



POLITICAL LAW

BAR QUESTIONS & ANSWERS

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I. PRELIMINARY PROVISIONS AND BASIC CONCEPTS

A. National Territory

- 1) (A) Define the archipelagic doctrine of national territory, state its rationale; and explain how it is implemented through the straight baseline method. (2.5%)

(B) Section 2 of RA 9522 declared the Kalayaan Island Group (KIG) and Scarborough Shoal as “Regimes of Islands.” Professor Agaton contends that since the law did not enclose said islands, then the Philippines lost its sovereignty and jurisdiction over them. Is his contention correct? Explain. (2.5%) (2016 Bar Question)

SUGGESTED ANSWER:

(A) “Archipelagic doctrine of national territory” means that the islands and waters of the Philippine archipelago are unified in sovereignty. This doctrine, so described under Article I of the Constitution, draws its rationale from the status of the whole archipelago in sovereignty by which the Philippines, under Part IV of the UNCLOS, the Philippines is defined as an Archipelagic State. As such, the national territory is implemented by drawing its “straight archipelagic baselines” pursuant to Article 47 of the UNCLOS which prescribes among its main elements, as follows:

- 1) By “joining the outermost points of the outermost islands and drying reefs of the archipelago”, including the main islands and an area in which the ratio of the area of the water to the land, including atolls, is between 1 to 1 and 9 to 1.
- 2) Mainly, the length of such baselines “shall not exceed 100 nautical lines...”
- 3) “The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.”

(B) The contention of Prof. Agaton is not correct. “Regime of islands,” a concept provided in Article 121 of the UNCLOS, is a definition of the island as “a naturally formed area of land, surrounded by water which is above water at high tide.” This provision differentiates said KIG from “rocks” which cannot sustain human habitation of their own. Thus, describing the KIG as “Regime of Islands” has no relevance to acquisition or loss of sovereignty. RA 9522 only has the effect of dividing the area in question into island and rocks, apparently to make clear for each the maritime zones involved in the definition of island or of rocks.

- 2) (A) 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%) (2015 Bar Question)

- (B) 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 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]).

(B)

(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 [2011]).

(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 Principles of Public International Law, 8th ed., p. 276).

(d) The continental shelf gives the coastal state rights to explore and exploit the resources within 150 nautical miles of the shelf by operation of law. (Crawford, Brownlie's Principles of Public International Law, 8th ed., p. 276).

- 3) **TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%) (2009 Bar Question)**

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 water around, between and connecting the islands of the Philippines form part of its internal waters.

B. Declaration of Principles and State Policies

- 4) **To instill religious awareness in the students of Doña Trinidad High School, a public school in Bulacan, the Parent Teacher's Association of the school contributed funds for the construction of a grotto and 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 and administrative complaint against the principal before the DECS is the principal liable? Explain briefly. (5%) (2010 Bar Question)**

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; thus violating the prohibition against the establishment of religion. (Opinion No. 12 of the Secretary of Justice dated February 2, 1979.)

- 5) **TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%) (2009 Bar Question)**

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.

- 6) **Angelina, a married woman, is a Division Chief in the Department of Science and Technology. She had been living with a married man, not her husband, for the last fifteen (15) years. Administratively charged with immorality and conduct prejudicial to the best interest of the service, she admits her live-in arrangement, but maintains that this conjugal understanding is in conformity with their religious beliefs. As members of the religious sect, Yahweh's Observers, they had 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%) (2006 Bar Question)**

SUGGESTED ANSWER:

Angelina should be exonerated. First, it has not been shown that there is compelling state interest which will be undermined by granting her an exemption. Second, it has not been shown that the least intrusive means possible was used so that the free exercise of religion is not infringed any more than necessary (*Estrada v. Escritor*, 492 SCRA 1 [2006]).

- 7) **Meanwhile, Jenny, also a member of Yahweh's Observers, was severely disappointed at the manner the Grand Elder validated what she considered was an obviously immoral conjugal arrangement between Angelina and her partner. Jenny filed suit in court, seeking the removal of the Grand Elder from the religious sect on the ground that his act in supporting Angelina not only ruined the reputation of their religion, but also violated the constitutional policy upholding the sanctity of marriage and the solidarity of the family. Will Jenny's case prosper? Explain your answer. (2%) (2005 Bar Question)**

SUGGESTED ANSWER:

The case will not prosper. This involves the performance of the official functions of religious authorities. Because of separation of Church and State, courts must respect the autonomy of the religious sect in such matters (*Taruc v. De la Cruz*, 453 SCRA 123 [2005]).

C. Separation of powers

- 8) Under Sec. 5, Article VIII of the Constitution, the Supreme Court shall have the power to “promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts xxx.” Section 23 of R.A. No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 provides that “any person charged under any provision of this Act regardless of the imposable penalty shall not be allowed to avail of the provision on plea-bargaining.” Patricio, a user who was charged with alleged sale of shabu but who wants to enter a plea of guilty to a charge of possession, questions the constitutionality of Sec. 23 on the ground that Congress encroached on the rule-making power of the Supreme Court under Sec. 5, Article VIII. He argues that plea-bargaining is procedural in nature and is within the exclusive constitutional power of the Court. Is Patricio correct? Explain your answer. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

Patricio is not correct. Defining the penalty for a criminal offense involves the exercise of legislative power (*People v. Dacuycuy*, G.R. No. L-45127, May 5, 1989, 173 SCRA 90). When Section 23 of the Comprehensive Dangerous Drugs Act prohibited plea-bargaining, Congress only defined what should be the penalty for the criminal offense. Also, the power of the Supreme Court to promulgate rules of procedure is subject to the limitation that it should not modify substantive rights (Section 5(5), Article VIII of the Constitution).

- 9) 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 %) (2015 Bar Question)

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]).

On the other hand, the Executive Agreement allowing Kroi Sha 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 and, when the Congress so requires, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, is required even for the temporary presence of foreign troops. (*Bayan v. Zamora*, 342 SCRA 449 [2000]).

- 10) The “Poverty Alleviation and Assistance Act” was passed to enhance the capacity of the most marginalized families nationwide. A financial assistance scheme called “conditional cash

transfers" was initially funded 500 million pesos by Congress. One of the provisions of the law gave the Joint-Congressional Oversight Committee authority to screen the list of beneficiary families initially determined by the Secretary of Department of Social Welfare and Development pursuant to the Department implementing rules. Mang Pandoy, a resident of Smokey Mountain in Tondo, questioned the authority of the Committee.

Is the grant of authority to the Oversight Committee to screen beneficiaries constitutional? Decide with reasons. (3%) (2009 Bar Question)

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 v. Purisima*, 562 SCRA 251 [2008].)

D. Checks and balances

See: Belgica v. Ochoa, G.R. No. 208566, November 19, 2013.

E.State immunity

11) (a) Under the doctrine of immunity from suit, the State cannot be sued without its consent. How may the consent be given by the State? Explain your answer. (3%) (2017 Bar Question)

(b) The doctrine of immunity from suit in favor of the State extends to public officials in the performance of their official duties. May such officials be sued nonetheless to prevent or to undo their oppressive or illegal acts, or to compel them to act? Explain your answer. (3%)

(c) Do government-owned or -controlled corporations also enjoy the immunity of the State from suit? Explain your answer. (3%)

SUGGESTED ANSWERS:

(a) The State may be sued, with its consent, either expressly or impliedly. Only Congress can give a written waiver of immunity from suit in the form of a law [*United States v. Guinto* 182 SCRA 664 (1990); *Republic v. Feliciano*, 148 SCRA 424 (1987)]. However, if a government agency undertakes a proprietary function, it also waives its immunity from suit [*Philippine Tourism Authority v. Philippine Golf and Equipment, Inc.*, 668 SCRA 408 (2012)].

(b) Public officials may be sued if they acted oppressively or illegally in the performance of their duties. A suit against a public officer who acted illegally is not a suit against the state [*Abella v. Ver* 160, SCRA 590 (1988)]. For instance, a public official may be compelled to perform a ministerial duty through a writ of mandamus. The writ of prohibition can also be availed of against a public officer ordering said officer to desist from further proceedings when said proceedings are without or in excess of said officer's jurisdiction, or are accompanied with grave abuse of discretion (Rule 65, Revised Rules of Court). Lastly, a public officer is by law not immune from damages in his/her personal capacity for acts done in bad faith which, are no longer protected by the mantle of immunity for official actions [*Vinzons-Chato v. Fortune Tobacco*, 525 SCRA 11 (2007)].

(c) A government-owned or controlled corporation may be sued. A suit against it is not a suit against the State, because it has a separate juridical personality [*Social Security Systems v. Court of Appeals*, 120 SCRA 707 (1983)].

- 12) The USS Liberty, a warship of the United States (U.S.), entered Philippine archipelagic waters on its way to Australia. Because of the negligence of the naval officials on board, the vessel ran aground off the island of Palawan, damaging coral reefs and other marine resources in the area. Officials of Palawan filed a suit for damages against the naval officials for their negligence, and against the U.S., based on Articles 30 and 31 of the United Nations Convention on the Law of the Sea (UNCLOS). Article 31 provides that the Flag State shall bear international responsibility for any loss or damage to the Coastal State resulting from noncompliance by a warship with the laws and regulations of the coastal State concerning passage through the territorial sea. The U.S. Government raised the defenses that:

(A) The Philippine courts cannot exercise jurisdiction over another sovereign State, including its warship and naval officials. (2.5%)

(B) The United States is not a signatory to UNCLOS and thus cannot be bound by its provisions. (2.5%)

Rule on the validity of the defenses raised by the U.S., with reasons. (2016 Bar Question)

SUGGESTED ANSWER:

A) [NEW ANSWER] The Philippine courts cannot exercise jurisdiction over another sovereign State, including its warship and naval officials in line with the doctrine of sovereign immunity. It is contended that all states are sovereign equals and cannot assert jurisdiction over one another. This precept is a long-standing rule of customary international law. Suing a representative of the state acting in his official capacity such as in this case the naval officials, is in effect, suing the state itself.

B) The U.S. Government turns to the defense that it is not bound by the UNCLOS for the reason that it is not a State Party or a signatory. However, to be bound by the principle, it does not have to be a party to a treaty or convention. If it has the normative status of a customary norm of international law, it is binding on all states. This appears to be the holding of the principle of immunity of warship in question, as upheld by the U.S.

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

The Bureau of Customs raised the defense of immunity from suit and, alternatively, that liability should lie with XYZ Corp. which the Bureau had contracted for the lease of ten (10) high powered van cranes but delivered only five (5) of these cranes, thus causing the delay in its cargo-handling operations. It appears that the Bureau, despite demand, did not pay XYZ Corp. the Php1.0 Million deposit and advance rental required under their contract. (2013 Bar Question)

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

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

SUGGESTED ANSWER:

No. The action by the group of importers will not prosper. The primary function of the Bureau of Customs is governmental, that of assessing and collecting lawful revenues from imported articles and all other tariff and customs duties, fees, charges, fines and penalties (*Mobil Philippines Exploration, Inc. v. Customs Arrastre Service*, December 17, 1966, 18 SCRA 120) Thus, it enjoys by immunity from suit.

No, XYZ Corporation cannot sue the Bureau of Customs to collect rentals for the delivered cranes. The contract was a necessary incident to the performance of its governmental function. To 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 v. Customs Arrastre Service*, December 17, 1966 18 SCRA 1120).

ALTERNATIVE ANSWER:

Yes, XYZ Corporation may sue the Bureau of Customs because the contract is connected with a propriety 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).

- 14) The Convention protects and strengthens the key principle of sovereign immunity for warships...Although not a new concept, sovereign immunity is a principle of vital importance to the United States. The Convention provides for a universally recognized formulation of this principle... Article 32 provides that, with such exceptions as are contained in subsection A and in Articles 30 and 31... nothing in the Convention affects the immunities of warships...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%) (2009 Bar Question)

SUGGESTED ANSWER:

The motion to dismiss should be denied. Under Section 24 of the Local Government Code and Article 2189 of the Civil Code, the Municipality of Pinatukdao is liable for damages arising from injuries to person by reason of negligence of local government units or local offices of the defective condition of the municipal hall, which is under their control and supervision.

II. LEGISLATIVE DEPARTMENT

A. Legislative Power

1. Scope and Limitations

- 1) Sec. 3, Art. XI of the Constitution states that "[n]o impeachment proceedings shall be initiated against the same official more than once within a period of one year."

What constitutes initiation of impeachment proceedings under the provision? (3%) (2017 Bar Question)

SUGGESTED ANSWER:

Initiation of impeachment proceedings under Article XI, Sec. 3 of the Constitution starts with the filing of the complaint—not the vote of one-third of the House in a resolution of impeachment. [*Francisco v. House of Representatives*, 415 SCRA 44(2003)].

- 2) The Philippines entered into an international agreement with members of the international community creating the International Economic Organization (IEO) which will serve as a forum to address economic issues between States, create standards, encourage greater volume of trade between its members, and settle economic disputes. After the Philippine President signed the agreement, the Philippine Senate demanded that the international agreement be submitted to it for its ratification. The President refused, arguing that it is an executive agreement that merely created an international organization and it dwells mainly on addressing economic issues among States.

Is the international agreement creating the IEO a treaty or an executive agreement? Explain. (5%) (2017 Bar Question)

SUGGESTED ANSWER:

The agreement creating the International Economic Organization (IEC) is an executive agreement and not a treaty. Section 21, Article VII defines a “treaty or international agreement” as valid and effective only upon concurrence of the Senate. However, it is well-settled in jurisprudence that the intendment of the Constitution on such “treaty or international agreement” does not include executive agreements, which therefore is excluded from the Senate’s authority of concurrence over treaties (*Commissioner of Customs v. Eastern Sea Trading*, G.R. No. L-14279, October 31, 1961, 3 SCRA 351; *USAFFE Veterans Association v. Treasurer*, G.R. No. L-10500, June 30, 1959, 105 Phil. 1030) since it is the President who has the sole power to ratify treaties. (*Pimentel v. Office of the Executive Secretary*)

- 3) 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 engineers as their college course. Several students protested, invoking their freedom to choose their profession. Is the law constitutional? (6%) (2008 Bar Question)

SUGGESTED ANSWER:

Yes, the law is constitutional. It is a valid exercise of the State’s police power, which empowers the government to enact measures that may interfere with personal liberty or property in order to promote the general welfare or the common good. In this case, it may be said that the interests of the public generally, as distinguished from those of a particular class, require the exercise of police power. It cannot be denied in this case that a rice shortage and a dearth of mining engineers are valid concerns that affect the common good and must be addressed by the State.

ALTERNATIVE ANSWER:

The law is unconstitutional. It violates the right granted by Section 5(3), Article XIV of the Constitution to the high school graduates to select their professions or courses of study. This provision authorizes the State to impose fair, reasonable, and equitable requirements for admission to the professions or courses of study selected by the students. It does not authorize the State to select for them the professions or courses of study they will pursue.

2. Principle of Non-delegability; exceptions

- 4) Section 8 of P.D. No. 910, entitled “Creating an Energy Development Board, defining its powers and functions, providing funds therefor and for other purposes,” provides that: “All fees, revenues and receipts of the Board from any and all sources x x x shall form part of a Special Fund to be used to finance energy resource development and exploitation programs and projects of the government and for such other purposes as may be hereafter directed by the President.”

The Malampaya NGO contends that the provision constitutes an undue delegation of legislative power since the phrase “and for such other purposes as may be hereafter directed by the President” gives the President unbridled discretion to determine the purpose for which the funds will be used. On the other hand, the government urges the application of ejusdem generis. (2016 Bar Question)

(A) Explain the “completeness test” and “sufficient standard test.” (2.5%)

(B) Does the assailed portion of section 8 of PD 910 hurdle the two (2) tests? (2.5%)

SUGGESTED ANSWER:

(A) The completeness test means that the law sets forth the policy to be executed, carried out or implemented by the delegate (*Abakada Guro Party List v. Ermita*, G.R. No. 168056, October 18, 2005, 469 SCRA 1). The “sufficient standard test” means the law lays down adequate guidelines or limitations to map out the boundaries of the authority of the delegate and prevent the delegate from running riot. The standard must specify the limits of the authority of the delegate, announce the legislative policy and identify the condition under which it is to be implemented (*Abakada Guro Party List v. Ermita*, G.R. No. 168056, October 18, 2005, 469 SCRA 1).

(B) The assailed portion of Presidential Decree No. 910 does not satisfy the two tests. First, the phrase “and for such other purposes as may be hereafter directed by the President” gives the President unbridled discretion to determine the purpose for which the funds will be used. Second, an infrastructure is any basic facility needed by society. Thus, this power to determine what kind of infrastructure to prioritize and fund also constitutes an undue delegation of the power to appropriate. (*Belgica v. Ochoa, Jr.*, G.R. No. 208566, November 19, 2013, 710 SCRA 1).

- 5) 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%) (2015 Bar Question)

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. (*Baguio v. Commission on Elections*, 573 SCRA 290 [2008]).

- 6) Gerrymandering refers to the practice of: (1%) (2014 Bar Question)
- creating or dividing congressional districts in a manner intended to favor a particular party or candidate
 - truancy as applied to Members of Congress
 - loafing among members of Congress
 - coming up with guessing game when it comes to legislation

- e. commandeering large chunks of the budget for favored congressional districts

SUGGESTED ANSWER:

A. [*Aldaba v. Commission on Elections*, G.R. No. 188078]

- 7) Constituent power refers to the authority (1%) (2014 Bar Question)
- a. of public officials to command respect
 - b. given to Congress to enact police power measures
 - c. to propose constitutional amendments or revisions
 - d. of the people to take back the power entrusted to those in government
 - e. of the President to call out the armed forces to suppress lawless violence

SUGGESTED ANSWER:

C. [*Sanidad v. Commission on Elections*, G.R. No. L-44640; *Lambino v. Commission on Elections*, G.R. No. 174153]

- 8) 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%) (2014 Bar Question)

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. 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 provisions to provinces, there is no reason why the exemption.

B. Houses of Congress; composition and qualification of members

1. Senate

- 9) A candidate for Senator must be at least 35 years old on (2011 Bar Question)
- (A) the day he is duly proclaimed.
 - (B) the day the election is held.
 - (C) the day he files his certificate of candidacy.
 - (D) the day he takes his oath of office

SUGGESTED ANSWER:

B. [Article VI, Sec. 6]

2. House of Representatives

a. District representatives and questions of apportionment

- 10) Onofre, a natural born Filipino citizen, arrived in the United States in 1985. In 1990, he married Salvacion, a Mexican, and together they applied for and obtained American citizenship in 2001. In 2015, the couple and their children-Alfred, 21 years of age, Robert, 16, and Marie, 14, who were all born in the U.S.-returned to the Philippines on June 1, 2015, informed that he could reacquire Philippine citizenship without losing his American citizenship. Onofre went home to the Philippines and took the oath of allegiance prescribed under R.A. No. 9225. On October 28, 2015, he filed Certificate of Candidacy to run in the May 9, 2016 elections for the position of Congressman in his home province of Palawan, running against re-electionist Congressman Profundo. (2016 Bar Question)

A) Did Onofre's reacquisition of Philippine citizenship benefit his wife, Salvacion, and their minor children and confer upon them Filipino citizenship? Explain your answer. (2.5%)

B) Before the May 9, 2016 elections, Profundo's lawyer filed a Petition to Deny Due Course or to Cancel the Certificate of Candidacy against Onofre. What grounds can he raise in his Petition to support it? Explain your answer. (2.5%)

SUGGESTED ANSWERS:

(A) The reacquisition of Philippine citizenship by Onofre did not automatically make his American wife, Salvacion, a Filipino citizen as nowhere does Republic Act No. 9225 provide that the foreign wife of a former Filipino citizen who reacquired his Filipino citizenship will automatically become a Filipino citizen. On the other hand, Robert, who is 16 years old, and Marie, who is 14 years old, became Filipino citizens. The unmarried children below eighteen (18) years of age, of those who reacquire Philippine citizenship are also deemed citizens of the Philippines (Section 4 of Republic Act No. 9225).

(B) The lawyer of Congressman Profundo can ask for the cancellation of the certificate of candidacy on the ground that he did not execute an affidavit renouncing his American citizenship as required by Section 5(2) of Republic Act No. 9225. Onofre also lacked one-year residence in the Philippines as required by Section 6, Article VI of the Constitution.

a. Party-list system

- 11) 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%) (2014 Bar Question)

SUGGESTED ANSWER:

The claims of Bluebean are not correct. First, 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 is 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 should be allocated among the parties by the proportional percentage of votes received by each (*Barangay Association for National Advancement and Transparency v. COMELEC*, G.R. No. 179271, April 21, 2009). Second,

Greenpeas is entitled to participate in the party-list elections even if it does not represent any marginalized and underrepresented sectors of society as it is enough that its principal advocacy pertains to the special interests of its sector (*Atong Paglaum, Inc. v. COMELEC*, G.R. No. 203766, April 2, 2013).

- 12) (a) 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. 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%) (2010 Bar Question)

SUGGESTED ANSWER:

I will file a petition to cancel the certificate of candidacy of Gabriel in the Commission on Elections because of the false material representation that he is qualified to run for congressman (Section 78 of the Omnibus Election Code; *Fermin v. Commission on Elections*, 574 SCRA 787 [2008]).

(b) If, during the pendency of such action / s but before election day, Gabriel withdraws his certificate of candidacy, can he be substituted as candidate? If so, by whom and why? If not, why not? (2%) (2010 Bar Question)

SUGGESTED ANSWER:

If Gabriel withdraws, he may be substituted by a candidate nominated by his political party, as expressly provided for by Section 77 of the Omnibus Election Code. Section 77 of the Omnibus Election Code states: "If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party (1) dies, (2) withdraws or is (3) disqualified for any cause, only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died, withdrew or was disqualified."

(c) If the action/s instituted should be dismissed with finality before the election, and Gabriel assumes office after being proclaimed the winner in the election, can the issue of his candidacy and/or citizenship and residence still be questioned? If so, what action or actions may be filed and where? If not, why not? (2%) (2010 Bar Question)

SUGGESTED ANSWER:

Yes, the question of the citizenship and residence of Gabriel can be questioned in the House of Representatives Electoral Tribunal by the losing candidate. Once a candidate for member of the House of Representatives has been proclaimed, the House of Representatives Electoral Tribunal acquires jurisdiction over election contests relating to his qualifications (*Guerrero v. Commission on Elections*, 336 SCRA 458 [2000]). Thus, since the issue is within its jurisdiction, the COMELEC decision does not constitute *res judicata* (*Jalandoni v. Crespo*, HRET Case No. 01-020, March 6, 2003).

- 13) Rudy Domingo, 38 years old, natural-born Filipino and a resident of the Philippines since birth, is a Manila-based entrepreneur who runs KABAKA, a coalition of peoples' organizations from fisherfolk communities. KABAKA's operations consist of empowering fisherfolk leaders through livelihood projects and trainings on good governance. The Dutch Foundation for Global Initiatives, a private organization registered in The Netherlands, receives a huge subsidy from the Dutch Foreign Ministry, which, in turn is allocated worldwide to the Foundation's partners like KABAKA. Rudy seeks to register KABAKA as a party-list with himself as a nominee of the coalition'. Will KABAKA and Rudy be qualified as a party-list and a nominee, respectively? Decide with reasons. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

KABAKA and Ruby are not qualified as a party list and as nominee, respectively, since KABAKA is receiving a subsidy from the Dutch Foreign Ministry. Under Section 2(5), Article IX-C of the Constitution, a political party which is supported by any foreign government cannot be registered with the Commission on Elections.

C. Privileges, inhibitions, and disqualifications

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

Is the cited ground for disbarment meritorious? (6%) (2013 Bar Question)

SUGGESTED ANSWER:

Yes, the cited ground for disbarment is meritorious. 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 (*Puyat v. De Guzman*, G.R. No. L-5122, 1982, 1135 SCRA 33). His involvement in the collective bargaining negotiations also involves practice of law because he is making use of his legal knowledge for the benefit of others (*Cayetano v. Monsod*, G.R. No. 100113, September 3, 1991, 201 SCRA 210).

- 15) Senator Bondoc was charged with murder and detained at the Quezon City Jail. He invoked, in seeking leave from the court to attend the session of the Senate, his immunity from arrest as a Senator. How should the court rule on his motion? (2011 Bar Question)

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

SUGGESTED ANSWER:

D. [*People v. Jalosjos*, G.R. No. 132875-76]

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

(A) May X be compelled to appear and testify? If yes, what sanction may be imposed on him? (2%) (2009 Bar Question)

SUGGESTED ANSWER:

X may be compelled to appear and testify. Only the President or the Executive Secretary by order of the President can invoke executive privilege. (*Senate of the Philippines v. Ermita*, 488 SCRA 13 (2006).) He can be cited for contempt and ordered to be arrested. (*De la Paz v. Senate Committee on Foreign Relations*, 579 SCRA 521 [2009].)

(B) Is the Budget Secretary shielded by executive privilege from responding to the inquiries of the House Committee? Explain briefly. If the answer is no, is there any sanction that may be imposed upon him? (3%) (2009 Bar Question)

SUGGESTED ANSWER:

The Secretary of Budget and Management is not shielded by executive privilege from responding to the inquiries of the House Committee on Appropriations, because the inquiry is aid of legislation and neither the President nor the Executive Secretary by order of the President invoked executive privilege. (*Senate of the Philippines v. Ermita*, 488m SCRA 1 (2006).) For refusing to testify, he may cited for contempt and ordered to be arrested (*De la Paz v Senate Committee on Foreign Relations*, 519 SCRA 521 [2009].)

- 17) Congresswoman A is a co-owner of an industrial estate in Sta. Rosa, Laguna which she had declared in her Statement of Assets and Liabilities. A member of her political party authored a bill which would provide a 5-year development plan for all industrial estates in the Southern Tagalog Region to attract investors. The plan included an appropriation of 2 billion pesos for construction of roads around the estates. When the bill finally became law, a civil society watchdog questioned the constitutionality of the law as it obviously benefitted Congresswoman A's industrial estate. Decide' with reasons. (3%) (2009 Bar Question)

SUGGESTED 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 benefitted by the law is the one who will file the bill, he should notify the House concerned of the potential conflict of interest.

D. Discipline of members

- 18) 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%) (2015 Bar Question)

SUGGESTED ANSWER:

The contention of Senator Fleur de Lis is not tenable. The doctrine of separation of powers cannot be deemed to have excluded Members of Congress from the application of the Plunder Law. The law itself does not exclude Members of Congress from its coverage. Thus, the Sandiganbayan did not err in issuing the preventive suspension order. (*Santiago v. Sandiganbayan*, 756 SCRA 636 [2001]).

E. Process of law-making

- 19) The Congress establishes by law Philippine Funds, Inc., a private corporation, to receive foreign donations coming from abroad during national and local calamities and disasters, and to enable the unhampered and speedy disbursements of the donations through the mere action of its Board of Directors. Thereby, delays in the release of the donated funds occasioned by the stringent rules of procurement would be avoided. Also, the releases would not come under the jurisdiction of the Commission on Audit (COA). (2017 Bar Question)

A) Is the law establishing Philippine Funds, Inc. constitutional? Explain your answer. (3%)

B) Can the Congress pass the law that would exempt the foreign grants from the jurisdiction of the COA? Explain your answer. (3%)

SUGGESTED ANSWER:

a) The establishment of Philippine Funds, Inc. is valid. It was created to enable the speedy disbursements of donations for calamities and disasters. Public purpose is no longer restricted to traditional government functions [*Petitioner-Organization v. Executive Secretary*, 269 SCRA 49 (2012)].

b) Congress cannot exempt the foreign grants from the jurisdiction of the Commission on Audit. Its jurisdiction extends to all government-owned or controlled corporations, including those funded by donations through the Government [Art. IX-D, Sec. 2 of the 1987 Philippine Constitution, and *Petitioner-Corporation v. Executive Secretary*, G.R. Nos. 147036-37(2012)].

- 20) Under the enrolled bill doctrine, the signing of a bill by both the Speaker of the House of Representatives and the President of the Senate and the certification by the secretaries of both Houses of Congress that the bill was passed on a certain date are conclusive on the bill's due enactment. Assuming there is a conflict between the enrolled bill and the legislative journal, to the effect that the enrolled bill signed by the Senate President and eventually approved by the President turned out to be different from what the Senate actually passed as reflected in the legislative journal. (2017 Bar Question)

a) May the Senate President disregard the enrolled bill doctrine and consider his signature as invalid and of no effect? (2.5%)

b) May the President thereafter withdraw his signature? Explain your answer. (2.5%)

SUGGESTED ANSWER:

a) The Senate President may withdraw his signature from the bill since it was not actually the bill that was approved by Congress, so there was no enrolled bill to speak of [*Astorga v. Villegas*, 56 SCRA 714(1974)].

b) Yes, he can because of the prior withdrawal of the signature of Senate President and Speaker; accordingly, there could be no “enrolled bill” that could have been validly approved [*Astorga v. Villegas*, 56 SCRA 714(1974)].

- 21) **Sec. 26(2), Art. VI of the Constitution provides that no bill passed by either House of Congress shall become a law unless it has passed three readings on separate days and printed copies of it in its final form have been distributed to the Members of the House three days before its passage.**

Is there an exception to the provision? Explain your answer. (3%) (2017 Bar Question)

SUGGESTED ANSWER:

The exception to this provision is when the President certifies to the necessity of its immediate enactment to meet a public calamity or necessity [Article VI, Sec. 27(i) of the 1987 Philippine Constitution, and *Tolentino v. Secretary of Finance* 235 SCRA 632(2005)].

F. Quorum and Voting Majorities

See: Arroyo v. De Venecia, G.R. No. 127255, August 14, 1997.

G. Appropriation and Re-alignment

- 22) **Give the limitations on the power of the Congress to enact the General Appropriations Act? Explain your answer. (5%) (2017 Bar Question)**

SUGGESTED ANSWER:

Sections 24 and 25 of Article VI provide the limitations on the power of Congress to enact General Appropriations Acts.

Under Article VI, Sec. 24, all appropriation, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments (Article VI, Sec. 24 of the 1987 Constitution).

Under Article VI, Sec. 25, the Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget. The form, content, and manner of preparation of the budget shall be prescribed by law. No provision or enactment shall be embraced in the general appropriations bill unless it relates specifically to some particular appropriation therein. Any such provision or enactment shall be limited in its operation to the appropriation to which it relates. The procedure in approving appropriations for the Congress shall strictly follow the procedure for approving appropriations for other departments and agencies. A special appropriations bill shall specify the purpose for which it is intended, and shall be supported by funds actually available as certified by the National Treasurer, or to be raised by a corresponding revenue proposed therein (Article VI, Sec. 25 of the 1987 Constitution).

No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations (Article VI, Sec. 25 of the 1987 Constitution).

Discretionary funds appropriated for particular officials shall be disbursed only for public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law. If, by the end of any fiscal year, the Congress shall have failed to pass the general appropriations bill for the ensuing fiscal year, the general appropriations law for the preceding fiscal year shall be deemed reenacted and shall remain in force and effect until the general appropriations bill is passed by the Congress (Article VI, Sec. 25 of the 1987 Constitution).

- 23) Congress passed a bill appropriating P50 million in assistance to locally based television stations subject to the condition that the amount would be available only in places where commercial national television stations do not operate. The President approved the appropriation but vetoed the condition. Was the veto valid? (2011 Bar Question)
- Yes, since the vetoed condition may be separated from the item.
 - Yes, the President's veto power is absolute.
 - No, since the veto amounted to a suppression of the freedom to communicate through television.
 - No, since the approval of the item carried with it the approval of the condition attached to it.

SUGGESTED ANSWER:

D. [*PHILCONSA v. Enriquez*, G.R. No. 113105]

- 24) A treaty which provides tax exemption needs no concurrence by a majority of all the Members of the Congress. (0.5%) (2009 Bar Question)

SUGGESTED ANSWER:

The statement is true. The pertained measure 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. 24, Art. VII of the Constitution).

H. Legislative inquiries and oversight functions

- 25) 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 Colonel 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%) (2015 Bar Question)

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]). However, 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 as only the President can make use of Executive Privilege. (*Senate v. Ermita*, 488 SCRA 1 [2006]).

- 26) 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%) (2014 Bar Question)

SUGGESTED ANSWER: (updated):

The Senators are incorrect. The period of imprisonment under the inherent power of contempt by the Senate during inquiries in aid of legislation should only last until the termination of the legislative inquiry under which the said power is invoked (*Balag v. Senate of the Philippines*, G.R. No. 234608, July 03, 2018).

- 27) In the exercise of its power of legislative inquiries and oversight functions, the House of Representatives or the Senate may only ask questions (2011 Bar Question)
- that the official called is willing to answer.
 - that are relevant to the proposed legislation.
 - to which the witness gave his prior consent.
 - material to the subject of inquiry.

SUGGESTED ANSWER:

D. [*Arnault v. Nazareno*, G.R. No. L-3820]

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

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

The IUB officials filed suit to prohibit HCGG from proceeding with the inquiry and to quash the subpoena, raising the following arguments: (2009 Bar Question)

- A) The subject of the legislative investigation is also the subject of criminal and civil actions pending before the courts and the prosecutor's office; thus, the legislative inquiry would preempt judicial action; (3%)

SUGGESTED ANSWER:

The argument is not tenable. Since this is an essential component of legislative power, it cannot be made subordinate to criminal and civil actions. Otherwise, it would be very easy to subvert any investigation in aid of legislation through the convenient ploy of instituting criminal and civil actions (*Standard Chartered Bank [Philippine Branch] v. Senate Committee on Banks, Financial Institutions and Currencies*, 541 SCRA 456 [2007]).

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

SUGGESTED ANSWER:

The argument is untenable. Since the IUB officials were not being subjected to a criminal penalty, they cannot invoke their right against self-incrimination unless a question calling for an incriminating answer is propounded (*Standard Chartered Bank [Philippine Branch] v. Senate Committee 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? (3%) (2009 Bar Question)

SUGGESTED ANSWER:

No, because the power to invoke executive privilege is limited to the President (*Senate of the Philippines v. Ermita*, 488 SCRA 1 [2006]).

I. Power of impeachment

- 29) The one-year-bar rule in impeachment proceedings is to be reckoned from the time the (1%) (2014 Bar Question)
- a. first impeachment complaint is filed
 - b. impeachment complaint is referred to the Committee on Justice
 - c. House of Representatives vote on the impeachment complaint
 - d. House of Representatives endorses the Articles of Impeachment to the Senate

SUGGESTED ANSWER:

B. [*Francisco v. House of Representatives*, G.R. No. 160261]

- 30) As a leading member of the Lapiang Mandirigma in the House of Representatives, you were tasked by the party to initiate the moves to impeach the President because he entered into an executive agreement with the US Ambassador for the use of the former Subic Naval Base by the US Navy, for free, i.e., without need to pay rent nor any kind of fees as a show of goodwill to the U.S. because of the continuing harmonious RPUS relations. Cite at least two (2) grounds for impeachment and explain why you chose them. (6%) (2013 Bar Question).

SUGGESTED ANSWER:

The President can be impeached for culpable violation of the Constitution and betrayal of public trust. First, the Supreme Court has already ruled that the provision in Article XVIII, Section 25 of the Constitution requires a treaty even for the mere temporary presence of foreign troops in the Philippines (*Bayan v. Zamora*, G.R. No. 138570, October 10, 2000), which the President has violated. Second, betrayal of public trust includes violation of the oath of the office of the President (Record of the Constitutional

Commission, Vol. II, p. 272). In his oath of office, the President swore to preserve and defend the Constitution (Article VII, Section 5 of the 1987 Constitution).

J. Electoral Tribunals

- 31) Sec. 17, Art. VI of the Constitution establishes an Electoral Tribunal for each of the Houses of Congress, and makes each Electoral Tribunal "the sole judge of all contests relating to the election, returns, and qualifications of their respective Members." On the other hand, Sec. 2(1), C (Commission on Elections), Art. IX of the Constitution grants to the COMELEC the power to enforce and administer all laws and regulations "relative to the conduct of an election, plebiscite, initiative, referendum, and recall."

Considering that there is no concurrence of jurisdiction between the Electoral Tribunals and the COMELEC, state when the jurisdiction of the Electoral Tribunals begins, and the COMELEC's jurisdiction ends. Explain your answer. (4%) (2017 Bar Question)

SUGGESTED ANSWER:

To be considered a Member of the House of Representatives, there must be a concurrence of the following requisites: (1) a valid proclamation, (2) a proper oath, and (3) assumption of office [*Reyes v. COMELEC*, 699 SCRA 522(2013)].

- 32) 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%) (2014 Bar Question)

SUGGESTED ANSWER: (updated):

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 has been proclaimed and had taken her oath of office, she had not yet assumed office. The term of office of the House of Representatives begins at noon of the thirtieth day of June next following their election.

K. Commission on Appointments

- 33) A was a career Ambassador when he accepted an ad interim appointment as cabinet Member. The Commission on Appointment bypassed his ad interim appointment, however, and he was not re-appointed. Can he re-assume his position as career Ambassador? (5%) (2010 Bar Question)

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.)

L. Initiative and referendum

- 34) 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%) (2014 Bar Question)

SUGGESTED ANSWER:

I shall advise those starting people's initiative that initiative to pass a law defining political dynasties may proceed as their proposal is to enact a law only and not to amend the Constitution. The decision in *Santiago v. COMELEC* (G.R. No. 127325, June 10, 1997), which has not been reversed, upheld the adequacy of the provisions in Republic Act 6735 on initiative to enact a law.

- 35) Jose Cruz and 20 others filed a petition with the COMELEC to hold a plebiscite on their petition for initiative to amend the Constitution by shifting to a unicameral parliamentary form of government. Assuming that the petition has been signed by the required number of registered voters, will it prosper? (2011 Bar Question)
- No, only Congress can exercise the power to amend the Constitution.
 - Yes, the people can substantially amend the Constitution by direct action.
 - Yes, provided Congress concurs in the amendment.
 - No, since they seek, not an amendment, but a revision.

SUGGESTED ANSWER:

D. [*Santiago v. COMELEC*, G.R. No. 127325]

- 36) What are the essential elements of a valid petition for a people's initiative to amend the 1987 Constitution? Discuss. (2%) (2010 Bar Question)

SUGGESTED ANSWER:

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

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

- 37) TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%) (2009 Bar Question)

[a] A law making "Bayan Ko" the new national anthem of the Philippines, in lieu of "Lupang Hinirang," is constitutional.

SUGGESTED ANSWER:

True. Congress may by law adopt a new national anthem, but it shall take effect only upon ratification by the people in a national referendum (Section 2, Article XVI of the Constitution).

III. EXECUTIVE DEPARTMENT

A. Qualifications, election, and term of the President and Vice-President

See: Poe-Llamanzares v. COMELEC, G.R. No. 221697, March 8, 2016.

B. Privileges, inhibitions, and disqualifications

- 1) During his incumbency, President Carlos shot to death one of his advisers during a heated argument over a game of golf that they were playing. The deceased adviser's family filed a case of homicide against President Carlos before the city prosecutor's office. He moved to dismiss the case, invoking presidential immunity from suit. Should the case be dismissed? (2011 Bar Question)

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

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

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

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

SUGGESTED ANSWER:

C. [*Rodriguez v. Macapagal-Arroyo*, G.R. No. 191805]

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

SUGGESTED ANSWER:

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

- 3) Distinguish "presidential communications privilege" from "deliberative process privilege." (3%). (2010 Bar Question)

SUGGESTED ANSWER:

The two may be distinguished as follows. *First*, presidential communications privilege applies to decision-making of the President. The deliberative process privilege applies to decision-making of executive officials.

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

C. Powers of the President

4) Distinguish between "pocket veto" and "item veto." (2%) (2009 Bar Question)

SUGGESTED ANSWER:

A pocket veto is when the President is considered to have rejected a bill submitted to him for his approval when Congress adjourns during the period given to the President to approve or reject a bill. On the other hand, an item veto, or partial veto, is the power of a President to nullify or cancel specific provisions of a bill, usually a budget appropriations bill, without vetoing the entire legislative package.

1. Executive and administrative powers in general

- 5) The Executive Department has accumulated substantial savings from its appropriations. Needing P3,000,000.00 for the conduct of a plebiscite for the creation of a new city but has no funds appropriated soon by the Congress for the purpose, the COMELEC requests the President to transfer funds from the savings of the Executive Department in order to avoid a delay in the holding of the plebiscite.

May the President validly exercise his power under the 1987 Constitution to transfer funds from the savings of the Executive Department, and make a cross-border transfer of P3,000,000.00 to the COMELEC by way of augmentation? Is your answer the same if the transfer is treated as aid to the COMELEC? Explain your answer. (4%) (2017 Bar Question)

SUGGESTED ANSWER:

The President may not transfer savings to the Commission on Elections as aid. The constitutional prohibition against the transfer of appropriations to other branches of government or Constitutional Commission applies must be strictly observed [*Araullo v. Aquino III*, 728 SCRA 1(2014)].

- 6) 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%) (2015 Bar Question)

SUGGESTED ANSWER:

The invocation of the qualified political agency doctrine is not correct. When the Board of Directors 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]; *Drivers and Mechanic Association v. NAPOCOR*, G.R. 156208]

- 7) **Typhoon Bangis devastated the Province of Sinagtala. Roads and bridges were destroyed which impeded the entry of vehicles into the area. This caused food shortage resulting in massive looting of grocery stores and malls.**

There is power outage also in the area. For these reasons, the governor of the province declares a state of emergency in their province through Proclamation No. 1. He also invoked Section 465 of the Local Government Code of 1991 (R.A. No. 7160) which vests on the provincial governor the power to carryout emergency measures during man-made and natural disasters and calamities, and to call upon the appropriate national law enforcement agencies to suppress disorder and lawless violence. In the same proclamation, the governor called upon the members of the Philippine National Police, with the assistance of the Armed Forces of the Philippines, to set up checkpoints and chokepoints, conduct general searches and seizures including arrests, and other actions necessary to ensure public safety. Was the action of the provincial governor proper? Explain. (4%) (2015 Bar Question)

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 18, Article VII of the Constitution. Section 465 of the Local Government Code does not sanction his actions as this refers to calamities and disasters, and looting is not a calamity or disaster. Also, the power under Article 465 of the Local Government Code to call upon national law enforcement agencies to suppress lawless violence is not applicable as the Armed Forces of the Philippines is not a national law enforcement agency. (*Kulayan v. Tan*, 675 SCRA 482 [2012]).

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

(B) What are the limitations, if any, to the pardoning power of President? (3%) (2015 Bar Question)

SUGGESTED ANSWER:

(A) The power of the President to declare a state of rebellion is based on the power of the President as chief executive and commander-in-chief of the Armed Forces of the Philippines. 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]).

(B) 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 Congress. (Section 19, Article VII of Constitution)
 4. The President cannot grant pardon, amnesty, parole or suspension of sentence for violation of election laws, rules and regulations without the favorable recommendation of the Commission on Elections. (Section 9, Article IX-C of 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 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).
- 9) **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%) (2014 Bar Question)**

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 require 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 law in such a case. (*Philippine Constitution Association v. Enriquez*, G.R. No. 113105)

2. Power of appointment

a. Confirmation and by-passed appointments

- 10) **The President appoints the Vice President as his Administration's Housing Czar, a position that requires the appointee to sit in the Cabinet. Although the appointment of the members of the Cabinet requires confirmation by the Commission on Appointment (CA), the Office of the President does not submit the appointment to the CA. May the Vice President validly sit in the Cabinet? (2.5%) (2017 Bar Question)**

SUGGESTED ANSWER:

The Vice President may validly sit in the Cabinet even if he was not confirmed by the Commission on Appointments. Under Article VII, Sec. 3 of the Constitution, the appointment of the Vice President as cabinet member requires no confirmation [*Araullo v. Aquino III*, 728 SCRA 1 (2014)].

b. Midnight and ad interim appointments

- 11) **While Congress was not in session, the President appointed Antero as Secretary of the Department of Tourism (DOT), Benito as Commissioner the Bureau of Immigration (BI), Clodualdo as Chairman of the Civil Service Commission (CSC), Dexter as Chairman of the Commission on Human Rights (CHR), and Emmanuel as Philippine Ambassador to Cameroon. The following day, all the appointees took their oath before the President, and commenced to perform the functions of their respective offices. (2016 Bar Question)**

A) Characterize the appointments, whether permanent or temporary; and whether regular or interim, with reasons. (2.5%).

B) A civil society group, the Volunteers Against Misguided Politics (VAMP), files suit, contesting the legality of the acts of the appointees and claiming that the appointees should not have entered into the performance of the functions of their respective offices, because their appointments had not yet been confirmed by the Commission on Appointments. Is this claim of VAMP correct? Why or why not? (2.5%)

SUGGESTED ANSWER

A) 1. The appointment of Antero as Secretary of Tourism is ad interim, because it is subject to confirmation of the Commission on Appointments and was made while Congress was not in session. He can start performing his duties upon his acceptance, because it is permanent and cannot be withdrawn after its acceptance (*Matibag v. Benipayo*, G.R. No. 149036, April 2, 2002, 380 SCRA 49).

2. The appointment of Benito as Commissioner of the Bureau of Immigration is regular and permanent. It is not required to be confirmed by the Commission on Appointments. He can start performing his duties upon acceptance of the appointment (Section 16, Article VII of the Constitution).

3. The appointment of Clodualdo as Chairman of the Civil Service Commission is ad interim, because it is subject to confirmation by the Commission on Appointments and was made while Congress was not in session. He can start performing his duties upon his acceptance of the appointment, because it is permanent and cannot be withdrawn.

4. The appointment of Dexter as Chairman of the Commission on Human Rights is regular and permanent upon his acceptance. It is not required to be confirmed by the Commission on Appointments. He can start performing his duties upon his acceptance (*Bautista v. Salonga*, G.R. No. 86439, April 13, 1989, 172 SCRA 160).

5. The appointment of Emmanuel as Ambassador to Cameroon is ad interim, because it is subject to confirmation by the Commission on Appointment (Section 16, Article VII of the Constitution).

(B) The claim of VAMP is not correct. The Commissioner of the Bureau of Immigration and the Chairman of the Commission on Human Rights can immediately start performing their functions upon acceptance since they are not required to be confirmed. The Secretary of the Department of Tourism and the Chairman of the Civil Service Commission, can immediately start performing their duties upon acceptance, since their ad interim appointment is permanent.

b. Power of removal

12) 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%) (2014 Bar Question)

SUGGESTED ANSWER:

The President can make appointments to the Supreme Court two months before a presidential elections until the end of his term but not to the rest of the judiciary as in the case of the Court of Appeals. Section 4 (1), Article VIII of the Constitution provides that vacancies in the Supreme Court shall be filled within

90 days from the occurrence of the vacancy, while Section 9, Article VIII of the Constitution states that vacancies in the lower courts shall be filled within 90 days from submission of the list of nominees. (*De Castro v. JBC*, G.R. No. 191002, April 20, 2010)

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

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%) (2013 Bar Question)

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).

3. Power of control and supervision

a. Doctrine of qualified political agency

- 14) Under the so-called doctrine of qualified political agency, (1%) (2014 Bar Question) civil servants must first qualify before they could be appointed to office all employees in the government are merely agents of the people the acts of subordinates presumptively of those of the heads of offices disapproves them members of the Cabinet must have the absolute trust and confidence of the President

SUGGESTED ANSWER: C.

b. Executive departments and officers

- 15) The President issued an executive order directing all department heads to secure his consent before agreeing to appear during question hour before Congress on matters pertaining to their departments. Is the executive order unconstitutional for suppressing information of public concern? (2011 Bar Question)
- No, because those department heads are his alter egos and he is but exercising his right against self-incrimination.
 - Yes, the President cannot control the initiative of the department heads to conform with the oversight function of Congress.
 - Yes, the President cannot withhold consent to the initiative of his department heads as it will violate the principle of check and balance.
 - No, the President has the power to withhold consent to appearance by his department heads during question hour.

SUGGESTED ANSWER:

D. [*Neri v. Senate Committee on Accountability*, G.R. No. 180643]

- 16) **The Metropolitan Manila Development Authority is authorized to confiscate a driver's' license in the enforcement of traffic regulations. (0.5%) (2010 Bar Question)**

SUGGESTED ANSWER:

The statement is false. Since Republic Act No. 7924 does not grant the Metropolitan Manila Development Authority the authority to enact ordinances, the grant to it by Section 5(f) of Republic Act No. 7924 of the power to confiscate drivers' licenses without the need of any other law is an unauthorized exercise of police power. (*Metropolitan Manila Development Authority v. Garin*, 456 SCRA 176 [2005].)

- 17) **TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%) (2009 Bar Question)**

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

SUGGESTED ANSWER:

True. Under Section 17, Article VII of the Constitution the President has control of all executive departments, bureaus and offices. His power of control extends to agencies with respect to their administrative functions, even if they are performing quasi-judicial functions (*Cruz v. Secretary of Environment and Natural Resources*, 347 SCRA 128 [2000]) and to government-owned or controlled corporations (*National Marketing Corporation v. Area*, 29 SCRA 648 [1969]).

c. Local Government Units**4. Military powers**

- 18) **The President issued Proclamation 9517 declaring a state of emergency and calling the armed forces to immediately carry out necessary measures to suppress terrorism and lawless violence. In the same proclamation, he directed the government's temporary takeover of the operations of all privately owned communication utilities, prescribing reasonable terms for the takeover. Is the takeover valid? (2011 Bar Question)**
- Yes, it is an implied power flowing from the President's exercise of emergency power.**
 - No, it is a power reserved for Congress alone.**
 - Yes, subject to ratification by Congress.**
 - No, it is a power exclusively reserved for the People's direct action.**

SUGGESTED ANSWER:

C. [Article XII, Sec. 17]

- 19) **During a period of national emergency. Congress may grant emergency powers to the President. State the conditions under which such a venture is allowed. (2010 Bar Question)**

SUGGESTED ANSWER:

Under Section 23(2), Article VI of the Constitution, Congress may grant the President emergency powers subject to the following conditions:

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

a. Calling out power**b. Declaration of Martial Law and suspension of the privilege of the writ of habeas corpus; requisites and parameters of extension****5. Executive clemency**

20) What is the pardoning power of the President under Art. VIII, Sec. 19 of the Constitution? (2017 Bar Question)

A) Is the exercise of the power absolute? (4%)

B) Distinguish pardon from amnesty. (4%)

SUGGESTED ANSWER:

A) No, it is not absolute. The constitution provides the exceptions to the President's pardoning power: (1) impeachment cases [Article VII, Sec. 19]; (2) cases that have not yet resulted in a final conviction [Article VII, Sec. 19]; and (3) cases involving violations of election laws, rules and regulations in which there was no favorable recommendation coming from the COMELEC [Article IX-C, Sec. 5]. Any act of Congress by way of statute cannot operate to delimit the pardoning power of the President [*Risos-Vidal v. COMELEC*, G.R. No. 206666 (2015)].

B) *First*, pardon can be given only after final conviction; amnesty can be given any time and even before the filing of a criminal case. *Second*, pardon looks forward; amnesty looks backward, as if the accused never committed a crime. *Third*, pardon is given to individuals; amnesty is given to a class of persons. *Fourth*, pardon is given for all criminal offenses; amnesty is given for political offenses. *Fifth*, pardon does not require the concurrence of Congress; amnesty requires the concurrence of Congress. *Sixth*, pardon must be proven, because it is a private act; amnesty need not be proven, because it is a public act [*Barrioquinto v. Fernandez*, 82 Phils. 642 (1949)].

6. Powers pertinent to foreign relations

21) (A) What is the right of legation, and how is it undertaken between states? Explain your answer. (2%) (2017 Bar Question)

(B) Under this right, may a country like Malaysia insist that the Philippines establishes a consulate in Sabah to look after the welfare of the Filipino migrants in the area? Explain your answer. (2%)

SUGGESTED ANSWER:

(A) The right of legation is the right accorded to a State to be represented by an ambassador or diplomatic agent in another State (*Coquia and Defensor-Santiago, International Law and World Organizations*, p. 289).

(B) Malaysia cannot insist that the Philippines establish a consulate in Sabah. Article 2 of the Diplomatic Convention provides: “(t)he establishment of diplomatic mission takes place by mutual consent”. A State may conduct its diplomatic relations with another State without establishing a diplomatic mission (*Magallona, Fundamentals of Public International Law*, p. 91).

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

a) Decide with reasons. (3%)

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:

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

b) KMM is entitled to have access to information pertaining to government contracts entered into by the Government in the exercise of its proprietary or commercial capacity. The right to information under the Constitution does not exclude contracts of public interest and are not privileged (Section 7, Article III of the Constitution; *Valmonte v. Belmonte*, 170 SCRA 256 [1989]).

- 23) The League of Filipino Political Scientists (LFPS) organized an international conference on the human rights situation in Myanmar at the Central Luzon State University (CLSU). An exiled Myanmar professor Sung Kui, critical of the military government in Myanmar, was invited as keynote speaker. The Secretary of Foreign Affairs informed the President of the regional and national security implications of having Prof. Kui address the conference. The President thereupon instructed the immigration authorities to prevent the entry of Prof. Kui into Philippine territory. The chancellor of CLSU argued that the instruction violates the Constitution. Decide with reasons. (4%) (2009 Bar Question)**

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 v. Curtiss-Wright Export Corporation*, 299 U.S. 304 [1936].)

D. Rule of succession

IV. JUDICIAL DEPARTMENT

A. Judicial power

- 1) Congress may increase the appellate jurisdiction of the Supreme Court: (1%) (2014 Bar Question)
 - a. anytime it wants
 - b. if requested by the Supreme Court
 - c. upon recommendation of the President
 - d. only with the advice and concurrence of the Supreme Court
 - e. whenever it deems it appropriate, advisable or necessary

SUGGESTED ANSWER (updated):

D. [*Fabian v. Desierto*, G.R. No. 129742]

- 2) 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%) (2014 Bar Question)

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 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 Employment Agency v. Cabiles*, G.R. No. 170139, August 5, 2014).

B. Judicial review

1. Requisites

- 3) 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%) (2014 Bar Question)

SUGGESTED ANSWER:

The Supreme Court can proceed to decide the case even if the law has not yet become effective. Since it is alleged that the Cybercrime Prevention Act violates the various provisions of the Bill of Rights, including freedom of speech, freedom of the press, and the right against unreasonable searches and seizures, the issues raised are of paramount public interest of transcendental importance and with far-reaching constitutional implications that justify dispensation with *locus standi* and exercise of the power of judicial review by the Supreme Court. (*Chavez v. Gonzales*, G.R. No. 168338, February 15, 2018.) Jurisprudence provides that locus standi is not required when the action was filed to prevent a chilling effect on the exercise of the right to freedom of expression and overbreadth.

- 4) 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.

Does Mang Pandoy have legal standing to question the law? (2%) (2010 Bar Question)

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 v. Romulo*, 492 SCRA 736 [2004]).

2. Political question doctrine

3. Moot questions

4. Operative fact doctrine

- 5) Define/explain: (2009 Bar Question)

A) Doctrine of operative fact. (1%)

B) Doctrine of necessary implication (1%)

SUGGESTED ANSWER:

A) The doctrine of operative facts means that before a law was declared unconstitutional, its actual existence must be taken into account and whatever was done while the law was in operation should be recognized as valid. (*Rieta v. People*, 436 SCRA 273 [2004].)

B) The doctrine of necessary implication means 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. (*Pepsi-Cola Products Philippines, Inc. v. Secretary of Labor*, 312 SCRA 104 [1999].)

C. Safeguards and judicial independence

1. Judicial and Bar Council

a. Composition

b. Powers

See: Jardelez v. JBC, G.R. No. 213181, August 19, 2014;
Villanueva v. JBC, G.R. No. 211833, April 7, 2015;
Aguinaldo and JBC v. Aquino III, G.R. No. 224302, November 29, 2016.

2. Fiscal autonomy

D. Qualifications of members of the Judiciary

- 6) In her interview before the Judicial and Bar Council (JBC), Commissioner Annie Amorsolo of the National Labor Relations Commission (NLRC) 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? (2013 Bar Question)

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 Commission is not a court. She does not perform judicial functions.

- 7) May an incumbent Justice of the Supreme Court be disbarred as a lawyer? (2011 Bar Question)
- No, it will amount to removal.
 - No, his membership in the bar is secure.
 - Yes, by the Supreme Court itself.
 - Yes, by Congress in joint session.

SUGGESTED ANSWER:

A. [*In re: Raul Gonzales*, A.M. No. 88-4-5433]

E. Workings of the Supreme Court

1. *En banc* and division cases

- 8) 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%) (2014 Bar Question)

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

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

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

SUGGESTED ANSWER:

(A) The decision cannot be deemed to have been promulgated simply because of the announcement of the voting in a press release, because the decision has not yet been 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. COMELEC*, G.R. Nos. 178831-32, July 30, 2009)

(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*, G.R. No. 76597, February 26, 1988)

(C) The Supreme Court should not release to the public the majority opinion and the separate opinions, as well as its deliberations. They are part of its confidential internal deliberations. (*Limkaichong v. COMELEC*, G.R. Nos. 178831-32, July 30, 2009)

2. Procedural rule-making

- 9) Congress enacted R.A. No. 14344 creating the City of Masuwerte which took effect on September 25, 2014. Section 23 of the law specific 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%) (2015 Bar Question)

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]).

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

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

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

SUGGESTED ANSWER:

The law is unconstitutional. The Constitution has taken away the power of Congress to repeal, alter or supplement the Rules of Court. The fiscal autonomy guaranteed the Judiciary by Section 3, Article VIII of the Constitution recognized the authority of the Supreme Court to levy, assess and collect fees. Thus, 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 08-02-01-0*, February 11, 2010 A.M. No. 08, etc.)

- 11) Congress enacted a 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%) (2008 Bar Question)

SUGGESTED ANSWER:

The law is unconstitutional. The 1987 Constitution took away the power of Congress to alter, repeal, or supplement the rules concerning pleading, practice, and procedure promulgated by the Supreme Court (*Echegaray v. Secretary of Justice*, 301 SCRA 96 [1999]).

3. Administrative supervision over lower courts

See: *Estrada v. Escritor*, A.M. No. P-02-1651, June 22, 2006.

4. Original and appellate jurisdiction

V. CONSTITUTIONAL COMMISSIONS

A. Common provisions

B. Powers and functions of the CSC, COMELEC, and COA

- 1) 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%) (2015 Bar Question)

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 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. In this case, 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. His designation as member of the governing Boards of GSIS, PHILHEALTH, ECC and HDMF entitles him to receive per diem, a form of additional compensation that 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).
- 2) 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%) (2014 Bar Question)

SUGGESTED ANSWER:

Yes. COA is entitled to the rest of its appropriations even without complying with the DBM policy. That the no report, no release policy may not be validly enforced against offices vested with fiscal autonomy is not disputed. Indeed, such policy cannot be enforced against offices possessing fiscal autonomy without violating Article IX (A), Section 5 of the Constitution, which provides:

Sec. 5. The Commission shall enjoy fiscal autonomy. Their approved appropriations shall be automatically and regularly released. (*Civil Service Commission v. Department of Budget and Management*, G.R. No. 158791, July 22, 2005)

C. Composition and qualifications of members

3) What is the rotational scheme of appointments in the COMELEC? (2%) (2009 Bar Question)

SUGGESTED ANSWER:

The rotational scheme of appointments in the Commissions on Elections refers to the scheme in which there is a regular recurrence of a two-year interval between the expiration of terms of the Chairman and the Commissioners. (*Gamide vs. Commission on Audit*, 347 SCRA 655 [2000].)

4) What are the two conditions for its workability (2%) (2009 Bar Question)

SUGGESTED ANSWER:

The two (2) conditions for the workability of the rotational scheme of appointments are the following: (1) the terms of the first Chairman and Commissioners should start on a common date, irrespective of variation of dates of their appointments and qualifications, and (2) any vacancy due to the death, resignation or disability before expiration of the term should be filled only for the unexpired balance of the term. (*Gaminde v. Commission on Audit*, 347 SCRA 655 [2000].)

5) To what other constitutional offices does the rotational scheme of appointments apply? (2%) (2009 Bar Question)

SUGGESTED ANSWER:

The rotational scheme of appointments applies also to (1) the Judicial and Bar Council, (2) the Civil Service Commission, and (3) the Commission on Audit. (Section 9(2), Article VIII, Section 1(2), Article IX-B and Section 1(2), Article IX-D of the Constitution.)

D. Prohibited offices and interests

E. Review of final orders, resolutions, and decisions

6) 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.

May the Commission on Human Rights order the Mayor to stop the implementation of the Executive Order? Explain. (2007 Bar Question)

SUGGESTED ANSWER:

The Commission on Human Rights cannot order the City Mayor to stop the implementation of his Executive Order, because it has no power to issue writs of injunction (*Export Processing Zone Authority v. Commission on Human Rights*, 208 SCRA 125 [1992]).

VI. BILL OF RIGHTS

A. Fundamental powers of the State

1. Police power

- 1) The National Building Code and its implementing rules provide, inter alia, that operators of shopping centers and malls should provide parking and loading spaces, in accordance with a prescribed ratio. The Solicitor General, heeding the call of the public for the provision of free parking spaces in malls, filed a case to compel said business concerns to discontinue their practice of collecting parking fees. The mall owners and operators oppose, saying that this is an invalid taking of their property, thus a violation of due process. The Solicitor General justifies it, however, claiming that it is a valid exercise of police power. Could the mall owners and operators be validly compelled to provide free parking to their customers? (2014 Bar Question)

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 power. It unreasonably restricts the right to use property for business purposes and amounts to confiscation of property (*Office of the Solicitor General v. Ayala Land, Inc.*, 600 SCRA 617). Otherwise, the same would be tantamount to eminent domain.

- 2) 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 reasons. Some police officers questioned the validity of the circular, claiming that it violated their right to liberty under the Constitution. Resolve the controversy. (6%) (2008 Bar Question)

SUGGESTED ANSWER:

The circular is valid. The circular is based on a desire to make police officers easily recognizable to the members of the public or to inculcate spirit de corps which such similarity is felt to inculcate within the police force. Either one is a sufficient rational justification for the circular (*Kelley v. Johnson*, 425 U.S. 238 [1976]).

2. Eminent domain

- 3) 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%) (2014 Bar Question)

SUGGESTED ANSWER:

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

3. Taxation

- 4) To address the pervasive problem of gambling, Congress is considering the following options: (1) prohibit all forms of gambling; (2) allow gambling only on Sundays; (3) allow gambling only in government-owned casinos; and (4) remove all prohibitions against gambling but impose a tax equivalent to 30% on all winnings. (2009 Bar Question)

(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%)

(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:

(A) The law absolutely prohibiting all forms of gambling is a valid exercise of police power, because it is an evil that undermines the social, moral and economic growth of the nation (*People v. Punto*, 68 Phil. 481 [1939]).

(B) 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 (*Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, 20 SCRA 849 [1967]). Taxes may be imposed for the attainment of the objective of police power (*Lutz v. Araneta*, 98 Phil. 148 [1955]).

B. Private acts and the Bill of Rights

C. Rights to life, liberty, and property

1. Procedural and substantive due process

- 5) 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.

Is the Executive Order in any way constitutionally infirm? Explain. (2007 Bar Question)

SUGGESTED ANSWER:

The Executive Order is constitutionally infirm. It violates the guarantees of due process and equal protection. Due process includes the right to decisional privacy, which refers to the ability to make one's own decisions and to act on those decisions, free from governmental or other unwanted interference. Moreover, the Executive Order violates equal protection as it discriminates against poor women in the city who cannot afford to pay private clinics. (*Griswold v. Connecticut*; *Imbong v. Ochoa*, G.R. No. 204819)

2. Void-for-vagueness doctrine

- 6) The overbreadth doctrine posits that the government: (1%) (2014 Bar Question)
- must know the extent of its power
 - when it exercises too much power it is like someone with bad breath –it is not healthy to society
 - can enact laws which can reach outside its borders, like long-arm statutes
 - the government is prohibited in banning unprotected speech if a substantial amount of protected speech is restrained or chilled in the process

SUGGESTED ANSWER: D.

- 7) The void-for-vagueness doctrine is a concept which means that: (1%) (2014 Bar Question)
- if a law is vague, then it must be void
 - any law which could not be understood by laymen is a nullity
 - if a law is incomprehensible to ordinary people such that they do not really know what is required or prohibited, then the law must be struck down
 - a government regulation that lacks clear standards is nonsensical and useless as a guide for human conduct
 - clarity in legal language is a mandate of due process.

SUGGESTED ANSWER: C.

- 8) Compare and contrast “overbreadth doctrine” from “void-for-vagueness” doctrine. (5%) (2010 Bar Question)

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 v. Sandiganbayan*, 369 SCRA 394 [2001].)

3. Hierarchy of rights**D. Equal protection****1. Requisites for valid classification**

- 9) A law is passed intended to protect women and children from all forms of violence. When a woman perceives an act to be an act of violence or a threat of violence against her, she may apply for a Barangay Protection Order (BPO) to be issued by the Barangay Chairman, which shall have the force and effect of law. Conrado, against whom a BPO had been issued on petition of his wife, went to court to challenge the constitutionality of the law. He raises the following grounds:

(A) The law violates the equal protection clause, because while it extends protection to women who may be victims of violence by their husbands, it does not extend the same protection to husbands who may be battered by their wives. (2.5%)

(B) The grant of authority to the Barangay Chairman to issue a Barangay Protection Order (BPO) constitutes an undue delegation of judicial power, because obviously, the issuance of the BPO entails the exercise of judicial power. (2.5%)

Rule on the validity of the grounds raised by Conrado, with reasons. (2017 Bar Questions)

SUGGESTED ANSWER:

(A) The law does not violate the equal protection clause. It is based on substantial distinctions. The unequal power relationship between women and men, the greater likelihood for women than men to be victims of violence, and the widespread gender bias and prejudice against women all make for real differences (*Garcia v. Drilon*, G.R. No. 179267, June 25, 2013, 699 SCRA 352).

(B) The grant of authority to the Barangay Chairman to issue a Barangay Protection Order is a purely executive function pursuant to his duty to enforce all laws and ordinances and to maintain public order (*Garcia v. Drilon*, G.R. No. 179267, June 25, 2013, 599 SCRA 352).

2. Rational basis, strict scrutiny, and intermediate scrutiny tests

- 10) The Gay, Bisexual and Transgender Youth Association (GBTYA), an organization of gay, bisexual, and transgender persons, filed for accreditation with the COMELEC to join the forthcoming party-list elections. The COMELEC denied the application for accreditation on the ground that GBTYA espouses immorality which offends religious dogmas. GBTYA challenges the denial of its application based on moral grounds because it violates its right to equal protection of the law. (2015 Bar Question)

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

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

SUGGESTED ANSWER:

- (1) The three levels of tests that 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 the review of economic legislation; and *heightened or intermediate scrutiny* for evaluating classifications based on gender and legitimacy.
- (2) It is submitted that the *strict scrutiny test* should be applied in this case because the challenged classification restricts the political process.

E. Searches and seizures**1. Requisites for a valid warrant****2. Warrantless searches and seizures**

- 11) Pornographic materials in the form of tabloids, magazines and other printed materials, proliferate and are being sold openly in the streets of Masaya City. The city Mayor organized a task force which confiscated these materials. He then ordered that the materials be burned in public. Dominador, publisher of the magazine, "Plaything", filed a suit, raising the following constitutional issues:
- the confiscation of the materials constituted an illegal search and seizure, because the same was done without a valid search warrant; and
 - the confiscation, as well as the proposed destruction of the materials, is a denial of the right to disseminate information, and thus, violates the constitutional right to freedom of expression.

Is either or both contentions proper? Explain your answer. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

- (a) The confiscation of the materials constituted an illegal search and seizure, because it was done without a valid search warrant. It cannot be justified as a valid warrantless search and seizure, because such search and seizure must have been an incident of a lawful arrest. There was no lawful arrest (*Pita v. Court of Appeals*, G.R. No. 80806, October 5, 1989, 178 SCRA 362).
- (b) The argument of Dominador that pornographic materials are protected by the constitutional right to freedom of expression is erroneous. Obscenity is not protected expression (*Fernando v. Court of Appeals*, G.R. No. 159751, December 6, 2006, 510 SCRA 351). Section 2 of Presidential Decree No. 969 requires the forfeiture and destruction of pornographic materials (*Nogralles v. People*, G.R. No. 191080, November 21, 2011, 660 SCRA 475).
- 12) Ernesto, a minor, while driving a motor vehicle, was stopped at a mobile checkpoint. Noticing that Ernesto is a minor, SPO1 Jojo asked Ernesto to exhibit his driver's license but Ernesto failed to produce it. SPO1 Jojo requested Ernesto to alight from the vehicle and the latter acceded. Upon observing a bulge in the pants of Ernesto, the policeman frisked him and found an unlicensed .22-caliber pistol inside Ernesto's right pocket. Ernesto was arrested, detained and charged. At the trial, Ernesto, through his lawyer, argued that, policemen at mobile checkpoints are empowered to conduct nothing more than a "visual search". They cannot order the persons riding the vehicle to alight. They cannot frisk, or conduct a body search of the driver or the passengers of the vehicle.

Ernesto's lawyer thus posited that:

(A) The search conducted in violation of the Constitution and established jurisprudence was an illegal search; thus, the gun which was seized in the course of an illegal search is the "fruit of the poisonous tree" and is inadmissible in evidence. (2.5%)

(B) The arrest made as a consequence of the invalid search was likewise illegal, because an unlawful act (the search) cannot be made the basis of a lawful arrest. (2.5%)

Rule on the correctness of the foregoing arguments, with reasons. (2016 Bar Question)

SUGGESTED ANSWER:

(A) The warrantless search of motor vehicles at checkpoints should be limited to a visual search. Its occupants should not be subjected to a body search (*Aniag, Jr. v. Commission on Elections*, G.R. No. 104961, October 7, 1994, 237 SCRA 424). The "stop and frisk rule" applies when a police officer observes suspicious activity or unusual activity which may lead him to believe that a criminal act may be afoot, and is merely a limited protective search of outer clothing for weapons (*Luñ v. People*, G.R. No. 197788, February 29, 2012, 667 SCRA 421),

(B) Under the exclusionary rule or the doctrine of the fruit of the poisonous tree, since there was no valid warrantless search, the warrantless search was also illegal. The unlicensed .22 caliber pistol is inadmissible in evidence (*Luñ v. People*, G.R. No. 197788, February 29, 2012, 667 SCRA 421).

- 13) 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%) (2015 Bar Question)

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]).

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

During the trial, the accused:

(A) challenged the validity of his arrest; (2%) and

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

Decide with reasons. (2009 Bar Question)

SUGGESTED ANSWER:

(A) The warrantless arrest of the accused was valid based on the circumstances: The cemetery was rumored to be a place where the sale of drugs was rampant; the eyes of the accused were reddish and glassy; he was walking unsteadily, veered away from the policemen upon seeing them; and refused to say what was in his clenched fist. Thus, the policemen had sufficient reason to stop him and investigate if he was high on drugs. After which, he could be arrested without the need for a warrant (*Manalili v. Court of Appeals*, 280 SCRA 400 [1997]).

(B) Since the search and seizure of the shabu were incidental to a valid warrantless arrest, the shabu is admissible in evidence (*Manalili v. Court of Appeals*, 280 SCRA 400 [1997]).

ALTERNATIVE ANSWER:

(A) There were no circumstances that would indicate that he was committing a crime. The search preceded his arrest (*People v. Tudtud*, 412 SCRA 142 [2003]).

(B) The search and seizure were illegal, because they preceded the arrest and were not incidental to the arrest. The shabu confiscated as a result thereof is inadmissible in evidence (*People v. Tudtud*, 412 SCRA 142 [2003]).

- 15) 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 Asaw the two hooded men hitting B until the latter fell lifeless. The assailants escaped using a yellow motorcycle with a fireball sticker on it toward the direction of an exclusive village nearby. A reported the incident to POI Nuval. The following day, POI Nuval saw the motorcycle parked in the garage of a house at Sta. Ines Street inside the exclusive village. He inquired with the caretaker as to who owned the motorcycle. The caretaker named the brothers Pilo and Ramon Maradona who were then outside the country. POI Nuval insisted on getting inside the garage. Out of fear, the caretaker allowed him. POI Nuval took 2 ski masks and 2 bats beside the motorcycle. Was the search valid? What about the seizure? Decide with reasons. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

The warrantless search and the seizure was not valid. It was not made as an incident to a lawful warrantless arrest. (*People v. Baula*, 344 SCRA 663 [2000].) The caretaker also had no authority to waive the right of the

brothers Pilo and Ramon Maradona to waive their right against an unreasonable search and seizure. (*People v. Damaso*, 212 SCRA547 [1992].) Lastly, the warrantless seizure of the ski masks and bats cannot be justified under the plain view doctrine, because they were seized after an invalid intrusion into the house. (*People v. Bolasa*, 321 SCRA 459 [1999].)

3. Administrative arrests

4. Evidence obtained through purely mechanical acts

F. Privacy of communications and correspondence

1. Private and public communications

2. Intrusion, when allowed; exclusionary rule

- 16) In a criminal prosecution for murder, the prosecution presented, as witness, an employee of the Manila Hotel who produced in court a videotape recording showing the heated exchange between the accused and the victim that took place at the lobby of the hotel barely 30 minutes before the killing. The accused objects to the admission of the videotape recording on the ground that it was taken without his knowledge or consent, in violation of his right to privacy and the Anti- Wire Tapping law. Resolve the objection with reasons. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

The objection should be overruled. What the law prohibits is the overhearing, intercepting, and recording of private communications. Since the exchange of heated words was not private, its videotape recording is not prohibited (*Navarro v. Court of Appeals*, 313 SCRA 153 [1999]).

G. Freedom of speech and expression

1. Prior restraint and subsequent punishment

- 17) 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%)

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

Resolve. (2009 Bar Question)**SUGGESTED ANSWER:**

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

(B) 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 v. Commissioner of Internal Revenue*, 541 SCRA 316 [2007]).

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 v. United States*, 403 U.S. 713 [1971]).

- 18) 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%) (2008 Bar Question)

SUGGESTED ANSWER:

I shall advise the students that the circular is void. The constitutional guarantee of freedom of speech and peaceful assembly extends to students within the premises of the Metro Manila State University (*Malabanan v. Ramente*, 129 SCRA 359 [1984]).

I shall also advise the students that their wearing of black T-shirts as a sign of protest is covered by their freedom of speech, because it is closely akin to free speech (*Tinker v. Des Moines Community School District*, 393 U.S. 503; *Nikko Hotel Manila Garden v. Reyes*, G.R. No. 154259).

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

Salakay, Bayan! held a protest rally and planned to march from Quezon City to Luneta in Manila. They received a permit from the Mayor of Quezon City, but not from the Mayor of Manila. They were able to march in Quezon City and up to the boundary separating it from the City of Manila. Three meters after crossing the boundary, the Manila Police stopped them for posing a danger to public safety. Was this a valid exercise of police power? (2007 Bar Question)

SUGGESTED 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:

The police officers may disperse the rally peacefully, because the permit from the Mayor of Quezon City is limited to Quezon City only and does not extend to the City of Manila and no permit was obtained from the Mayor of Manila (Batas Pambansa Big. 880, sec. 13[a]).

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

SUGGESTED ANSWER:

In accordance with the policy of maximum tolerance, the security police 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.

ALTERNATIVE ANSWER:

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

2. Content-based and content-neutral regulations

- 21) Allmighty Apostles is a relatively new religious group and movement with fastgrowing 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 simpleminded 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%) (2014 Bar Question)

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)).

ALTERNATIVE ANSWER:

The action of the government is justified. The test for limitations on freedom of expression continues to be the clear and present danger rule. The fact that some people had already started destroying properties while hurting those selling the newspaper can be validly considered by the government as a clear and present danger, which will justify its banning of the further distribution of the newspaper containing the article. (*Chavez vs. Gonzales*, 545 SCRA 441 (2008)).

3. Facial challenges and the overbreadth doctrine

22) 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%) (2015 Bar Question)

SUGGESTED ANSWER:

In United States Constitutional Law, a facial challenge is one that is launched to assail the validity of statutes concerning not only protected speech, but also all other rights in the First Amendment. These include religious freedom, freedom of the press, and the right of the people to peaceably assemble, and to petition the Government for a redress of grievances. This doctrine is maintained in this jurisdiction by the Supreme Court in the case of *Imbong v. Ochoa*, albeit with some modification to expand its scope to cover statutes not only regulating free speech, but also those involving religious freedom and other fundamental rights.

4. Dangerous tendency, balancing of interests, and clear and present danger tests**5. State regulation of different types of mass media**

23) The guarantee of freedom of expression signifies: (1%) (2014 Bar Question)

- a. absolute freedom to express oneself
- b. freedom from prior restraint
- c. right to freely speak on anything without limitations
- d. the right of the government to regulate speech
- e. the right of broadcast stations to air any program

SUGGESTED ANSWER:

D. [*Chavez v. Gonzales*, G.R. No. 168338]

6. Commercial speech**7. Unprotected Speech**

H. Freedom of religion

1. Non-establishment and free-exercise clauses

2. Benevolent neutrality and conscientious objectors

24) Fernando filed an administrative complaint against his co-teacher, Amelia, claiming that the latter is living with a married man who is not her husband. Fernando charged Amelia with committing “disgraceful and immoral conduct” in violation of the Revised Administrative Code and, thus, should not be allowed to remain employed in the government. Amelia, on the other hand, claims that she and her partner are members of a religious sect that allows members of the congregation who have been abandoned by their respective spouses to enter marital relations under a “Declaration of Pleading Faithfulness.” Having made such Declaration, she argues that she cannot be charged with committing immoral conduct for she is entitled to free exercise of religion under the Constitution.

(A) Is Amelia administratively liable? State your reasons briefly.

(B) Briefly explain the concept of “benevolent neutrality. (2016 Bar Question)

SUGGESTED ANSWER:

(A) Amelia is not administratively liable. There is no compelling state interest that justifies inhibiting the free exercise of religious beliefs. The means used by the government to achieve its legitimate objective is not the least intrusive means (*Estrada v. Escritor*, AM No. P-02-1651, June 22, 2006, 492 SCRA 1).

(B) Benevolent neutrality means that with respect to governmental actions, accommodation of religion may be permitted to allow individuals and groups to exercise their religion without hindrance. What is sought is not a declaration of unconstitutionality of the law but an exemption from its application (*Estrada v. Escritor*, AM No. P-02-1651, June 22, 2006, 492 SCRA 1).

3. Lemon and compelling state interest tests

See: Lemon v. Kurtzman, 403 U.S. 602 (1971).

I. Liberty of abode and right to travel

1. Scope and limitations

2. Watch-list and hold departure orders

See: Office of Court Administrator v. Judge Macarine, A.M. No. MTJ-10-1770, July 18, 2012

J. Right to information

1. Scope and limitations

2. Publication of laws and regulations

See: Tañada v. Tuvera, G.R. No. L-63915, April 24, 1985.
 Judge Villanueva v. JBC, G.R. No. 211833, April 7, 2015.

K. Right of association

L. Eminent Domain

1. Concept of public use

2. Just compensation

See: City of Manila v. Chinese Community of Manila, G.R. No. L-14355, October 31, 1919.
 Mañosca v. Court of Appeals, G.R. No. 106440, January 29, 1996.

- 25) The Government, through Secretary Toogood of the Department of Transportation (DOTr), filed a complaint for eminent domain to acquire a 1,000-hectare property in Bulacan, owned by Baldomero. The court granted the expropriation, fixed the amount of just compensation, and installed the Government in full possession of the property.

(A) If the Government does not immediately pay the amount fixed by the court as just compensation, can Baldomero successfully demand the return of the property to him? Explain your answer. (2016 Bar Question)

SUGGESTED ANSWER:

(A) If the government does not pay Baldomero the just compensation immediately, he cannot demand the return of the property to him. Instead, legal interest should be paid from the time of taking of the property until actual payment in full (*Republic v. Court of Appeals*, G.R. No. 146587, July 2, 2002, 383 SCRA 611).

(B) If the Government paid full compensation but after two years it abandoned its plan to build an airport on the property, can Baldomero compel the Government to re-sell the property back to him? Explain your answer. (2016 Bar Question)

SUGGESTED ANSWER:

(B) With respect to the element of public use, the expropriator should commit to use the property for the purpose stated in the petition. If not, it is incumbent upon it to return the property to the owner, if the owner desires to reacquire it. Otherwise, the judgment of expropriation will lack the element of public use. (*Mactan-Cebu Airport Authority v. Lozada, Sr.*, G.R. No. 176625, February 25, 2010, 613 SCRA 618). If the just compensation was not paid within 5 years from finality of judgment, the owner is entitled to recover the property (*Republic v. Lim*, G.R. No. 161656, June 29, 2005, 462 SCRA 265).

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

But FCC refused to sell the lot. Hard-pressed to find a suitable property to house its homeless residents, the City filed a complaint for eminent domain against FCC.

(A) If FCC hires you as lawyer, what defense or defenses would you set up in order to resist the expropriation of the property? Explain. (5%) (2009 Bar Question)

SUGGESTED ANSWER:

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

(B) If the Court grants the City's prayer for expropriation, but the City delays payment of the amount determined by the court as just compensation, can FCC recover the property from Pasig City? Explain. (2009 Bar Question)

SUGGESTED ANSWER:

(B) The mere delay in the payment of the just compensation will not entitle the Filipinas Computer Corporation to recover the property. Instead, legal interest of 6% per annum effective July 1, 2013 on the just compensation should be paid (*National Power Corporation v. Henson*, 300 SCRA 751 [1998]). However, if the payment was not made within five (5) years from the finality of judgment in the expropriation case, Filipinas Computer Corporation can recover the property. To be just, the compensation must be paid within a reasonable time. (*Republic v. 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 a much bigger lot, can FCC legally demand that it be allowed to repurchase the property from the City of Pasig? Why or why not? (2009 Bar Question)

SUGGESTED ANSWER (updated):

(C) 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 re-acquire 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.

3. Expropriation by local government units

M. Non-impairment of contracts

N. Free access to courts and adequate legal assistance

27) Norberto Malasmas was accused of estafa before the Regional Trial Court of Manila. After the trial, he was found guilty. On appeal, his conviction was affirmed by the Court of Appeals. After the records of his case had been remanded to the Regional Trial Court for execution, and after the latter Court had set the date for the promulgation of judgment, the accused filed a motion with the Court of Appeals to set aside the entry of judgment, and to remand the case to the Regional

Trial Court for new trial on the ground that he had just discovered that “Atty. Leonilo Maporma” whom he had chosen and who had acted as his counsel before the trial court and the Court of Appeals, is not a lawyer. Resolved the motion of the accused with reasons. (2010 Bar Question)

SUGGESTED ANSWER:

The motion should be granted and the entry of judgment should be set aside. An accused is entitled to be heard by himself or counsel. (Art. III, sec. 14(2)). Unless he is represented by an attorney, there is a great danger that any defense presented in his behalf will be inadequate considering the legal requisite and skill needed in court proceedings. There would certainly be a denial of due process. (Delgado v. Court of Appeals, 145 SCRA 357 (1986)).

O. Custodial investigation rights

- 28) The contents of the vault of ABC Company consisting of cash and documents were stolen. Paulyn, the treasurer of ABC, was invited by the Makati City Police Department to shed light on the amount of cash stolen and the details of the missing documents. Paulyn obliged and volunteered the information asked. Later, Paulyn was charged with qualified theft together with suspects. Paulyn claims her rights under the Constitution and pertinent laws were blatantly violated. The police explained that they were just gathering evidence when Paulyn was invited for a conference and she was not a suspect at that time. Rule on her defense. (2016 Bar Question)

SUGGESTED ANSWER:

No, the defense of Paulyn is not valid. When she was invited for questioning by the Makati City Police Department and she volunteered information, she was not yet a suspect. Her constitutional rights of a person under investigation for the commission of an offense under Section 12(1), Article III of the Constitution begins to operate when the investigation ceases to be a general inquiry upon an unsolved crime and begins to be aimed upon a particular suspect who has been taken into custody and the questions tend to elicit incriminating statements (People v. Marra, G.R. No. 108494, September 20, 1994, 236 SCRA 565).

- 29) 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 selfdefense. Edward was eventually charged with murder. During his trial, the statements he made to the police were introduced as evidence against him. He objected claiming that they were inadmissible since he was not given his Miranda rights. On the other hand, the prosecution countered that there was no need for such rights to be given since he was not yet arrested at the time of the questioning. If you were the judge, how would you rule on the issue? (2014 Bar Question)

SUGGESTED ANSWER:

I would rule in favor of Edward. Custodial investigation refers to any questioning initiated by law enforcement officers after a person has been taken into custody. The Miranda rights are available when the person interrogated is already treated as a particular suspect and the investigation is no longer a general inquiry into an unsolved crime. In the case of Edward, the questioning made was more than just a general

inquiry into an unsolved crime. It was already in the accusatory stage in which the Miranda rights must be given to the accused.

- 30) A robbery with homicide had taken place and Lito, Badong, and Rollie were invited for questioning based on the information furnished by a neighbor that he saw them come out of the victim's house at the time of the robbery/killing. The police confronted the three with this and other information they had gathered, and pointedly accused them of committing the crime.

Lito initially resisted, but eventually broke down and admitted his participation in the crime. Elated by this break and desirous of securing a written confession soonest, the police called City Attorney Juan Buan to serve as the trio's counsel and to advise them about their rights during the investigation.

Badong and Rollie, weakened in spirit by Lito's early admission, likewise admitted their participation. The trio thus signed a joint extrajudicial confession which served as the main evidence against them at their trial.

They were convicted based on their confession. Should the judgment of conviction be affirmed or reversed on appeal? (2013 Bar Question)

SUGGESTED ANSWER:

The judgment of conviction should be reversed on appeal. It relied mainly on the extrajudicial 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*, March 27, 2013 399 SCRA 624).

ALTERNATIVE ANSWER:

The judgment of conviction should be affirmed if the accused failed to object when their extrajudicial confession was offered in evidence which was rendered it admissible (*People v. Samus*, September 17, 2002, 389 SCRA 93).

P. Rights of the accused

- 31) Jojo filed a criminal complaint against Art for theft of a backpack worth P150.00 with the Office of the City Prosecutory of Manila. The crime is punishable with *arresto mayor* to *prision correccional* in its minimum period, or not to exceed 4 years and 2 months. The case was assigned to Prosecutor Tristan and he applied Sec. 8(a) of Rule 112 which reads: "(a) If filed with the prosecutor.

If the complaint is filed directly with the prosecutor involving an offense punishable by imprisonment of less than four (4) years, two (2) months and one (1) day, the procedure outlined in Sec. 3(a) of this Rule shall be observed. The Prosecutor shall act on the complaint within ten (10) days from its filing."

On the other hand, Sec. 3(a) of Rule 112 provides: "(a) The complaint shall state the address of the respondent and shall be accompanied by affidavits of the complainant and his witnesses as well as other supporting documents to establish probable cause. X X X"

Since Sec. 8(a) authorizes the Prosecutor to decide the complaint on the basis of the affidavits and other supporting documents submitted by the complainant, Prosecutor Tristan did not notify Art nor require him to submit a counter-affidavit. He proceeded to file the Information against Art with the Metropolitan Trial Court. Art vehemently assails Sec. 8(a) of Rule 112 as unconstitutional

and violative of due process and his rights as an accused under the Constitution for he was not informed of the complaint nor was he given the opportunity to raise his defenses thereto before the information was filed. Rule on the constitutionality of Sec. 8(a) of Rule 112. Explain. (2016 Bar Question)

SUGGESTED ANSWER:

The contention of Art is not meritorious. The right to be informed of the complaint and to be given the opportunity to raise one's defenses does not apply to preliminary investigation. Preliminary investigation is merely procedural. It may be dispensed with without violating the right of the accused to due process (*Bustos v. Lucero*, G.R. No. 2068, October 20, 1948, 81 Phil. 640 (1948)).

- 32) As he was entering a bar, Arnold — who was holding an unlit cigarette in this right hand — was handed a match box by someone standing near the doorway. Arnold unthinkingly opened the matchbox to light his cigarette and as he did so, a sprinkle of dried leaves fell out, which the guard noticed. The guard immediately frisked Arnold, grabbed the matchbox, and sniffed its contents. After confirming that the matchbox contained marijuana, he immediately arrested Arnold and called in the police. At the police station, the guard narrated to the police that he personally caught Arnold in possession of dried marijuana leaves. Arnold did not contest the guard's statement; he steadfastly remained silent and refused to give any written statement. Later in court, the guard testified and narrated the statements he gave the police over Arnold's counsel's objections. While Arnold presented his own witnesses to prove that his possession and apprehension had been set-up, he himself did not testify. The court convicted Arnold, relying largely on his admission of the charge by silence at the police investigation and during trial.

From the constitutional law perspective, was the court correct in its ruling? (2013 Bar Question)

SUGGESTED ANSWER:

The court was wrong in relying on the silence of Arnold during the police investigation and during the trial. Under Article III, Section 12(1) of the 1987 Constitution, he had the right to remain silent. His silence cannot be taken as a tacit admission, otherwise, his right to remain silent would be rendered nugatory. Considering that his right against self-incrimination protects his right to remain silent, he cannot be penalized for exercising it (*People v. Galvez*, G.R. No. 157221, March 30, 2007).

ALTERNATIVE ANSWER:

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

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

William protested his arrest.

(A) He argued that since the incident took place inside the U.S. embassy, Philippine courts have no jurisdiction because the U.S. embassy grounds are not part of Philippine territory; thus,

technically, no crime under Philippine law was committed. Is William correct? Explain your answer. (2009 Bar Question)

SUGGESTED ANSWER:

(A) William is not correct. The premises occupied by the United States Embassy do not constitute territory of the United States but of the Philippines. Crimes committed within them are subject to the territorial jurisdiction of the Philippines. Since William has no diplomatic immunity, the Philippines can prosecute him if it acquires custody over him (*Reagan v. Commissioner of Internal Revenue*, 30 SCRA 968 [1969]).

(B) He also claimed that his Miranda rights were violated because he was not given the lawyer of his choice; that being an American, he should have been informed of his rights in proper English; and that he should have been informed of his rights as soon as he was taken into custody, not when he was already at the police station. Was William denied his Miranda rights? Why or why not? (2009 Bar Question)

SUGGESTED ANSWER:

(B) 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 v. Cruz*, 162 SCRA 642 [1988]).

(C) If William applies for bail, claiming that he is entitled thereto under the “international standard of justice” and that he comes from a U.S. State that has outlawed capital punishment, should William be granted bail as a matter of right? Reasons. (2009 Bar Question)

SUGGESTED ANSWER:

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

34) Having received tips that the accused was selling narcotics, two police officers forced open the door of his room. Finding him sitting partly 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 officers pounced on the accused but failed to extract the capsules. The officers handcuffed the accused, took him to a hospital where at their direction, a doctor forced an emetic solution through 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? (2008 Bar Question)

SUGGESTED ANSWER:

As counsel for the accused, I shall invoke the following constitutional rights of the accused:

1. Right against illegal searches and seizures under Section 2, Article III of the Constitution: Since the police officers had no personal knowledge that the accused was selling marijuana and acted merely on a tip, there was no probable cause and the intrusion into his room was invalid (*People v. Bolasa*, 321 SCRA 459).

2. Right to due process and his right against self-incrimination: Because the brutal method used to obtain the evidence offends the sense of justice (*Rochin v. California*, 342 U.S. 165).

3. That no force shall be used against any person: Because of the coerced extraction of heroin.

(B) How should the court decide the case? (2008 Bar Question)

SUGGESTED ANSWER:

The court should acquit the accused. Under Section 3(2), Article III of the Constitution, evidence obtained in violation of the right against unreasonable searches and seizures is inadmissible. Besides, under Section 12(3), Article III of the Constitution, any confession or admission obtained in violation of Section 12 or Section 17 or any object discovered as a result of it is inadmissible in evidence (*People v. Suela*, 273 SCRA 163; *see also De la Cruz v. People*, G.R. No. 200748).

35) JC, a major in the Armed Forces of the Philippines, is facing prosecution before the Regional Trial Court of Quezon City for the murder of his neighbor whom he suspected to have molested his (JC's) 15-year old daughter.

(A) Is JC entitled to bail? Why or why not? (2008 Bar Question)

SUGGESTED ANSWER:

If the evidence of guilt is strong, JC is not entitled to bail since the penalty for murder is reclusion *perpetua*. (Section 13, Article III of the Constitution; Article 248 of the Revised Penal Code, as amended.) Although under Paragraph 5 of Article 13 of the Revised Penal Code murder is mitigated by the fact that it was committed in the immediate vindication of the molestation of his daughter, in case of conviction the penalty will still be reclusion *perpetua* since the Revised Penal Code provides a single indivisible penalty for murder (Article 63 of the Revised Penal Code).

ALTERNATIVE ANSWER:

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

(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 acquitting JC. Would an appeal by the prosecution from the decision of acquittal violate JC's right against double jeopardy? Why or why not? (2008 Bar Question)

SUGGESTED ANSWER:

An appeal by the prosecution from the decision of acquittal will not violate the right of JC against double jeopardy. When he proved complete self-defense, his testimony vacated his plea of guilty. The trial court should have required him to plead again and enter a plea of not guilty. Since this was not done, there was no standing plea when the court rendered its decision of acquittal (*People v. Balicasan*, 17 SCRA 1119 [1966]).

Q. Right to the speedy disposition of cases

R. Right against self-incrimination

36) Paragraphs c, d and f of Section 36 of Republic Act No. 9165 provide:

“Sec. 36. Authorized drug testing. x x x The following shall be subjected to undergo drug testing: X X X Students of secondary and tertiary schools x x x; d. Officers and employees of public and private offices x x x;

All persons charged before the prosecutor’s office with a criminal offense having an imposable imprisonment of not less than 6 years and 1 day;”

Petitioners contend that the assailed portions of Sec. 36 are unconstitutional for violating the right to privacy, the right against unreasonable searches and seizures and the equal protection clause. Decide if the assailed provisions are unconstitutional. (2016 Bar Question)

SUGGESTED ANSWER:

The drug testing of students of secondary and tertiary schools is valid as deterring their use of drugs by random drug testing is as important as enhancing efficient enforcement. Likewise, random drug testing of officers and employees of public and private offices is justifiable given that their expectation of privacy in office is reduced, especially for public officials and employees who are required by the Constitution to be accountable at all times to the people.

However, the mandatory testing of all persons charged before the prosecutor’s office of a criminal offense punishable with imprisonment of at least six years and one day is void. They are not randomly picked and are not beyond suspicion. They do not consent to the procedure or waive their right to privacy (*Social Justice Society v. Dangerous Drugs Board*, G.R. Nos. 157870, 158633 & 161658, November 3, 2008, 570 SCRA 410).

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

SUGGESTED ANSWER:

Alienmae can invoke her right against self-incrimination even if the fear of incrimination 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:

(g) Not to be compelled to testify against himself or to confess guilt.”

38) A, the wife of an alleged victim of enforced disappearance, applied for the issuance of a Writ of Amparo before a Regional Trial Court in Tarlac. Upon motion of A, the court issued inspection and production orders addressed to the AFP Chief of Staff to allow entry at Camp Aquino and permit the copying of relevant documents, including the list of detainees, if any. Accompanied by court designated Commission on Human Rights (CHR) lawyers, A took photographs of a

suspected isolation cell where her husband was allegedly seen being held for three days and tortured before he finally disappeared. The CHR lawyers requested one Lt. Valdez for a photocopy of the master plan of Camp Aquino and to confirm in writing that he had custody of the master plan. Lt. Valdez objected on the ground that it may violate his right against self-incrimination. Decide with reasons. (2010 Bar Question)

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 v. Vasquez*, 244 SCRA 286 [1995].)

S. Right against double jeopardy

See: Ivler v. Judge Modesto-San Pedro, G.R. No. 172716, November 17, 2010.

People v. Webb, G.R. No. 176864, January 18, 2011.

People v. Judge Reolova, G.R. No. L-45129, March 6, 1987.

T. Involuntary servitude

U. Right against excessive fines, and cruel and inhuman punishments

V. Non-imprisonment for debts

W. *Ex post facto* laws and bills of attainder

X. Writs of habeas corpus, kalikasan, habeas data, and amparo

39) Command responsibility pertains to the responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflicts. The doctrine has now found application in civil actions for human rights abuses, and in proceedings seeking the privilege of the writ of amparo.

(A) What are the elements to be established in order to hold the superior or commander liable under the doctrine of command responsibility? (2017 Bar Question)

SUGGESTED ANSWER:

(A) To hold someone liable under the doctrine of command responsibility, the following elements must obtain:

1. the existence of a superior-subordinate relationship between the accused as superior and the perpetrator of the crime as his subordinate;
2. the superior knew or had reason to know that the crime was about to be or had been committed; and

3. the superior failed to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof [*Rodriguez v. Macapagal-Arroyo*, 660 SCRA 843(2011)].

(B) May the doctrine of command responsibility apply to the President for the abuses of the armed forces (AFP and PNP) given his unique role as the commander-in-chief of all the armed forces? Explain your answer. (2017 Bar Question)

SUGGESTED ANSWER:

The President, being the commander-in-chief of all armed forces, necessarily possesses control over the military that qualifies him as a superior within the purview of the command responsibility doctrine. The incumbent President is immune from suit during his incumbency. The immunity, however, exists only during the incumbency of the President. Once his or her term has ended, he or she may be held accountable under this doctrine [*Rodriguez v. Macapagal-Arroyo* (660 SCRA 843)].

40) Several concerned residents of the areas fronting Manila Bay, among them a group of students who are minors, filed a suit against the Metro Manila Development Authority (MMDA), the Department of Environment and Natural Resources (DENR), the Department of Health (DOH), the Department of Agriculture (DA), the Department of Education (DepEd), the Department of Interior and Local Government (DILG), and a number of other executive agencies, asking the court to order them to perform their duties relating to the cleanup, rehabilitation and protection of Manila Bay. The complaint alleges that the continued neglect by defendants and their failure to prevent and abate pollution in Manila Bay constitute a violation of the petitioners' constitutional right to life, health and a balanced ecology.

(A) If the defendants assert that the students/petitioners who are minors do not have locus standi to file the action, is the assertion correct? Explain your answer. (2016 Bar Question)

SUGGESTED ANSWER:

The assertion that the students/petitioners who are minors have no locus standi is erroneous. Pursuant to the obligation of the State under Section 16, Article II of the Constitution to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature, minors have standing to sue based on the concept of intergenerational responsibility (*Oposa v. Factoran*, G.R. No. 101083, July 30, 1993, 224 SCRA 792).

(B) In its decision which attained finality, the Court ordered the defendants to clean up, rehabilitate and sanitize Manila Bay within eighteen (18) months, and to submit to the Court periodic reports of their accomplishment, so that the Court can monitor and oversee the activities undertaken by the agencies in compliance with the Court's directives. Subsequently, a resolution was issued extending the time periods within which the agencies should comply with the directives covered by the final decision. A view was raised that the Court's continued intervention after the cases has been decided violates the doctrine of separation of powers considering that the government agencies all belong to the Executive Department and are under the control of the President. Is this contention correct? Why or why not? (2016 Bar Question)

SUGGESTED BAR QUESTION:

The order of the Supreme Court to the defendants to clean up, rehabilitate and sanitize Manila Bay is an exercise of judicial power, because the execution of its decision is an integral part of its adjudicative function. Since the submission of periodic reports is needed to fully implement the decision, the Supreme Court can issue a continuing writ of mandamus to the Metropolitan Manila Development Authority until full compliance with its order is shown (*Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48, February 15, 2011, 643 SCRA 90).

- 41) 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 disclaimed 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? (2013 Bar Question)

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 can 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*, G.R. No. 184467, June 19, 2012).

(B) If the petition would prosper, can Col. Sangre be held liable and/or responsible for Conrad’s disappearance? (2013 Bar Question)

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*, G.R. No. 183871, February 18, 2010., 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*, G.R. No. 186050, December 13, 2011, 662 SCRA 312).

ALTERNATIVE ANSWER:

Although the writ of amparo does not pinpoint criminal culpability for a disappearance, it determines responsibility, for the purpose of imposing the 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*, G.R. No. 182498, December 3, 2009, 606 SCRA 598).

VII. CITIZENSHIP

A. Who are Filipino citizens

- 1) Discuss the evolution of the principle of *jus sanguinis* as basis of Filipino citizenship under the 1935, 1973, and 1987 Constitutions. (2015 Bar Question)

SUGGESTED ANSWER:

Section 1, Article III of the 1935 Constitution adopted the *jus sanguinis* principle as the 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 born before January 17, 1973, of Filipino mothers, who elected Philippine citizenship upon reaching the age of majority under the 1973 Constitution is a natural-born Filipino citizen. (*Tecson v. Commission on Elections*, 424 SCRA 277 [2004]).

(NOTE: The 1935 and the 1973 Constitutions are not included in the coverage of the examinations).

B. Modes of acquiring citizenship

C. Loss and re-acquisition of Philippine citizenship

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

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

(A) Having reacquired Philippine citizenship, is Warlito a natural-born or a naturalized Filipino citizen today? Explain your answer. (2009 Bar Question)

SUGGESTED ANSWER:

(A) Warlito is a natural-born Filipino citizen. Repatriation of Filipinos results in the recovery of the original nationality. Since Warlito was a natural-born Filipino citizen before he lost his Philippine citizenship, he was restored to his former status as a natural born Filipino citizen (*Bengson v. House of Representatives Electoral Tribunal*, 357 SCRA 545 [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. (2009 Bar Question)

SUGGESTED ANSWER:

(B) Shirley will not become a Filipino citizen because under Republic Act No. 9225, Warlito's reacquisition of Philippine citizenship did not extend its benefits to Shirley. She should instead file with the Bureau of Immigration a petition for the cancellation of her alien certificate of registration on the ground that according to 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 (*Burva v. Republic*, 51 SCRA 248 [1973]).

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

SUGGESTED ANSWER:

(C) Under Section 18 of Republic Act No. 9225, only the unmarried children who are below eighteen years of age of those who reacquire Philippine citizenship shall be deemed Filipino citizens. Thus, only Luisa, who is seventeen years old, became a Filipino citizen.

D. Dual citizenship and dual allegiance

- 3) **Rosebud is a natural-born Filipino woman who got married to Rockcold, a citizen of State Frozen. By virtue of the laws of Frozen, any person who marries its citizens would automatically be deemed its own citizen. After ten years of marriage, Rosebud, who has split her time between the Philippines and Frozen, decided to run for Congress. Her opponent sought her disqualification, however, claiming that she is no longer a natural-born citizen. In any event, she could not seek elective position since she never renounced her foreign citizenship pursuant to the Citizenship Retention and Reacquisition Act (R.A. No. 9225). Is Rosebud disqualified to run by reason of citizenship? (2014 Bar Question)**

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. However, 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*, August 10, 2012, G.R. No. 198742).

- 4) **TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (2009 Bar Question)**

Dual citizenship is not the same as dual allegiance.

SUGGESTED ANSWER:

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

E. Foundlings

VIII. LAW ON PUBLIC OFFICERS

A. General principles

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

Should the petition be granted? (2013 Bar Question)

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*, October 13, 2005, 472 SCRA 587).

- 2) **TRUE OR FALSE.**

A discretionary duty of a public officer is never delegable. (2010 Bar Question)

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 of Public Offices and Officers*, p. 368.)

B. Modes of acquiring title to public office

C. Kinds of appointment

D. Eligibility and qualification requirements

E. Disabilities and inhibitions of public officers

- 3) **TRUE OR FALSE.**

The rule on nepotism does not apply to designations. (2010 Bar Question)

SUGGESTED ANSWER:

The statement that the rule on nepotism does not apply to designations made in favor of a relative if the authority making the designation is false. Designation accomplishes the same purpose as appointment. (*Laurel v. Civil Service Commission*, 203 SCRA 195 [1991].)

F. Rights and liabilities of public officers

4) Define/explain the following:

e. Principle of holdover. (2010 Bar Question)

SUGGESTED ANSWER:

The principle of holdover means that in the absence of an express or implied constitutional or statutory provision to the contrary, an officer is entitled to hold his office until his successor is appointed or chosen and has been qualified. (*Topacio Nueno v. Angeles*, 76 Phil. 12 [1946].)

G. De facto vs. de jure officers

5) TRUE OR FALSE.

A person who occupies an office that is defectively created is a de facto officer. (2010 Bar Question)

SUGGESTED ANSWER:

The statement that a person who occupies an office that is defectively created is a de facto officer is false. For him to be a de facto officer, the office must be validly created. (*Tuanda v. 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 v. Carroll*, 38 Conn. [1871].)

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

A de facto public officer is, by right, entitled to receive the salaries and emoluments attached to the public office he holds. (2009 Bar Question)

SUGGESTED ANSWER:

True. De facto officers are entitled to emoluments attached to the office for actual services rendered *Civil Liberties Union v. Executive Secretary*, 194 SCRA 317 [1991].

H. Termination of official relation

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

SUGGESTED ANSWER:

Maximino cannot recover back salaries during his preventive suspension since the law does not provide for it. Preventive suspension is not a penalty. During the preventive suspension, he was not yet out of the service. However, he is entitled to back wages from the time of his dismissal until his reinstatement. The

enforcement of the dismissal pending appeal was punitive, and he was exonerated (*Gloria v. Court of Appeals*, 306 SCRA 287 [1999]).

I. The Civil Service

8) TRUE OR FALSE.

Acquisition of civil service eligibility during tenure of a temporary appointee does not automatically translate to a permanent appointment. (2009 Bar Question)

SUGGESTED ANSWER:

The statement that the acquisition of civil service eligibility during the tenure of a temporary appointee does not automatically translate to a permanent appointment is true. A new appointment which is permanent is necessary. (*Province of Camarines Sur v. Court of Appeals*, 246 SCRA 281 [1995].)

9) 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? (2008 Bar Question)

SUGGESTED ANSWER:

The Civil Service Commission should disapprove the promotional appointment of Amelia. Section 59 (1), Chapter 7, Title I, Subsection A, Book V of the Administrative Code prohibits all appointments in the cities of a relative of the appointing authority within the third degree of consanguinity or affinity. The prohibition applies to all appointments, whether original or promotional (*Debulgado v. Civil Service Commission*, 237 SCRA 184 [1994]).

J. Personnel actions

K. Accountability of public officers

1. Discipline

a. Grounds

b. Jurisdiction

c. Dismissal, preventive suspension, reinstatement and back salaries

d. Condonation doctrine

See: Carpio-Morales v. Court of Appeals and Jejomar Binay, Jr., G.R. No. 217126-27, November 10, 2015.

2. Impeachment

3. The Ombudsman

a. Functions

- 10) May a complaint for disbarment against the Ombudsman prosper during her incumbency? Explain your answer. (2017 Bar Question)

SUGGESTED ANSWER:

A complaint for disbarment cannot be filed against the Ombudsman during her incumbency. Article XI, Sec. 8 of the 1987 Philippine Constitution imposes membership of the Philippine Bar as a qualification to be an Ombudsman. The Ombudsman is removable only by impeachment. If the Ombudsman were to be disbarred, he would be removed from office without undergoing impeachment (Article XI, Section 2 of the 1987 Philippine Constitution).

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

Decisions of the Ombudsman imposing penalties in administrative disciplinary cases are merely recommendatory. (2009 Bar Question)

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 v. Madriaga*, 503 SCRA 631 [2006]).

b. Judicial review in administrative proceedings

c. Judicial review in penal proceedings

4. Office of the Special Prosecutor

5. The Sandiganbayan

- 12) 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? (2015 Bar Question)

SUGGESTED ANSWER:

Although Professor Masipag is correct in saying that “he can not be accused of receiving double compensation” as he would not actually be receiving additional or double compensation, he may nevertheless not be allowed to accept the position of Executive Assistant of the Court of Appeals during his incumbency since the same 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.”

IX. ADMINISTRATIVE LAW

A. General principles

- 1) Maximino, an employee of the Department of Education, is administratively charged with dishonesty and gross misconduct. During the formal investigation of the charges, the Secretary of Education preventively suspended him for a period of sixty (60) days. On the 60th day of the preventive suspension, the Secretary rendered a verdict, finding Maximino guilty, and ordered his immediate dismissal from the service.

Maximino appealed to the Civil Service Commission (CSC), which affirmed the Secretary's decision. Maximino then elevated the matter to the Court of Appeals (CA). The CA reversed the CSC decision, exonerating Maximino. The Secretary Of Education then petitions the Supreme Court (SC) for the review of the CA decision.

Is the Secretary of Education a proper party to seek the review of the CA decision exonerating Maximino? Reasons. (2010 Bar Question)

SUGGESTED ANSWER:

The Secretary of Education is not the proper party to seek a review of the decision of the Court of Appeals, because he is the one who heard the case and imposed the penalty. Being the disciplinary authority, the Secretary of Education should be impartial and should not actively participate in prosecuting Maximino (*National Appellate Board of the National Police Commission v. Mamauag*, 466 SCRA 624 [2005]).

B. Powers of administrative agencies

1. Quasi-legislative (rule-making) power

a. Kinds of administrative rules and regulations

b. Requisites for validity

2. Quasi-judicial (adjudicatory) power

a. Administrative due process

See: Ang Tibay v. Court of Industrial Relations, G.R. No. L-46496, February 27, 1940.

b. Administrative appeal and review

c. Administrative res judicata

3. Fact-finding, investigative, licensing, and rate-fixing powers

C. Doctrines of primary jurisdiction and exhaustion of administrative remedies

- 2) The Secretary of the Department of Environment and Natural Resources (DENR) issued Memorandum Circular No. 123-15 prescribing the administrative requirements for the conversion of a timber license agreement (TLA) into an Integrated Forestry Management Agreement (IFMA). ABC Corporation, a holder of a TLA which is about to expire, claims that the conditions for conversion imposed by the said circular are unreasonable and arbitrary and a patent nullity because it violates the non-impairment clause under the Bill of Rights of the 1987 Constitution. ABC Corporation goes to court seeking the nullification of the subject circular. The DENR moves to dismiss the case on the ground that ABC Corporation has failed to exhaust administrative remedies which is fatal to its cause of action. If you were the judge, will you grant the motion? Explain. (2015 Bar Question)

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]).

- 3) (A) Distinguish the doctrine of primary jurisdiction from the doctrine of exhaustion of administrative remedies. (2010 Bar Question)

SUGGESTED ANSWER:

(A) The doctrine of exhaustion of administrative remedies applies where a claim is cognizable in the first instance by an administrative agency alone. Judicial interference is withheld until the administrative process has been completed. On the other hand, the doctrine of primary Jurisdiction applies where a case is within the concurrent Jurisdiction of the court and an administrative agency but the determination of the case requires the technical expertise of the administrative agency (*Industrial Enterprises, Inc. vs. Court of Appeals*, 184 SCRA 426). In such a case, although the matter is within the jurisdiction of the court, it must yield to the Jurisdiction of the administrative case.

(B) Does the failure to exhaust administrative remedies before filing a case in court oust said court of jurisdiction to hear the case? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

(B) No, the failure to exhaust administrative remedies before filing a case in court does not oust the court of jurisdiction to hear the case. As held in *Rosario vs. Court of Appeals*. 211 SCRA 384, the failure to exhaust administrative remedies does not affect the jurisdiction of the court but results in the lack of a cause of action, because a condition precedent that must be satisfied before action can be filed was not fulfilled.

X. ELECTION LAW

A. Suffrage

1. Qualification and disqualification of voters
2. Registration and deactivation
3. Inclusion and exclusion proceedings
4. Local and overseas absentee voting
5. Detainee voting

B. Candidacy

1. Qualifications and disqualifications of candidates
2. Filing of certificates of candidacy
 - a. Effect of filing
 - b. Substitution and withdrawal of candidates

- 1) 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 Elections. 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 elections on the premise that he could not be considered as having served as Vice-Governor from 2004-2007 because he was not duly elected to the post, as he assumed office merely as a presumptive winner and that presumption was later overturned when the COMELEC decided with finality that he had lost in the May 2004 elections. What will be your advice? (2008 Bar Question)

SUGGESTED ANSWER:

(A) I will advise him that his second term should be counted as a full term served in contemplation of the three-term limit prescribed by Section 8, Article X of the Constitution. Since the election protest against him was decided after the term of the contested office had expired, it had no practical and legal use and value (*Ong v. Alegre*, 479 SCRA 473 [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 elections in case the COMELEC

disqualifies him and denies due course to or cancels his certificate of candidacy in view of a false material representation therein. What will be your advice? (2008 Bar Question)

SUGGESTED ANSWER:

(B) I shall advise Abdul that his wife cannot be nominated as substitute candidate for Vice-Governor of Tawi-Tawi. The denial of due course and cancellation of a certificate of candidacy is not one of the cases in which a candidate may be validly substituted. A cancelled certificate does not give rise to a valid candidacy. Under Section 77 of the Omnibus Election Code, a valid of candidacy is an indispensable requisite in case of substitution of a disqualified candidate (*Miranda v. Abaya*, 311 SCRA 617 [199]).

c. Nuisance candidates

d. Duties of the COMELEC

C. Remedies and jurisdiction

1. Petition to deny due course or cancel a certificate of candidacy

2. Petition for disqualification

3. Failure of election, call of special election

4. Pre-proclamation controversy

- 2) The 1st Legislative District of South Cotabato is composed of General Santos and three municipalities including Polomolok. During the canvassing proceedings before the District Board of Canvassers in connection with the 2007 congressional elections, candidate MP objected to the certificate of canvass for Polomolok on the ground that it was obviously manufactured, submitting as evidence the affidavit of a mayoralty candidate of Polomok. The certificate of canvass for General Santos was likewise objected to by MP on the basis of the confirmed report of the local NAMFREL that 10 election returns from non-existent precincts were included in the certificate. MP moved that the certificate of canvass for General Santos be corrected to exclude the results from the nonexistent precincts. The District Board of Canvassers denied both objections and ruled to include the certificate of canvass. May MP appeal the rulings to the COMELEC? Explain. (2008 Bar Question)

SUGGESTED ANSWER:

No, MP cannot appeal the rulings to the Commission on Elections. Under Section 15 of Republic Act No. 7166, as amended by Republic Act No. 9369, no pre-proclamation controversies regarding the appreciation of election returns and certificates of canvass maybe entertained in elections for members of the House of Representatives. The canvassing body may correct manifest errors in the certificate of canvass. His recourse is to file a regular election protest before the HRET (*Pimentel v. Commission on Elections*, 548 SCRA 169 [2008]).

5. Election protest

- 3) As counsel for the protestant, where will you file an election protest involving a contested elective position in: (2009 Bar Question)

- a. the barangay?
- b. the municipality?
- c. the province?
- d. the city?
- e. the House of Representatives?

SUGGESTED ANSWER:

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

Barangay - Metropolitan Trial Court, Municipal Circuit Trial Court, or Municipal Trial Court;

Municipality - Regional Trial Court;

Province - Commission on Elections;

City - Commission on Elections; and

Under Section 17, Article VI of the Constitution, an election protest involving the position of Member of the House of Representatives shall be filed In the House of Representatives Electoral Tribunal.

6. Quo warranto

- 4) (1) Gandang Bai filed her certificate of candidacy (COC) for municipal mayor stating that she is eligible to run for the said position. Pasyo Maagap, who also filed his COC for the same position, filed a petition to deny due course or cancel Bai's COC under Section 78 of the Omnibus Election Code for material misrepresentation as before Bai filed her COC, she had already been convicted of a crime involving moral turpitude. Hence, she is disqualified perpetually from holding any public office or from being elected to any public office. Before the election, the COMELEC cancelled Bai' s COC but her motion for reconsideration (MR) remained pending even after the election. Bai garnered the highest number of votes followed by Pasyo Maagap, who took his oath as Acting Mayor. Thereafter, the COMELEC denied Bai's MR and declared her disqualified for running for Mayor. P. Maagap asked the Department of Interior and Local Government Secretary to be allowed to take his oath as permanent municipal mayor. This request was opposed by Vice Mayor Umaasa, invoking the rule on succession to the permanent vacancy in the Mayor's office. Who between Pasyo Maagap and Vice Mayor Umaasa has the right to occupy the position of Mayor? Explain your answer. (2015 Bar Question)

SUGGESTED ANSWER:

(1) Pasyo Maagap would be entitled to occupy the position of Mayor upon the disqualification of Gandang Bai 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 not even have been a candidate in the first place. 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).

(2) How do you differentiate the petition filed under Section 68 from the petition filed under Section 78, both of the Omnibus Election Code? (2015 Bar Question)

SUGGESTED ANSWER:

A certificate of candidacy which is denied or cancelled under Section 78 would make said certificate of candidacy void *ab initio* (which would preclude the application of the rules on succession), unlike in the case

of disqualification under Section 68, which would give rise to the de jure officership of the disqualified candidate up to his point of disqualification.

Also, Under Section 68 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, while under Section 78 a certificate of candidacy may be denied due course or cancelled if found to be containing material representations.

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 prior to the last day for filing of certificates of candidacy, 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.

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

SUGGESTED 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 has been proclaimed and had taken her oath of office, she had not yet assumed office. The term of office of the House of Representatives begins at noon of the thirtieth day of June next following their election (*Ongsiako-Reyes v. COMELEC*).

XI. LOCAL GOVERNMENTS

A. Principles of local autonomy

B. Autonomous regions and their relation to the national government

- 1) Define/explain the following:

b. De facto municipal corporation. (2010 Bar Question)

SUGGESTED ANSWER:

A de facto municipal corporation is one so defectively created as not to be a de jure corporation but is nevertheless the result of a bona fide attempt to incorporate under existing statutory authority coupled with the exercise of corporate powers, and recognized by the courts as such on the ground of public policy in all proceedings except a direct attack by the state questioning its corporate existence. (Angeles, Restatement of the Law on Local Governments, p. 23.)

2) Define/explain the following:**c. Municipal corporation by estoppel. (2010 Bar Question)****SUGGESTED ANSWER:**

A municipal corporation by estoppel 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.)

C. Local government units**1. Powers****a. Police power (general welfare clause)****3) TRUE OR FALSE.**

Re-classification of land by a local government unit may be done through a resolution. (2009 Bar Question)

SUGGESTED ANSWER:

The statement is false. Under Section 2 of the Local Government Code, the enactment of an ordinance is required. (*Department of Agrarian Reform v. Polo Coconut Plantation Company, Inc.*, 564 SCRA 78 [2008].)

b. Eminent domain

- 4) 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 therefore. Upon review, the Sangguniang Panlalawigan of Leyte disapproved the ordinance because the municipality has an existing freedom park which, though smaller in size, is still suitable for the purpose, and to pursue expropriation would be needless expenditure of the people's money. Is the disapproval of the ordinance correct? Explain your answer. (2009 Bar Question)**

SUGGESTED ANSWER:

The disapproval of the ordinance is not correct. Under Section 56(c) (Local Government Code), the Sangguniang Panlalawigan of Leyte can declare the ordinance invalid only if it is beyond the power of the Sangguniang Bayan of Bulalakaw. In the instant case, the ordinance is well within the power of the Sangguniang Bayan. (*Moday v. Court of Appeals*, 268 SCRA 586 [1997]).

5) TRUE OR FALSE.

A valid and definite offer to buy a property is a prerequisite to expropriation initiated by a local government unit. (2009 Bar Question)

SUGGESTED ANSWER:

The statement that a valid and definite offer to buy a property' is a pre-requirement to expropriation initiated by a local government is true. (Section 19, Local Government Code.)

- 6) 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 the properties within a targeted badly blighted area in San Nicolas, Manila, except a well maintained drug and convenience store that poses no blight or health problem itself. Thereafter, NHA sold all the properties it has thus far acquired to a private realty company for redevelopment. Thus, the NHA initiated expropriation proceedings against the store owner who protested that his property could not be taken because it is not residential or slum housing. He also contended that his property is being condemned for a private purpose, not a public one, noting the NHA's sale of the entire area except his property to a private party. If you were the judge, how would you decide the case? (2008 Bar Question)**

SUGGESTED ANSWER:

If I were the judge, I would order the expropriation of the property. The expropriation of the property is valid being a lawful exercise of the State's power of eminent domain, exercised through the NHA by Congressional fiat. The expropriation of the private land for slum clearance urban development is for a public purpose even if the developed area is later sold to private homeowners, commercial firms, and other private parties (*Heirs of Juancho Ardon v. Reyes*, 125 SCRA 220 [1983]). It is function of Congress to decide which type of taking is for public use and that the agency authorized to do the taking may do so to the full extent of its statutory authority.

c. Taxing power**d. Legislative power****1. Requisites for valid ordinance****2. Local initiative and referendum**

- 7) A law converted the component city of Malumanay, Laguna into a highly urbanized city. The Local Government Code (LGC) provides that the conversion "shall take effect only after it is approved by the majority of votes cast in a plebiscite to be held in the political units directly affected."**

Before the COMELEC, Mayor Xenon of Malumanay City insists that only the registered voters of the city should vote in the plebiscite because the city is the only political unit directly affected by the conversion. Governor Yuri asserts that all the registered voters of the entire province of Laguna should participate in the plebiscite, because when the LGC speaks of the "qualified voters therein," it means all the voters of all the political units affected by such conversion, and that includes all the voters of the entire province. He argues that the income, population and area of Laguna will reduce. Who, between Mayor Xenon and Governor Yuri, is correct? Explain your answer. (2017 Bar Question)

SUGGESTED ANSWER:

Governor Yuri is correct. All the registered voters of the Province of Laguna should be included in the plebiscite as the conversion of the City of Malumanay into a highly urbanized city will adversely affect the Province of Laguna and its residents. Not only will it reduce the province's territory, once the City of Malumanay becomes a highly urbanized city, the Province will no longer share in the taxes collected by the City of Malumanay. Thus, to limit the plebiscite to the voters of the City of Malumanay would nullify the principle of majority rule (*Umali v. Commission on Elections*, G.R. No. 203974. April 22, 2014, 723 SCRA 170).

e. Ultra vires acts**2. Liability****3. Settlement of boundary disputes****8) TRUE OR FALSE.**

Boundary disputes between and among municipalities in the same province may be filed immediately with the Regional Trial Court. (2009 Bar Question)

SUGGESTED ANSWER:

The statement that boundary disputes between and among municipalities in the same province may be ruled immediately with the Regional Trial Court is false. Under Section 118 of the Local Government Code, they should be referred for settlement to the sangguniang panlalawigan. (*Municipality of Sta. Fe v. Municipality of Artao*, 533 SCRA 586 [2007].)

4. Vacancies and succession

- 9) 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 ViceGovernor. By the elevation of Benito to the office of Vice-Governor, a vacancy in the Sangguniang Panlalawigan was created. How should the vacancy be filled? (2008 Bar Question)

SUGGESTED ANSWER:

In accordance with Section 45 of the Local Government Code, the vacancy should be filled by appointment by the President of the nominee of the political party of Benito since his elevation to the position of Vice-Governor created the last vacancy in the Sangguniang Panlalawigan. If Benito does not belong to any political party, a qualified person recommended by the Sangguniang Panlalawigan should be appointed (*Navarro v. Court of Appeals*, 355 SCRA 672 [2001]).

5. Recall

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

Who shall succeed Governor Diy in his office as Governor? (2009 Bar Question)

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.)

11) Can Governor Diy run again as governor in the next election? (2009 Bar Question)**SUGGESTED ANSWER:**

Governor Diy can run again as governor. He did not fully serve his third term, because he lost in the recall election. His third term should not be included in computing the three-term limit. (*Lonzanida v. Commission on Elections*, 311 SCRA 602 [1999].)

12) Can Governor Diy refuse to run in the recall election and instead resign from his position as governor? (2009 Bar Question)**SUGGESTED ANSWER:**

Governor Diy cannot refuse to run in the recall election. He is automatically considered as duly registered candidate (Section 71, Local Government Code). He is not allowed to resign. (Section 72, Local Government Code.)

6. Term limits**13) Sec. 8, Article X of the 1987 Constitution provides that no elective official shall serve for more than three (3) consecutive terms. Rule and explain briefly the reason if the official is prohibited to run for another term in each of the following situations:**

- a. if the official is a Vice-Mayor who assumed the position of Mayor for the unexpired term under the Local Government Code;
- b. if the official has served for three consecutive terms and did not seek a 4th term but who won in a recall election;
- c. if the position of Mayor of a town is abolished due to conversion of the town to a city;
- d. if the official is preventively suspended during his term but was exonerated; and
- e. if the official proclaimed as winner and assumes office but loses in an election protest. (2016 Bar Question)

SUGGESTED ANSWER:

- a. In computing the three term limit, only the term for which the local official was elected should be considered. The second sentence of Section 8, Article X of the Constitution states that the voluntary renunciation shall not be considered as interruption of the continuity of the service for the full term for which he was elected (*Borja v. Commission on Elections*, G.R. No. 133495, September 3, 1998, 295 SCRA 157).
- b. A mayor who served three consecutive terms and did not seek a fourth term but ran and won in the recall election can serve, because the recall election was not an immediate reelection (*Socrates v. Commission on Elections*, G.R. Nos. 154512, 154683, 155083-84, November 12, 2002, 391 SCRA 547).
- c. If a municipality in which a mayor served for three consecutive terms was converted to a city, he cannot run as city mayor in the first election. For purposes of applying the three term limit, the office of the municipal mayor should not be considered as different from that of the city mayor (*Latasa v. Commission on Election*, G.R. No. 154829, December 10, 2003, 417 SCRA 601).

- d. The temporary inability of an elective official to exercise his functions due to preventive suspension is not an interruption of his term, because it did not involve loss of title to the office (*Aldovino, Jr. V. Commission on Elections*, G.R. No. 184836, December 23, 2009, 609 SCRA 234).
- e. If a candidate was proclaimed for three consecutive terms but did not serve it in full because of loss in an election protest he is not disqualified (*Lonzanida v. Commission on Elections*, G.R. No. 135150, July 28, 1999, 311 SCRA 602).

XII. NATIONAL ECONOMY AND PATRIMONY

A. Regalian doctrine

- 1) A bank acquired a large tract of land as the highest bidder in the foreclosure sale of the mortgaged assets of its borrower. It appears that the land has been originally registered under the Torrens system in 1922 pursuant to the provisions of the Philippine Bill of 1902, the organic act of the Philippine Islands as a colony of the USA. Sec. 21 of the Philippine Bill of 1902 provided that "all valuable mineral deposits in public lands in the Philippine Islands, both surveyed and unsurveyed, are hereby declared to be free and open to exploration, occupation and purchase, and the land in which they are found to occupation and purchase, by citizens of the United States, or of said Islands." Sec. 27 of the law declared that a holder of the mineral claim so located was entitled to all the minerals that lie within his claim, but he could not mine outside the boundary lines of his claim.

The 1935 Constitution expressly prohibited the alienation of natural resources except agricultural lands. Sec. 2, Art. XII of the 1987 Constitution contains a similar prohibition, and proclaims that all lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. This provision enunciates the Regalian Doctrine.

May the Government, on the basis of the Regalian Doctrine enunciated in the constitutional provisions, deny the bank its right as owner to the mineral resources underneath the surface of its property as recognized under the Philippine Bill of 1902? Explain your answer. (2017 Bar Question)

SUGGESTED ANSWER:

The government cannot deny the bank its right as owner of the mineral resources underneath the surface of the property. The mining rights acquired under Philippine Bill of 1902 before the effectivity of the 1935 Constitution were vested rights that cannot be impaired by the Government [*Yinbu Bicol Mining Corporation v. Trans-Asia Oil and Energy Development Corporation*, 745 SCRA 154 (2015)].

B. Nationalist and citizenship requirement provisions

- 2) Sec. 11, Art. XII of the Constitution, provides: "No franchise, certificate or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens x x x." Does the term "capital" mentioned in the cited section refer to the total common shares only, or to the total outstanding capital stock, or to both or "separately to each class of shares, whether common, preferred non-voting, preferred voting or any class of shares?" Explain your answer. (2016 Bar Question)

SUGGESTED ANSWER:

The term “capital” mentioned in Section 11, Article XII of the Constitution refers to the total outstanding capital stock of public utilities. The requirement that at least sixty percent of the capital must be owned by Filipino citizens applies separately to each class of shares, whether common, preferred, non-voting, preferred voting, or any class of shares. Mere legal title is not enough. Full beneficial ownership of sixty percent of the outstanding capital stock is required (*Gamboa v. Teves*, G.R. 176579, June 28, 2011, 652 SCRA 690; *also see Roy v. Herbosa*, G.R. No. 207246, November 22, 2016).

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

An educational institution 100% foreign-owned may be validly established in the Philippines. (2009 Bar Question)

SUGGESTED ANSWER:

True. An educational institution which is 100% foreign-owned maybe established in the Philippines if it is established by religious groups and mission boards (Section 4[2], Article XIV of the Constitution).

C.Exploration, development, and utilization of natural resources

D. Franchises, authority, and certificates for public utilities

- 4) Pursuant to its mandate to manage the orderly sale, disposition and privatization of the National Power Corporation's (NPC) generation assets, real estate and other disposable assets, the Power Sector Assets and Liabilities Management (PSALM) started the bidding process for the privatization of Angat Hydro Electric Power Plant (AHEPP). After evaluation of the bids, K-Pop Energy Corporation, a South Korean Company, was the highest bidder. Consequently, a notice of award was issued to K-Pop. The Citizens' Party questioned the sale arguing that it violates the constitutional provisions on the appropriation and utilization of a natural resource which should be limited to Filipino citizens and corporations which are at least 60% Filipino-owned. The PSALM countered that only the hydroelectric facility is being sold and not the Angat Dam; and that the utilization of water by a hydroelectric power plant does not constitute appropriation of water from its natural source of water that enters the intake gate of the power plant which is an artificial structure. Whose claim is correct? Explain. (2015 Bar Question)

SUGGESTED ANSWER:

The PSALM is correct. Foreign ownership of a hydroelectric power plant is not prohibited by the Constitution. Angat Dam traps the natural flow of water from the river, which 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]).

- 5) **BD Telecommunications, Inc. (BDTI)**, a Filipino-owned corporation, sold its 1,000 common shares of stock in the **Philippine Telecommunications Company (PTC)**, a public utility, to **Australian Telecommunications (AT)**, another stockholder of the PTC which also owns 1,000 common shares. A Filipino stockholder of PTC questions the sale on the ground that it will

increase the common shares of AT, a foreign company, to more than 40% of the capital (stock) of PTC in violation of the 40% limitation of foreign ownership of a public utility.

AT argues that the sale does not violate the 60-40 ownership requirement in favor of Filipino citizens decreed in Section II, Article XII of the 1987 Constitution because Filipinos still own 70% of the capital of the PTC. AT points to the fact that it owns only 2,000 common voting shares and 1,000 non-voting preferred shares while Filipino stockholders own 1,000 common shares and 6,000 preferred shares, therefore, Filipino stockholders still own a majority of the outstanding capital stock of the corporation, and both classes of shares have a par value of Php 20.00 per share. Decide. (2015 Bar Question)

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).

(Note: This question should have been asked in Mercantile Law. I respectfully ask that answers featuring the foregoing discussion should be accepted as correct).

- 6) **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? (2007 Bar Question)**

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 advertisements (*Metromedia, Inc. v. San Diego*, 453 U.S. 490 [1981]). The mere fact that an advertisement is offensive cannot justify its suppression (*Carey v. Population Services International*, 431 U.S. 678 [1977]). The blocking of advertising funds is a threat intended to prevent the exercise of the freedom of speech of Destilleria Felipe Segundo through the fear of consequences. Such a threat qualifies as prior restraint.

E.Acquisition, ownership and transfer of public and private lands

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

Aliens are absolutely prohibited from owning private lands in the Philippines. (2009 Bar Question)

SUGGESTED ANSWER:

False. Under Section 7, Article XII of the Constitution, aliens may acquire private land by hereditary succession. Under Section 8, Article XII of the Constitution, natural-born citizens of the Philippines who lost their Filipino citizenship may be transferees of private land.

F. Practice of professions

G.Organization and regulation of corporations, private and public

H. Monopolies, restraint of trade, and unfair competition

XIII. SOCIAL JUSTICE AND HUMAN RIGHTS

A. Concept

B.Economic, social, and cultural rights

C.Commission on Human Rights

XIV. EDUCATION, SCIENCE, TECHNOLOGY, ARTS, CULTURE AND SPORTS

A.Academic freedom

- 1) Bobby, an incoming third year college student, was denied admission by his university, a premiere educational institution in Manila, after he failed in three (3) major subjects in his sophomore year. The denial of admission was based on the university's rules and admission policies. Unable to cope with the depression that his non-admission triggered, Bobby committed suicide. His family sued the school for damages, citing the school's grossly unreasonable rules that resulted in the denial of admission. They argued that these rules violated Bobby's human rights and the priority consideration that the Constitution gives to the education of the youth.

You are counsel for the university. Explain your arguments in support of the university's case. (2013 Bar Question)

SUGGESTED ANSWER:

I shall argue that under Article XIV, Section 5(2) of the 1987 Constitution, the educational institution enjoys academic freedom. Academic freedom includes its rights to prescribe academic standards, policies and qualifications for the admission of a student (*University of San Agustin, Inc. v. Court of Appeals*, G.R. No. 100588, March 7, 1994).

XV. THE FAMILY

A. Rights

XVI. AMENDMENTS OR REVISIONS OF THE CONSTITUTION

A. Procedure to amend or revise the Constitution

- 2) **Priority thrust of the Administration is the change of the form of government from unitary to federal. The change can be effected only through constitutional amendment or revision.**

(A) What are the methods of amending the Constitution? Explain briefly each method. (2017 Bar Question)

SUGGESTED ANSWER:

(A) The Constitution may be amended or revised by the vote of at least three-fourths of all the Members of Congress, acting as a Constituent Assembly, by way of a proposal (Article XVII, Sec. 1(1) of the 1987 Constitution).

First, by Constitutional Convention, where Article XVII, Section 3 of the Constitution states, "The Congress may, by a vote of two-thirds of all its Members, call a constitutional convention, or by a majority vote of all its Members, submit to the electorate the question of calling such a convention." Both houses shall vote separately, and the members includes all those within the jurisdiction of the Congress.

Second, by Constitutional Assembly, composed of all members of the bicameral Philippine Congress (Senate and the House of Representatives). It is convened by Congress to propose amendments to the 1987 constitution. Under Article XVII of the Constitution of the Philippines, amendments pass upon a vote of three fourths of all members of Congress, but it is not clear if the Congress should vote as a single body or as separate houses.

Third, amendments to the Constitution may likewise be directly proposed by the people through initiative upon a petition of at least twelve per centum of the total number of registered voters, of which every legislative district must be represented by at least three per centum of the registered votes therein. No amendment under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter. However, the people cannot propose revisions and may propose only amendments. The petition must be signed by the required number of people, and the full text of the proposed amendments must be embodied in the petition (*Lambino v. COMELEC*, 503 SCRA 1650 (2006)).

(B) Cite at least three provisions of the Constitution that need to be amended or revised to effect the change from unitary to federal, and briefly explain why? (2017 Bar Question)

SUGGESTED ANSWER:

Examples of provisions that need to be amended or revised to effect the change from unitary to federal:

1. Article X, Sec. 3 must be omitted because the legislature will no longer define the scope of the powers of the government.
2. Article X, Sec. 4 will have to be omitted. The President will no longer have the power of supervision over local governments.
3. Article X, Sec. 5 must be omitted. Congress will no longer be allowed to impose limitations on the power of taxation of local governments.

[Note: The panel wishes to recommend liberality in favor of the examinee for this question, as answers can be gleaned from many articles and provisions of the Constitution, among them Articles VI, VII, and X].

- 3) **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 inspite of the opposition of the majority of the members of the Senate. When the votes were counted, 275 members of the House of Representatives approved the proposed amendments. Only 10 Senators supported such proposals. The proponents now claim that the proposals were validly made, since more than the required three-fourths vote of Congress has been obtained. The 14 Senators who voted against the proposals claim that the proposals needed not three-fourths vote of the entire Congress but each house. Since the required number of votes in the Senate was not obtained, then there could be no valid proposals, so argued the Senators. Were the proposals validly adopted by Congress? (2014 Bar Question)**

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 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 consists of two (2) houses, the determination of one house is to be submitted to the separate determination of the other house. (Miller v. Mardo, G.R. L-15138, July 31, 1968).

XVII. PUBLIC INTERNATIONAL LAW

A. Concepts

1. Obligations *erga omnes*

2. Jus cogens

- 1) May a treaty violate international law? If your answer is in the affirmative, explain when such may happen. If your answer is in the negative, explain why. (2008 Bar Question)

SUGGESTED ANSWER:

Yes, a treaty may violate international law (understood as general international law) if it conflicts with a peremptory norm or jus cogens of international law. Jus cogens norm is defined as a norm of general international law accepted and recognized by the international community of states as a whole “as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”

Article 53 of the Vienna Convention on the Law of Treaties (1969) provides that (a) treaty is void if at the time of its conclusion, it conflicts with jus cogens norm.

Moreover, under Article 54 of this Convention if a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

3. Ex aequo et bono

- 2) 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? (2008 Bar Question)

SUGGESTED ANSWER:

Opinio juris sive necessitates or simply *opinio juris* means that as an element in the formation of customary norm in international law, it is required that States in their conduct amounting to general practice, must act out of a sense of legal duty and not only by the motivation of courtesy, convenience or tradition. As stated by the Philippine Supreme Court in *Mijares v. Ranada* (455 SCRA 397 [2005]), “Not only must the acts amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it.”

B. Relationship between international and national law

- 3) 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) XXX

(B) Is the Philippines in breach of any obligation under international law? Explain. (2007 Bar Question)

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 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 right to life of every child. While Article 24 (2)(f) of the Convention of the Rights of the Child requires the 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 require 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. Furthermore, it is also consistent with Article II, Sec. 12 of the 1987 Constitution.

C. Sources of obligations in international law

4) Under international law, differentiate “hard law” from “soft law”. (2009 Bar Question)

SUGGESTED ANSWER:

“Hard law” is used to designate a norm or rule of conduct accepted and recognized by the international community of states as a whole, as a source of law binding on them. It produces obligations which when breached gives rise to international responsibility and, consequently, to reparation. On the other hand, “soft law” has no binding force and pertains to a statement or declaration of principles with moral force on the conduct of states but no normative character and without intent to create enforceable obligations.

D. Subjects

1. States

2. International organizations

5) What is the concept of association under international law? (2009 Bar Question)

SUGGESTED ANSWER:

An association is formed when two states of unequal power voluntarily establish durable links. The associate delegates certain responsibilities to the other, the principal, while maintaining its status as a state. The associated state arrangement has usually been used as a transitional device of former colonies on their way to full independence. (*Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, 568 SCRA 402 [2008].)

Association, under international law, is a formal arrangement between a non-self-governing territory and an independent State whereby such territory becomes an associated State with internal self-government, but the independent state is responsible for foreign relations and defense. For an association to be lawful, it must comply with the general conditions prescribed in UN General Assembly Resolution 1541 (XV) of 14 December 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 is subject to UN approval.

3. Individuals

E. Jurisdiction of states

1. Basis of jurisdiction

- a. Territoriality principle
- b. Nationality principle and statelessness
- c. Protective principle
- d. Universality principle
- e. Passive personality principle

2. Exemptions from jurisdiction

a. Act of State doctrine

- check Question #3 under this Section.

- 6) Extradition is the process pursuant to a treaty between two State parties for the surrender by the requested State to the custody of the requesting State of a fugitive criminal residing in the former. However, extradition depends on the application of two principles - the principle of specialty and the dual criminality principle. Explain these principles. (2017 Bar Question)

SUGGESTED ANSWER:

The principle of specialty means that the State requesting extradition from another State is required to specify the crime as provided in the extradition treaty for which the fugitive or the accused is to be extradited and to be tried only for the offense specified in the extradition treaty (Magallona, Fundamentals of Public International Law, p. 572).

Upon the other hand, the principle of dual criminality requires that the crime for which extradition is sought must be recognized as a crime by both the requiring State and the State to which the fugitives or the accused has fled (Magallona, Fundamentals of Public International Law, p. 578).

- 7) The President signs an agreement with his counterpart in another country involving reciprocity in the treatment of each country's nationals residing in the other's territory. However, he does not submit the agreement to the Senate for concurrence.

Sec. 21, Art. VII of the Constitution provides that no treaty or international agreement shall be valid and effective without such concurrence.

Is the agreement signed by the President effective despite the lack of Senate concurrence? Explain your answer. (2017 Bar Question)

SUGGESTED ANSWER:

The agreement signed by the President is effective even if the Senate did not concur in it. The agreement is in the nature of an executive agreement and need not be submitted to the Senate for concurrence in its ratification [*Saguisag v. Ochoa, Jr.*, 798 SCRA 292 (2016)].

b. International organizations and its officers

- 8) Ambassador Robert of State Alpha committed a very serious crime while he headed his foreign mission in the Philippines. Is he subject to arrest by Philippine authorities? Explain your answer. (2017 Bar Question)**

SUGGESTED ANSWER:

In accordance with the Convention on the Protection and Punishment of Crimes Against International Protected Persons Including Diplomatic Agents, the Philippines has the obligation to either extradite or prosecute Ambassador Robert of State Alpha (Magallona, Fundamentals of Public International Law, p. 68). This is in relation to Article VIII, Sec. 5(1) of the Constitution which states that the Supreme Court has jurisdiction over cases affecting ambassadors, other public ministers and consuls.

- 9) 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? (2013 Bar Question)

SUGGESTED ANSWER:

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

- 10) Ambassador Gaylor is State Juvenus' diplomatic representative to State Hinterlands. During one of his vacations, Ambassador Gaylor decided to experience for himself the sights and sounds of State Paradise, a country known for its beauty and other attractions. While in State Paradise, Ambassador Gaylor was caught in the company of children under suspicious circumstances. He was arrested for violation of the strict anti-pedophilia statute of State Paradise. He claims that he**

is immune from arrest and incarceration by virtue of his diplomatic immunity. Does the claim of Ambassador Gaylor hold water? (2014 Bar Question)

SUGGESTED ANSWER:

Ambassador Gaylor cannot invoke his diplomatic immunity. In accordance with Paragraph 1, Article 31 of Vienna Convention of Diplomatic Relations, since State Paradise is not his receiving state, he does not enjoy diplomatic immunity within its territory. Under Paragraph 1, Article 40 of the Vienna Convention of Diplomatic Relations, he cannot be accorded diplomatic immunity in State Paradise, because he is not passing through it to take up or return to his post or to return to *State Juvenus*.

- 11) The President alone without the concurrence of the Senate abrogated a treaty. Assume that the other country party to the treaty is agreeable to the abrogation provided it complies with the Philippine Constitution. If a case involving the validity of the treaty abrogation is brought to the Supreme Court, how should it be resolved? (2009 Bar Question)**

SUGGESTED ANSWER:

The Supreme Court should dismiss the case. The jurisdiction of the Supreme Court (or of all lower courts) over a treaty is only with respect to questions of its constitutionality or validity (See Art. VIII, sec. 5 (2) (a) of the 1987 Constitution). In other words, the question should involve the constitutionality of a treaty or its validity in relation to a statute (*Gonzales v. Hanchanova*, 9 SCRA 230 [1963]). It does not pertain to the termination (or abrogation) of a treaty. There being no express constitutional provision regulating the termination (or abrogation) of treaties, it is presumed that the power of the President over treaty agreements and over foreign relations includes the authority to “abrogate” (or more properly referred as “terminate”) treaties. The termination of the treaty by the President without the concurrence of the Senate is not subject to constitutional attack, there being no Senate authority to that effect.

ALTERNATIVE ANSWER:

The Supreme Court should dismiss the case. The case involved is a political question, because it involves the authority of the President in the conduct of foreign relations and the extent to which the Senate is authorized to negate the action of the President. Since Section 21, Article VII of the Constitution is silent as to the participation of the Senate in the abrogation of a treaty, the question may be answered in different ways and should be decided by political standards rather than judicially manageable standards (*Goldwater vs. Carter*, 444 U.S. 996 [1979]).

ALTERNATIVE ANSWER:

While it is the President who negotiates and ratifies treaties and other international agreements, it must be underscored that when the same has been concurred by the qualified majority of the Senate, they become part of the law of the land. Accordingly, it is submitted that the President alone cannot unilaterally abrogate a treaty without Congressional authorization, in the same way that she would have no authority to repeal a law.

Further, even as what the Constitution requires in the concurrence of the Senate in treaties and international agreements entered into, not the abrogation of the same, the same should not also be construed as empowering the President to simply render nugatory a treaty that has already acquired the imprimatur of the Senate (See *Goldwater v. Carter*, 444 U.S. 996 [1979], cited in Be mas, An Introduction to Public International Law [2002] at 53).

F. General principles of treaty law

- 12) Compare and contrast the jurisdiction of the International Criminal Court and International Court of Justice. (2009 Bar Question)

SUGGESTED ANSWER:

The jurisdiction of the International Court of Justice pertains to international responsibility in the concept of civil liability, while that of the International Criminal Court pertains to criminal liability. While States are the subject of law in international responsibility under the jurisdiction of the International Court of Justice, the criminal liability within the jurisdiction of the International Criminal Court pertains to individual natural person. (Article 34(i) of the Statute of the International Court of Justice; Articles 25 and 27 of the Statute of the International Criminal Court.)

G. Doctrine of state responsibility

- 13) 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? (2009 Bar Question)

SUGGESTED ANSWER:

(A) There is no state responsibility on the part of Thailand. The wrongful act in question is an act of private individuals and not of an organ of the government or a state official. Hence, it is not attributable to Thailand as its wrongful act for the purpose of state responsibility.

(B) What is the appropriate remedy available to the victim's family under international law? (2009 Bar Question)

SUGGESTED ANSWER:

(B) The appropriate remedy available to the family of A is to seek diplomatic protection' from Great Britain to press a claim for reparation. [Brownlie, Principles of Public International Law, 7th .ed., pp. 460 and 477-478; Belgium v. Spain (Barcelona Traction, Light and Power Company Case)]. However, in order that the claim will be allowable under customary international law, the family of A must first exhaust the legal remedies available in Thailand [Brownlie, Principles of Public International Law, 7th ed., p.492].

H. Refugees

I. Extradition

J. Basic principles of International Human Rights Law

K. Basic principles of International Humanitarian Law

- 14) A terrorist group called the Emerald Brigade is based in the State of Asyaland. The government of Asyaland does not support the terrorist group, but being a poor country, is powerless to stop it. The Emerald Brigade launched an attack on the Philippines, firing two missiles that killed thousands of Filipinos. It then warned that more attacks were forthcoming. Through diplomatic channels, the Philippines demanded that Asyaland stop the Emerald Brigade; otherwise, it will do whatever is necessary to defend itself. Receiving reliable intelligence reports of another imminent attack by the Emerald Brigade, and it appearing that Asyaland was incapable of preventing the assault, the Philippines sent a crack commando team to Asyaland. The team stayed only for a few hours in Asyaland, succeeded in killing the leaders and most of the members of the Emerald Brigade, then immediately returned to the Philippines.

(A) Was the Philippine action justified under the international law principle of self-defense? Explain your answer. (2009 Bar Question)

SUGGESTED ANSWER:

(A) The Philippine action cannot be justified as self- defense. Self-defense is an act of State by reason of an armed attack by another State. The acts of terrorism in this case were acts of a private group and cannot be attributed to Asyaland, which does not support the Emerald Brigade. Thus, 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.

(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. (2009 Bar Question)

SUGGESTED ANSWER:

(B) The contention of Asyaland is correct. The Philippines violated Article 2(4) of the Charter of the United Nations, which prohibits States from the threat or use of force against the territorial integrity of any State.

(C) Assume that the commando team captured a member of the Emerald Brigade and brought him back to the Philippines. The Philippine Government insists that a special international tribunal should try the terrorist. On the other hand, the terrorist argues that terrorism is not an international crime and, therefore, the municipal laws of the Philippines, which recognize access of the accused to constitutional rights, should apply. Decide with reasons. (2009 Bar Question)

SUGGESTED ANSWER:

(C) 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.

- 15) The dictatorial regime of President A of the Republic of Gordon was toppled by a combined force led by Gen. Abe, former royal guards and the secessionist Gordon People’s Army. The new government constituted a Truth and Reconciliation Commission to look into the serious crimes committed under President A’s regime. After the hearings, the Commission recommended that an amnesty law be passed to cover even those involved in mass killings of members of indigenous

groups who opposed President A. International human rights groups argued that the proposed amnesty law is contrary to international law. Decide with reasons. (2009 Bar Question)

SUGGESTED ANSWER:

The proposed amnesty law is contrary to international law. The mass killings of members of indigenous groups constitute genocide under Article II(a), Convention for the Prevention and Punishment of the Crime of Genocide. As such, the proposed amnesty law is against international law because it is incompatible with, or in violation of the international obligation under Article V of this Convention that "Persons committing genocide... shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals."

L. Law of the sea

1. Baselines

2. Archipelagic states

3. Internal waters

4. Territorial sea

5. Contiguous zone

6. Exclusive economic zone

7. Continental shelf and extended continental shelf

8. International Tribunal for the Law of the Sea

- 16) Congress passed Republic Act No. 7711 to comply with the United Nations Convention on the Law of the Sea.

In a petition filed with the Supreme Court, Anak Ti Ilocos, an association of Ilocano professionals, argued that Republic Act No. 7711 discarded the definition of the Philippine territory under the Treaty of Paris and in related treaties; excluded the Kalayaan Islands and the Scarborough Shoals from the Philippine Archipelagic baselines; and converted internal waters into archipelagic waters. Is the petition meritorious? (2013 Bar Question)

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 maritime zones, contiguous zones, exclusive economic zones, and continental shelves which it delimits. The Kalayaan Islands and the Scarborough Shoals are located at an appreciable distance from the nearest shoreline of the Philippine archipelago. A straight baseline loped around them from the nearest baseline will violate Article 47(3) and Article 47(2) of the United Nations Convention on the Law of the Sea III. Whether the bodies of water lying landward of the baselines of the Philippines are internal waters or

archipelagic waters, the Philippines retains jurisdiction over them (*Magallona v. Ermita*, G.R. No. 187167, July 16, 2011).

M. Basic principles of International Environmental Law

FREQUENTLY ASKED TOPICS (2007 - 2017)

TOPIC				No. of Times Asked
EXECUTIVE DEPARTMENT	Powers of the President	Executive and administrative powers in general		6
LEGISLATIVE DEPARTMENT	Legislative Power	Principle of non-delegability; exceptions		5
BILL OF RIGHTS	Searches and seizures	Warrantless searches and seizures		5
BILL OF RIGHTS	Rights of the Accused			5
PRELIMINARY PROVISIONS AND BASIC CONCEPTS	National territory			4
PRELIMINARY PROVISIONS AND BASIC CONCEPTS	State immunity			4
LEGISLATIVE DEPARTMENT	Privileges, inhibitions, and disqualifications			4
LEGISLATIVE DEPARTMENT	Legislative inquiries and oversight functions			4
LEGISLATIVE DEPARTMENT	Initiative and referendum			4
PUBLIC INTERNATIONAL LAW	Jurisdiction of states	Exemptions from jurisdiction	International organizations and its officers	4
PRELIMINARY PROVISIONS AND BASIC CONCEPTS	Declaration of principles and State policies			3
PRELIMINARY PROVISIONS AND BASIC CONCEPTS	Separation of powers			3
LEGISLATIVE DEPARTMENT	Legislative Power	Scope and limitations		3
LEGISLATIVE DEPARTMENT	House of Congress; composition and qualification of members	House of Representatives	Party-list system	3
LEGISLATIVE DEPARTMENT	Appropriation and re-alignment			3
EXECUTIVE DEPARTMENT	Powers of the President	Power of control and supervision	Executive departments and officers	3
JUCIAL DEPARTMENT	Workings of the Supreme Court	Procedural rule-making		3

FREQUENTLY ASKED TOPICS (2007 - 2017)

BILL OF RIGHTS	Rights to life, liberty, and property	Void-for-vagueness doctrine		3
BILL OF RIGHTS	Freedom of speech and expression	Prior restraint and subsequent punishment		3
BILL OF RIGHTS	Custodial investigation rights			3
BILL OF RIGHTS	Right against self-incrimination			3
BILL OF RIGHTS	Writs of <i>habeas corpus</i> , <i>kalikasan</i> , <i>habeas data</i> , and <i>amparo</i>			3
LAW ON PUBLIC OFFICERS	Termination of official relation			3
LOCAL GOVERNMENTS	Local government units	Powers	Eminent domain	3
NATIONAL ECONOMY AND PATRIMONY	Franchises, authority, and certificates for public utilities			3
PUBLIC INTERNATIONAL LAW	Jurisdiction of states	Exemptions from jurisdiction	Act of State doctrine	3
LEGISLATIVE DEPARTMENT	Power of impeachment			2
LEGISLATIVE DEPARTMENT	Electoral Tribunals			2
EXECUTIVE DEPARTMENT	Privileges, inhibitions, and disqualifications			2
EXECUTIVE DEPARTMENT	Powers of the President	Power of appointment	Power of removal	2
EXECUTIVE DEPARTMENT	Powers of the President	Executive clemency		2
EXECUTIVE DEPARTMENT	Powers of the President	Powers pertinent to foreign relations		2
JUCIAL DEPARTMENT	Judicial power			2
JUCIAL DEPARTMENT	Judicial review	Requisites		2
JUCIAL DEPARTMENT	Qualifications of members of the Judiciary			2
CONSTITUTIONAL COMMISSIONS	Powers and functions of the CSC, COMELEC, and COA			2
BILL OF RIGHTS	Fundamental powers of the State	Police power		2
BILL OF RIGHTS	Freedom of religion	Benevolent neutrality and conscientious objectors		2

FREQUENTLY ASKED TOPICS (2007 - 2017)

BILL OF RIGHTS	Eminent domain	Just compensation		2
CITIZENSHIP	Dual citizenship and dual allegiance			2
LAW ON PUBLIC OFFICERS	General Principles			2
LAW ON PUBLIC OFFICERS	<i>De facto</i> vs. <i>de jure</i> officers			2
LAW ON PUBLIC OFFICERS	Accountability of public officers	The Ombudsman	Functions	2
ELECTION LAW	Remedies and jurisdiction	<i>Quo warranto</i>		2
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