crimes of concern to the international community as a whole, particularly:

- (a) the Crime of Genocide;
- (b) Crimes against Humanity;
- (c) War crimes; and
- (d) the Crime of Aggression. (R. Sarmiento, Public International Law Bar Reviewer, 2009 Revised Edition, p. 308).

On the other hand, the jurisdiction of the ICJ covers legal disputes which the States refer to it. This includes disputes concerning:

- (a) the interpretation of a treaty;
- (b) any question of international law;
- (c) the existence of any fact which, if established, would constitute a breach of an international

obligation; and
(d) the nature or extent of the reparation to be made for the breach of an international obligation. (Article 36, ICJ Statute)

The ICJ also has jurisdiction to give an advisory opinion on any legal question as may be requested by the General Assembly or the Security Council or on legal questions arising within the scope of the activities of other organs and specialized agencies of the U.N. upon their request and when so authorized by the General Assembly. (Article 96, U.N. Charter)

As to jurisdiction over the persons or parties (*ratione personae*), the ICC shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, and shall be complementary to national criminal jurisdictions. (Art. 1, Rome Statute) On the other hand, only States may be parties in cases before the ICJ and their consent is needed for the ICJ to acquire jurisdiction. (R. Sarmiento, Public International Law Bar Reviewer, 2009 Revised Edition, p. 185)

International Law Violation; Treaty (2008)

May a treaty violate international law? if your answer is in the affirmative, explain when such may happen. If your answer is in the negative, explain why? (5%)

SUGGESTED ANSWER:

Yes, a treaty may violate international law when at the time of its conclusion, it conflicts with peremptory norm of general international law (*jus cogens*) or if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations. (Vienna Convention on the Law of Treaties, Art. 52 & 53).

ALTERNATIVE ANSWER:

Treaty may contain provisions that depart from general rules of international law provided that the provisions do not violate *jus cogens*, which refer to rules of peremptory norms of international law so fundamental that no nation may ignore them or attempt to contract out of them through treaties. For example, the prohibitions on the use of force, genocide and participating in a slave trade are regarded as *jus cogens*. When a treaty is in conflict with a *jus cogens* rule, the treaty is deemed void. When a treaty is in conflict with the other rules of international law, the treaty amounts to a waiver of rights that prevents the parties from raising legal claims against other over these rules.

International Law vs. Municipal Law; Territorial Principle; International Crimes (Q2-2005)

(2) Police Officer Henry Magiting of the Narcotics Section of the Western Police District applied for a search warrant in the Regional Trial Court of Manila for violation of Section 11, Article II (Possession of Prohibited Drugs) of Republic Act (R.A.) No. 9165 (Comprehensive Dangerous Drugs Act of 2002) for the search and seizure of heroin in the cabin of the Captain of the MSS Seastar, a foreign-registered vessel which was moored at the South Harbor, Manila, its port of destination. Based on the affidavits of the applicant's witnesses who were crew

members of the vessel, they saw a box containing ten (10) kilograms of heroin under the bed in the Captain's cabin. The RTC found probable cause for the issuance of a search warrant; nevertheless, it denied the application on the ground that Philippine courts have no criminal jurisdiction over violations of R.A. No. 9165 committed on foreign-registered vessels found in Philippine waters. Is the ruling of the court correct? Support your answer with reasons. (5%)

ALTERNATIVE ANSWER:

The court's ruling is not correct. The foreign-registered vessel was not in transit. It was moored in South Harbor, Manila, its port of destination. Hence, any crime committed on board said vessel, like possession of heroin, is triable by our courts (U.S. v. Ah Sing, G.R. No. 13005, October 10, 1917), except if the crime involves the internal management of the vessel.

ALTERNATIVE ANSWER:

The RTC may assert its jurisdiction over the case by invoking the territorial principle, which provides that crimes committed within a state's territorial boundaries and persons within that territory, either permanently or temporarily, are subject to the application of local law. Jurisdiction may also be asserted on the basis of the universality principle, which confers upon all states the right to exercise jurisdiction over *delicta juris gentium* or international crimes, such as the international traffic narcotics. The possession of 10 kgs. of heroin constitutes commercial quantity and therefore qualifies as trafficking of narcotics. Consequently, the denial of the search warrant should have been anchored on the failure of the court to conduct personal examination of the witnesses to the crime in order to establish probable cause, as required by Sections 3 and 4 of Rule 126. In any event, there is no showing that the requisite quantum of probable cause was established by mere reference to the affidavits and other documentary evidence presented.

Municipal Law vs. International Law (2003)

An organization of law students sponsored an inter-school debate among three teams with the following assignments and propositions for each team to defend: Team "A" - International law prevails over municipal law. Team "B" - Municipal law prevails over international law. Team "C" - country's Constitution prevails over international law but international law prevails over municipal statutes. If you were given a chance to choose the correct proposition, which would you take and why?

SUGGESTED ANSWER:

I shall take the proposition for Team C. International Law and municipal law are supreme in their own respective fields. Neither has hegemony over the other. (Brownlie, Principles of Public International Law, 4th ed. p. 157.) Under Article II, Section 2 of the 1987 Constitution, the generally accepted principles of international law form part of the law of the land. Since they merely have the force of law, if it is Philippine courts that will decide the case, they will uphold the Constitution over international law. If it is an international tribunal that will decide the case, it will uphold international law over municipal law. As held by the Permanent International Court of Justice in the case of the Polish Nationals in Danzig, a State

cannot invoke its own Constitution to evade obligations incumbent upon it under international law.

ALTERNATIVE ANSWER:

I would take the proposition assigned to Team "C" as being nearer to the legal reality in the Philippines, namely, "A country's Constitution prevails over international law but international law prevails over municipal statutes". This is, however, subject to the place of international law in the Philippine Constitutional setting in which treaties or customary norms in international law stand in parity with statutes and in case of irreconcilable conflict, this may be resolved by *ex posteriori derogat lex priori* as the Supreme Court obiter dictum in *Abbas v. COMELEC* holds. Hence, a statute enacted later than the conclusion or effectivity of a treaty may prevail. In the Philippine legal system, there are no norms higher than constitutional norms. The fact that the Constitution makes generally accepted principles of international law or conventional international law as part of Philippine law does not make them superior to statutory law, as clarified in *Secretary v. Lantion and Philip Morris* decisions.

Mandates and Trust Territories (2003)

What are the so-called Mandates and Trust Territories? Does the United Nations exercise sovereignty over these territories? In the affirmative, how is this jurisdiction exercised?

SUGGESTED ANSWER:

The Mandates were the overseas possessions of the defeated states of Germany and Turkey which were placed by the League of Nations under the administration of mandatories to promote their development and ultimate independence. (Harris, *Cases and Materials on International Law*, 5th ed., p. 131.) When the United Nations replaced the League of Nations, the system of Mandates was replaced by the System of Trust Territories. The United Nations exercised residuary sovereignty over the Trust Territories through the Trustee Powers, who exercised the powers of sovereignty subject to supervision by and accountability to the United Nations. (Oppenheim-Lauterpacht, *International Law*, Vol. I, 7th ed., pp. 213-214.) (Since there are no more Trust Territories, this is just a matter of historical interest.)

ALTERNATIVE ANSWER:

Mandates pertains to the mandate system established under Article 22 of the Covenant of the League of Nations for the tutelage and guardianship of colonies and territories formerly held by Germany and Turkey before the First World War, by a victorious power on behalf of the League of Nations until they were prepared for independence. Territories under mandate were not under the sovereignty of any State; they were administered by a mandatory power which was responsible to the League of Nations for the development and welfare of the disadvantaged subject peoples towards independence. Thus, mandated territories were under the jurisdiction of the mandatory power, subject to the supervision of the League of Nations. The general legal framework of the mandate system passed into the trusteeship system of the United Nations, together with mandated territories which did not attain independence status by the end of

the Second World War. Trust territories and the Trusteeship Council are created by the UN Charter. The trusteeship system under Chapters XII and XIII of the UN Charter is established under the supervision of the UN Trusteeship Council under the authority of the General Assembly for the promotion of political and socio-economic development of peoples in trust territories towards independent status. A new feature of the UN trusteeship system is the creation of a new category of territories, the strategic trust territories, which is under the supervision of the Security Council instead of the Trusteeship Council. Under the foregoing conditions, the United Nations may not be said to exercise sovereignty over trust territories, the functions and powers of the Trusteeship Council and the General Assembly being limited to administration and supervision under the principle of self-determination as set forth in individual trust agreements concluded in accordance with the UN Charter. UN jurisdiction is exercised through the Trusteeship Council under the authority of the General Assembly, except with respect to strategic areas or territories which are placed under the jurisdiction of the Security Council.

Outer Space; Jurisdiction (2003)

What is outer-space? Who or which can exercise jurisdiction over astronauts while in outer space?

ALTERNATIVE ANSWER:

There are several schools of thought regarding the determination of outer space, such as the limit of air flight, the height of atmospheric space, infinity, the lowest altitude of an artificial satellite, and an altitude approximating aerodynamic lift. Another school of thought proceeds by analogy to the law of the sea. It proposes that a State should exercise full sovereignty up to the height to which an aircraft can ascend. Non-militant flight instrumentalities should be allowed over a second area, a contiguous zone of 300 miles. Over that should be outer space. The boundary between airspace and outer space has not yet been defined. (Harris, *Cases and Materials on International Law*, 5th ed., pp. 251-253.) Under Article 8 of the Treaty on the Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, a State on whose registry an object launched into outer space retains jurisdiction over the astronauts while they are in outer space.

ALTERNATIVE ANSWER:

Outer space is the space beyond the airspace surrounding the Earth or beyond the national airspace. In law, the boundary between outer space and airspace has remained undetermined. But in theory, this has been estimated to be between 80 to 90 kilometers. Outer space in this estimate begins from the lowest altitude an artificial satellite can remain in orbit. Under the Moon Treaty of 1979 the moon and the other celestial bodies form part of outer space. In outer space, the space satellites or objects are under the jurisdiction of States of registry which covers astronauts and cosmonauts. This matter is covered by the Registration of Objects in Space Convention of 1974 and the Liability for Damage Caused by Spaced Objects Convention of 1972.

Principle of Auto-Limitation (2006)

1. What is the principle of auto-limitation? (2.5%)

ALTERNATIVE ANSWER:

Under the principle of auto-limitation, any state may by its consent, express or implied, submit to a restriction of its sovereign rights. There may thus be a curtailment of what otherwise is a plenary power (Reagan v. CIR, G.R. L-26379, December 27, 1969).

Reciprocity v. Principle of Auto-Limitation (2006)

2. What is the relationship between reciprocity and the principle of autolimitation? (2.5%)

ALTERNATIVE ANSWER:

When the Philippines enters into treaties, necessarily, these international agreements may contain limitations on Philippine sovereignty. The consideration in this partial surrender of sovereignty is the reciprocal commitment of other contracting states in granting the same privilege and immunities to the Philippines. For example, this kind of reciprocity in relation to the principle of auto-limitation characterizes the Philippine commitments under WTO-GATT. This is based on the constitutional provision that the Philippines "adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of ... cooperation and amity with all nations" (Tanada v. Angara, G.R. No. 118295, May 2, 1997).

Right to Transit and Innocent Passage (2004)

II-B. *En route* to the tuna fishing grounds in the Pacific Ocean, a vessel registered in Country TW entered the Balintang Channel north of Babuyan Island and with special hooks and nets dragged up red corals found near Batanes. By international convention certain corals are protected species. Just before the vessel reached the high seas, the Coast Guard patrol intercepted the vessel and seized its cargo including tuna. The master of the vessel and the owner of the cargo protested, claiming the rights of transit passage and innocent passage, and sought recovery of the cargo and the release of the ship. Is the claim meritorious or not? Reason briefly. (5%)

SUGGESTED ANSWER:

The claim of innocent passage is not meritorious. While the vessel has the right of innocent passage, it should not commit a violation of any international convention. The vessel did not merely navigate through the territorial sea, it also dragged red corals in violation of the international convention which protected the red corals. This is prejudicial to the good order of the Philippines. (Article 19(2) of the Convention on the Law of the Sea)

Sovereignty; Definition; Nature (Q10-2006)

3. How is state sovereignty defined in International Law? (2.5%)

ALTERNATIVE ANSWER:

State sovereignty signifies independence in regard to a portion of the globe, and the right to exercise and enforce jurisdiction therein, to the exclusion of any other state the functions of the state [See Island of Las Palmas Case (US v. The Netherlands) 2 R.IAA. 829]. Sovereignty means independence from outside control. The 1933

Montevideo Convention expresses this in positive terms as including "the capacity to enter into relations with other states."

ALTERNATIVE ANSWER:

Under the principle of state sovereignty in International Law, all states are sovereign equals and cannot assert jurisdiction over one another. A contrary disposition would "unduly vex the peace of nations" (Da Haber v. Queen of Portugal, 17 Q. B. 171).

4. Is state sovereignty absolute? (2.5%)

ALTERNATIVE ANSWER:

State sovereignty is not absolute. On the contrary, the rule says that the state may not be sued without its consent, which clearly imports that it may be sued if it consents. Moreover, certain restrictions enter into the picture: (1) limitations imposed by the very nature of membership in the family of nations; and (2) limitations imposed by treaty stipulations. The sovereignty of a state therefore cannot in fact and in reality be considered absolute (Tanada v. Angara, G.R. No. 118295, May 2, 1997).

ALTERNATIVE ANSWER:

Sovereignty is absolute with respect to exclusive competence over internal matters [See Island of Las Palmas Case (US v. The Netherlands) 2 R.IAA. 829], subject only to such limitations as may be imposed or recognized by the state itself as part of its obligations under international law. In the international plain, state sovereignty is realized as the coexistence with other sovereignties under conditions of independence and equality.

State Sovereignty; Effective Occupation; Terra Nullius (2000)

a) What is the basis of the Philippines' claim to a part of the Spratly Islands?

SUGGESTED ANSWER:

The basis of the Philippine claim is effective occupation of a territory not subject to the sovereignty of another state. The Japanese forces occupied the Spratly Island group during the Second World War. However, under the San Francisco Peace Treaty of 1951 Japan formally renounced all right and claim to the Spratlys. The San Francisco Treaty or any other International agreement however, did not designate any beneficiary state following the Japanese renunciation of right. Subsequently, the Spratlys became terra nullius and was occupied by the Philippines in the title of sovereignty. Philippine sovereignty was displayed by open and public occupation of a number of islands by stationing of military forces, by organizing a local government unit, and by awarding petroleum drilling rights, among other political and administrative acts. In 1978, it confirmed its sovereign title by the promulgation of Presidential Decree No. 1596, which declared the Kalayaan Island Group part of Philippine territory.

Territorial Sea vs. Internal Waters (2004)

Distinguish briefly but clearly between: (1) The territorial sea and the internal waters of the Philippines.

SUGGESTED ANSWER:

A. (1) TERRITORIAL SEA is an adjacent belt of sea with a breadth of **twelve nautical miles** measured from the baselines of a state and over which the state has sovereignty. (Articles 2 and 3 of the Convention on the Law of the Sea.) Ship of all states enjoy the right of innocent passage through the territorial sea. (Article 14 of the Convention on the Law of the Sea.) Under Section 1, Article I of the 1987 Constitution, the INTERNAL WATERS of the Philippines consist of the waters around, between and connecting the islands of the Philippine Archipelago, regardless of their breadth and dimensions, including the waters in bays, rivers and lakes. No right of innocent passage for foreign vessels exists in the case of internal waters. (Harris, Cases and Materials on International Law, 5th ed., 1998, p. 407.) Internal waters are the waters on the landward side of baselines from which the breadth of the territorial sea is calculated. (Brownlie, Principles of Public International Law, 4th ed., 1990, p. 120.)

Concept of Association (2010)

What is the concept of association under international law?

SUGGESTED ANSWER:

Under international law, an association is formed when two states of unequal power voluntarily establish durable links. In the basic model, one state, the associate, delegates certain responsibilities to the other, the principal, while maintaining its international status as a state. Free associations represent a middle ground between integration and independence.

Association under international Law, is a formal arrangement between a non-self-governing territory and independent State whereby such territory becomes an associated State with internal self-government, but the independent state is responsible for foreign relations and defense.

For an association to be lawful, it must comply with the general conditions prescribed in the UN General Assembly Resolution 1541 (XV) of 14 December 1960: (1) the population must consent to the association; and (2) the association must promote the development and well-being of the dependent state (the non-self-governing territory). Association subject to UN approval.

In deciding the constitutionality of the Memorandum of Agreement on the Ancestral Domain (MOA-AD) Aspect of the GRP-MILF Tripoli Agreement on Peace of 2001, the Supreme Court had ruled that the concept of association under international law is not recognized under the 1987 Constitution as it runs counter to the national sovereignty and territorial integrity of the Republic. (Province of North Cotabato v. GRP Peace Panel on Ancestral Domain, G.R. No. 183591, Oct. 14, 2008)

Use of Force; Exceptions (2003)

Not too long ago, "allied forces", led by American and British armed forces, invaded Iraq to "liberate the Iraqis and destroy suspected weapons of mass destruction."

The Security Council of the United Nations failed to reach a consensus on whether to support or oppose the "war of liberation". Can the action taken by the allied forces find justification in International Law? Explain.

SUGGESTED ANSWER:

The United States and its allied forces cannot justify their invasion of Iraq on the basis of self-defense under Article 51 attack by Iraq, and there was no necessity for anticipatory self-defense which may be justified under customary international law. Neither can they justify their invasion on the ground that Article 42 of the Charter of the United Nations permits the use force against a State if it is sanctioned by the Security Council. Resolution 1441, which gave Iraq a final opportunity to disarm or face serious consequences, did not authorize the use of armed force.

ALTERNATIVE ANSWER:

In International Law, the action taken by the allied forces cannot find justification. It is covered by the prohibition against the use of force prescribed by the United Nations Charter and it does not fall under any of the exceptions to that prohibition. The UN Charter in Article 2(4) prohibits the use of force in the relations of states by providing that all members of the UN "shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations." This mandate does not only outlaw war; it encompasses all threats of and acts of force or violence short of war. As thus provided, the prohibition is addressed to all UN members. However, it is now recognized as a fundamental principle in customary international law and, as such, is binding on all members of the international community. The action taken by the allied forces cannot be justified under any of the three exceptions to the prohibition against the use of force which the UN Charter allows. These are:

1. inherent right of individual or collective self-defense under Article 51;
2. enforcement measure involving the use of armed forces by the UN Security Council under Article 42; and
3. enforcement measure by regional arrangement under Article 53, as authorized by the UN Security Council. The allied forces did not launch military operations and did not occupy Iraq on the claim that their action was in response to an armed attack by Iraq, of which there was none. Moreover, the action of the allied forces was taken in defiance or disregard of the Security Council Resolution No. 1441 which set up "an enhanced inspection regime with the aim of bringing to full and verified completion the disarmament process", giving Iraq "a final opportunity to comply with its disarmament obligations". This resolution was in the process of implementation; so was Iraq's compliance with such disarmament obligations.

Use of Force; Right of Self-defense (2002)

On October 13, 2001, members of Ali Baba, a political extremist organization based in and under the protection

of Country X and espousing violence worldwide as a means of achieving its objectives, planted high-powered explosives and bombs at the International Trade Tower (ITT) in Jewel City in Country Y, a member of the United Nations. As a result of the bombing and the collapse of the 100-story twin towers, about 2,000 people, including women and children, were killed or injured, and billions of dollars in property were lost. Immediately after the incident, Ali Baba, speaking through its leader Bin Derdandat, admitted and owned responsibility for the bombing of ITT, saying that it was done to pressure Country Y to release captured members of the terrorist group. Ali Baba threatened to repeat its terrorist acts against Country Y if the latter and its allies failed to accede to Ali Baba's demands. In response, Country Y demanded that Country X surrender and deliver Bin Derdandat to the government authorities of Country Y for the purpose of trial and "in the name of justice." Country X refused to accede to the demand of Country Y. What action or actions can Country Y legally take against Ali Baba and Country X to stop the terrorist activities of Ali Baba and dissuade Country X from harboring and giving protection to the terrorist organization? Support your answer with reasons. (5%)

FIRST ALTERNATIVE ANSWER:

(1) Country Y may exercise the right of self-defense, as provided under Article 51 of the UN Charter "until the Security Council has taken measure necessary to maintain international peace and security". Self-defense enables Country Y to use force against Country X as well as against the Ali Baba organization.

(2) It may bring the matter to the Security Council which may authorize sanctions against Country X, including measure invoking the use of force. Under Article 4 of the UN Charter, Country Y may use force against Country X as well as against the Ali Baba organization by authority of the UN Security Council.

SECOND ALTERNATIVE ANSWER:

Under the Security Council Resolution No. 1368, the terrorist attack of Ali Baba may be defined as a threat to peace, as it did in defining the September 11, 2001 attacks against the United States. The resolution authorizes military and other actions to respond to terrorist attacks. However, the use of military force must be proportionate and intended for the purpose of detaining the persons allegedly responsible for the crimes and to destroy military objectives used by the terrorists. The fundamental principles of international humanitarian law should also be respected. Country Y cannot be granted sweeping discretionary powers that include the power to decide what states are behind the terrorist organizations. It is for the Security Council to decide whether force may be used against specific states and under what conditions the force may be used.

Use of Force; Self-Defense (2009)

A terrorist group called the Emerald Brigade is based in the State Asyaland. The government of Asyaland does not support the terrorist group, but being a poor country, is powerless to stop it.

The Emerald Brigade launched an attack on the

Philippines firing two missiles that killed thousands of Filipinos. It then warned that more attacks were forthcoming. Through diplomatic channels the Philippines demanded that Asyaland stop the Emerald Brigade; otherwise, it will do whatever is necessary to defend itself.

Receiving reliable intelligence reports of another imminent attack by the Emerald Brigae, and it appearing that Asyaland was incapable of preventing the assault, the Philippines sent a crack commando team to Asyaland. The team stayed only for a few hours in Asyaland, succeeded in killing the leaders and most of the members of the Emerald Brigade, then immediately returned to the Philippines.

(a) Was the Philippine action justified under the international law principle of self-defense? explain your answer (3%)

SUGGESTED ANSWER:

The Philippines action cannot be justified as self-defense. Self-defense is an act of a State by reason of an armed attack by another State. The acts of terrorism in this case were acts of private group and cannot be attributed to Asyaland, which does not support the Emerald Brigade. Article 51 of the Charter of the United Nations has no applicability, because self defense in Article 51 contemplates a response to a legitimate armed attack by a State against another State. The attack of Emerald Brigade is an attack by a private group without authority as an organ of Asyaland.

ALTERNATIVE ANSWER:

Yes, the Philippine action was justified. Article 51 of the U.N. Charter affirms the inherent right of States to individual or collective self-defense. The terrorist group Emerald Brigade had already launched actual armed attacks on the Philippines which killed thousands of Filipinos with a warning that more attacks were forthcoming. Asyaland, on the other hand, had failed to fulfill its obligations, under international law, to prevent the use of its territory for the staging of terrorist acts against the Philippines. As such, in the face of another imminent attack by the Emerald Brigade, and it appearing that Asyaland was incapable of preventing the assault, the Philippines was therefore justified in resorting to military action to protect its own security as an act of self-defense.

(b) As a consequence of the foregoing incident, Asyaland charges the Philippines with violation of Article 2.4 of the United

Nations Charter that prohibits "the threat or use of force against the territorial integrity or political independence of any State. The Philippines counters that its commando team neither took any territory nor interfered in the political processes of Asyaland. Which contention is correct? Reasons (3%)

SUGGESTED ANSWER:

The contention of Asyaland is correct. The Philippines violated Article 2(4) of the Charter of the United Nations, which prohibits States from the threat or use of force against territorial integrity of any State.

ALTERNATIVE ANSWER:

The contention of the Philippines is the correct one. State practice and the U.N. Security Council's actions after 9/11 indicate a trend towards recognizing that a State that suffers large-scale violence perpetrated by non-State actors located in another State has a right to use force when:

- (1) that other State proves unwilling or unable to reduce or eliminate the source of the violence,
- (2) the use of force is proportional to the threat posed by the non-State actor, and
- (3) the use of force is temporary and does not result in non-consensual occupation or annexation of territory.

(c) Assume that the commando team captured a member of the Emerald Brigade and brought him back to the Philippines. The Philippine Government insists that a special international tribunal should try the terrorist. On the other hand, the terrorist argues that terrorism is not an international crime and, therefore, the municipal laws of the Philippines, which recognize access of the accused to constitutional rights, should apply. Decide with reasons. (3%)

SUGGESTED ANSWER:

The terrorist should be tried in the Philippines. Section 58 of Republic Act No. 9372, the Human Security Act provides for its extraterritorial application to individual persons who, although outside the territorial limits of the Philippines, commit an act of terrorism directly against Filipino citizens where their citizenship was a factor in the commission of the crime.

Human Rights; Civil and Political Rights (2007)

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

(b) Is the Philippines in breach of any obligation under international law? Explain.

SUGGESTED ANSWER:

The acts of the City Mayor may be attributed to the Philippines under the principle of state responsibility. Article 26 of the International Covenant on Civil and Political Rights requires that Philippine law shall prohibit any discrimination and shall guarantee to all persons equal and effective protection against discrimination on any ground such as social origin, birth or other status. The Executive Order of the City Mayor discriminates against poor women.

ALTERNATIVE ANSWER:

The Philippines is in breach of its obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) of which the country is a signatory.

Under the CEDAW, "State Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on basis of equality of men and women, access to health care services, including those related to family planning" (Article 12, Section 1). Women shall likewise have "access to adequate health care facilities, including information, counseling and services in family planning." (Article 14, Section 2[b]).

ALTERNATIVE ANSWER:

The Philippines is not in breach of any obligation under international law. The protection of the life of the unborn from conception is consistent with Article 6(1) of the Convention on the Rights of the Child, which Recognizes the inherent life of every child. While Article 24(2)(f) of the Convention on the Rights of the Child requires that States Parties to develop family planning, education, and services and Article 10(h), Article 12(2) and Article 14(b) of the Convention on the Elimination of all forms of Discrimination against Women requires that States Parties to provide access to information, advice and services in family planning, they do not prescribe any specific form of such information and services.

Constitutive Theory vs. Declaratory Theory (2004)

Distinguish: The constitutive theory and the declaratory theory concerning recognition of states.

SUGGESTED ANSWER:

According to the CONSTITUTIVE THEORY, recognition is the last indispensable element that converts the state being recognized into an international person. According to the DECLARATORY THEORY, recognition is merely an acknowledgment of the pre-existing fact that the state being recognized is an international person. (Cruz, International Law, 2003 ed.)

Human Rights; Civil and Political Rights; Freedom from Torture (2010)

Which statement best completes the following phrase:

- a. "Freedom from torture is a right Subject to derogation when national security is threatened
- b. Confined only during custodial investigation
- c. Which is non-derogable both during peacetime and in a situation of armed conflict
- d. Both (a) and (b)
- e. None of the above

SUGGESTED ANSWER:

C. "Freedom from torture is a right which is non-derogable both during peacetime and in a situation of armed conflict." Article 2(2) of the U.N. Convention Against Torture provides that "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

Because of the importance of the values it protects, the prohibition of torture has evolved into a peremptory norm or jus cogens, that is, a norm that enjoys a higher rank in the international hierarchy than treaty law and even ordinary customary rules. The most conspicuous consequence of this higher rank is that the norm

prohibiting torture cannot be derogated from by States through international treaties or local or special customs or even general customary rules not endowed with the same normative force. (Prosecutor v. Furundzija, ICTY, December 10, 1998).

Genocide (2010)

The dictatorial regime of the President A of the Republic of Gordon was toppled by a combined force led by Gen. Abe, former royal guards and the secessionist Gordon People's Army. The new government constituted a Truth and Reconciliation Commission to look into the serious crimes committed under President A's regime. After the hearings, the Commission recommended that an amnesty law be passed to cover even those involved in mass killings of members of indigenous groups who opposed President A. International human rights groups argued that the proposed amnesty law is contrary to international law. Decide with reasons. (4%)

SUGGESTED ANSWER:

The proposed amnesty law is contrary to international law.

The indigenous group may constitute an ethnic group which is protected by the law on Genocide. If the mass killing was committed with the intent to destroy (*dolusspecialis*) the said ethnic group as such, in whole or in part, then the crime of Genocide was committed. The international norm for the prevention, prosecution and punishment of Genocide is a peremptory (*ius cogens*) norm of international law and, therefore, non-derogable. (Prosecutor v. Blagojevic and Jokic, ICTY, January 17, 2005)

Even if the mass killing was not committed with the *dolusspecialis* to destroy the ethnic group as such, the same may still constitute the Crime Against Humanity of Extermination if the mass killing was widespread and systematic or the War Crime of Intentionally Attacking Civilians if the same took place in the context of or was associated with an armed conflict. The norm for the prevention, prosecution and punishment of crimes against humanity and war crimes are also customary norms of international and therefore binding on all States. (Prosecutor v. Stakic, ICTY, July 31, 2003)

Thus, Republic of Gordon has the obligation under international law to prosecute and punish all those involved in the mass killing of the members of the indigenous group and providing amnesty to those involved is violative of this obligation.

Wilson doctrine vs. Estrada doctrine (2004)

(2-a-5) Distinguish: The Wilson doctrine and the Estrada doctrine regarding recognition of governments.

SUGGESTED ANSWER:

Under the WILSON DOCTRINE, recognition shall not be extended to any government established by revolution or internal violence until the freely elected representatives of the people have organized a constitutional government. Under the ESTRADA DOCTRINE, the Mexican government declared that it would, as it saw fit, continue

or terminate its diplomatic relations with any country in which a political upheaval had taken place and in so doing it would not pronounce judgment on the right of the foreign state to accept, maintain or replace its government. (Cruz, International Law, 2003 ed.) (In view of recent developments, the Wilson doctrine and the Estrada doctrine are no longer in the mainstream of public international law.)

Retorsion (2010)

A state which resorts to retorsion in international law

- Must ensure that all states consent to its act
- Cannot curtail migration from the offending state
- Can expel the nationals of the offending state
- Should apply appropriate response within appreciable limit
- None of the above

Explain your answer/ (2%)

SUGGESTED ANSWER:

D. "A State which resorts to retorsion in international law should apply proportionate response within appreciable limits."

Retorsion consists in retaliation where the acts complained of do not constitute a legal ground of offense but are rather in the nature of unfriendly acts done primarily in pursuance of legitimate State interests but indirectly hurtful to other States. (R. Sarmiento, Public International Law Bar Reviewer, 2009 Revised Edition, p. 233)

To be valid in international law, acts of retorsion should not be excessive when compared to the unfriendly acts committed by the offending State. Moreover, they should not violate a State's obligation under Article 2(3) of the U.N. Charter to settle their disputes by peaceful means in such a manner that international peace and security and justice are not endangered.

Reparation (2007)

In 1993, historians confirmed that during World War II, "comfort women" were forced into serving the Japanese military. These women were either abducted or lured by false promises of jobs as cooks or waitresses, and eventually forced against their will to have sex with Japanese soldiers on a daily basis during the course of the war, and often suffered from severe beatings and venereal diseases. The Japanese government contends that the "comfort stations" were run as "onsite military brothels" (or prostitution houses) by private operators, and not by the Japanese military. There were many Filipina "comfort women."

- Name at least one basic principle or norm of international humanitarian law that was violated by the Japanese military in the treatment of the "comfort women."

SUGGESTED ANSWER:

The treatment of "comfort women" by the Japanese military violated Article XXVII of the Geneva Convention

(IV), which provides that: "Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault."

ALTERNATIVE ANSWER:

The treatment of "comfort women" by the Japanese military violated Article III of the Geneva Convention (IV) which prohibits outrages upon personal dignity in particular humiliation and degrading treatment.

ALTERNATIVE ANSWER:

The principle of military necessity was violated. It prohibits the use of any measure that is not absolutely necessary for the purposes of the war. Military necessity is governed by several constraints: An attack or action must be intended to help in the military defeat of the enemy, it must be an attack on a military objective and the harm caused to civilians or civilian property must be proportional and not excessive in relation to the concrete and direct military advantage anticipated. Having to force women of the enemy state to serve the sexual needs of the soldiers is not absolutely necessary for the conduct of the war.

b. The surviving Filipina "comfort women" demand that the Japanese government apologize and pay them compensation. However, under the 1951 San Francisco Peace Agreement -the legal instrument that ended the state of war between Japan and the Allied Forces -all the injured states, including the Philippines, received war reparations and, in return, waived all claims against Japan arising from the war. Is that a valid defense?

SUGGESTED ANSWER:

The defense is not valid. Under the preamble of San Francisco Treaty, Japan Undertook to conform to the protection and observance of human rights. The San Francisco Treaty must yield to the United Nations Charter which provides for respect of human rights. Article 103 of the United Nations Charter provides that the obligation of the member-States prevail over any other international agreement. The waiver in Article 14(a) of the San Francisco Treaty is qualified by Article 14(b), which stated that Japan had no resources presently sufficient to make complete reparation for all such damages and sufferings and meet its other obligations. Thus the waiver was operative only while Japan had inadequate resources.

ALTERNATIVE ANSWER:

No, that is not a valid defense. Even if it could be argued that the Philippines, by signing said Peace Agreement had the right as a state to bring further claims, it had no authority to waive the individual right to reparations vested directly in its nationals who were victims of sexual slavery. The Philippines can only validly waive its right to recovery of reparations for injuries to the state. Moreover, there is no defense for the violation of jus cogens norms.

ALTERNATIVE ANSWER:

No. The claim is being made by the individuals, not by the State and it is recognized that individuals may also be subjects of international law apart from the state. Further, the San Francisco Peace Agreement could not be interposed as a valid defense as this could not have been contemplated therein. The use of "comfort women"

was only confirmed long after that Agreement. Moreover, Article 17 (3) of the New Civil Code provides that "prohibitive laws concerning persons, their acts or property, and those which have for their object public order, policy and good customs, shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country.

c. The surviving Filipina "comfort women" sue the Japanese government for damages before Philippine courts. Will that case prosper?

SUGGESTED ANSWER:

The Filipina "comfort women" cannot sue Japan for damages, because a foreign State may not be sued before Philippine courts as a consequence of the principles of independence and equality of States (Republic of Indonesia vs. Vinzon, 405 SCRA 126 [2003]).

ALTERNATIVE ANSWER:

The case will not prosper in view of the doctrine of sovereign immunity from suit. However, a person who feels aggrieved by the acts of a foreign sovereign can ask his own government to espouse his cause through diplomatic channels. The "comfort women" can request the Philippine government, through the Department of Foreign Affairs, to espouse its claims against the Japanese government. (Holy See v. Rosario, G.R. No. 101949, December 1, 1994). The sovereign authority of a State to settle the claims of its national against foreign countries has repeatedly been recognized. This may be made without the consent of the nationals or even without consultation without them. (Dames and Moore v. Regan, 433 U.S. 654, [1981])

ALTERNATIVE ANSWER:

No. since the Philippines is a signatory to that Agreement, courts may not entertain a suit since that has been waived by the State. Moreover, it can be argued that there was no state action since the prostitution houses were being run by private operators, without the control or supervision of the Japanese government. (Southeast Case, United States v. Wilhelm List, Nuremberg Case No. 7, 1949)

