



Reference:
Lectures of/ Cases from **ATTY. BONG LOPEZ**
Constitutional Law by Bernas and De Leon

Concept and Origin of the Bill of Rights

Life – pursuit of happiness
Liberty – (freedom is broader)
Property – right to own and disown

Main Classification

1. Natural Right – inherent rights (ex. human rights)
2. Constitutional Right – to guarantee rights arbitrary intrusion by the government
3. Statutory Right – to enable the provisions of the constitution (ex. overtime pay)

Classification According to Purpose

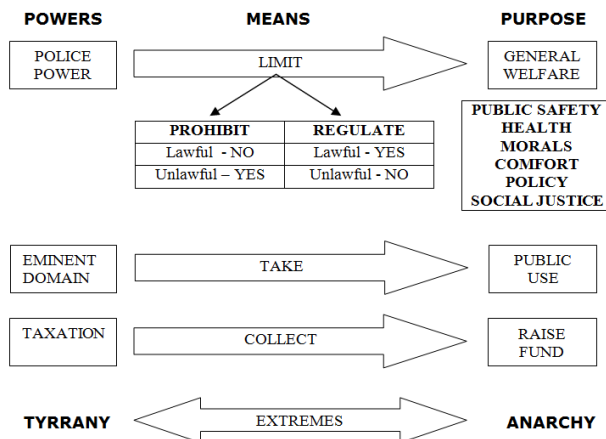
1. Civil Rights
2. Political Rights
3. Social Rights – associated with other rights
4. Economic Rights – to survive
5. Cultural Rights - customs

Doctrine of Preferred Freedom (Hierarchy of Rights)

PBM Employees Org. v. PBM Co., Inc., 51 SCRA 189 (1973)

In the hierarchy of civil liberties, the rights of free expression and of assembly occupy a preferred position as they are essential to the preservation and vitality of our civil and political institutions; The superiority of these freedoms over property rights is underscored by the fact that a mere reasonable or rational relation between the means employed by the law and its object or purpose — that the law is neither arbitrary nor discriminatory nor oppressive — would suffice to validate a law which restricts or impairs property rights.

The Fundamental Powers of the State
Similarities, Differences & Limitations
(inherent powers of the state)



POLICE POWER
(the power to police)

Definition

- Power of promoting public welfare by restraining and regulating the use of liberty and property.
- Most essential, insistent and less limitable of powers, extending as it does to all the great public needs.

Scope/Characteristics

- It cannot be bargained away through the medium of treaty /contract
- Taxing power may be used to implement police power
- Eminent domain may also be used to implement or attain police power
- Non-impairment of contracts or vested rights will have to yield to superior and legitimate exercise of police power
- Exercise of profession may be regulated by the state to safeguard health, morals, peace, education, order, safety and several welfare of the people

Basis

Salus populi est suprema lex
(welfare of the people is the supreme law)

Sic utere tuo ut alienum non laedas
(so as to use your property so as not to impair/injure another)

Who exercises said power?

Legislative branch
Executive branch, upon valid delegation

Tests of Police Power

1. Reasonable Connection Test (for life, liberty and property)
2. Clear and Present Danger Test (apply if suppression of life and liberty)
Is there a clear and present danger of a substantive evil the state should protect?
Clear – degree of danger
Present – proximity of danger
3. Dangerous Tendency Doctrine (applied during the time of martial law)

Balacuit v. CFI, G.R. No. L-38429, June 30, 1988

[A]s to the question of the subject ordinance (selling admission tickets to children 7-12 years old to full payment but should charge only 1/2 the price) being a valid exercise of police power, the same must be resolved in the negative. While it is true that a business may be regulated, it is equally true that such regulation must be within the bounds of reason, that is, the regulatory ordinance must be reasonable, and its provisions cannot be oppressive amounting to an arbitrary interference with the business or calling subject of regulation.



Lozano v. Martinez, 146 SCRA 323 (1986)

The constitutionality of the law in question (B.P. Blg. 22, Bouncing Checks Law) was upheld by the Court, it being within the authority of the legislature to enact such a law in the exercise of the police power.

Del Rosario v. Bengzon, 180 SCRA 521 (1989)

The prohibition against the use by doctors of "no substitution" and/or words of similar import in their prescription (under Generics Act, R.A. No. 6675), is a valid regulation to prevent the circumvention of the law. It secures to the patient the right to choose between the brand name and its generic equivalent since his doctor is allowed to write both the generic and the brand name in his prescription form.

Tablarin v. Judge Gutierrez, 152 SCRA 730 (1987)

That the power to regulate and control the practice of medicine includes the power to regulate admission to the ranks of those authorized to practice medicine, is also well recognized. thus, legislation and administrative regulations requiring those who wish to practice medicine first to take and pass medical board examinations have long ago been recognized as valid exercises of governmental power.

Zoning and Regulatory Ordinances

Ermita-Malate Hotel & Motel Operators v. City Mayor, 20 SCRA 849 (1967)

The mantle of protection associated with the due process guaranty does not cover petitioners. This particular manifestation of a police power measure being specifically aimed to safeguard public morals is immune from such imputation of nullity resting purely on conjecture and unsupported by anything of substance. There is no question but that the challenged ordinance (Ordinance No.4760) was precisely enacted to minimize certain practices hurtful to public morals.

De la Cruz v. Paras, 123 SCRA 569 (1983)

[The Court] holds that reliance on the police power is insufficient to justify the enactment of the assailed ordinance (Ordinance No.84 s.1975 Prohibition and Closure Ordinance covering nightclubs, cabarets, hostesses, dancers and operators). It must be declared null and void. A municipal corporation can not prohibit the exercise of a lawful trade.

Velasco v. Villegas, 120 SCRA 568 (1983)

[The Ordinance] is a police power measure. The objectives behind its enactment are: "(1) To be able to impose payment of the license fee for engaging in the business of massage clinic under Ordinance No. 3659 as amended by Ordinance 4767, an entirely different measure than the ordinance regulating the business of barbershops and, (2) in order to forestall possible immorality which might grow out of the construction of separate rooms for massage of customers."

Magtajas v. Pryce Properties, 234 SCRA 255 (1994)

Casino gambling is authorized by P.D. 1869. This decree has the status of a statute that cannot be amended or nullified by a mere ordinance. Hence, it was not competent for the Sangguniang Panlungsod of Cagayan de Oro City to enact Ordinance No. 3353 prohibiting the use of buildings for the operation of a casino and Ordinance No. 3375-93 prohibiting the operation of casinos. For all their praiseworthy motives, these ordinances are contrary to P.D.

1869 and the public policy announced therein and are therefore *ultra vires* and void.

Tano v. Socrates, G.R. 110249, August 27, 1997

The ordinances in question are police power measures, enacted by the Province of Palawan and the City of Puerto Princesa, pursuant to the Local Government Code of 1991 which makes it in fact their duty to enact measures to "protect the environment and impose appropriate penalties for acts which endanger the environment, such as dynamite fishing and other forms of destructive fishing. . . ."

City of Manila v. Judge Laguio, G.R. No. 118127, April 12, 2005

The Ordinance does not constitute a proper exercise of police power as the compulsory closure of the motel business has no reasonable relation to the legitimate municipal interests sought to be protected. To successfully invoke the exercise of police power as the rationale for the enactment of the Ordinance, and to free it from the imputation of constitutional infirmity, not only must it appear that the interests of the public generally, as distinguished from those of a particular class, require an interference with private rights, but the means adopted must be reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.

Administrative Rules and Regulations

Bautista v. Juinio, 127 SCRA 329 (1984)

The validity of an energy conservation measure, Letter of Instruction No. 869, issued on May 31, 1979 is upheld. In the interplay between such a fundamental right and police power, especially so where the assailed governmental action deals with the use of one's property, the latter is accorded much leeway. That is settled law. What is more, it is good law. Due process, therefore, cannot be validly invoked.

Taxicab Operators of Metro Manila v. BOT, 119 SCRA 597 (1982)

As enunciated in the preambular clauses of the challenged BOT Circular (M.C. 77-42, dated October 10, 1977), the overriding consideration is the safety and comfort of the riding public from the dangers posed by old and dilapidated taxis. The State, in the exercise, of its police power, can prescribe regulations to promote the health, morals, peace, good order, safety and general welfare of the people. It can prohibit all things hurtful to comfort, safety and welfare of society. It may also regulate property rights.

Mirasol v. DPWH, G.R. No. 158793, June 8, 2006

[Petitioners] attack this exercise of police power as baseless and unwarranted. [They] belabor the fact that there are studies that provide proof that motorcycles are safe modes of transport. They also claim that AO 1 introduces an unreasonable classification by singling-out motorcycles from other motorized modes of transport, and argue that AO 1 violates their right to travel. SC upholds the validity of AO 1.

Anglo-Fil Trading v. Lazaro, 124 SCRA 494 (1983)

The Manila South Harbor is public property owned by the State. The operations of this premiere port of the country, including stevedoring work, are affected with public interest. Stevedoring services are subject to regulation and control for the public good and in the interest of general welfare.



PPA v. Cipres Stevedoring, G.R. No. 145742, July 14, 2005

[T]here is] no arbitrariness nor irregularity on the part of petitioner as far as PPA AO No. 03-2000 is concerned. It is worthwhile to remind respondent that petitioner was created for the purpose of, among other things, promoting the growth of regional port bodies. In furtherance of this objective, petitioner is empowered, after consultation with relevant government agencies, to make port regulations particularly to make rules or regulation for the planning, development, construction, maintenance, control, supervision and management of any port or port district in the country.

Chavez v. Romulo, G.R. No. 157036. June 9, 2004

[T]here can be no question as to the reasonableness of a statutory regulation prohibiting the carrying of concealed weapons as a police measure well calculated to restrict the too frequent resort to such weapons in moments of anger and excitement. We do not doubt that the strict enforcement of such a regulation would tend to increase the security of life and limb, and to suppress crime and lawlessness, in any community wherein the practice of carrying concealed weapons prevails, and this without being unduly oppressive upon the individual owners of these weapons. It follows that its enactment by the legislature is a proper and legitimate exercise of the police power of the state.

**EMINENT DOMAIN
(private property → public use)**

Definition

It is the right, authority or power of the State as sovereign, or of those to whom the power has been lawfully delegated to take private property for public use upon observance of due process of law and paying for the owner a just compensation to be ascertained according to law.

Who exercises the power?

City of Manila v. Chinese Cemetery of Manila, 40 Phil 349 (1919)

The right of expropriation is not an inherent power in a municipal corporation, and before it can exercise the right some law must exist conferring the power upon it. When the courts come to determine the question, they must only find (a) that a law or authority exists for the exercise of the right of eminent domain, but (b) also that the right or authority is being exercised in accordance with the law.

Moday v. Court of Appeals, 268 SCRA 368 (1997)

Eminent domain, the power which the Municipality of Bunawan exercised in the instant case, is a fundamental State power that is inseparable from sovereignty. It is government's right to appropriate, in the nature of a compulsory sale to the State, private property for public use or purpose. Inherently possessed by the national legislature, the power of eminent domain may be validly delegated to local governments, other public entities and public utilities.

Constitutional Limitations - Art. III, Sec. 9

Private property shall not be taken for

public use without just compensation.

LEGEND: adjective noun verb

1. Taking = expropriation
2. Property must be private
If property is already public, no need to take but use
3. Use must be public
Public use need not be direct, as long as there is benefit derived
4. Compensation must be just
Just compensation = Fair Market Value (FMV) + Consequential Damages (CD) – Consequential Benefits (CB)
5. "Shall not" means that the default stance of the state is "not to" (take)

Distinguished from destruction due to necessity

Taking of property	Destruction of property
As power of the state	
Eminent domain	Police power
As to kind of property	
Private property	Private and public property
As to purpose	
To devote for some public use	To protect public from imminent danger
As to compensation	
There must be just compensation	No compensation (<i>damnum absque injuria</i>)

Objects of Expropriation

RP v. PLDT, 26 SCRA 620 (1969)

[T]he Republic may, in the exercise of the sovereign power of eminent domain, require the telephone company to permit interconnection of the government telephone system and that of the PLDT, as the needs of the government service may require, subject to the payment of just compensation to be determined by the court. Nominally, of course, the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why the said power may not be availed of to impose only a burden upon the owner of condemned property, without loss of title and possession. It is unquestionable that real property may, through expropriation, be subjected to an easement of right of way.



Where Expropriation Suit is Filed

Barangay San Roque v. Heirs of Pastor, GR 138896 June 20, 2000

[A]n expropriation suit is incapable of pecuniary estimation. The test to determine whether it is so was laid down by the Court in this wise: A review of the jurisprudence of this Court indicates that in determining whether an action is one the subject matter of which is not capable of pecuniary estimation, this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the courts of first instance would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, or where the money claim is purely incidental to, or a consequence of, the principal relief sought, like in suits to have the defendant perform his part of the contract (specific performance) and in actions for support, or for annulment of a judgment or to foreclose a mortgage, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are ***cognizable exclusively by courts of first instance (now RTC)***. The rationale of the rule is plainly that the second class cases, besides the determination of damages, demand an inquiry into other factors which the law has deemed to be more within the competence of courts of first instance, which were the lowest courts of record at the time that the first organic laws of the Judiciary were enacted allocating jurisdiction. (emphasis supplied)

Taking

- Actual physical seizure not essential
- Taking must be direct
- Mere notice or intention to expropriate not sufficient

Requisites of Taking

Republic v. Castelví, 58 SCRA 336 (1974)

Taking' under the power of eminent domain may be defined generally as entering upon private property for more than a momentary period, and, under the warrant or color of legal authority, devoting it to a public use, or otherwise informally appropriating or injuriously affecting it in such a way as substantially to oust the owner and deprive him of all beneficial enjoyment thereof.

Taking of Property under Eminent Domain

- (1) **Expropriator must enter a private property.**
- (2) **The entrance into private property must be for more than a momentary period.**
- (3) **The entry into the property should be under warrant or color of legal authority.**
- (4) **The property must be devoted to a public use or otherwise informally appropriated or injuriously affected.**
- (5) **The utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property.**

City Govt. of Quezon City v. Ericta, 122 SCRA 759 (1983)

There is no reasonable relation between the setting aside of at least six (6) percent of the total area of an private cemeteries for charity burial grounds of deceased paupers and the promotion of health, morals, good order, safety, or the general welfare of the people. The ordinance is actually a taking without compensation of a certain area from a private cemetery to benefit paupers who are charges of the municipal corporation. Instead of building or maintaining a public cemetery for this purpose, the city passes the burden to private cemeteries.

Deprivation of Use

People v. Fajardo, 104 Phil.443 (1958)

As the case now stands, every structure that may be erected on appellants' land, regardless of its own beauty, stands condemned under the ordinance in question, because it would interfere with the view of the public plaza from the highway. The appellants would, in effect, be constrained to let their land remain idle and unused for the obvious purpose for which it is best suited, being urban in character. To legally achieve that result, the municipality must give appellants just compensation and an opportunity to be heard.

Napocor v. Gutierrez, 193 SCRA 1 (1991)

[T]he easement of right-of-way is definitely a taking under the power of eminent domain. Considering the nature and effect of the installation of the 230 KV Mexico-Limay transmission lines, the limitation imposed by NPC against the use of the land for an indefinite period deprives private respondents of its ordinary use.

Napocor v. San Pedro, G.R. 170945, September 26, 2006

Similarly, in this case, the commissioners' observation on the reported constant loud buzzing and exploding sounds emanating from the towers and transmission lines, especially on rainy days; the constant fear on the part of the landowners that the large transmission lines looming not far above their land and the huge tower in front of their lot will affect their safety and health; and the slim chance that no one would be interested to buy the remaining portions on each side of the residential lot affected by the project, to the damage of the landowners, both as to future actual use of the land and financial gains to be derived therefrom, makes the instant case fall within the ambit of expropriation.

U.S. v. Causby, 328 U.S. 256 (1946)

We agree that, in those circumstances (USAF planes taking off and landing near property), there would be a taking. Though it would be only an easement of flight which was taken, that easement, if permanent and not merely temporary, normally would be the equivalent of a fee interest. It would be a definite exercise of complete dominion and control over the surface of the land. The fact that the planes never touched the surface would be as irrelevant as the absence in this day of the feudal livery of seisin on the transfer of real estate. The owner's right to possess and exploit the land -- that is to say, his beneficial ownership of it -- would be destroyed.

PPI v. Comelec, 244 SCRA 272 (1995)

The taking of private property for public use is, of course, authorized by the Constitution, but not without payment of "just compensation" (Article III, Section 9). And apparently the necessity of paying compensation for "Comelec space"



is precisely what is sought to be avoided by respondent Commission, whether Section 2 of Resolution No. 2772 is read as petitioner PPI reads it, as an assertion of authority to require newspaper publishers to "donate" free print space for Comelec purposes, or as an exhortation, or perhaps an appeal, to publishers to donate free print space, as Section 1 of Resolution No. 2772-A attempts to suggest. There is nothing at all to prevent newspaper and magazine publishers from voluntarily giving free print space to Comelec for the purposes contemplated in Resolution No. 2772. Section 2 of Resolution No. 2772 does not, however, provide a constitutional basis for compelling publishers, against their will, in the kind of factual context here present, to provide free print space for Comelec purposes. Section 2 does not constitute a valid exercise of the power of eminent domain.

Priority in Expropriation

Filstream International v. CA, 284 SCRA 716 (1998)

Private lands rank last in the order of priority for purposes of socialized housing. In the same vein, expropriation proceedings are to be resorted to only when the other modes of acquisition have been exhausted. Compliance with these conditions must be deemed mandatory because these are the only safeguards in securing the right of owners of private property to due process when their property is expropriated for public use.

The governing law that deals with the subject of expropriation for purposes of urban land reform and housing is **Republic Act No. 7279 (Urban Development and Housing Act of 1992)** and Sections 9 and 10 of which specifically provide as follows:

Sec. 9. *Priorities in the acquisition of Land.* — Lands for socialized housing shall be acquired in the following order:

- (a) Those owned by the Government or any of its subdivisions, instrumentalities, or agencies, including government-owned or controlled corporations and their subsidiaries;
- (b) Alienable lands of the public domain;
- (c) Unregistered or abandoned and idle lands;
- (d) Those within the declared Areas for Priority Development, Zonal Improvement sites, and Slum Improvement and Resettlement Program sites which have not yet been acquired;
- (e) Bagong Lipunan Improvement of Sites and Services or BLISS sites which have not yet been acquired; and
- (f) Privately-owned lands.

Where on-site development is found more practicable and advantageous to the beneficiaries, the priorities mentioned in this section shall not apply. The local government units shall give budgetary priority to on-site development of government lands.

Sec. 10. *Modes of Land Acquisition.* — The modes of acquiring lands for purposes of this Act shall include, among others, *community mortgage, land swapping, land assembly or consolidation, land banking, donation to the Government, joint-*

venture agreement, negotiated purchase, and expropriation. Provided, however, That expropriation shall be resorted to only when other modes of acquisition have been exhausted. Provided further, That where expropriation is resorted to, parcels of land owned by small property owners shall be exempted for purposes of this Act. Provided, finally, That abandoned property, as herein defined, shall be reverted and escheated to the State in a proceeding analogous to the procedure laid down in Rule 91 of the Rules of Court.

For the purpose of socialized housing, government-owned and foreclosed properties shall be acquired by the local government units, or by the National Housing Authority primarily through negotiated purchase: *Provided, That* qualified beneficiaries who are actual occupants of the land shall be given the right of first refusal. (Emphasis supplied).

JIL v. Mun. of Pasig, G.R. 152230, August 9, 2005

The subject property is expropriated for the purpose of constructing a road. The respondent is not mandated to comply with the essential requisites for an easement of right-of-way under the New Civil Code. Case law has it that in the absence of legislative restriction, the grantee of the power of eminent domain may determine the location and route of the land to be taken unless such determination is capricious and wantonly injurious. Expropriation is justified so long as it is for the public good and there is genuine necessity of public character. Government may not capriciously choose what private property should be taken.

The Court declared that the following **requisites for the valid exercise of the power of eminent domain by a local government unit** must be complied with:

1. An ordinance is enacted by the local legislative council authorizing the local chief executive, in behalf of the local government unit, to exercise the power of eminent domain or pursue expropriation proceedings over a particular private property.
2. The power of eminent domain is exercised for public use, purpose or welfare, or for the benefit of the poor and the landless.
3. There is payment of just compensation, as required under Section 9, Article III of the Constitution, and other pertinent laws.
4. A valid and definite offer has been previously made to the owner of the property sought to be expropriated, but said offer was not accepted.



Public use

Heirs of Juancho Ardon v. Reyes, 125 SCRA 220 (1983)

The petitioners' contention that the promotion of tourism is not "public use" because private concessioners would be allowed to maintain various facilities such as restaurants, hotels, stores, etc. inside the tourist complex is impressed with even less merit. Private bus firms, taxicab fleets, roadside restaurants, and other private businesses using public streets and highways do not diminish in the least bit the public character of expropriations for roads and streets. The lease of store spaces in underpasses of streets built on expropriated land does not make the taking for a private purpose. Airports and piers catering exclusively to private airlines and shipping companies are still for public use. The expropriation of private land for slum clearance and urban development is for a public purpose even if the developed area is later sold to private homeowners, commercial firms, entertainment and service companies, and other private concerns.

Sumulong v. Guerrero, 154 SCRA 461 (1987)

This Court holds that "socialized housing" defined in Pres. Decree No. 1224, as amended by Pres. Decree Nos. 1259 and 1313, constitutes "public use" for purposes of expropriation. However, as previously held by this Court, the provisions of such decrees on just compensation are unconstitutional; and in the instant case the Court finds that the Orders issued pursuant to the corollary provisions of those decrees authorizing immediate taking without notice and hearing are violative of due process.

Province of Camarines Sur v. CA, 222 SCRA 170 (1993)

To sustain the Court of Appeals would mean that the local government units can no longer expropriate agricultural lands needed for the construction of roads, bridges, schools, hospitals, etc. without first applying for conversion of the use of the lands with the Department of Agrarian Reform, because all of these projects would naturally involve a change in the land use. In effect, it would then be the Department of Agrarian Reform to scrutinize whether the expropriation is for a public purpose or public use.

Manosca v. Court of Appeals, 252 SCRA 412 (1996)

[T]his Court is asked to resolve whether or not the "public use" requirement of Eminent Domain is extant in the attempted expropriation by the Republic of a 492-square-meter parcel of land so declared by the National Historical Institute ("NHI") as a national historical landmark. x x x (the birthsite of Felix Y. Manalo, the founder of *Iglesia Ni Cristo*) x x x The validity of the exercise of the power of eminent domain for traditional purposes is beyond question; it is not at all to be said, however, that public use should thereby be restricted to such traditional uses. The idea that "public use" is strictly limited to clear cases of "use by the public" has long been discarded.

Estate of Jimenez v. PEZA, G.R. No. 137285, January 16, 2001

Petitioner contends that respondent is bound by the representations of its Chief Civil Engineer when the latter testified before the trial court that the lot was to be devoted for the construction of government offices. Anent this issue, suffice it to say that PEZA can vary the purpose for which a condemned lot will be devoted to provided that the same is for public use. Petitioner cannot impose or dictate on the respondent what facilities to establish for as long as the same are for public purpose.

Recovery of Expropriated Land

ATO v. Gopuco, G.R. No. 158563, June, 30 2005

When private land is expropriated for a particular public use, and that particular public use is abandoned, does its former owner acquire a cause of action for recovery of the property?

x x x

[Gopuco] argues that there is present, in cases of expropriation, an "implied contract" that the properties will be used only for the public purpose for which they were acquired. No such contract exists.

x x x

Eminent domain is generally described as "the highest and most exact idea of property remaining in the government" that may be acquired for some public purpose through a method in the nature of a forced purchase by the State. Also often referred to as expropriation and, with less frequency, as condemnation, it is, like police power and taxation, an inherent power of sovereignty and need not be clothed with any constitutional gear to exist; instead, provisions in our Constitution on the subject are meant more to regulate, rather than to grant, the exercise of the power. It is a right to take or *reassert* dominion over property within the state for public use or to meet a public exigency and is said to be an essential part of governance even in its most primitive form and thus inseparable from sovereignty. In fact, "all separate interests of individuals in property are held of the government under this tacit agreement or implied reservation. Notwithstanding the grant to individuals, the *eminent domain*, the highest and most exact idea of property, remains in the government, or in the aggregate body of people in their sovereign capacity; and they have the right to *resume the possession* of the property whenever the public interest so requires it.

Republic v. Lim, G.R. 161656, June 29, 2005

In summation, while the prevailing doctrine is that "the non-payment of just compensation does not entitle the private landowner to recover possession of the expropriated lots, however, in cases where the government failed to pay just compensation *within five (5) years from the finality of the judgment in the expropriation proceedings*, the owners concerned shall have the right to recover possession of their property. This is in consonance with the principle that "the government cannot keep the property and dishonor the judgment." To be sure, the five-year period limitation will encourage the government to pay just compensation punctually. This is in keeping with justice and equity. After all, it is the duty of the government, whenever it takes property from private persons against their will, to facilitate the payment of just compensation. In *Coscolluela v. Court of Appeals*, we defined just compensation as not only the correct determination of the amount to be paid to the property owner but also the payment of the property within a *reasonable time*. Without prompt payment, compensation cannot be considered "just."

Genuine Necessity

Mun. of Meycavauan v. IAC, 157 SCRA 640 (1988)

[T]his Court held that the foundation of the right to exercise the power of eminent domain is genuine necessity and that necessity must be of a public character. Condemnation of private property is justified only if it is for the public good and there is a genuine necessity of a public character. Consequently, the courts have the power to inquire into the



legality of the exercise of the right of eminent domain and to determine whether there is a genuine necessity therefor

De Knecht v. Bautista, 100 SCRA 660 (1980)

From all the foregoing, the facts of record and recommendations of the Human Settlements Commission, it is clear that the choice of Fernando Rein — Del Pan Streets as the line through which the Epifanio de los Santos Avenue should be extended to Roxas Boulevard is arbitrary and should not receive judicial approval. The respondent judge committed a grave abuse of discretion in allowing the Republic of the Philippines to take immediate possession of the properties sought to be expropriated.

Republic v. De Knecht, G.R. 87351, February 12, 1990

The issue posed in this case is whether an expropriation proceeding that was determined by a final judgment of this Court may be the subject of a subsequent legislation for expropriation.

x x x

The Court finds justification in proceeding with the said expropriation proceedings through the Fernando Rein-Del Pan streets from ESDA to Roxas Boulevard due to the aforesaid supervening events after the rendition of the decision of this Court in *De Knecht*. B.P. Blg. 340 therefore effectively superseded the aforesaid final and executory decision of this Court. And the trial court committed no grave abuse of discretion in dismissing the case pending before it on the ground of the enactment of B.P. Blg. 340. Moreover, the said decision, is no obstacle to the legislative arm of the Government in thereafter (over two years later in this case) making its own independent assessment of the circumstances then prevailing as to the propriety of undertaking the expropriation of the properties in question and thereafter by enacting the corresponding legislation as it did in this case. The Court agrees in the wisdom and necessity of enacting B.P. Blg. 340. Thus the anterior decision of this Court must yield to this subsequent legislative fiat.

De la Paz Masikip v. Judge Legaspi, G.R. No. 136349, January 23, 2006

[R]espondent City of Pasig has failed to establish that there is a genuine necessity to expropriate petitioner's property. Our scrutiny of the records shows that the Certification issued by the Caniogan Barangay Council dated November 20, 1994, the basis for the passage of Ordinance No. 42 s. 1993 authorizing the expropriation, indicates that the intended beneficiary is the Melendres Compound Homeowners Association, a private, non-profit organization, not the residents of Caniogan. It can be gleaned that the members of the said Association are desirous of having their own private playground and recreational facility. Petitioner's lot is the nearest vacant space available. The purpose is, therefore, not clearly and categorically public. The necessity has not been shown, especially considering that there exists an alternative facility for sports development and community recreation in the area, which is the Rainforest Park, available to all residents of Pasig City, including those of Caniogan.

Just Compensation, defined

Eslaban v. De Onorio, G.R. No. 146062, June 28, 2001

With respect to the compensation which the owner of the condemned property is entitled to receive, it is likewise settled that it is the market value which should be paid or **"that sum of money which a person, desirous but not**

compelled to buy, and an owner, willing but not compelled to sell, would agree on as a price to be given and received therefor." Further, just compensation means not only the correct amount to be paid to the owner of the land but also the payment of the land within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" for then the property owner is made to suffer the consequence of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss. (emphasis supplied)

Republic of the Philippines v. IAC, et al., G.R. No. 71176, May 21, 1990

The determination of just compensation for a condemned property is basically a judicial function. As the court is not bound by the commissioners' report, it may make such order or render such judgment as shall secure to the plaintiff the property essential to the exercise of its right of condemnation, and to the defendant just compensation for the property expropriated. For that matter, this Court may even substitute its own estimate of the value as gathered from the record. Hence, although the determination of just compensation appears to be a factual matter which is ordinarily outside the ambit of its jurisdiction, this Court may disturb the lower court's factual finding on appeal when there is clear error or grave abuse of discretion.

Determination of Just Compensation

EPZA v. Dulay, 149 SCRA 305 (1987)

It is violative of due process to deny to the owner the opportunity to prove that the valuation in the tax documents is unfair or wrong. And it is repulsive to basic concepts of justice and fairness to allow the haphazard work of a minor bureaucrat or clerk to absolutely prevail over the judgment of a court promulgated only after expert commissioners have actually viewed the property, after evidence and arguments pro and con have been presented, and after all factors and considerations essential to a fair and just determination have been judiciously evaluated. x x x P.D. No. 1533, which eliminates the court's discretion to appoint commissioners pursuant to Rule 67 of the Rules of Court, is unconstitutional and void.

When Determined

Ansaldo v. Tantuico, G.R. 50147 August 3, 1990

In the context of the State's inherent power of eminent domain, there is a "taking" when the owner is actually deprived or dispossessed of his property; when there is a practical destruction or a material impairment of the value of his property or when he is deprived of the ordinary use thereof. There is a "taking" in this sense when the expropriator enters private property not only for a momentary period but for a more permanent duration, for the purpose of devoting the property to a public use in such a manner as to oust the owner and deprive him of all beneficial enjoyment thereof.¹³ For ownership, after all, "is nothing without the inherent rights of possession, control and enjoyment. Where the owner is deprived of the ordinary and beneficial use of his property or of its value by its being diverted to public use, there is taking within the Constitutional sense. Under these norms, there was undoubtedly a *taking* of the Ansaldos' property when the Government obtained possession thereof and converted it into a part of a thoroughfare for public use.



NAPOCOR v. Tiangco, G.R. No. 170846, February 6, 2007

As correctly observed by the CA, considering the nature and the effect of the installation power lines, the limitations on the use of the land for an indefinite period would deprive respondent of normal use of the property. For this reason, the latter is entitled to payment of a just compensation, which must be neither more nor less than the monetary equivalent of the land.

Manner of Payment

Association of Small Landowners v. DAR, 175 SCRA 343 (1989)

Accepting the theory that payment of the just compensation is not always required to be made fully in money, we find further that the proportion of cash payment to the other things of value constituting the total payment, as determined on the basis of the areas of the lands expropriated, is not unduly oppressive upon the landowner. It is noted that the smaller the land, the bigger the payment in money, primarily because the small landowner will be needing it more than the big landowners, who can afford a bigger balance in bonds and other things of value. No less importantly, the government financial instruments making up the balance of the payment are "negotiable at any time." The other modes, which are likewise available to the landowner at his option, are also not unreasonable because payment is made in shares of stock, LBP bonds, other properties or assets, tax credits, and other things of value equivalent to the amount of just compensation.

DAR v. CA, 249 SCRA 149 (1995)

We agree with the observations of respondent court. The ruling in the "Association" case merely recognized the extraordinary nature of the expropriation to be undertaken under RA 6657 thereby allowing a deviation from the traditional mode of payment of compensation and recognized payment other than in cash. It did not, however, dispense with the settled rule that there must be full payment of just compensation before the title to the expropriated property is transferred.

Trial with Commissioners

Meralco v. Pineda, 206 SCRA 196 (1992)

[T]he appointment of at least three (3) competent persons as commissioners to ascertain just compensation for the property sought to be taken is a mandatory requirement in expropriation cases. While it is true that the findings of commissioners may be disregarded and the court may substitute its own estimate of the value, the latter may only do so for valid reasons, *i.e.*, where the Commissioners have applied illegal principles to the evidence submitted to them or where they have disregarded a clear preponderance of evidence, or where the amount allowed is either grossly inadequate or excessive

NPC v. Henson, G.R. No. 129998, December 29, 1998

In this case, the trial court and the Court of Appeals fixed the value of the land at P400.00 per square meter, which was the selling price of lots in the adjacent fully developed subdivision, the Santo Domingo Village Subdivision. The land in question, however, was an undeveloped, idle land, principally agricultural in character, though re-classified as residential. Unfortunately, the trial court, after creating a board of commissioners to help it determine the market value of the land did not conduct a hearing on the report of

the commissioners. The trial court fixed the fair market value of subject land in an amount equal to the value of lots in the adjacent fully developed subdivision. This finds no support in the evidence. The valuation was even higher than the recommendation of anyone of the commissioners.

Legal Interest for Expropriation Cases

NPC v. Angas, 208 SCRA 542 (1992)

In this case, Central Bank Circular No. 416 and Art. 2209 of the Civil Code contemplate different situations and apply to different transactions. In transactions involving loan or forbearance of money, goods or credits, as well as judgments relating to such loan or forbearance of money, goods or credits, the Central Bank circular applies. It is only in such transactions or judgments where the Presidential Decree allowed the Monetary Board to dip its fingers into. On the other hand, in cases requiring the payment of indemnities as damages, in connection with any delay in the performance of an obligation other than those involving loan or forbearance of money, goods or credits, Art. 2209 of the Civil Code applies. For the Court, this is the most fair, reasonable, and logical interpretation of the two laws. We do not see any conflict between Central Bank Circular No. 416 and Art. 2209 of the Civil Code or any reason to hold that the former has repealed the latter by implication.

1987 Constitution, Art. XII, Sec. 18

The State may, in the interest of national welfare or defense, establish and operate vital industries and, upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the Government.

1987 Constitution, Art. XIII, Sec. 4

The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

1987 Constitution, Art. XIII, Sec. 9

The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost, decent housing and basic services to under-privileged and homeless citizens in urban centers and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program the State shall respect the rights of small property owners.

City of Baguio v. Nawasa, 106 Phil. 114 (1959)

It is clear that the State may, in the interest of National welfare, transfer to public ownership any private enterprise upon payment of just compensation. At the same time, one has to bear in mind that no person can be deprived of his property except for public use and upon payment of just compensation. There is an attempt to observe this



requirement in Republic Act No. 1383 when in providing for the transfer of appellee's waterworks system to a national agency it was directed that the transfer be made upon payment of an equivalent value of the property.

Zamboanga del Norte v. City of Zamboanga, 22 SCRA 1334 (1968)

The controversy here is more along the domains of the Law of Municipal Corporations — *State v. Province* — than along that of Civil Law. Moreover, this Court is not inclined to hold that municipal property held and devoted to public service is in the same category as ordinary private property. The consequences are dire. As ordinary private properties, they can be levied upon and attached. They can even be acquired thru adverse possession — all these to the detriment of the local community. Lastly, the classification of properties other than those for public use in the municipalities as patrimonial under Art. 424 of the Civil Code — is "... without prejudice to the provisions of special laws." For purpose of this article, the principles, obtaining under the Law of Municipal Corporations can be considered as "special laws". Hence, the classification of municipal property devoted for distinctly governmental purposes as public should prevail over the Civil Code classification in this particular case.

UPDATE CASE

Mactan-Cebu International Airport Authority v. Lozada, G.R. No.176625, February 25, 2010

[W]e now expressly hold that the taking of private property, consequent to the Government's exercise of its power of eminent domain, is always subject to the condition that the property be devoted to the specific public purpose for which it was taken. Corollarily, if this particular purpose or intent is not initiated or not at all pursued, and is peremptorily abandoned, then the former owners, if they so desire, may seek the reversion of the property, subject to the return of the amount of just compensation received. In such a case, the exercise of the power of eminent domain has become improper for lack of the required factual justification.

TAXATION
(the power to raise revenues)

Definition and Nature

- It is the power by which the State raises revenue to defray the necessary expenses of the Government.
- It is the power to demand from the members of society their proportionate share/contribution in the maintenance of the government.
- **Lifeblood of the government**

Limitations

1. Taxes must be uniform
2. It must be applied equally to all similarly situated
3. Progressive system of taxation (based capacity to pay taxes)
 - Due process of law

- Equal protection clause
4. It must be used for public purpose

Purpose

CIR v. Algue, Inc., 158 SCRA 9 (1988)

It is said that taxes are what we pay for civilization society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.

Commissioner of Customs v. Makasiar, 177 SCRA 27 (1989)

Jurisprudence is replete with cases which have held that regional trial courts are devoid of any competence to pass upon the validity or regularity of seizure and forfeiture proceedings conducted in the Bureau of Customs, and to enjoin, or otherwise interfere with, these proceedings. The Collector of Customs sitting in seizure and forfeiture proceedings has exclusive jurisdiction to hear and determine all questions touching on the seizure and forfeiture of dutiable goods.

Scope

(The power to tax is the power to destroy)

- Covers persons, property or occupation to be taxed within the taxing jurisdiction
- It is so pervasive it reaches even the citizens abroad and their income outside the Philippines;
- Covers all the income earned in the Philippines by a citizen or alien.

Who exercises the power?

1. The Legislature
2. Local government units (Sec. 5, Art. X);
3. President (limited extent-delegated tariff powers), under Sec. 28 (2), Art. VI of the Constitution or as an incident of emergency powers that Congress may grant to him under Sec. 23 (2), Art. VI.

Purpose: *unavoidable obligation of the government to protect the people and extend them benefits in the form of public projects and services.*

Art. VI Sec. 28

(1)The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.

(2)The Congress may, by law, authorize the President to fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues, and other duties or



imposts within the framework of the national development program of the Government.

(3)Charitable institutions, churches and personages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation.

(4)No law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of the Congress.

Art. XIV, Sec. 4 (3)

All revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties. Upon the dissolution or cessation of the corporate existence of such institutions, their assets shall be disposed of in the manner provided by law.

Proprietary educational institutions, including those cooperatively owned, may likewise be entitled to such exemptions, subject to the limitations provided by law, including restrictions on dividends and provisions for reinvestment.

Art. X, Sec. 5

Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.

Tax Exemptions

YMCA v. CIR, 33 Phil. 217 (1916)

There is no doubt about the correctness of the contention that an institution must devote itself exclusively to one or the other of the purpose mentioned in the statute before it can be exempt from taxation; but the statute does not say that it must be devoted exclusively to any one of the purposes therein mentioned. It may be a combination of two or three or more of those purposes and still be entitled to exempt.

The Young Men's Christian Association of Manila cannot be said to be an institution used exclusively for religious purposes, or an institution used exclusively for charitable purposes, or an institution devoted exclusively to educational purposes; but we believe it can be truthfully said that it is an institution used exclusively for all three purposes, and that, as such, it is entitled to be exempted from taxation.

Bishop of Nueva Segovia v. Provincial Board, 51 Phil. 352 (1927)

The exemption in favor of the convent in the payment of the land tax (sec. 344 [c] Administrative Code) refers to the home of the parties who presides over the church and who has to take care of himself in order to discharge his duties. In therefore must, in the sense, include not only the land actually occupied by the church, but also the adjacent ground destined to the ordinary incidental uses of man. Except in large cities where the density of the population and the development of commerce require the use of larger tracts of land for buildings, a vegetable garden belongs to a

house and, in the case of a convent, it use is limited to the necessities of the priest, which comes under the exemption.

In regard to the lot which formerly was the cemetery, while it is no longer used as such, neither is it used for commercial purposes and, according to the evidence, is now being used as a lodging house by the people who participate in religious festivities, which constitutes an incidental use in religious functions, which also comes within the exemption.

Lladoc v. CIR, 14 SCRA 292 (1965)

Section 22 (3), Art. VI of the (1935) Constitution of the Philippines, exempts from taxation cemeteries, churches and parsonages or convents, appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious purposes. The exemption is only from the payment of taxes assessed on such properties enumerated, as property taxes, as contra distinguished from excise taxes. In the present case, what the Collector assessed was a donee's gift tax; the assessment was not on the properties themselves. It did not rest upon general ownership; it was an excise upon the use made of the properties, upon the exercise of the privilege of receiving the properties (Phipps vs. Com. of Int. Rec. 91 F 2d 627). Manifestly, gift tax is not within the exempting provisions of the section just mentioned. A gift tax is not a property tax, but an excise tax imposed on the transfer of property by way of gift *inter vivos*, the imposition of which on property used exclusively for religious purposes, does not constitute an impairment of the Constitution. As well observed by the learned respondent Court, the phrase "exempt from taxation," as employed in the Constitution (*supra*) should not be interpreted to mean exemption from all kinds of taxes. And there being no clear, positive or express grant of such privilege by law, in favor of petitioner, the exemption herein must be denied.

Province of Abra v. Hernando, 107 SCRA 104 (1981)

Respondent Judge would not have erred so grievously had he merely compared the provisions of the present Constitution with that appearing in the 1935 Charter on the tax exemption of "lands, buildings, and improvements." There is a marked difference. Under the 1935 Constitution: "Cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation." The present Constitution added "charitable institutions, mosques, and non-profit cemeteries" and required that for the exemption of "lands, buildings, and improvements," they should not only be "exclusively" but also "actually and "directly" used for religious or charitable purposes. The Constitution is worded differently. The change should not be ignored. It must be duly taken into consideration. Reliance on past decisions would have sufficed were the words "actually" as well as "directly" not added. There must be proof therefore of the actual and direct use of the lands, buildings, and improvements for religious or charitable purposes to be exempt from taxation. According to *Commissioner of Internal Revenue v. Guerrero*: "From 1906, in *Catholic Church v. Hastings* to 1966, in *Esso Standard Eastern, Inc. v. Acting Commissioner of Customs*, it has been the constant and uniform holding that exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer. Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed *strictissimi juris*." xxx



Abra Valley College v. Aquino , 162 SCRA 106 (1988)

[W]hile this Court allows a more liberal and non-restrictive interpretation of the phrase "exclusively used for educational purposes" as provided for in Article VI, Section 22, paragraph 3 of the 1935 Philippine Constitution, reasonable emphasis has always been made that exemption extends to facilities which are incidental to and reasonably necessary for the accomplishment of the main purposes. Otherwise stated, the use of the school building or lot for commercial purposes is neither contemplated by law, nor by jurisprudence. **Thus, while the use of the second floor of the main building in the case at bar for residential purposes of the Director and his family, may find justification under the concept of incidental use, which is complimentary to the main or primary purpose—educational**, the lease of the first floor thereof to the Northern Marketing Corporation cannot by any stretch of the imagination be considered incidental to the purpose of education.

American Bible Society v. City of Manila, 101 Phil. 386 (1957)

It may be true that in the case at bar the price asked for the bibles and other religious pamphlets was in some instances a little bit higher than the actual cost of the same but this cannot mean that appellant was engaged in the business or occupation of selling said "merchandise" for profit. For this reason We believe that the provisions of City of Manila Ordinance No. 2529, as amended, cannot be applied to appellant, for in doing so it would impair its free exercise and enjoyment of its religious profession and worship as well as its rights of dissemination of religious beliefs.

With respect to Ordinance No. 3000, as amended, which requires the obtention the Mayor's permit before any person can engage in any of the businesses, trades or occupations enumerated therein, We do not find that it imposes any charge upon the enjoyment of a right granted by the Constitution, nor tax the exercise of religious practices. xxx

It seems clear, therefore, that Ordinance No. 3000 cannot be considered unconstitutional, even if applied to plaintiff Society. But as Ordinance No. 2529 of the City of Manila, as amended, is not applicable to plaintiff-appellant and defendant-appellee is powerless to license or tax the business of plaintiff Society involved herein for, as stated before, it would impair plaintiff's right to the free exercise and enjoyment of its religious profession and worship, as well as its rights of dissemination of religious beliefs, We find that Ordinance No. 3000, as amended is also inapplicable to said business, trade or occupation of the plaintiff.

Double Taxation

Punzalan v. Municipal Board of Manila, 95 Phil.46 (1954)

Plaintiffs brand the ordinance unjust and oppressive because they say that it creates discrimination within a class in that while professionals with offices in Manila have to pay the tax, outsiders who have no offices in the city but practice their profession therein are not subject to the tax. Plaintiffs make a distinction that is not found in the ordinance. The ordinance imposes the tax upon every person "exercising" or "pursuing" — in the City of Manila naturally — any one of the occupations named, but does not say that such person must have his office in Manila. What constitutes exercise or pursuit of a profession in the city is a matter of judicial determination. **The argument against double taxation may not be invoked where one tax is imposed by the state and the other is imposed by the city, it being widely**

recognized that there is nothing inherently obnoxious in the requirement that license fees or taxes be exacted with respect to the same occupation, calling or activity by both the state and the political subdivisions thereof.(citations omitted)

License Fees

(In Re Declaratory Relief) Physical Therapy Org. v. Municipal Board, G.R. No. L-10448, August 30, 1957

As regards the permit fee of P100.00, it will be seen that said fee is made payable not by the masseur or massagist, but by the operator of a massage clinic who may not be a massagist himself. Compared to permit fees required in other operations, P100.00 may appear to be too large and rather unreasonable. However, much discretion is given to municipal corporations in determining the amount of said fee without considering it as a tax for revenue purposes:

The amount of the fee or charge is properly considered in determining whether it is a tax or an exercise of the police power. The amount may be so large as to itself show that the purpose was to raise revenue and not to regulate, but in regard to this matter there is a marked distinction between license fees imposed upon useful and beneficial occupations which the sovereign wishes to regulate but not restrict, and those which are *inimical and dangerous to public health, morals or safety. In the latter case the fee may be very large without necessarily being a tax.* (Cooley on Taxation, Vol. IV, pp. 3516-17; underlining supplied.)

Evidently, the Manila Municipal Board considered the practice of hygienic and aesthetic massage not as a useful and beneficial occupation which will promote and is conducive to public morals, and consequently, imposed the said permit fee for its regulation.

DUE PROCESS

(a law which hears before it condemns)

1987 Constitution, Art. III, Sec. 1

No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

1987 Constitution, Art. III, Sec. 14 (1)

No person shall be held to answer for a criminal offense without due process of law.

Definition, Nature and Scope

- The Constitution did not contain any definition of due process
- "law which hears before it condemns" (Daniel Webster)
- It may be "**substantial**" or "**procedural**"
- It applies to all person regardless of race, age or creed
- Applicable to juridical persons with respect to their property
- Application is extended to aliens
- Includes application to means of livelihood (property right)



Eternal vigilance is the price of liberty.
–Thomas Jefferson

Purpose of the guarantee

Hurtado v. California, 110 U.S. 516 (1884)

A trial by jury in suits at common law pending in State courts is not, therefore, a privilege or immunity of national citizenship which the States are forbidden by the Fourteenth Amendment to abridge. A State cannot deprive a person of his property without due process of law; but this does not necessarily imply that all trials in the State courts affecting the property of persons must be by jury. This requirement of the Constitution is met if the trial is had according to the settled course of judicial proceedings. Due process of law is process according to the law of the land. This process in the States is regulated by the law of State.

Meaning of Life, Liberty, and Property

Life – includes the right of an individual to his body in its completeness, free from dismemberment, and extends to the use of God given faculties which make life enjoyable.

Liberty – includes the right to exist and the right to be free from arbitrary personal restraint or servitude. It includes the right of the citizen to be free to use his faculties in all lawful ways.

Property – is anything that comes under the right of ownership and be the subject of contract. It represents more than the things a person owns; it includes the right to secure, use and dispose of them.

Substantive Due Process

Villegas v. Hiu Chiong Tsai Pao Ho, 86 SCRA 275 (1978)

The ordinance in question violates the due process of law and equal protection rule of the Constitution. Requiring a person before he can be employed to get a permit from the City Mayor of Manila who may withhold or refuse it at will is tantamount to denying him the basic right of the people in the Philippines to engage in a means of livelihood. While it is true that the Philippines as a State is not obliged to admit aliens within its territory, once an alien is admitted, he cannot be deprived of life without due process of law. This guarantee includes the means of livelihood. The shelter of protection under the due process and equal protection clause is given to all persons, both aliens and citizens.

Rubi v. Provincial Board of Mindoro, 39 Phil. 660 (1919)

[A]ction pursuant to section 2145 of the Administrative Code does not deprive a person of his liberty without due process of law and does not deny to him the equal protection of the laws, and that confinement in reservations in accordance with said section does not constitute slavery and involuntary servitude. We are further of the opinion that section 2145 of the Administrative Code is a legitimate exertion of the police power, somewhat analogous to the Indian policy of the United States. Section 2145 of the Administrative Code of 1917 is constitutional.

Void for Vagueness/Overbreadth

Ople v. Torres, 292 SCRA 141. (1998)

Administrative Order No. 308 entitled "Adoption of a National Computerized Identification Reference System" declared null and void for being unconstitutional. The right to privacy is one of the most threatened rights of man living in a mass society. The threats emanate from various sources — governments, journalists, employers, social scientists, etc. In the case at bar, the threat comes from the executive branch of government which by issuing A.O. No. 308 pressures the people to surrender their privacy by giving information about themselves on the pretext that it will facilitate delivery of basic services. Given the record-keeping power of the computer, only the indifferent fail to perceive the danger that A.O. No. 308 gives the government the power to compile a devastating dossier against unsuspecting citizens. It is timely to take note of the well-worded warning of Kalvin, Jr., "the disturbing result could be that everyone will live burdened by an unerasable record of his past and his limitations. In a way, the threat is that because of its record-keeping, the society will have lost its benign capacity to forget." Oblivious to this counsel, the dissents still say we should not be too quick in labelling the right to privacy as a fundamental right. We close with the statement that the right to privacy was not engraved in our Constitution for flattery.

Estrada v. Sandiganbayan, G.R. No. 148560, November 19, 2001

RA 7080 otherwise known as the Plunder Law, as amended by RA 7659, is CONSTITUTIONAL. The rationalization seems to us to be pure sophistry. A statute is not rendered uncertain and void merely because general terms are used therein, or because of the employment of terms without defining them; much less do we have to define every word we use. Besides, there is no positive constitutional or statutory command requiring the legislature to define each and every word in an enactment. Congress is not restricted in the form of expression of its will, and its inability to so define the words employed in a statute will not necessarily result in the vagueness or ambiguity of the law so long as the legislative will is clear, or at least, can be gathered from the whole act, which is distinctly expressed in the Plunder Law.

David v. Arroyo, G.R. No. 171390, May 3, 2006

Related to the "overbreadth" doctrine is the "void for vagueness doctrine" which holds that **"a law is facially invalid if men of common intelligence must necessarily guess at its meaning and differ as to its application."** It is subject to the same principles governing overbreadth doctrine. For one, it is also an analytical tool for testing "on their faces" **statutes in free speech cases.** And like overbreadth, it is said that a litigant may challenge a statute on its face only if it is **vague in all its possible applications. Again, petitioners did not even attempt to show that PP 1017 is vague in all its application.** They also failed to establish that men of common intelligence cannot understand the meaning and application of PP 1017.

Ong v. Sandiganbayan, G.R. No. 126858, September 16, 2005

The law is not vague as it defines with sufficient particularity unlawfully acquired property of a public officer or employee as that "which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property." It also provides a definition of what is legitimately acquired



property. Based on these parameters, the public is given fair notice of what acts are proscribed. The law, therefore, does not offend the basic concept of fairness and the due process clause of the Constitution

Procedural Due Process (Judicial)

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

Publication Requirement

Tañada v. Tuvera, 146 SCRA 446 (1986)

The publication of all presidential issuances "of a public nature" or "of general applicability" is mandated by law. Obviously, presidential decrees that provide for fines, forfeitures or penalties for their violation or otherwise impose a burden for the people, such as tax and revenue measures, fall within this category. Other presidential issuances which apply only to particular persons or class of persons such as administrative and executive orders need not be published on the assumption that they have been circularized to all concerned.

PITC v. Angeles, 263 SCRA 421 (1996)

The Administrative Order under consideration is one of those issuances which should be published for its effectivity, since its purpose is to enforce and implement an existing law pursuant to a valid delegation, *i.e.*, P.D. 1071, in relation to LOI 444 and EO 133.

Impartial Court or Tribunal

Tañada v. PAEC, 141 SCRA 307 (1986)

Having thus prejudged the safety of the PNPP-1 respondent PAEC Commissioners would be acting with grave abuse of discretion amounting to lack of jurisdiction were they to sit in judgment upon the safety of the plant, absent the requisite objectivity that must characterize such an important inquiry. The Court therefore Resolved to RESTRAIN respondent PAEC Commissioners from further acting in PAEC Licensing Proceedings No. 1-77.

Anzaldo v. Clave, 119 SCRA 353 (1982)

Due process of law means fundamental fairness. It is not fair to Doctor Anzaldo that Presidential Executive Assistant Clave should decide whether his own recommendation as Chairman of the Civil Service Commission, as to who between Doctor Anzaldo and Doctor Venzon should be appointed Science Research Supervisor II, should be adopted by the President of the Philippines. Common sense and propriety dictate that the commissioner in the Civil Service Commission, who should be consulted by the Office of the President, should be a person *different* from the person in the Office of the President who would decide the appeal of the protestant in a contested appointment.

Tumey v. Ohio, 273 U.S. 510 (1997)

There are doubtless mayors who would not allow such a consideration as \$12 costs in each case to affect their judgment in it; but the requirement of due process of law in judicial procedure is not satisfied by the argument that men of the highest honor and the greatest self-sacrifice could carry it on without danger of injustice. Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law.

People v. Court of Appeals, 262 SCRA 452 (1996)

In the case at bar, Judge Pedro Espina, as correctly pointed out by the Solicitor General, can not be considered to adequately possess such cold neutrality of an impartial judge as to fairly assess both the evidence to be adduced by the prosecution and the defense in view of his previous decision in Special Civil Action No. 92-11-219 wherein he enjoined the preliminary investigation at the Regional State Prosecutor's Office level against herein respondent Jane Go, the principal accused in the killing of her husband Dominador Go.

Tabuena v. Sandiganbayan, 268 SCRA 332 (1997)

The majority believes that the interference by the Sandiganbayan Justices was just too excessive that it cannot be justified under the norm applied to a jury trial, or even under the standard employed in a non-jury trial where the judge is admittedly given more leeway in propounding questions to clarify points and to elicit additional relevant evidence.

Prejudicial Publicity

Webb v. De Leon, 247 SCRA 652 (1995)

In the case at bar, we find nothing in the records that will prove that the tone and content, of the publicity that attended the investigation of petitioners fatally infected the fairness and impartiality of the DOJ Panel. Petitioners cannot just rely on the subliminal effects of publicity on the sense of fairness of the DOJ Panel, for these are basically unbeknown and beyond knowing. To be sure, the DOJ Panel is composed of an Assistant Chief State Prosecutor and Senior State Prosecutors. Their long experience in criminal investigation is a factor to consider in determining whether they can easily be blinded by the klieg lights of publicity. Indeed, their 26-page Resolution carries no indubitable indicia of bias for it does not appear that they considered any extra-record evidence except evidence properly adduced by the parties. The length of time the investigation was conducted despite its summary nature and the generosity with which they accommodated the discovery motions of petitioners speak well of their fairness.

People v. Sanchez, G.R. No. 121039, October 18, 2001

Pervasive publicity is not *per se* prejudicial to the right of an accused to fair trial. The mere fact that the trial of appellant was given a day-to-day, gavel-to-gavel coverage does not by itself prove that publicity so permeated the mind of the trial judge and impaired his impartiality... Our judges are learned in the law and trained to disregard off-court evidence and on-camera performances of parties to a litigation. Their mere exposure to publications and publicity stunts does not *per se* fatally infect their impartiality.



Notice and Hearing

Summary Dismissal Board v. Torcita, 330 SCRA 153 (2000)

Torcita was found guilty of an offense for which he was not properly charged. A decision is void for lack of due process if, as a result, a party is deprived of the opportunity of being heard. The cursory conclusion of the Dismissal Board that Torcita "committed breach of internal discipline by taking drinks while in the performance of same" should have been substantiated by factual findings referring to this particular offense. As it turned out, the dismissal Board believed his allegation that he was not drunk and found that he was in full command of his senses where he tried to apprehend the driver of the maroon Mazda pick-up. Although Torcita did not deny that he had taken a shot of alcoholic drink at the party which he attended before the incident, the records show that he was then off-duty and the party was at the Municipality of Victorias, which was outside of his area of police jurisdiction.

People v. Estrada G.R. No. 130487 June 19, 2000

By depriving appellant of a mental examination, the trial court effectively deprived appellant of a fair trial. The trial court's negligence was a violation of the basic requirements of due process; and for this reason, the proceedings before the said court must be nullified. In *People v. Serafica*, we ordered that the joint decision of the trial court be vacated and the cases remanded to the court a quo for proper proceeding. The accused, who was charged with two (2) counts of murder and one (1) count of frustrated murder, entered a plea of "guilty" to all three charges and was sentenced to death. We found that the accused's plea was not an unconditional admission of guilt because he was "not in full possession of his mental faculties when he killed the victim;" and thereby ordered that he be subjected to the necessary medical examination to determine his degree of insanity at the time of commission of the crime.

Lim v. Court of Appeals, G.R. 111397, August 12, 2002

Lim's zeal in his campaign against prostitution is commendable. The presumption is that he acted in good faith and was motivated by his concern for his constituents when he implemented his campaign against prostitution in the Ermita-Malate area. However, there is no excusing Lim for arbitrarily closing down, without due process of law, the business operations of Bistro. For this reason, the trial court properly restrained the acts of Lim.

Opportunity to be Heard

Marohombsar v. Judge Adiong, A.M. RTJ-02-1674, January 22, 2004

In applications for preliminary injunction, the dual requirement of prior notice and hearing before injunction may issue has been relaxed to the point that not all petitions for preliminary injunction need undergo a trial-type hearing, it being doctrinal that a formal or trial-type hearing is not, at all times and in all instances, essential to due process. The essence of due process is that a party is afforded a reasonable opportunity to be heard and to present any evidence he may have in support of his defense. In the present case, complainant was able to move for a reconsideration of the order in question, hence her right to due process was not in anyway transgressed. We have ruled that a party cannot claim that he has been denied due process when he has availed of the opportunity to present his position.

Exceptions to Notice & Hearing requirements

Philcomsat v. Alcuaz, 180 SCRA 218 (1989)

The function involved in the rate fixing-power of NTC is adjudicatory and hence quasi-judicial, not quasi-legislative; thus, notice and hearing are necessary and the absence thereof results in a violation of due process. The challenged order, particularly on the issue of rates provided therein, being violative of the due process clause is void and should be nullified. Respondents should now proceed, as they should heretofore have done, with the hearing and determination of petitioner's pending application for a certificate of public convenience and necessity and in which proceeding the subject of rates involved in the present controversy.

Suntay v. People, 101 Phil. 833 (1957)

Hearing would have been proper and necessary if the reason for the withdrawal or cancellation of the passport were not clear but doubtful. But where the holder of a passport is facing a criminal charge in our courts and left the country to evade criminal prosecution, the Secretary for Foreign Affairs, in the exercise of his discretion to revoke a passport already issued, cannot be held to have acted whimsically or capriciously in withdrawing and cancelling such passport. Due process does not necessarily mean or require a hearing. When discretion is exercised by an officer vested with it upon an undisputed fact, such as the filing of a serious criminal charge against the passport holder, hearing maybe dispensed with by such officer as a prerequisite to the cancellation of his passport; lack of such hearing does not violate the due process of law clause of the Constitution; and the exercise of the discretion vested in him cannot be deemed whimsical and capricious because of the absence of such hearing.

De Bisschop v. Galang, 8 SCRA 244 (1963)

The administration of immigration laws is the primary and exclusive responsibility of the Executive branch of the government. Extension of stay of aliens is purely discretionary on the part of the immigration authorities. Since Commonwealth Act No. 613, otherwise known as the Philippine Immigration Act of 1940, is silent as to the procedure to be followed in these cases, we are inclined to uphold the argument that courts have no jurisdiction to review the purely administrative practice of immigration authorities of not granting formal hearings in certain cases as the circumstances may warrant, for reasons of practicability and expediency. This would not violate the due process clause if we take into account that, in this particular case, the letter of appellant-commissioner advising de Bisschop to depart in 5 days is a mere formality, a preliminary step, and, therefore, far from final, because, as alleged in paragraph 7 of appellant's answer to the complaint, the "requirement to leave before the start of the deportation proceedings is only an advice to the party that unless he departs voluntarily, the State will be compelled to take steps for his expulsion". It is already a settled rule in this jurisdiction that a day in court is not a matter of right in administrative proceedings.

Var Orient Shipping Co., Inc. v. Achacoso, 161 SCRA 232 (1988)

Equally unmeritorious is the petitioners' allegation that they were denied due process because the decision was rendered without a formal hearing. The essence of due process is simply an opportunity to be heard, or, as applied to administrative proceedings, an opportunity to explain



one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. *(citations omitted)*

Administrative Due Process

Ang Tibay v. CIR, 69 Phil. 635 (1940)

[W]e have come to the conclusion that the interest of justice would be better served if the movant is given opportunity to present at the hearing the documents referred to in his motion and such other evidence as may be relevant to the main issue involved. The legislation which created the Court of Industrial Relations and under which it acts is new. The failure to grasp the fundamental issue involved is not entirely attributable to the parties adversely affected by the result. Accordingly, the motion for a new trial should be and the same is hereby granted, and the entire record of this case shall be remanded to the Court of Industrial Relations, with instruction that it reopen the case, receive all such evidence as may be relevant and otherwise proceed in accordance with the requirements set forth [below]:

Requisites of Administrative Due Process

1. Right to a hearing, which includes the right to present one's case and submit evidence in support thereof;
2. The tribunal must consider the evidence presented;
3. The decision must have something to support itself;
4. The evidence must be "substantial"; and "substantial" evidence means such a reasonable mind would accept as adequate to support a finding or conclusion;
5. The decision must be based on the evidence presented at the hearing or at least contained in the record and disclosed to the parties affected;
6. The tribunal or body or any of its judges must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision;
7. The tribunal or body shall, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved and the reason for the decision rendered.

Montemayor v. Araneta University Foundation, 77 SCRA 321 (1977)

The charge leveled against petitioner (*a university professor aptly referred to as a tiller in the vineyard of the mind*), that of making homosexual advances to certain individuals, if proved, did amount to a sufficient cause for removal. The crucial question therefore is whether it was shown that he was guilty of such immoral conduct. He is thus entitled to the protection of procedural due process. To paraphrase Webster, there must be a hearing before condemnation, with the investigation to proceed in an orderly manner, and judgment to be rendered only after such inquiry.

x x x

The legal aspect as to the procedural due process having been satisfied was then summarized by the Solicitor General thus: "All the foregoing clearly shows that petitioner was afforded his day in court. Finally, and more significant, is the fact that petitioner claims denial of due process in the proceeding had before the investigating committees and not in the proceedings before the NLRC wherein, as shown heretofore, he was given the fullest opportunity to present his case."

Meralco v. PSC, 11 SCRA 317 (1964)

We need not be reminded that it is the cardinal right of a party in trials and administrative proceedings to be heard, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof and to have such evidence presented considered by the tribunal. "Even if the Commission is not bound by the rules of judicial proceedings, it must how its head to the constitutional mandate that no person shall be deprived of right without due process of law", which binds not only the government of the Republic, but also each and everyone of its branches, agencies, etc. "Due process of law guarantees *notice and opportunities to be heard* to persons who would be affected by the order or act contemplated" (citations omitted)

Ateneo v. CA, 145 SCRA 100 (1986)

It is unfortunate of the parents suffered some embarrassment because of the incident. However, their predicament arose from the misconduct of their own son who, in the exuberance of youth and unfortunate loss of self control, did something which he must have, later, regretted. There was no bad faith on the part of the university. In fact, the college authorities deferred any undue action until a definitive decision had been rendered. The whole procedure of the disciplinary process was set up to protect the privacy of the student involved. There is absolutely no indication of malice, fraud and improper or willful motives or conduct on the part of the Ateneo de Manila University in this case.

Alcuaz v. PSBA, 161 SCRA 7 (1988)

It is well settled that by reason of their special knowledge and expertise gained from the handling of specific matters falling under their respective jurisdictions, the Court ordinarily accords respect if not finality to factual findings of administrative tribunals, unless the factual findings are not supported by evidence; where the findings are vitiated by fraud, imposition or collusion; where the procedure which led to the factual findings is irregular; when palpable errors are committed; or when a grave abuse of discretion, arbitrariness, or capriciousness is manifest. *In the light of compassionate equity, students who were, in view of the absence of academic deficiencies, scheduled to graduate during the school year when this petition was filed, should be allowed to re-enroll and to graduate in due time.*



Non v. Hon. Dames II, G.R. No. 89317, May 20, 1990

[I]t does not appear that the petitioners were afforded due process, in the manner expressed in *Guzman v. national University*, before they were refused re-enrollment. In fact, it would appear from the pleadings that the decision to refuse them re-enrollment because of failing grades was a mere afterthought. It is not denied that what incurred the ire of the school authorities was the student mass actions conducted in February 1988 and which were led and/or participated in by petitioners. Certainly, excluding students because of failing grades when the cause for the action taken against them undeniably related to possible breaches of discipline not only is a denial of due process but also constitutes a violation of the basic tenets of fair play.

EQUAL PROTECTION

(political, economic and social equality)

1987 Constitution, Art. XIII, Sec. 1 and 2 (social justice)

Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

Section 2. The promotion of social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.

Id., Sec. 3 (protection to labor)

The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns to investments, and to expansion and growth.

Art. XII, Sec. 10 (nationalization of business)

The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty per centum of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the

formation and operation of enterprises whose capital is wholly owned by Filipinos.

In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.

Id., Sec. 2, par. 2 (reservation of marine resources)

The State shall protect the nations marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

Art. III, Sec. 11 (free access to the courts)

Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

Art. VIII, Sec. 5(5) (legal aid to poor)

Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

Art. IX-C, Sec. 10 (protection of candidates)

Bona fide candidates for any public office shall be free from any form of harassment and discrimination.

Art. II, Sec. 26 (public service)

The State shall guarantee equal access to opportunities for public service and prohibit political dynasties as may be defined by law.

Art. II, Sec. 14 (equality of women and men)

The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

Sexual Discrimination

Phil. Association of Service Exporters v. Drilon, 163 SCRA 386 (1988)

There is likewise no doubt that such a classification is germane to the purpose behind the measure. Unquestionably, it is the avowed objective of Department Order No. 1 to "enhance the protection for Filipino female overseas workers" this Court has no quarrel that in the midst of the terrible mistreatment Filipina workers have suffered abroad, a ban on deployment will be for their own good and welfare.

x x x

Had the ban been given universal applicability, then it would have been unreasonable and arbitrary. For obvious reasons, not all of them are similarly circumstanced. What the Constitution prohibits is the singling out of a select person or



group of persons within an existing class, to the prejudice of such a person or group or resulting in an unfair advantage to another person or group of persons.

Administration of Justice

People v. Hernandez, 99 Phil. 515 (1956)

[T]he culprit cannot, then, be considered as displaying a greater degree of malice than when the two offenses are independent of each other. On the contrary, since one offense is a necessary means for the commission of the other, the evil intent is one, which, at least, quantitatively, is lesser than when the two offenses are unrelated to each other, because, in such event, he is twice guilty of having harbored criminal designs and of carrying the same into execution.

x x x

[W]e cannot accept the explanation that crimes committed as a means necessary for the success of a rebellion had to be prosecuted separately under the provisions of Article 259 of the Penal Code of Spain, which is the counterpart of Article 244 of our old Penal Code. To begin with, these articles are part of a substantive law. They do not govern the manner or method of prosecution of the culprits.

People v. Isinain, 85 Phil. 648 (1950)

In the matter of theft of coconuts, the purpose of the heavier penalty is to encourage and protect the development of the coconut industry as one of the sources of our national economy. Unlike rice and sugar cane farms where the range of vision is unobstructed, coconut groves can not be efficiently watched because of the nature of the growth of coconut trees; and without a special measure to protect this kind of property, it will be, as it has been in the past the favorite resort of thieves. There is therefore, some reason for the special treatment accorded the industry; and as it can not be said that the classification is entirely without basis, the plea of unconstitutionality must be denied.

Chavez v. PCGG, G.R. 130716, December 9, 1998

Even granting that Congress enacts a law exempting the Marcoses from paying taxes on their properties, such law will definitely not pass the test of the equal protection clause under the Bill of Rights. Any special grant of tax exemption in favor only of the Marcos heirs will constitute class legislation. It will also violate the constitutional rule that "taxation shall be uniform and equitable."

Public Policy

UNIDO v. COMELEC, 104 SCRA 17 (1981)

The long and short of the foregoing is that it is not true that in speaking as he did in the "Pulong-Pulong sa Pangulo" he spoke not only as President-Prime Minister but also as head of the KBL, the political party now in power. It was in the former capacity that he did so. x x x

[T]here are other political parties similarly situated as petitioner. To grant to petitioner what it wants, it must necessarily follow that such other parties should also be granted. As already indicated earlier, that would be too much to expect from the media that has also its own right to earn its wherewithal. x x x

[T]he prayer in the instant petition cannot be granted.

x x x

PJA v. Prado, 227 SCRA 703 (1993)

In lumping the Judiciary with the other offices from which the franking privilege has been withdrawn, Section 35 has placed the courts of justice in a category to which it does not belong. If it recognizes the need of the President of the Philippines and the members of Congress for the franking privilege, there is no reason why it should not recognize a similar and in fact greater need on the part of the Judiciary for such privilege. While we may appreciate the withdrawal of the franking privilege from the Armed Forces of the Philippines Ladies Steering Committee, we fail to understand why the Supreme Court should be similarly treated as that Committee. And while we may concede the need of the National Census and Statistics Office for the franking privilege, we are intrigued that a similar if not greater need is not recognized in the courts of justice.

Olivarez v. Sandiganbayan, 248 SCRA 700 (1995)

Petitioner's suspected partiality may be gleaned from the fact that he issued a permit in favor of the unidentified Baclaran-based vendors' associations by the mere expedient of an executive order, whereas so many requirements were imposed on Baclaran Credit Cooperative, Inc. (BCCI) before it could be granted the same permit. Worse, petitioner failed to show, in apparent disregard of BCCI's right to equal protection, that BCCI and the unidentified Baclaran-based vendors' associations were not similarly situated as to give at least a semblance of legality to the apparent haste with which said executive order was issued. It would seem that if there was any interest served by such executive order, it was that of herein petitioner.

ISAE v. Quisumbing, G.R. No. 128845, June 1, 2000

In this case, we find the point-of-hire classification employed by respondent School to justify the distinction in the salary rates of foreign-hires and local hires to be an invalid classification. There is no reasonable distinction between the services rendered by foreign-hires and local-hires. The practice of the School of according higher salaries to foreign-hires contravenes public policy and, certainly, does not deserve the sympathy of this Court.

PHILRECA v. DILG, G.R. No. 143076, June 10, 2003

The equal protection clause under the Constitution means that "no person or class of persons shall be deprived of the same protection of laws which is enjoyed by other persons or other classes in the same place and in like circumstances." Thus, the guaranty of the equal protection of the laws is not violated by a law based on reasonable classification. **Classification, to be reasonable, must (1) rest on substantial distinctions; (2) be germane to the purposes of the law; (3) not be limited to existing conditions only; and (4) apply equally to all members of the same class.** (emphasis supplied)

[T]here is reasonable classification under the Local Government Code to justify the different tax treatment between electric cooperatives covered by P.D. No. 269, as amended, and electric cooperatives under R.A. No. 6938.

Beltran v. Secretary of Health, G.R. No. 133640, November 25, 2005

Based on the foregoing, the Legislature never intended for the law to create a situation in which unjustifiable discrimination and inequality shall be allowed. To effectuate its policy, a classification was made between nonprofit blood banks/centers and commercial blood banks.



The promotion of public health is a fundamental obligation of the State. The health of the people is a primordial governmental concern. Basically, the National Blood Services Act was enacted in the exercise of the State's police power in order to promote and preserve public health and safety.

x x x

Based on the grounds raised by petitioners to challenge the constitutionality of the National Blood Services Act of 1994 and its Implementing Rules and Regulations, the Court finds that petitioners have failed to overcome the presumption of constitutionality of the law. As to whether the Act constitutes a wise legislation, considering the issues being raised by petitioners, is for Congress to determine.

THE NON-IMPAIRMENT (OF CONTRACT) CLAUSE

1987 Constitution, Art. III, Sec. 10
No law impairing the obligation of contracts shall be passed.

Purpose

The purpose of the non-impairment clause is to safeguard the integrity of valid contractual agreements against unwarranted interference by the State. As a rule, they should be respected by the legislature and not tampered with by subsequent laws that will change the intention of the parties or modify their rights and obligations. The will of the obligor and the obligee must be observed; the obligation of their contract must not be impaired.

When impairment occurs

...[a] law which changes the terms of a legal contract between parties either in the time or mode of performance, or imposes new conditions, or dispenses with those expressed, or authorizes for its satisfaction something different from that provided in its terms, is law which impairs the obligation of a contract and is therefore null and void... [Clemons v. Nolting, 42 Phil. 702, 717 (1922)]

When allowed

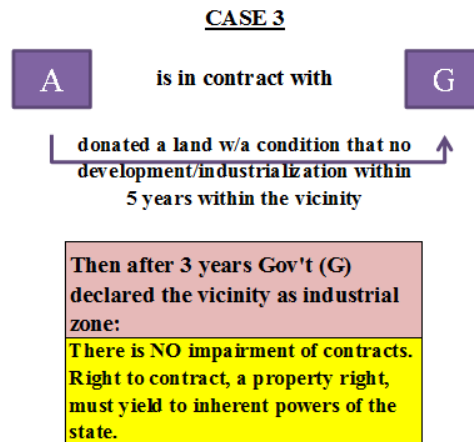
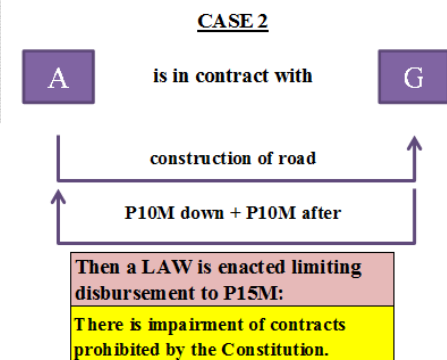
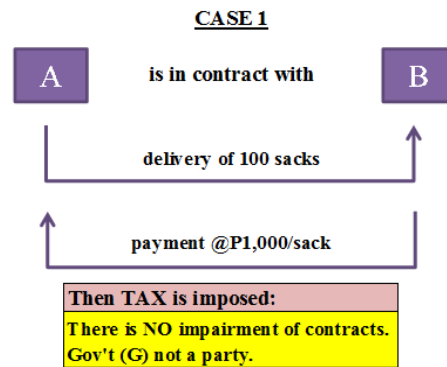
The freedom to contract is not absolute; all contracts and all rights are subject to the following limitations:

1. Police power – generally prevails over contracts
2. Eminent domain – may impair obligation of contracts

N.B.

- Taxation does not impair (obligation of) contracts
- Non-impairment clause is the weakest right
- Only surplusage in the Constitution
- Intended on legislature and quasi-legislative bodies as guide

ILLUSTRATIONS:





Regulations which affect contracts may be subject to change from time to time or as the general well-being of the community may require or as experience may demonstrate the necessity. There are instances when contracts valid at the time of their perfection may later become invalid, or some of their provisions may be rendered inoperative or illegal, by virtue of supervening legislation.

Emergency Powers

Rutter v. Esteban, 93 Phil. 68 (1953)

Consistent with what [the Supreme Court] believe to be as the only course dictated by justice, fairness and righteousness, [the Supreme Court] feel that the only way open under the present circumstances is to declare that the continued operation and enforcement of Republic Act No. 342 x x x is unreasonable and oppressive, and should not be prolonged a minute longer, and, therefore, the same should be declared null and void and without effect.

Zoning and Regulatory Ordinances

Villanueva v. Castaneda, 154 SCRA 142 (1987)

A public plaza is beyond the commerce of man and so cannot be the subject of lease or any other contractual undertaking. This is elementary. Applying this well-settled doctrine, the Supreme Court ruled that the petitioners had no right in the first place to occupy the disputed premises and cannot insist in remaining there now on the strength of their alleged lease contracts. The problems caused by the usurpation of the place by the petitioners are covered by the police power as delegated to the municipality under the general welfare clause. In fact, every contract affecting the public interest suffers a congenital infirmity in that it contains an implied reservation of the police power as a postulate of the existing legal order. This power can be activated at any time to change the provisions of the contract, or even abrogate it entirely, for the promotion or protection of the general welfare. Such an act will not militate against the impairment clause, which is subject to and limited by the paramount police power.

Sangalang v. IAC, 168 SCRA 634 (1988)

Petitioners cannot successfully rely on the alleged promise by Ayala Corporation, to build a "[f]ence along Jupiter [street] with gate for entrance and/or exit as evidence of Ayala's alleged continuing obligation to maintain a wall between the residential and commercial sections. Assuming there was a contract violated, it was still overtaken by the passage of zoning ordinances which represent a legitimate exercise of police power. The petitioners have not shown why Courts should hold otherwise other than for the supposed "non-impairment" guaranty of the Constitution, which is secondary to the more compelling interests of general welfare. The Ordinance has not been shown to be capricious or arbitrary or unreasonable to warrant the reversal of the judgments so appealed.

Ortigas & Co. v. CA, G.R. No. 126102, December 4, 2000

A law enacted in the exercise of police power to regulate or govern certain activities or transactions could be given

retroactive effect and may reasonably impair vested rights or contracts. Police power legislation is applicable not only to future contracts, but equally to those already in existence. Non-impairment of contracts or vested rights clauses will have to yield to the superior and legitimate exercise by the State of police power to promote the health, morals, peace, education, good order, safety, and general welfare of the people. Moreover, statutes in exercise of valid police power must be read into every contract. Noteworthy, in *Sangalang v. Intermediate Appellate Court*, the Supreme Court already upheld subject ordinance as a legitimate police power measure.

Administrative Regulations

Tiro v. Hontanosas, 125 SCRA 697 (1983)

The salary check of a government officer or employee such as a teacher does not belong to him before it is physically delivered to him. Until that time the check belongs to the Government. Accordingly, before there is actual delivery of the check, the payee has no power over it; he cannot assign it without the consent of the Government. On this basis Circular No. 21 stands on firm legal footing.

Rental Laws

Caleon v. Agus Development Corp., 207 SCRA 748 (1992)

B.P. Blg. 25 is derived from P.D. No. 20 which has been declared by the Supreme Court as police power legislation so that the applicability thereof to existing contracts cannot be denied. The constitutional guaranty of non-impairment of obligations of contract is limited by and subject to the exercise of police power of the state in the interest of public health, safety, morals and general welfare. In spite of the constitutional prohibition, the State continues to possess authority to safeguard the vital interests of its people. Legislation appropriate to safeguarding said interest may modify or abrogate contracts already in effect.

Tax Exemptions

MERALCO v. Province of Laguna, 306 SCRA 750 (1999)

The Local Government Code of 1991 has incorporated and adopted, by and large, the provisions of the now repealed Local Tax Code. The 1991 Code explicitly authorizes provincial governments, notwithstanding "any exemption granted by any law or other special law, . . . (to) impose a tax on businesses enjoying a franchise." A franchise partakes the nature of a grant which is beyond the purview of the non-impairment clause of the Constitution. Article XII, Section 11, of the 1987 Constitution, like its precursor provisions in the 1935 and the 1973 Constitutions, is explicit that no franchise for the operation of a public utility shall be granted except under the condition that such privilege shall be subject to amendment, alteration or repeal by Congress as and when the common good so requires.

UPDATE CASE

PAGCOR v. BIR, G.R. No. 172087, March 15, 2011

In this case, PAGCOR was granted a franchise to operate and maintain gambling casinos, clubs and other recreation or amusement places, sports, gaming pools, *i.e.*, basketball, football, lotteries, etc., whether on land or sea, within the territorial jurisdiction of the Republic of the



Philippines. Under Section 11, Article XII of the Constitution, PAGCOR's franchise is subject to amendment, alteration or repeal by Congress such as the amendment under Section 1 of R.A. No. 9377. Hence, the provision in Section 1 of R.A. No. 9337, amending Section 27 (c) of R.A. No. 8424 by withdrawing the exemption of PAGCOR from corporate income tax, which may affect any benefits to PAGCOR's transactions with private parties, is not violative of the non-impairment clause of the Constitution.

End of Topic for Midterm Purposes

Next: Midterm to Finals

ARRESTS, SEARCHES AND SEIZURES

Art. III, Section 2

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

Art. III, Section 3

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

Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

- Right to liberty
- Right to privacy
- Right to be alone

Probable Cause¹ – facts and circumstances(not mere conclusions of law)that would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested.

- In determining probable cause, the average man weighs the facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge;
- He relies on common sense;
- A finding of probable cause needs only to rest on evidence showing that, more likely

than not, a crime has been committed and that it was committed by the accused;

- It demands more than suspicion;
- It requires less than evidence that would justify conviction.

N.B.

→ Probable cause of one offense is different from probable cause of another offense.

Purpose and Importance of the Guaranty

Alvero v. Dizon, 76 Phil 637 (1946)

(treason)

The purpose of the constitutional provisions against unlawful searches and seizures is to prevent violations of private security in person and property, and unlawful invasions of the sanctity of the home, by officers of the law acting under legislative or judicial sanction, and to give remedy against such usurpations when attempted. But it does not prohibit the Federal Government from taking advantage of unlawful searches made by a private person or under authority of state law.

To Whom Directed

People v. Andre Marti, 193 SCRA 57 (1991)

(violation of dangerous drugs act)

The argument is untenable. For one thing, the constitution, in laying down the principles of the government and fundamental liberties of the people, does not govern relationships between individuals. Moreover, it must be emphasized that the modifications introduced in the 1987 Constitution (re: Sec. 2, Art. III) relate to the issuance of either a search warrant or warrant of arrest *vis-a-vis* the responsibility of the judge in the issuance thereof. The modifications introduced deviate in no manner as to whom the restriction or inhibition against unreasonable search and seizure is directed against. The restraint stayed with the State and did not shift to anyone else. Corollarily, alleged violations against unreasonable search and seizure may only be invoked against the State by an individual unjustly traduced by the exercise of sovereign authority. To agree with appellant that an act of a private individual in violation of the Bill of Rights should also be construed as an act of the State would result in serious legal complications and an absurd interpretation of the constitution. (citations omitted)

Who May Invoke the Right?

Bache and Co., v. Ruiz, 37 SCRA 323 (1971)

(various sections of NIRC)

The Court is of the opinion that an officer of a corporation which is charged with a violation of a statute of the state of its creation, or of an act of Congress passed in the exercise of its constitutional powers, cannot refuse to produce the books and papers of such corporation, we do not wish to be understood as holding that a corporation is not entitled to immunity, under the 4th Amendment, against unreasonable searches and seizures. A corporation is, after all, but an association of individuals under an assumed name and with a distinct legal entity. In organizing itself as a collective body it waives no constitutional immunities appropriate to such body. Its property cannot be taken without compensation. It can only be proceeded against by due process of law, and is protected, against unlawful discrimination.

¹ Santos v. Orda, Jr., G.R. No.189402, 06 May 2010.



Stonehill v. Diokno, 20 SCRA 383 (1967)

(violation of tax laws, tariff codes, internal revenue code, revised penal code)

The Court held that petitioners herein have *no* cause of action to assail the legality of the contested warrants and of the seizures made in pursuance thereof, for the simple reason that said corporations have their respective personalities, separate and distinct from the personality of herein petitioners, regardless of the amount of shares of stock or of the interest of each of them in said corporations, and whatever the offices they hold therein may be. Indeed, it is well settled that the legality of a seizure can be contested *only* by the party whose rights have been impaired thereby, and that the objection to an unlawful search and seizure is *purely personal* and cannot be availed of by third parties. Consequently, petitioners herein may not validly object to the use in evidence against them of the documents, papers and things seized from the offices and premises of the corporations adverted to above, since the right to object to the admission of said papers in evidence belongs *exclusively* to the corporations, to whom the seized effects belong, and may not be invoked by the corporate officers in proceedings against them in their individual capacity.

Zurcher v. Stanford Daily, 436 U. S. 547 (1978)

It is an understatement to say that there is no direct authority in this or any other federal court for the District Court's sweeping revision of the Fourth Amendment. Under existing law, valid warrants may be issued to search *any* property, whether or not occupied by a third party, at which there is probable cause to believe that fruits, instrumentalities, or evidence of a crime will be found. Nothing on the face of the Amendment suggests that a third-party search warrant should not normally issue. The Warrant Clause speaks of search warrants issued on "probable cause" and "particularly describing the place to be searched, and the persons or things to be seized." In situations where the State does not seek to seize "persons" but only those "things" which there is probable cause to believe are located on the place to be searched, there is no apparent basis in the language of the Amendment for also imposing the requirements for a valid arrest—probable cause to believe that the third party is implicated in the crime.

Wilson v. Layne, 98-0083, May 24, 1999

It violates the Fourth Amendment rights of homeowners for police to bring members of the media or other third parties into their home during the execution of a warrant when the presence of the third parties in the home was not in aid of the warrant's execution. The Amendment embodies centuries-old principles of respect for the privacy of the home, which apply where, as here, police enter a home under the authority of an arrest warrant in order to take into custody the suspect named in the warrant. It does not necessarily follow from the fact that the officers were entitled to enter petitioners' home that they were entitled to bring a reporter and a photographer with them. The Fourth Amendment requires that police actions in execution of a warrant be related to the objectives of the authorized intrusion. Certainly the presence of the reporters, who did not engage in the execution of the warrant or assist the police in their task, was not related to the objective of the authorized intrusion, the apprehension of petitioners' son. Taken in their entirety, the reasons advanced by respondents to support the reporters' presence—publicizing the government's efforts to combat crime, facilitating accurate reporting on law enforcement activities, minimizing police abuses, and protecting suspects and the officers—fall short of justifying media ride-alongs. Although the presence of third parties during the execution of a warrant may in

some circumstances be constitutionally permissible, the presence of *these* third parties was not.

Conditions for a Valid Warrant, Existence of Probable Cause

Burgos v. Chief of Staff, 133 SCRA 800 (1984)

We find petitioners' thesis impressed with merit. Probable cause for a search is defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched. And when the search warrant applied for is directed against a newspaper publisher or editor in connection with the publication of subversive materials, as in the case at bar, the application and/or its supporting affidavits must contain a specification, stating with particularity the alleged subversive material he has published or is intending to publish. Mere generalization will not suffice. Thus, the broad statement in Col. Abadilla's application that petitioner "is in possession or has in his control printing equipment and other paraphernalia, news publications and other documents which were used and are all continuously being used as a means of committing the offense of subversion punishable under Presidential Decree 885, as amended ..." is a mere conclusion of law and does not satisfy the requirements of probable cause. Bereft of such particulars as would justify a finding of the existence of probable cause, said allegation cannot serve as basis for the issuance of a search warrant and it was a grave error for respondent judge to have done so.

Chandler v. Miller, 520 U.S. 305, April 15, 1997, D-96-126

Georgia's drug-testing requirement, imposed by law and enforced by state officials, effects a search within the meaning of the Fourth and Fourteenth Amendments. As explained in *Skinner*, government-ordered "collection and testing of urine intrudes upon expectations of privacy that society has long recognized as reasonable." Because "these intrusions [are] searches under the Fourth Amendment," we focus on the question: Are the searches reasonable? To be reasonable under the Fourth Amendment, a search ordinarily must be based on individualized suspicion of wrongdoing. But particularized exceptions to the main rule are sometimes warranted based on "special needs, beyond the normal need for law enforcement." Georgia's testing method is relatively noninvasive; therefore, if the "special need" showing had been made, the State could not be faulted for excessive intrusion. However, Georgia has failed to show a special need that is substantial-important enough to override the individual's acknowledged privacy interest, sufficiently vital to suppress the Fourth Amendment's normal requirement of individualized suspicion.

People v. Chua Ho San, 308 SCRA 432) (1999)

The Court finds that there are no facts on record reasonably suggestive or demonstrative of CHUA's participation in ongoing criminal enterprise that could have spurred police officers from conducting the obtrusive search. The RTC never took the pains of pointing to such facts, but predicated mainly its decision on the finding that was "accused was caught red-handed carrying the bagful of [s]habu when apprehended." In short, there is no probable cause. At least in *People v. Tangliben*, the Court agreed with the lower court's finding that compelling reasons (*e.g.*, accused was acting suspiciously, on the spot identification by an informant



that accused was transporting prohibitive drug, and the urgency of the situation) constitutive of probable cause impelled police officers from effecting an in *flagrante delicto* arrest. In the case at bar, the Solicitor General proposes that the following details are suggestive of probable cause — persistent reports of rampant smuggling of firearm and other contraband articles, CHUA's watercraft differing in appearance from the usual fishing boats that commonly cruise over the Bacnotan seas, CHUA's illegal entry into the Philippines (he lacked the necessary travel documents or visa), CHUA's suspicious behavior, *i.e.* he attempted to flee when he saw the police authorities, and the apparent ease by which CHUA can return to and navigate his speedboat with immediate dispatch towards the high seas, beyond the reach of Philippine laws.

People v. Molina, G.R. No. 133917, February 19, 2001

In the case at bar, accused-appellants manifested no outward indication that would justify their arrest. In holding a bag on board a *trisikad*, accused-appellants could not be said to be committing, attempting to commit or have committed a crime. It matters not that accused-appellant Molina responded "Boss, if possible we will settle this" to the request of SPO1 Pamplona to open the bag. Such response which allegedly reinforced the "suspicion" of the arresting officers that accused-appellants were committing a crime, is an equivocal statement which standing alone will not constitute probable cause to effect an inflagrante delicto arrest. Note that were it not for SPO1 Marino Paguidopon (who did not participate in the arrest but merely pointed accused-appellants to the arresting officers), accused-appellants could not be the subject of any suspicion, reasonable or otherwise.

Partially Valid Warrant

People v. Salanquit, G.R. 133254, April 18, 2001

The marijuana bricks were wrapped in newsprint. There was no apparent illegality to justify their seizure. This case is similar to *People v. Musa* in which we declared inadmissible the marijuana recovered by NARCOM agents because the said drugs were contained in plastic bag which gave no indication of its contents. We explained: Moreover, when the NARCOM agents saw the plastic bag hanging in one corner of the kitchen, they had no clue as to its contents. They had to ask the appellant what the bag contained. When the appellant refused to respond, they opened it and found the marijuana. Unlike *Ker v. California*, where the marijuana was visible to the police officer's eyes, the NARCOM agents in this case could not have discovered the inculpatory nature of the contents of the bag had they not forcibly opened it. Even assuming then, that the NARCOM agents inadvertently came across the plastic bag because it was within their "plain view," what may be said to be the object in their "plain view" was just the plastic bag and not the marijuana. The incriminating nature of the contents of the plastic bag was not immediately apparent from the "plain view" of said object. It cannot be claimed that the plastic bag clearly betrayed its contents, whether by its distinctive configuration, its transparency, or otherwise, that its contents are obvious to an observer.

Microsoft Corp. v. Maxicorp., G.R. 140946, September 13, 2004

Still, no provision of law exists which requires that a warrant, partially defective in specifying some items sought to be seized yet particular with respect to the other items, should be nullified as a whole. A partially defective warrant remains

valid as to the items specifically described in the warrant. A search warrant is severable, the items not sufficiently described may be cut off without destroying the whole warrant. The exclusionary rule found in Section 3(2) of Article III of the Constitution renders inadmissible in any proceeding all evidence obtained through unreasonable searches and seizure. Thus, all items seized under paragraph (c) of the search warrants, not falling under paragraphs a, b, d, e or f, should be returned to Maxicorp.

Personal Determination by Judge

Sta. Rosa Mining Co., v. Fiscal Zabala, 153 SCRA 367 (1987)

There is no question that the institution of a criminal action is addresses to the sound discretion of the investigating fiscal. He may or he may not file the information according to whether the evidence is in his opinion sufficient to establish the guilt of the accused beyond reasonable doubt. and when he decides not to file the information, in the exercise of his discretion, he may not be compelled to do. However, after the case had already been filed in court, "fiscals are not clothed with power, without the consent of the court, to dismiss or *nolle prosequi* criminal actions actually instituted and pending further proceedings. The power to dismiss criminal actions is vested solely in the court".

Paderanga v. Drilon, G.R. 96080, April 19, 1991

It is a fundamental principle that the accused in a preliminary investigation has no right to cross-examine the witnesses which the complainant may present. Section 3, Rule 112 of the Rules of Court expressly provides that the respondent shall only have the right to submit a counter-affidavit, to examine all other evidence submitted by the complainant and, where the fiscal sets a hearing to propound clarificatory questions to the parties or their witnesses, to be afforded an opportunity to be present but without the right to examine or cross-examine. Thus, even if petitioner was not given the opportunity to cross-examine Galarion and Hanopol at the time they were presented to testify during the separate trial of the case against Galarion and Roxas, he cannot assert any legal right to cross-examine them at the preliminary investigation precisely because such right was never available to him. The admissibility or inadmissibility of said testimonies should be ventilated before the trial court during the trial proper and not in the preliminary investigation.

Pita v. CA, 178 SCRA 362 (1989)

It is basic that searches and seizures may be done only through a judicial warrant, otherwise, they become unreasonable and subject to challenge. In *Burgos v. Chief of Staff, AFP*, We counter-minded the orders of the Regional Trial Court authorizing the search of the premises of *We Forum* and *Metropolitan Mail*, two Metro Manila dailies, by reason of a defective warrant. We have greater reason here to reprobate the questioned raid, in the complete absence of a warrant, valid or invalid. The fact that the instant case involves an obscenity rap makes it no different from *Burgos*, a political case, because, and as we have indicated, speech is speech, whether political or "obscene".

Abdula v. Guiani. 326 SCRA 1 (2000)

In the case at bench, respondent admits that he issued the questioned warrant as there was "no reason for (him) to doubt the validity of the certification made by the Assistant Prosecutor that a preliminary investigation was conducted and that probable cause was found to exist as against those



charged in the information filed." The statement is an admission that respondent relied solely and completely on the certification made by the fiscal that probable cause exists as against those charged in the information and issued the challenged warrant of arrest on the sole basis of the prosecutor's findings and recommendations. He adopted the judgment of the prosecutor regarding the existence of probable cause as his own. Clearly, respondent judge, by merely stating that he had no reason to doubt the validity of the certification made by the investigating prosecutor has abdicated his duty under the Constitution to determine on his own the issue of probable cause before issuing a warrant of arrest. Consequently, the warrant of arrest should be declared null and void.

People v. Mamaril, G.R. 147607, January 22, 2004

The Court held that the search warrant is tainted with illegality by the failure of the Judge to conform with the essential requisites of taking the depositions in writing and attaching them to the record, rendering the search warrant invalid. No credit was given to the argument of the Solicitor General that the issuing judge examined under oath, in the form of searching questions and answers, the applicant SPO2 Chito S. Esmenda and his witnesses on January 25, 1999 as it is so stated in Search Warrant No. 99-51. Although it is possible that Judge Ramos examined the complainant and his witnesses in the form of searching questions and answers, the fact remains that there is no evidence that the examination was put into writing as required by law. Otherwise, the depositions in writing of the complainant and his witnesses would have been attached to the record, together with the affidavits that the witnesses submitted, as required by Section 5, Rule 126 of the Rules of Court. Consequently, we find untenable the assertion of the Solicitor General that the subject stenographic notes could not be found at the time Branch Clerk of Court Enrico Castillo testified before the trial court because of the confused state of the records in the latter's branch when he assumed office."

Examination of Witnesses

Pasion Vda. De Garcia v. Locsin, 65 Phil 68 (1938)

In the instant case the existence of probable cause was determined not by the judge himself but by the applicant. All that the judge did was to accept as true the affidavit made by agent Almeda. He did not decide for himself. It does not appear that he examined the applicant and his witnesses, if any. Even accepting the description of the properties to be seized to be sufficient and on the assumption that the receipt issued is sufficiently detailed within the meaning of the law, the properties seized were not delivered to the court which issued the warrant, as required by law. (See, secs. 95 and 104, G. O. No. 58.) Instead, they were turned over to the respondent provincial fiscal and used by him in building up cases against the petitioner. Considering that at the time the warrant was issued there was no case pending against the petitioner, the averment that the warrant was issued primarily for exploration purposes is not without basis. The lower court is, therefore, correct in reaching the conclusion that the search warrant (Exhibit B) was illegally issued by the justice of the peace of Tarlac, Tarlac.

Yee Sue Koy v. Almeda, 70 Phil. 141, (1940)

That the existence of probable cause has been determined by the justice of the peace of Sagay before issuing the search warrant complained of, is shown by the following statement in the warrant itself, to wit: "After examination under oath of the complainant, Mariano G. Almeda, Chief

Agent of the Anti-Usury Board, Department of Justice and Special Agent of the Philippine Army, Manila, and the witness he presented, . . . and this Court, finding that there is just and probable cause to believe as it does believe, that the above described articles, relating to the activities of said Sam Sing & Co. of lending money at usurious rate of interest, are being utilized and kept and concealed at its store and premise occupied by said Sam Sing & Co., all in violation of law." The description of the articles seized, given in the search warrant, is likewise sufficient.

Alvarez v. CFI, 64 Phil. 33 (1937)

Neither the Constitution nor General Orders No. 58 provides that it is of imperative necessity to take the deposition of the witnesses to be presented by the applicant or complainant in addition to the affidavit of the latter. The purpose of both in requiring the presentation of depositions is nothing more than to satisfy the committing magistrate of the existence of probable cause. Therefore, if the affidavit of the applicant or complainant is sufficient, the judge may dispense with that of other witnesses. Inasmuch as the affidavit of the agent in this case was insufficient because his knowledge of the facts was not personal but merely hearsay, it is the duty of the judge to require the affidavit of one or more witnesses for the purpose of determining the existence of probable cause to warrant the issuance of the search warrant. When the affidavit of the applicant of the complaint contains sufficient facts within his personal and direct knowledge, it is sufficient if the judge is satisfied that there exist probable cause; when the applicant's knowledge of the facts is mere hearsay, the affidavit of one or more witnesses having a personal knowledge of the fact is necessary. We conclude, therefore, that the warrant issued is likewise illegal because it was based only on the affidavit of the agent who had no personal knowledge of the facts.

Mata v. Bayona, 128 SCRA 388 (1984)

Mere affidavits of the complainant and his witness are thus not sufficient. The examining Judge has to take depositions in writing of the complainant and the witnesses he may produce and to attach them to the record. Such written deposition is necessary in order that the Judge may be able to properly determine the existence or non-existence of probable cause, to hold liable for perjury the person giving it if it will be found later that his declarations are false. The search warrant is tainted with illegality by the failure of the Judge to conform with the essential requirements of taking the depositions in writing and attaching them to the record, rendering the search warrant invalid.

Particularity of Description

Descriptio personae – description of a person.

- Without it, warrants are INVALID
- No name but with description, VALID

Olaes v. People, 155 SCRA 486 (1987)

While it is true that the caption of the search warrant states that it is in connection with "Violation of RA 6425, otherwise known as the Dangerous Drugs Acts of 1972," it is clearly recited in the text thereof that "There is probable cause to believe that Adolfo Olaes alias "Debie" and alias "Baby" of No. 628 Comia St., Filtration, Sta. Rita, Olongapo City, has in their possession and control and custody of marijuana dried stalks/leaves/seeds/cigarettes and other regulated/prohibited and exempt narcotics preparations which is the subject of the offense stated above." Although the specific section of the Dangerous Drugs Act is not



pinpointed, there is no question at all of the specific offense alleged to have been committed as a basis for the finding of probable cause. The search warrant also satisfies the requirement in the Bill of Rights of the particularity of the description to be made of the "place to be searched and the persons or things to be seized."

Prudente v. Judge Dayrit, 180 SCRA 69 (1989)

In the present case, however, the application for search warrant was captioned: "For Violation of PD No. 1866 (Illegal Possession of Firearms, etc.) While the said decree punishes several offenses, the alleged violation in this case was, qualified by the phrase "illegal possession of firearms, etc." As explained by respondent Judge, the term "etc." referred to ammunitions and explosives. In other words, the search warrant was issued for the specific offense of illegal possession of firearms and explosives. Hence, the failure of the search warrant to mention the particular provision of PD No. 1-866 that was violated is not of such a gravity as to call for its invalidation on this score. Besides, while illegal possession of firearms is penalized under Section 1 of PD No. 1866 and illegal possession of explosives is penalized under Section 3 thereof, it cannot be overlooked that said decree is a codification of the various laws on illegal possession of firearms, ammunitions and explosives; such illegal possession of items destructive of life and property are related offenses or belong to the same species, as to be subsumed within the category of illegal possession of firearms, etc. under P.D. No. 1866.

Chia v. Coll. of Customs, 177 SCRA 755 (1989)

Not only may goods be seized without a search and seizure warrant under Section 2536 of the Customs and Tariff Code, when they (the goods) are openly offered for sale or kept in storage in a store as in this case, but the fact is that petitioner's stores — "Tom's Electronics" and "Sony Merchandising (Phil.)" — were searched upon warrants of search and detention issued by the Collector of Customs, who, under the 1973 Constitution, was "a responsible officer authorized by law" to issue them.

20th Century Fox Film Corp. v. CA, 164 SCRA 655 (1988)

Although the applications and warrants themselves covered certain articles of property usually found in a video store, the Court believes that the search party should have confined themselves to articles that are according to them, evidence constitutive of infringement of copyright laws or the piracy of intellectual property, but not to other articles that are usually connected with, or related to, a legitimate business, not involving piracy of intellectual property, or infringement of copyright laws. So that a television set, a rewinder, and a whiteboard listing Betamax tapes, video cassette cleaners video cassette recorders as reflected in the Returns of Search Warrants, are items of legitimate business engaged in the video tape industry, and which could not be the subject of seizure, The applicant and his agents therefore exceeded their authority in seizing perfectly legitimate personal property usually found in a video cassette store or business establishment."

People v. Choi, G.R. No. 152950, August 3, 2006

Accordingly, to restrict the exercise of discretion by a judge by adding a particular requirement (the presentation of master tapes, as intimated by *20th Century Fox*) not provided nor implied in the law for a finding of probable cause is beyond the realm of judicial competence or statesmanship. It serves no purpose but to stultify and constrict the judicious exercise of a court's prerogatives and to denigrate the judicial duty of determining the existence of probable cause to a mere ministerial or mechanical function.

There is, to repeat, no law or rule which requires that the existence of probable cause is or should be determined solely by a specific kind of evidence. Surely, this could not have been contemplated by the framers of the Constitution, and we do not believe that the Court intended the statement in *20th Century Fox* regarding master tapes as the dictum for all seasons and reasons in infringement cases. (emphasis supplied)

Nolasco v. Cruz Pano, 132 SCRA 152 (1985)

It is at once evident that the foregoing Search Warrant authorizes the seizure of personal properties vaguely described and not particularized. It is an all-embracing description which includes everything conceivable regarding the Communist Party of the Philippines and the National Democratic Front. It does not specify what the subversive books and instructions are; what the manuals not otherwise available to the public contain to make them subversive or to enable them to be used for the crime of rebellion. There is absent a definite guideline to the searching team as to what items might be lawfully seized thus giving the officers of the law discretion regarding what articles they should seize as, in fact, taken also were a portable typewriter and 2 wooden boxes. It is thus in the nature of a general warrant and infringes on the constitutional mandate requiring particular description of the things to be seized. In the recent rulings of this Court, search warrants of similar description were considered null and void for being too general.

PICOP v. Asuncion, 307 SCRA 253 (1999)

In the present case, the search warrant is invalid because (1) the trial court failed to examine personally the complainant and the other deponents; (2) SPO3 Cicero Bacolod, who appeared during the hearing for the issuance or the search warrant, had no personal knowledge that petitioners were not licensed to possess the subject firearms; and (3) the place to be searched was not described with particularity.

Yusef Al Ghouf v. C.A, GR No.126859, September 4, 2001

That the articles seized during the search of Apartment No. 2 are of the same kind and nature as those items enumerated in the search warrant above-quoted appears to us beyond cavil. The items seized from Apartment No. 2 were described with specificity in the warrants in question. The nature of the items ordered to be seized did not require, in our view, a technical description. Moreover, the law does not require that the things to be seized must be described in precise and minute details as to leave no room for doubt on the part of the searching authorities, otherwise, it would be virtually impossible for the applicants to obtain a search warrant as they would not know exactly what kind of things they are looking for. Once described, however, the articles subject of the search and seizure need not be so invariant as to require absolute concordance, in our view, between those seized and those described in the warrant. Substantial similarity of those articles described as a class or species would suffice.

Del Rosario v. People G.R. No. 142295, May 31, 2001

In this case, the firearm was not found inadvertently and in plain view. It was found as a result of a meticulous search in the kitchen of petitioner's house. This firearm, to emphasize, was not mentioned in the search warrant. Hence, the seizure was illegal. The seizure without the requisite search warrant was in plain violation of the law and the Constitution. True that as an exception, the police may seize without warrant illegally possessed firearm or any contraband for that matter, inadvertently found in plain view. However, "[t]he seizure of



evidence in 'plain view' applies only where the police officer is not searching for evidence against the accused, but inadvertently comes across an incriminating object." Specifically, seizure of evidence in "plain view" is justified when there is:

- (1) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties;
- (2) the evidence was inadvertently discovered by the police who had the right to be where they are the evidence must be immediately apparent, and
- (3) "plain view" justified mere seizure of evidence without further search.

CASES OF VALID WARRANTLESS SEARCH/SEIZURE

1. Waiver/consent
2. Plain view doctrine – without conducting a search, an illegal object is exposed to eyes or hand. (*)
3. Search(w/o warrant) incident to a lawful arrest
 - (a) With warrant
 - (b) Without warrant falling under exceptions
4. Moving vehicle
5. Airport/seaport search – *no reasonable expectation of privacy of person or property in such places where public safety demands*
6. Emergency circumstances
 - (7) Plain view (*)
 - (8) Stop and frisk (*)
 - (9) Checkpoints (*)

(*) = no warrantless search/seizure but may lead to it.

N.B.

- ➔ **2-witness rule apply only in search with warrant**
- ➔ **In "plain view doctrine", smell not included, and object is illegal *per se***
- ➔ **Reason for search incident to lawful arrest:**
 - To protect the police
 - To protect the evidence from being concealed or destroyed

Rules of Court, Rule 126

Section 3. Personal property to be seized. — A search warrant may be issued for the search and seizure of personal property:

- (a) Subject of the offense;
- (b) Stolen or embezzled and other proceeds, or fruits of the offense; or
- (c) Used or intended to be used as the means of committing an offense.

Warrantless Searches, Valid Waiver

People vs. Omaweng, 213 SCRA 462 (1992)

The third assignment of error hardly deserves any consideration. Accused was not subjected to any search which may be stigmatized as a violation of his Constitutional right against unreasonable searches and seizures. If one had been made, this Court would be the first to condemn it "as the protection of the citizen and the maintenance of his constitutional rights is one of the highest duties and privileges of the Court." He willingly gave prior consent to the search and voluntarily agreed to have it conducted on his vehicle and travelling bag.

People v. Correa, 285 SCRA 679 (1998)

The appellants are now precluded from assailing the warrantless search and seizure when they voluntarily submitted to it as shown by their actuation during the search and seizure. The appellants never protested when SPO3 Jesus Faller, after identifying himself as a police officer, opened the tin can loaded in the appellants' vehicle and found eight (8) bundles. And when Faller opened one of the bundles, it smelled of marijuana. The NBI later confirmed the eight (8) bundles to be positive for marijuana. Again, the appellants did not raise any protest when they, together with their cargo of drugs and their vehicle, were brought to the police station for investigation and subsequent prosecution.

People vs. Ramos, G.R. 85401-02, June 4, 1990

Sgts. Sudiagal and Ahamad testified that there was an informant who apprised them of the presence of a drug pusher at the corner of 3rd Street and Rizal Avenue, Olongapo City. Acting on such information and in their presence, their superior, Captain Castillo, gave the informant marked money to buy marijuana. The informant, now turned poseur-buyer, returned with two sticks of marijuana. Captain Castillo again gave said informant marked money to purchase marijuana. The informant-poseur buyer thereafter returned with another two sticks of marijuana. The police officers then proceeded to the corner of 3rd Street and Rizal Avenue and effected the arrest of appellant. From the facts, it may be concluded that the arresting police officers had personal knowledge of facts implicating the appellant with the sale of marijuana to the informant-poseur buyer. We hold therefore that the arrest was legal and the consequent search which yielded 20 sticks of marijuana was lawful for being incident to a valid arrest. The fact that the prosecution failed to prove the sale of marijuana beyond reasonable doubt does not undermine the legality of the appellant's arrest.

People v. Barros, 231 SCRA 557 (1994)

It might be supposed that the non-admissibility of evidence secured through an invalid warrantless arrest or a warrantless search and seizure may be waived by an accused person. The *a priori* argument is that the invalidity of an unjustified warrantless arrest, or an arrest effected with a defective warrant of arrest may be waived by applying for and posting of bail for provisional liberty, so as to estop as accused from questioning the legality or constitutionality of his detention or the failure to accord him a preliminary investigation. We do not believe, however, that waiver of the latter (by, e.g., applying for and posting of bail) necessarily constitutes, or carries with it, waiver of the former — an argument that the Solicitor General appears to be making impliedly. Waiver of the non-admissibility of the "fruits" of an invalid warrantless arrest and of a warrantless search and seizure is not casually to be presumed, if the constitutional



right against unlawful searches and seizures is to retain its vitality for the protection of our people. In the case at bar, defense counsel had expressly objected on constitutional grounds to the admission of the carton box and the four (4) kilos of marijuana when these were formally offered in evidence by the prosecution. We consider that appellant's objection to the admission of such evidence was made clearly and seasonably and that, under the circumstances, no intent to waive his rights under the premises can be reasonably inferred from his conduct before or during trial.

Veroy vs. Layague, 210 SCRA 97 (1992)

The reason for searching the house of herein petitioners is that it was reportedly being used as a hideout and recruitment center for rebel soldiers. While Capt. Obrero was able to enter the compound, he did not enter the house because he did not have a search warrant and the owners were not present. This shows that he himself recognized the need for a search warrant, hence, he did not persist in entering the house but rather contacted the Veroyos to seek permission to enter the same. **Permission was indeed granted** by Ma. Luisa Veroy to enter the house **but only to ascertain the presence of rebel soldiers**. Under the circumstances it is undeniable that the police officers had ample time to procure a search warrant but did not. (emphasis supplied)

[In *malum prohibitum*] while there is no need of criminal intent, there must be knowledge that the same existed. Without the knowledge or voluntariness there is no crime.(Id.)

People vs. Damaso, 212 SCRA 457 (1992)

The constitutional immunity from unreasonable searches and seizures, being personal one, cannot be waived by anyone except the person whose rights are invaded or one who is expressly authorized to do so in his or her behalf. In the case at bar, the records show that appellant was not in his house at that time Luz Tanciangco and Luz Morados, his alleged helper, allowed the authorities to enter it. We find no evidence that would establish the fact that Luz Morados was indeed the appellant's helper or if it was true that she was his helper, that the appellant had given her authority to open his house in his absence. **The prosecution likewise failed to show if Luz Tanciangco has such an authority**. Without this evidence, the authorities' intrusion into the appellant's dwelling cannot be given any color of legality. While the power to search and seize is necessary to the public welfare, still it must be exercised and the law enforced without transgressing the constitutional rights of the citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government. **As a consequence, the search conducted by the authorities was illegal**. It would have been different if the situation here demanded urgency which could have prompted the authorities to dispense with a search warrant. But the record is silent on this point. The fact that they came to the house of the appellant at nighttime, does not grant them the license to go inside his house. (citations omitted, emphasis supplied)

Lopez vs. Comm. Of Customs, 68 SCRA 320 (1975)

The crucial question then is whether in this instance there was consent on the part of the person who was the occupant of the hotel room then rented by petitioner Velasco. It cannot be contended that such premises would be outside the constitutional protection of a guarantee intended to protect one's privacy. It stands to reason that in such a place, the insistence on being free from any unwelcome intrusion is likely to be more marked. **Was there, however, consent sufficient in law to dispense with the warrant?**

Respondents, as previously noted, contend that there was such consent. The person who was present at his hotel room was one Teofila Ibañez, "a manicurist by occupation ." Their effort appurtenant thereto is doomed to failure. If such indeed were the case, then it is much more easily understandable why that person, Teofila Ibañez, who could be aptly described as the wrong person at the wrong place and at the wrong time, would have signified her consent readily and immediately. Under the circumstances, that was the most prudent course of action. It would save her and even petitioner Velasco himself from any gossip or innuendo. Nor could the officers of the law be blamed if they would act on the appearances. There was a person inside who from all indications was ready to accede to their request. Even common courtesy alone would have precluded them from inquiring too closely as to why she was there. Under all the circumstances, therefore, it can readily be concluded that there was consent sufficient in law to dispense with the need for a search warrant. The petition cannot, therefore, prevail.

Caballes v. Court of Appeals, G.R. No. 136292, January 15, 2002

The "consent" given under intimidating or coercive circumstances is no consent within the purview of the constitutional guaranty. In addition, in cases where this Court upheld the validity of consented search, it will be noted that the police authorities expressly asked, in no uncertain terms, for the consent of the accused to be searched. And the consent of the accused was established by clear and positive proof. In the case of herein petitioner, the statements of the police officers were **not asking for his consent**; they were **declaring** to him that they will look inside his vehicle. Besides, it is doubtful whether permission was actually requested and granted because when Sgt. Noceja was asked during his direct examination what he did when the vehicle of petitioner stopped, he answered that he removed the cover of the vehicle and saw the aluminum wires. It was only after he was asked a clarificatory question that he added that he told petitioner he will inspect the vehicle. To our mind, this was more of an afterthought. Likewise, when Pat. de Castro was asked twice in his direct examination what they did when they stopped the jeepney, his consistent answer was that they searched the vehicle. He never testified that he asked petitioner for permission to conduct the search.

People vs. Asis, et. al, G.R. No. 142531, October 15, 2002

[T]he constitutional right against unreasonable searches and seizures, being a personal one, cannot be waived by anyone except the person whose rights are invaded or who is expressly authorized to do so on his or her behalf.³¹ In the present case, the testimonies of the prosecution witnesses show that at the time the bloodstained pair of shorts was recovered, Appellant Formento, together with his wife and mother, was present. Being the very subject of the search, necessarily, he himself should have given consent. Since he was physically present, the waiver could not have come from any other person.

People vs. Tudtud, et. al., G.R. No. 144037, September 26, 2003

Appellants' implied acquiescence, if at all, could not have been more than mere passive conformity given under coercive or intimidating circumstances and is, thus, considered no consent at all within the purview of the constitutional guarantee. Consequently, appellants' lack of objection to the search and seizure is not tantamount to a waiver of his constitutional right or a voluntary submission to the warrantless search and seizure



Q: [In case of warrantless arrests] Is the search/seizure valid?

A: No. There was no warrant. Here however, while there was no warrant...

Incident to Lawful Arrest

Rules of Court, Rule 126

Section 13. *Search incident to lawful arrest.* — A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant

Chimel vs. California, 395 U. S. 752 (1969)

Assuming the arrest was valid, the warrantless search of petitioner's house cannot be constitutionally justified as incident to that arrest. Police officers, armed with an arrest warrant but not a search warrant, were admitted to petitioner's home by his wife, where they awaited petitioner's arrival. When he entered, he was served with the warrant. Although he denied the officers' request to "look around," they conducted a search of the entire house "on the basis of the lawful arrest." While the reasonableness of a search incident to arrest depends upon "the facts and circumstances -- the total atmosphere of the case," those facts and circumstances must be viewed in the light of established Fourth Amendment principles, and the only reasoned distinction is one between (1) *a search of the person arrested and the area within his reach*, and (2) more extensive searches.

People vs. de la Cruz, G.R. 83260, April 18, 1990

While it is conceded that in a buy-bust operation, there is seizure of evidence from one's person without a search warrant, needless to state a search warrant is not necessary, the search being incident to a lawful arrest. A peace officer may, without a warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing or is attempting to commit an offense. It is a matter of judicial experience that in the arrest of violators of the Dangerous Drugs Act in a buy-bust operation, the malefactors were invariably caught red-handed. There being no violation of the constitutional right against unreasonable search and seizure, the confiscated articles are admissible in evidence.

People v. Kalubiran, 196 SCRA 645 (1991)

The defense posture that Kalubiran's arrest and search violated the Bill of Rights demonstrates an unfamiliarity with the applicable rules and jurisprudence. The accused-appellant was arrested *in flagrante delicto* as a result of the entrapment and so came under Section 5, Rule 113 of the Rules of Court, authorizing a warrantless arrest of any person actually committing a crime. The search was made as an incident of a lawful arrest and so was also lawful under Section 12 of Rule 116. In addition to the aforementioned Rules, there is abundant jurisprudence justifying warrantless searches and seizures under the conditions established in this case.

People v. Malmstedt, 198 SCRA 401 (1991)

The prohibited drugs supposedly discovered in Malmstedt's (*Swedish National, Caucasian from Sagada*) bags, having been taken in violation of the constitutional right against unreasonable searches and seizures, are inadmissible against him "for any purpose in any proceeding." Also pronounced as *incompetent evidence* against him are the

admissions supposedly made by him without his first being accorded the constitutional rights of persons under custodial investigation. Without such object evidence and admissions, nothing remains of the case against Malmstedt.

Espano v. Court of Appeals, 288 SCRA 558 (1998)

Petitioner's arrest falls squarely under the aforementioned rule. He was caught *in flagrante* as a result of a buy-bust operation conducted by police officers on the basis of information received regarding the illegal trade of drugs within the area of Zamora and Pandacan Streets, Manila. The police officer saw petitioner handing over something to an alleged buyer. After the buyer left, they searched him and discovered two cellophanes of marijuana. His arrest was, therefore, lawful and the two cellophane bags of marijuana seized were admissible in evidence, being the fruits of the crime. The warrantless search made in his house, however, which yielded ten cellophane bags of marijuana became unlawful since the police officers were not armed with a search warrant at the time. Moreover, it was beyond the reach and control of petitioner.

People vs. Tanliben, 184 SCRA 220 (1990)

It is contended that the marijuana allegedly seized from the accused was a product of an unlawful search without a warrant and is therefore inadmissible in evidence. This contention is devoid of merit. Accused was caught *in flagrante*, since he was carrying marijuana at the time of his arrest. This case therefore falls squarely within the exception. The warrantless search was incident to a lawful arrest and is consequently valid.

People v. Che Chun Ting, 328 SCRA 592 (2000)

The inadmissibility of the 5,578.68 grams of shabu in evidence, illegally seized for being violative of one's basic constitutional right and guarantee against unreasonable searches and seizures, does not totally exonerate the accused. The illegal search in Unit 122 was preceded by a valid arrest. The accused was caught *in flagrante delicto* as a result of an entrapment conducted by NARCOM operatives on the basis of the information provided by Mabel Cheung Mei Po regarding the accused's illegal trade. NARCOM agents P/Insp. Santiago and SPO3 Campanilla saw him handing over a bag of white crystalline substance to Mabel Cheung Mei Po. His arrest was lawful and the seized bag of shabu weighing 999.43 grams was admissible in evidence, being the fruit of the crime.

People vs. Estrella, G.R. Nos. 138539-40, January 21, 2003

Assuming *arguendo* that appellant was indeed committing an offense in the presence of the arresting officers, and that the arrest without a warrant was lawful, it still cannot be said that the search conducted was within the confines of the law. The scope of the search should be limited to the area within which the person to be arrested can reach for a weapon or for evidence that he or she can destroy. In this case, searched was the entire hut, which cannot be said to have been within appellant's immediate control. Thus, the search exceeded the bounds of that which may be considered to be incident to a lawful arrest.

People vs. Libnao, et al., G.R. No. 136860, January 20, 2003

The requirement that a judicial warrant must be obtained prior to the carrying out of a search and seizure is not absolute. There are certain familiar exceptions to the rule, one of which relates to *search of moving vehicles*. Warrantless search and seizure of moving vehicles are allowed in recognition of the impracticability of securing a



warrant under said circumstances as the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant may be sought. Peace officers in such cases, however, are limited to routine checks where the examination of the vehicle is limited to visual inspection. When a vehicle is stopped and subjected to an extensive search, such would be constitutionally permissible only if the officers made it upon probable cause, i.e., upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains as item, article or object which by law is subject to seizure and destruction. The warrantless search in the case at bench is not bereft of a probable cause. The Tarlac Police Intelligence Division had been conducting surveillance operation for three months in the area. The surveillance yielded the information that once a month, appellant and her co-accused Rosita Nunga transport drugs in big bulks. At 10:00 pm of October 19, 1996, the police received a tip that the two will be transporting drugs that night riding a tricycle. Surely, the two were intercepted three hours later, riding a tricycle and carrying a suspicious-looking black bag, which possibly contained the drugs in bulk. When they were asked who owned it and what its content was, both became uneasy. ***Under these circumstances, the warrantless search and seizure of appellant's bag was not illegal.***

**Validity of Warrant → Motion to Quash
If no warrant → Motion for re-investigation**

Plain View Doctrine

1. **Prior valid intrusion based on a valid warrantless arrest;**
2. **The evidence was inadvertent discovered right to be where they are**
3. **The evidence must be immediately apparent;**
4. **Plain view justified mere seizure of evidence without further search**

People v. Musa, 217 SCRA 597 (1993)

In this case, the appellant was arrested and his person searched in the living room. Failing to retrieve the marked money which they hoped to find, the NARCOM agents searched the whole house and found the plastic bag in the kitchen. The plastic bag was, therefore, not within their "plain view" when they arrested the appellant as to justify its seizure. The NARCOM agents had to move from one portion of the house to another before they sighted the plastic bag. Unlike *Ker vs. California*, where the police officer had reason to walk to the doorway of the adjacent kitchen and from which position he saw the marijuana, the NARCOM agents in this case went from room to room with the obvious intention of fishing for more evidence. Moreover, when the NARCOM agents saw the plastic bag hanging in one corner of the kitchen, they had no clue as to its contents. They had to ask the appellant what the bag contained. When the appellant refused to respond, they opened it and found the marijuana. Unlike *Ker v. California*, where the marijuana was visible to the police officer's eyes, the NARCOM agents in this case could not have discovered the inculpatory nature of the contents of the bag had they not forcibly opened it.

Padilla v. CA, 269 SCRA 402 (1997)

In conformity with respondent court's observation, it indeed appears that the authorities stumbled upon petitioner's firearms and ammunitions without even undertaking any active search which, as it is commonly understood, is a prying into hidden places for that which is concealed. The seizure of the Smith & Wesson revolver and an M-16 rifle magazine was justified for they came within "plain view" of the policemen who *inadvertently discovered* the revolver and magazine tucked in petitioner's waist and back pocket respectively, when he raised his hands after alighting from his Pajero. The same justification applies to the confiscation of the M-16 armalite rifle which was *immediately apparent* to the policemen as they took a casual glance at the Pajero and saw said rifle lying horizontally near the driver's seat. With respect to the Berreta pistol and a black bag containing assorted magazines, petitioner voluntarily surrendered them to the police. This latter gesture of petitioner indicated a waiver of his right against the alleged search and seizure, and that his failure to quash the information estopped him from assailing any purported defect.

People v. Valdez, G.R. No. 129296, September 25, 2000

In this case, PO2 Balut testified that they first located the marijuana plants before appellant was arrested without a warrant. Hence, there was no valid warrantless arrest which preceded the search of appellant's premises. Note further that the police team was dispatched to appellant's *kaingin* precisely to search for and uproot the prohibited flora. The seizure of evidence in "plain view" applies only where the police officer is not searching for evidence against the accused, but inadvertently comes across an incriminating object. Clearly, their discovery of the cannabis plants was not inadvertent. We also note the testimony of SPO2 Tipay that upon arriving at the area, they first had to "look around the area" before they could spot the illegal plants. Patently, the seized marijuana plants were not "immediately apparent" and a "further search" was needed. In sum, the marijuana plants in question were not in "plain view" or "open to eye and hand." The "plain view" doctrine, thus, cannot be made to apply.

Arizona v. Hicks, 480 U.S. 321 [1987]

The search was invalid because, as the State concedes, the policeman had only a "reasonable suspicion" -- i.e., less than probable cause to believe -- that the stereo equipment was stolen. Probable cause is required to invoke the "plain view" doctrine as it applies to seizures. It would be illogical to hold that an object is seizable on lesser grounds, during an unrelated search and seizure, than would have been needed to obtain a warrant for it if it had been known to be on the premises. Probable cause to believe the equipment was stolen was also necessary to support the search here, whether legal authority to move the equipment could be found only as the inevitable concomitant of the authority to seize it or also as a consequence of some independent power to search objects in plain view.

People v. Compacion, G.R. No. 124442, July 20, 2001

As a general rule, objects in the "plain view" of an officer who has the right to be in the position to have that view are subject to seizure without a warrant. It is usually applied where a police officer is not searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object. Thus, the following elements must be present before the doctrine may be applied: (a) a prior valid intention based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties; (b) the evidence was inadvertently discovered by the police



who have the right to be where they are; (c) the evidence must be immediately apparent; and (d) "plain view" justified were seizure of evidence without further search. **Here, there was no valid warrantless arrest.** They forced their way into accused-appellant's premises without the latter's consent.

People v. Huang Zhen Hua, G.R. 139301, September 29, 2004

Unannounced intrusion into the premises is permissible when:

- a party whose premises or is entitled to the possession thereof refuses, upon demand, to open it;
- when such person in the premises already knew of the identity of the officers and of their authority and persons;
- when the officers are justified in the honest belief that there is an imminent peril to life or limb; and
- when those in the premises, aware of the presence of someone outside (because, for example, there has been a knock at the door), are then engaged in activity which justifies the officers to believe that an escape or the destruction of evidence is being attempted.

Where the initial intrusion that brings the police within plain view of such an article is supported, not by a warrant, but by one of the recognized exceptions to the warrant requirement, the seizure is also legitimate. Thus, the police may inadvertently come across evidence while in 'hot pursuit' of a fleeing suspect. ... And an object that comes into view during a search incident to arrest that is appropriately limited in scope under existing law may be seized without a warrant. Finally, the 'plain view' doctrine has been applied where a police officer is not searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object.

Enforcement of fishing, customs and immigration laws

Roldan vs. Arca, 65 SCRA 320 (1975)

Search and seizure without search warrant of vessels and air crafts for violations of the customs laws have been the traditional exception to the constitutional requirement of a search warrant, because the vessel can be quickly moved out of the locality or jurisdiction in which the search warrant must be sought before such warrant could be secured; hence it is not practicable to require a search warrant before such search or seizure can be constitutionally effected. The same exception should apply to seizures of fishing vessels breaching our fishery laws. They are usually equipped with powerful motors that enable them to elude pursuing ships of the Philippine Navy or Coast Guard.

People v. Gatward, 267 SCRA 785 (1997)

The trial court was correct in rejecting the challenge to the admissibility in evidence of the heroin retrieved from the bag of appellant. While no search warrant had been obtained for that purpose, when appellant checked in his bag as his personal luggage as a passenger of KLM Flight No. 806 he thereby agreed to the inspection thereof in accordance with customs rules and regulations, an international practice of strict observance, and waived any objection to a warrantless search. His subsequent arrest, although likewise without a warrant, was justified since it was effected upon the discovery and recovery of the heroin in his bag, or in *flagrante delicto*.

People v. Johnson, G.R. No. 138881, December 18, 2000

Persons may lose the protection of the search and seizure clause by exposure of their persons or property to the public in a manner reflecting a lack of subjective expectation of privacy, which expectation society is prepared to recognize as reasonable. Such recognition is implicit in airport security procedures. With increased concern over airplane hijacking and terrorism has come increased security at the nation's airports. Passengers attempting to board an aircraft routinely pass through metal detectors; their carry-on baggage as well as checked luggage are routinely subjected to x-ray scans. Should these procedures suggest the presence of suspicious objects, physical searches are conducted to determine what the objects are. There is little question that such searches are reasonable, given their minimal intrusiveness, the gravity of the safety interests involved, and the reduced privacy expectations associated with airline travel. Indeed, travelers are often notified through airport public address systems, signs, and notices in their airline tickets that they are subject to search and, if any prohibited materials or substances are found, such would be subject to seizure. ***These announcements place passengers on notice that ordinary constitutional protections against warrantless searches and seizures do not apply to routine airport procedures.***

People vs. Suzuki, G.R. No. 120670, October 23, 2003

Clearly, the PASCOM agents have the right under the law to conduct search of prohibited materials or substances. To simply refuse passengers carrying suspected illegal items to enter the pre-departure area, as claimed by appellant, is to deprive the authorities of their duty to conduct search, thus sanctioning impotence and ineffectivity of the law enforcers, to the detriment of society. It should be stressed, however, that whenever the right against unreasonable search and seizure is challenged, an individual may choose between invoking the constitutional protection or waiving his right by giving consent to the search or seizure. Here, appellant voluntarily gave his consent to the search conducted by the PASCOM agents.

"Stop and frisk"

*No search yet.
It does not substitute to search without warrant but it could lead into search.*

STOP	reasonable suspicion
FRISK	protect the police
SEIZE	plain view (without conduction search)
ARREST	<i>in flagrante delicto</i>
SEARCH	incident to lawful arrest

Terry vs. Ohio, 392 US 1 (1968)

The court distinguished between an investigatory "stop" and an arrest, and between a "frisk" of the outer clothing for weapons and a full-blown search for evidence of crime. Petitioner and Chilton were found guilty, an intermediate appellate court affirmed, and the State Supreme Court dismissed the appeal on the ground that "no substantial constitutional question" was involved. The revolver seized from petitioner was properly admitted into evidence against him, since the search which led to its seizure was reasonable under the Fourth Amendment.



People v. Solayao, 262 SCRA 255 (1996)

The circumstances in this case are similar to those obtaining in *Posadas v. Court of Appeals* where the Supreme Court held that "at the time the peace officers identified themselves and apprehended the petitioner as he attempted to flee, they did not know that he had committed, or was actually committing the offense of illegal possession of firearm and ammunitions. They just suspected that he was hiding something in the *huri* bag. They did not know what its contents were. The said circumstances did not justify an arrest without a warrant." The search and seizure in the *Posadas* case brought about by the suspicious conduct of Posadas himself can be likened to a "stop and frisk" situation. There was probable cause to conduct a search even before an arrest could be made. In the present case, after SPO3 Niño told accused-appellant not to run away, the former identified himself as a government agents. The peace officers did not know that he had committed, or was actually committing, the offense of illegal possession of firearm. Tasked with verifying the report that there were armed men roaming in the barangays surrounding Caibiran, their attention was understandably drawn to the group that had aroused their suspicion. They could not have known that the object wrapped in coconut leaves which accused-appellant was carrying hid a firearm. As with *Posadas*, the case at bar constitutes an instance where a search and seizure may be effected without first making an arrest. There was justifiable cause to "stop and frisk" accused-appellant when his companions filed upon seeing the government agents. Under the circumstances, the government agents could not possibly have procured a search warrant first.

Manalili v. Court of Appeals, G.R. No. 113447, October 9, 1997

In the case at hand, Patrolman Espiritu and his companions observed during their surveillance that appellant had red eyes and was wobbling like a drunk along the Caloocan City Cemetery, which according to police information was a popular hangout of drug addicts. From his experience as a member of the Anti-Narcotics Unit of the Caloocan City Police, such suspicious behavior was characteristic of drug addicts who were "high." The policemen therefore had sufficient reason to stop petitioner to investigate if he was actually high on drugs. During such investigation, they found marijuana in petitioner's possession, and such was found to be admissible in evidence against him. Furthermore, petitioner effectively waived the inadmissibility of any evidence illegally obtained when he failed to raise this issue or to object thereto during the trial.

Malacat v. Court of Appeals, 283 SCRA 159 (1997)

Here, there are at least three (3) reasons why the "stop-and-frisk" was invalid: **First**, we harbor grave doubts as to Yu's claim that petitioner was a member of the group which attempted to bomb Plaza Miranda two days earlier. This claim is neither supported by any police report or record nor corroborated by any other police officer who allegedly chased that group. **Second**, there was nothing in petitioner's behavior or conduct which could have reasonably elicited even mere suspicion other than that his eyes were "moving very fast" — an observation which leaves us incredulous since Yu and his teammates were nowhere near petitioner and it was already 6:30 p.m., thus presumably dusk. Petitioner and his companions were merely standing at the corner and were not creating any commotion or trouble. **Third**, there was at all no ground, probable or otherwise, to believe that petitioner was armed with a deadly weapon. None was visible to Yu, for as he admitted, the alleged grenade was "discovered" "inside the front waistline" of petitioner, and from all indications as to the distance

between Yu and petitioner, any telltale bulge, assuming that petitioner was indeed hiding a grenade, could not have been visible to Yu. Hence, petitioner must be acquitted.

Florida v. J.L., 98-1993, March 28, 2000

An anonymous tip that a person is carrying a gun is not, without more, sufficient to justify a police officer's stop and frisk of that person. An officer, for the protection of himself and others, may conduct a carefully limited search for weapons in the outer clothing of persons engaged in unusual conduct where, *inter alia*, the officer reasonably concludes in light of his experience that criminal activity may be afoot and that the persons in question may be armed and presently dangerous. Here, the officers' suspicion that J. L. was carrying a weapon arose not from their own observations but solely from a call made from an unknown location by an unknown caller. The tip lacked sufficient indicia of reliability to provide reasonable suspicion to make a *Terry* stop: It provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility. The contentions of Florida and the United States as *amicus* that the tip was reliable because it accurately described J. L.'s visible attributes misapprehend the reliability needed for a tip to justify a *Terry* stop. The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person. This Court also declines to adopt the argument that the standard *Terry* analysis should be modified to license a "firearm exception," under which a tip alleging an illegal gun would justify a stop and frisk even if the accusation would fail standard pre-search reliability testing. The facts of this case do not require the Court to speculate about the circumstances under which the danger alleged in an anonymous tip might be so great—e.g., a report of a person carrying a bomb—as to justify a search even without a showing of reliability.

Search of moving vehicles

Papa vs. Mago, 22 SCRA 857 (1968)

Respondents aver that petitioner Martin Alagao, an officer of the Manila Police Department, could not seize the goods in question without a search warrant. This contention cannot be sustained. The Chief of the Manila Police Department, Ricardo G. Papa, having been deputized in writing by the Commissioner of Customs, could, for the purposes of the enforcement of the customs and tariff laws, effect searches, seizures, and arrests, and it was his duty to make seizure, among others, of any cargo, articles or other movable property when the same may be subject to forfeiture or liable for any fine imposed under customs and tariff laws. He could lawfully open and examine any box, trunk, envelope or other container wherever found when he had reasonable cause to suspect the presence therein of dutiable articles introduced into the Philippines contrary to law; and likewise to stop, search and examine any vehicle, beast or person reasonably suspected of holding or conveying such article as aforesaid. It cannot be doubted, therefore, that petitioner Ricardo G. Papa, Chief of Police of Manila, could lawfully effect the search and seizure of the goods in question. The Tariff and Customs Code authorizes him to demand assistance of any police officer to effect said search and seizure, and the latter has the legal duty to render said assistance. This was what happened precisely in the case of Lt. Martin Alagao who, with his unit, made the search and seizure of the two trucks loaded with the nine bales of goods in question at the Agrifina Circle. He was given authority by the Chief of Police to make the interception of the cargo.



People vs. CFI of Rizal, 101 SCRA 86 (1980)

In the case at bar, the decision of the Collector of Customs, as in other seizure proceedings, concerns the *resrather* than the *persona*. The proceeding is a probe on contraband or illegally imported goods. These merchandise violated the revenue law of the country, and as such, have been prevented from being assimilated in lawful commerce until corresponding duties are paid thereon and the penalties imposed and satisfied either in the form of fines or of forfeiture in favor of the government who will dispose of them in accordance with law. The importer or possessor is treated differently. The fact that the administrative penalty befalls on him is an inconsequential incidence to criminal liability. By the same token, the probable guilt cannot be negated simply because he was not held administratively liable. The Collector's final declaration that the articles are not subject to forfeiture does not detract his findings that untaxed goods were transported in respondents' car and seized from their possession by agents of the law. Whether criminal liability lurks on the strength of the provision of the Tariff and Customs Code adduced in the information can only be determined in a separate criminal action. Respondents' exoneration in the administrative cases cannot deprive the State of its right to prosecute. But under our penal laws, criminal responsibility, if any, must be proven not by preponderance of evidence but by proof beyond reasonable doubt.

Salvador v. People, G.R. No. 146706, July 15, 2005

At the time of the search, petitioner and his co-accused were on board a **moving** PAL aircraft tow truck. The search of a moving vehicle is recognized in this jurisdiction as a valid exception to the requirement for a search warrant. Such exception is easy to understand. A search warrant may readily be obtained when the search is made in a store, dwelling house or other **immobile** structure. But it is impracticable to obtain a warrant when the search is conducted in a **mobile** ship, aircraft or other motor vehicle since they can quickly be moved out of the locality or jurisdiction where the warrant must be sought. In the instant case, the prosecution established by positive, strong, and convincing evidence that petitioner and his co-accused were caught red-handed by a team from the PAF Special Operations Squadron, while in the possession of highly dutiable articles inside the premises of the airport. The contraband items were taken by petitioner and his co-accused from a PAL plane which arrived from Hong Kong on the night of June 3, 1994. Petitioner and his colleagues then attempted to bring out these items in the cover of darkness by concealing them inside their uniforms. When confronted by the PAF team, they were unable to satisfactorily explain why the questioned articles were in their possession. They could not present any document to prove lawful importation. Thus, their conviction must necessarily be upheld.

Whren v. United States, 95-5841, January 10, 1996

The temporary detention of a motorist upon probable cause to believe that he has violated the traffic laws does not violate the Fourth Amendment's prohibition against unreasonable seizures, even if a reasonable officer would not have stopped the motorist absent some additional law enforcement objective. Detention of a motorist is reasonable where probable cause exists to believe that a traffic violation has occurred. Petitioners claim that, because the police may be tempted to use commonly occurring traffic violations as means of investigating violations of other laws, the Fourth Amendment test for traffic stops should be whether a reasonable officer would have stopped the car for the purpose of enforcing the traffic violation at issue. However, this Court's cases foreclose the argument that ulterior

motives can invalidate police conduct justified on the basis of probable cause. Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.

Emergency circumstances

People vs. De Gracia 233 SCRA 716 (1994)

There was general chaos and disorder at that time because of simultaneous and intense firing within the vicinity of the office and in the nearby Camp Aguinaldo which was under attack by rebel forces. The courts in the surrounding areas were obviously closed and, for that matter, the building and houses therein were deserted. This case falls under one of the exceptions to the prohibition against a warrantless search. The military operatives, taking into account the facts obtaining in this case, had reasonable ground to believe that a crime was being committed. There was consequently more than sufficient probable cause to warrant their action. Furthermore, under the situation then prevailing, the raiding team had no opportunity to apply for and secure a search warrant from the courts. The trial judge himself manifested that when the raid was conducted, his court was closed. Under such urgency and exigency of the moment, a search warrant could lawfully be dispensed with.

Checkpoints

→ **No search yet because there is still no probable cause**

Valmonte vs. De Villa G.R. No. 83988, May 24, 1990

The Court's decision on checkpoints does not, in any way, validate nor condone abuses committed by the military manning the checkpoints. The Court's decision was concerned with power, i.e. whether the government employing the military has the power to install said checkpoints. Once that power is acknowledged, the Court's inquiry ceases. True, power implies the possibility of its abuse. But whether there is abuse in a particular situation is a different "ball game" to be resolved in the constitutional arena.

Aniag vs. Comelec, 237 SCRA 424 (1994)

In the case at bench, the checkpoint was set up twenty (20) meters from the entrance to the Batasan Complex to enforce COMELEC Resolution No. 2327. There was no evidence to show that the policemen were impelled to do so because of a confidential report leading them to reasonably believe that certain motorists matching the description furnished by their informant were engaged in gunrunning, transporting firearms or in organizing special strike forces. Nor, as adverted to earlier, was there any indication from the package or behavior of Arellano that could have triggered the suspicion of the policemen. Absent such justifying circumstances specifically pointing to the culpability of petitioner and Arellano, the search could not be valid. The action then of the policemen unreasonably intruded into petitioner's privacy and the security of his property, in violation of Sec. 2, Art. III, of the Constitution. Consequently, the firearms obtained in violation of petitioner's right against warrantless search cannot be admitted for any purpose in any proceeding

People v. Escaño (and Lopez), 323 SCRA 754 (2000)

The checkpoint herein conducted was in pursuance of the gun ban enforced by the COMELEC. The COMELEC would be hard put to implement the ban if its deputized agents were limited to a visual search of pedestrians. It would also defeat the purpose for which such ban was instituted. Those who intend to bring a gun during said period would know that they only need a car to be able to easily perpetrate their



malicious designs. The facts adduced do not constitute a ground for a violation of the constitutional rights of the accused against illegal search and seizure. PO3 Suba admitted that they were merely stopping cars they deemed suspicious, such as those whose windows are heavily tinted just to see if the passengers thereof were carrying guns. At best they would merely direct their flashlights inside the cars they would stop, without opening the car's doors or subjecting its passengers to a body search. There is nothing discriminatory in this as this is what the situation demands. There is also no need for checkpoints to be announced, as the accused have invoked. Not only would it be impractical, it would also forewarn those who intend to violate the ban. Even so, badges of legitimacy of checkpoints may still be inferred from their fixed location and the regularized manner in which they are operated.

People v. Vinecario, G.R. No. 141137, January 20, 2004

In the case at bar, as established by the evidence, appellants connived in unlawfully transporting the subject marijuana. Roble, who was driving the motorcycle at Ulas, did not stop but instead sped away upon seeing the checkpoint in a clear attempt to avoid inspection by the police officers. When asked as to the contents of the backpack by SPO1 Goc-ong, appellants passed the same to one another, indicating that they knew its contents. These circumstances manifest appellants' concerted efforts and cooperation towards the attainment of their criminal objective.

Inspection of buildings

Camara vs. Municipal Court, 387 U. S. 523 (1967)

In this case, appellant has been charged with a crime for his refusal to permit housing inspectors to enter his leasehold without a warrant. There was no emergency demanding immediate access; in fact, the inspectors made three trips to the building in an attempt to obtain appellant's consent to search. Yet no warrant was obtained, and thus appellant was unable to verify either the need for or the appropriate limits of the inspection. No doubt, the inspectors entered the public portion of the building with the consent of the landlord, through the building's manager, but appellee does not contend that such consent was sufficient to authorize inspection of appellant's premises. Assuming the facts to be as the parties have alleged, we therefore conclude that appellant had a constitutional right to insist that the inspectors obtain a warrant to search and that appellant may not constitutionally be convicted for refusing to consent to the inspection. It appears from the opinion of the District Court of Appeal that, under these circumstances, a writ of prohibition will issue to the criminal court under California law.

**PRIVACY OF COMMUNICATION
AND CORRESPONDENCE**

REPUBLIC ACT No. 4200

**AN ACT TO PROHIBIT AND PENALIZE WIRE TAPPING
AND OTHER RELATED VIOLATIONS OF THE PRIVACY
OF COMMUNICATION, AND FOR OTHER PURPOSES.**

Section 1. It shall be unlawful for any person, not being authorized by all the parties to any private communication or spoken word, to tap any wire or cable, or by using any other device or arrangement, to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or dictaphone or walkie-talkie or tape recorder, or however otherwise described:

It shall also be unlawful for any person, be he a participant or not in the act or acts penalized in the next preceding sentence, to knowingly possess any tape record, wire record, disc record, or any other such record, or copies thereof, of any communication or spoken word secured either before or after the effective date of this Act in the manner prohibited by this law; or to replay the same for any other person or persons; or to communicate the contents thereof, either verbally or in writing, or to furnish transcriptions thereof, whether complete or partial, to any other person: *Provided*, That the use of such record or any copies thereof as evidence in any civil, criminal investigation or trial of offenses mentioned in section 3 hereof, shall not be covered by this prohibition.

Section 2. Any person who willfully or knowingly does or who shall aid, permit, or cause to be done any of the acts declared to be unlawful in the preceding section or who violates the provisions of the following section or of any order issued thereunder, or aids, permits, or causes such violation shall, upon conviction thereof, be punished by imprisonment for not less than six months or more than six years and with the accessory penalty of perpetual absolute disqualification from public office if the offender be a public official at the time of the commission of the offense, and, if the offender is an alien he shall be subject to deportation proceedings.

Section 3. Nothing contained in this Act, however, shall render it unlawful or punishable for any peace officer, who is authorized by a written order of the Court, to execute any of the acts declared to be unlawful in the two preceding sections in cases involving the crimes of treason, espionage, provoking war and disloyalty in case of war, piracy, mutiny in the high seas, rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, inciting to sedition, kidnapping as defined by the Revised Penal Code, and violations of Commonwealth Act No. 616, punishing espionage and other offenses against national security: *Provided*, That such written order shall only be issued or granted upon written application and the examination under oath or affirmation of the applicant and the witnesses he may produce and a showing: (1) that there are reasonable grounds to believe that any of the crimes enumerated hereinabove has been committed or is being committed or is about to be committed: *Provided, however*, That in cases involving the offenses of rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, and inciting to sedition, such authority shall be granted only upon prior proof that a rebellion or acts of sedition, as the case may be, have actually been or are being committed; (2) that there are reasonable grounds to believe that evidence will be obtained essential to the conviction of any person for, or to the solution of, or to the prevention of, any of such crimes; and (3) that there are no other means readily available for obtaining such evidence.

The order granted or issued shall specify: (1) the identity of the person or persons whose communications, conversations, discussions, or spoken words are to be overheard, intercepted, or recorded and, in the case of telegraphic or telephonic communications, the telegraph line or the telephone number involved and its location; (2) the identity of the peace officer authorized to overhear, intercept, or record the communications, conversations, discussions, or spoken words; (3) the offense or offenses committed or sought to be prevented; and (4) the period of the authorization. The authorization shall be effective for the period specified in the order which shall not exceed sixty (60) days from the date of issuance of the order, unless extended or renewed by the court upon being satisfied that such extension or renewal is in the public interest.

All recordings made under court authorization shall, within forty-eight hours after the expiration of the period fixed in the order, be deposited with the court in a sealed envelope or sealed package, and shall be accompanied by an affidavit of the peace officer granted such authority stating the number of recordings made, the dates and times covered by each recording, the number of tapes, discs, or records included in the deposit, and certifying that no duplicates or copies of the whole or any part thereof have been made, or if made, that all such duplicates or copies are included in the envelope or package deposited with the court. The envelope or package so deposited shall not be opened, or the recordings replayed, or used in evidence, or their contents revealed, except upon order of the court, which shall not be granted except upon motion, with due notice and opportunity to be heard to the person or persons whose conversation or communications have been recorded.



The court referred to in this section shall be understood to mean the Court of First Instance within whose territorial jurisdiction the acts for which authority is applied for are to be executed.

Section 4. Any communication or spoken word, or the existence, contents, substance, purport, effect, or meaning of the same or any part thereof, or any information therein contained obtained or secured by any person in violation of the preceding sections of this Act shall not be admissible in evidence in any judicial, quasi-judicial, legislative or administrative hearing or investigation.

Section 5. All laws inconsistent with the provisions of this Act are hereby repealed or accordingly amended.

Section 6. This Act shall take effect upon its approval.
Approved: June 19, 1965

Revised Penal Code

Article 290. Discovering secrets through seizure of correspondence. - The penalty of prison correccional in its minimum and medium periods and a fine not exceeding 500 pesos shall be imposed upon any private individual who in order to discover the secrets of another, shall seize his papers or letters and reveal the contents thereof.

If the offender shall not reveal such secrets, the penalty shall be *arresto mayor* and a fine not exceeding 500 pesos.

The provision shall not be applicable to parents, guardians, or persons entrusted with the custody of minors with respect to the papers or letters of the children or minors placed under their care or study, nor to spouses with respect to the papers or letters of either of them.

Article 291. Revealing secrets with abuse of office. - The penalty of *arresto mayor* and a fine not exceeding 500 pesos shall be imposed upon any manager, employee, or servant who, in such capacity, shall learn the secrets of his principal or master and shall reveal such secrets.

Article 292. Revelation of industrial secrets. - The penalty of prison correccional in its minimum and medium periods and a fine not exceeding 500 pesos shall be imposed upon the person in charge, employee or workman of any manufacturing or industrial establishment who, to the prejudice of the owner thereof, shall reveal the secrets of the industry of the latter.

Gaanan vs. IAC, 145 SCRA 113 (1986)

Whether or not listening over a telephone party line would be punishable was discussed on the floor of the Senate. Yet, when the bill was finalized into a statute, no mention was made of telephones in the enumeration of devices "commonly known as a dictaphone or dictagraph, detectaphone or walkie talkie or tape recorder or however otherwise described." The omission was not a mere oversight. Telephone party lines were intentionally deleted from the provisions of the Act. It can be readily seen that our lawmakers intended to discourage, through punishment, persons such as government authorities or representatives of organized groups from installing devices in order to gather evidence for use in court or to intimidate, blackmail or gain some unwarranted advantage over the telephone users. Consequently, the mere act of listening, in order to be punishable must strictly be with the use of the enumerated devices in RA No. 4200 or others of similar nature. We are of the view that an extension telephone is not among such devices or arrangements.

Katz vs. U.S., 389 U.S. 347 (1967)

These considerations do not vanish when the search in question is transferred from the setting of a home, an office, or a hotel room to that of a telephone booth. Wherever a man may be, he is entitled to know that he will remain free

from unreasonable searches and seizures. The government agents here ignored "the procedure of antecedent justification . . . that is central to the Fourth Amendment," a procedure that we hold to be a constitutional precondition of the kind of electronic surveillance involved in this case. Because the surveillance here failed to meet that condition, and because it led to the petitioner's conviction, the judgment must be reversed.

Ramirez vs. CA, G.R. No. 93833, September 28, 1995

In *Gaanan vs. Intermediate Appellate Court*, a case which dealt with the issue of telephone wiretapping, we held that the use of a telephone extension for the purpose of overhearing a private conversation without authorization did not violate R.A. 4200 because a telephone extension device was neither among those "device(s) or arrangement(s)" enumerated therein, following the principle that "penal statutes must be construed strictly in favor of the accused." The instant case turns on a different note, because the applicable facts and circumstances pointing to a violation of R.A. 4200 suffer from no ambiguity, and the statute itself explicitly mentions the unauthorized "recording" of private communications with the use of tape-recorders as among the acts punishable.

Salcedo-Ortanez v. CA, 235 SCRA 111 (1994)

[R]espondents trial court and Court of Appeals failed to consider the afore-quoted provisions of the law in admitting in evidence the cassette tapes in question. Absent a clear showing that both parties to the telephone conversations allowed the recording of the same, the inadmissibility of the subject tapes is mandatory under Rep. Act No. 4200.

Alejano v. Cabuay, G.R. No. 160792, August 25, 2005

The letters alleged to have been read by the ISAFP authorities were not confidential letters between the detainees and their lawyers. The petitioner who received the letters from detainees Trillanes and Maestrecampo was merely acting as the detainees' personal courier and not as their counsel when he received the letters for mailing. In the present case, since the letters were not confidential communication between the detainees and their lawyers, the officials of the ISAFP Detention Center could read the letters. If the letters are marked confidential communication between the detainees and their lawyers, the detention officials should not read the letters but only open the envelopes for inspection in the presence of the detainees.

Privileged Communications

In Re Laureta, 148 SCRA 382 (1987)

Respondents' reliance on the "privacy of communication" is misplaced. Letters addressed to individual Justices, in connection with the performance of their judicial functions become part of the judicial record and are a matter of concern for the entire Court. The contumacious character of those letters constrained the First Division to refer the same to the Court *en banc*, en consulta and so that the Court *en banc* could pass upon the judicial acts of the Division. It was only in the exercise of forbearance by the Court that it refrained from issuing immediately a show cause order in the expectancy that after having read the Resolution of the Court *en banc* of October 28, 1986, respondents would realize the unjustness and unfairness of their accusations.

People vs. Albofera, 152 SCRA 123 (1987)

Accused Albofera contends that his letter to prosecution witness, Rodrigo Esma (Exhibit "B"), is inadmissible in evidence against him under the exclusionary provisions of



Section 4, Article IV of the 1973 Constitution (substantially reproduced in Section 3, Article III of the 1987 Constitution). x x x The submission is untenable. The foregoing provision implements another Constitutional provision on the security of a citizen against unreasonable search and seizure. The production of that letter by the prosecution was not the result of an unlawful search and seizure nor was it through unwarranted intrusion or invasion into Albofera's privacy. Albofera admitted having sent the letter and it was its recipient, Rodrigo Esma himself, who produced and identified the same in the course of his testimony in Court. Besides, there is nothing really self-incriminatory in the letter. Albofera mainly pleaded that Esma change his declaration in his Affidavit and testify in his (Albofera's) favor. Furthermore, nothing Albofera stated in his letter is being taken against him in arriving at a determination of his culpability.

Zulueta v. Court of Appeals, 253 SCRA 699 (1996)

The intimacies between husband and wife do not justify any one of them in breaking the drawers and cabinets of the other and in ransacking them for any telltale evidence of marital infidelity. A person, by contracting marriage, does not shed his/her integrity or his right to privacy as an individual and the constitutional protection is ever available to him or to her. The law insures absolute freedom of communication between the spouses by making it privileged. Neither husband nor wife may testify for or against the other without the consent of the affected spouse while the marriage subsists. Neither may be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage, save for specified exceptions.⁷ But one thing is freedom of communication; quite another is a compulsion for each one to share what one knows with the other. And this has nothing to do with the duty of fidelity that each owes to the other.

Deano v. Godinez, 12 SCRA 483 (1964)

Indeed, the communication now denounced by plaintiff as defamatory is one sent by defendant to his immediate superior in the performance of a legal duty, or in the nature of a report submitted in the exercise of an official function. He sent it as in explanation of a matter contained in an indorsement sent to him by his superior officer. It is a report submitted in obedience to a lawful duty, though in doing so defendant employed a language somewhat harsh and uncalled for. But such is excusable in the interest of public policy. As it has been aptly said, "The doctrine of privileged communication rests upon public policy, which looks to the free and unfettered administration of justice, though, as an incidental result, it may in some instances afford an immunity to the evil-disposed and malignant slanderer."

Waterous Drug Corporation v. NLRC, G.R. No. 113271, October 16, 1997

[T]he incident involving the opening of envelope addressed to private respondent does not warrant the application of the constitutional provisions. ...there was no violation of the right of privacy of communication in this case, adding that petitioner WATEROUS was justified in opening an envelope from one of its regular suppliers as it could assume that the letter was a business communication in which it had an interest.

Exclusionary Rule

Art. III, Sec. 3(2)

Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

Silverthorne Lumber vs. US, 251 US 385 (1920)

The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court, but that it shall not be used at all. Of course, this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others, but the knowledge gained by the Government's own wrong cannot be used by it in the way proposed. x x x But the rights of a corporation against unlawful search and seizure are to be protected even if the same result might have been achieved in a lawful way.

People v. Aruta, G.R. 120915, April 3, 1998

In fine, there was really no excuse for the NARCOM agents not to procure a search warrant considering that they had more than twenty-four hours to do so. Obviously, this is again an instance of seizure of the "fruit of the poisonous tree," hence illegal and inadmissible subsequently in evidence. The exclusion of such evidence is the only practical means of enforcing the constitutional injunction against unreasonable searches and seizure. The non-exclusionary rule is contrary to the letter and spirit of the prohibition against unreasonable searches and seizures.

People v. Rondero, G.R. 125687, December 9, 1999

[W]hat is actually proscribed is the use of physical or moral compulsion to extort communication from the accused-appellant and not the inclusion of his body in evidence when it may be material. For instance, substance emitted from the body of the accused may be received as evidence in prosecution for acts of lasciviousness and morphine forced out of the mouth of the accused may also be used as evidence against him. Consequently, although accused-appellant insists that hair samples were forcibly taken from him and submitted to the NBI for forensic examination, the hair samples may be admitted in evidence against him, for what is proscribed is the use of testimonial compulsion or any evidence communicative in nature acquired from the accused under duress.

Liability for damages

Aberca vs. Ver, 160 SCRA 590 (1988)

The Court finds merit in petitioners' contention that the suspension of the privilege of the writ of habeas corpus does not destroy petitioners' right and cause of action for damages for illegal arrest and detention and other violations of their constitutional rights. The suspension does not render valid an otherwise illegal arrest or detention. What is suspended is merely the right of the individual to seek release from detention through the writ of habeas corpus as a speedy means of obtaining his liberty.

PRIVILEGE AGAINST SELF-INCRIMINATION

Art. III, Sec. 17

No person shall be compelled to be a witness against himself.

Scope, compulsory testimonial incrimination

United States vs. Tan Teng, 23 Phil. 145 (1912)

But the prohibition of compelling a man in a criminal court to be a witness against himself, is a *prohibition of the use of*



physical or moral compulsion, to extort communications from him, *not an exclusion of his body as evidence, when it may be material*. The objection, in principle, would forbid a jury (court) to look at a person and compare his features with a photograph in proof. Moreover we are not considering how far a court would go in compelling a man to exhibit himself, for when he is exhibited, whether voluntarily or by order, even if the order goes too far, the evidence if material, is competent. *The prohibition* contained in section 5 of the Philippine Bill that a person shall not be compelled to be a witness against himself, *is simply a prohibition against legal process to extract from the defendant's own lips, against his will, an admission of his guilt*. The main purpose of the provision of the Philippine Bill is *to prohibit compulsory oral examination of prisoners* before trial or upon trial, for the purpose of extorting unwilling confessions or declarations implicating them in the commission of a crime. The doctrine contended for by appellant would prohibit courts from looking at the fact of a defendant even, for the purpose of disclosing his identity. Such an application of the prohibition under discussion certainly could not be permitted. Such an inspection of the bodily features by the court or by witnesses, can not violate the privilege granted under the Philippine Bill, because it does not call upon the accused as a witness — it does not call upon the defendant for his testimonial responsibility. Mr. Wigmore says that evidence obtained in this way from the accused, is not testimony but his body itself.

United States vs. Ong Siu Hong, 36 Phil. 735 (1917)

Counsel for appellant raises the constitutional question that the accused was compelled to be a witness against himself. The contention is that this was the result of forcing the accused to discharge the morphine from his mouth. No case exactly in point can be found. But, by analogy, the decision of the Supreme Court of the Philippine Islands in *U. S. vs. Tan Tan* ([1912] 23 Phil.145), following leading authorities, and the persuasive decisions of other courts of last resort, are conclusive. To force a prohibited drug from the person of an accused is along the same line as requiring him to exhibit himself before the court; or putting in evidence papers and other articles taken from the room of an accused in his absence; or, as in the *Tan Teng* case, taking a substance from the body of the accused to be used in proving his guilt. It would be a forced construction of the paragraph of the Philippine Bill of Rights in question to hold that any article, substance, or thing taken from a person accused of crime could not be given in evidence. The main purpose of this constitutional provision is to prohibit testimonial compulsion by oral examination in order to extort unwilling confessions from prisoners implicating them in the commission of a crime.

People vs. Otadura, 86 Phil. 244 (1950)

Further corroboration of appellant's criminal connection with the bloody affair is the undisputed possession by Otadura of the pants of Francisco Galos and his hat. It appears that when Francisco Galos denied ownership of the pants he was ordered to put it on; and the judge found that it fitted him perfectly. This incident gave the defense opportunity for extended argument that the constitutional protection against self-incrimination had been erroneously disregarded. But we discover in the record no timely objection upon that specific ground. And it is to be doubted whether the accused could benefit from the error, if any. Furthermore, and this is conclusive, "measuring or photographing the party is not within the privilege" (against self-incrimination). "Nor is the removal or replacement of his garments or shoes. Nor is the requirement that the party move his body to enable the foregoing things to be done." (citations omitted)

Villafior vs. Summers, 41 Phil. 62 (1920)

Fully conscious that we are resolving a most extreme case in a sense, which on first impression is a shock to one's sensibilities, we must nevertheless enforce the constitutional provision in this jurisdiction in accord with the policy and reason thereof, undeterred by merely sentimental influences. Once again we lay down the rule that the constitutional guaranty, that no person shall be compelled in any criminal case to be a witness against himself, is limited to a prohibition against compulsory testimonial self-incrimination. The corollary to the proposition is that, an ocular inspection of the body of the accused is permissible. The proviso is that torture of force shall be avoided. Whether facts fall within or without the rule with its corollary and proviso must, of course, be decided as cases arise.

Bermudez vs. Castillo, 64 Phil. 485 (1937)

The reason for the privilege appears evident. The purpose thereof is positively to avoid and prohibit thereby the repetition and recurrence of the certainly inhuman procedure of compelling a person, in a criminal or any other case, to furnish the missing evidence necessary for his conviction. If such is its purpose, then the evidence must be sought elsewhere; and if it is desired to discover evidence in the person himself, then he must be promised and assured at least absolute immunity by one authorized to do so legally, or he should be asked, one for all, to furnish such evidence voluntarily without any condition. This court is the opinion that in order that the constitutional provision under consideration may prove to be a real protection and not a dead letter, it must be given a liberal and broad interpretation favorable to the person invoking it.

Beltran v. Judge Samson, 53 Phil. 570 (1929)

It cannot be contended in the present case that if permission to obtain a specimen of the petitioner's handwriting is not granted, the crime would go unpunished. Considering the circumstance that the petitioner is a municipal treasurer, according to Exhibit A, it should not be a difficult matter for the fiscal to obtain genuine specimens of his handwriting. But even supposing it is impossible to obtain specimen or specimens without resorting to the means complained herein, that is no reason for trampling upon a personal right guaranteed by the constitution. It might be true that in some cases criminals may succeed in evading the hand of justice, but such cases are accidental and do not constitute the *raison d'etre* of the privilege. This constitutional privilege exists for the protection of innocent persons.

People vs. Tranca, 235 SCRA 455 (1994)

The defense contends that the right of the accused against self-incrimination was violated when he was made to undergo an ultraviolet ray examination. The defense also argues that Chief Chemist Teresita Alberto failed to inform the accused of his right to counsel before subjecting him to the examination. These contentions are without merit. What is prohibited by the constitutional guarantee against self-incrimination is the use of physical or moral compulsion to extort communication from the witness, not an inclusion of his body in evidence, when it may be material. Stated otherwise, it is simply a prohibition against legal process to extract from the defendant's own lips, against his will, an admission of guilt. Nor can the subjection of the accused's body to ultraviolet radiation, in order to determine the presence of ultraviolet powder, be considered a custodial investigation so as to warrant the presence of counsel.



South Dakota v. Neville, 459 U.S. 553 (1983)

The admission into evidence of a defendant's refusal to submit to a blood alcohol test does not offend his Fifth Amendment right against self-incrimination. A refusal to take such a test, after a police officer has lawfully requested it, is not an act coerced by the officer, and thus is not protected by the privilege against self-incrimination. The offer of taking the test is clearly legitimate, and becomes no less legitimate when the State offers a second option of refusing the test, with the attendant penalties for making that choice.

Schmerber v. California, 384 U.S. 757 (1966)

The privilege against self-incrimination is not available to an accused in a case such as this, where there is not even a shadow of compulsion to testify against himself, or otherwise provide the State with evidence of a testimonial or communicative nature.

People v. Rondero, G.R. No. 125687, December 9, 1999

In the present case, however, no such problem of application is presented. Not even a shadow of testimonial compulsion upon or enforced communication by the accused was involved either in the extraction or in the chemical analysis. Petitioner's testimonial capacities were in no way implicated; indeed, his participation, except as a donor, was irrelevant to the results of the test, which depend on chemical analysis and on that alone. Since the blood test evidence, although an incriminating product of compulsion, was neither petitioner's testimony nor evidence relating to some communicative act or writing by the petitioner, it was not inadmissible on privilege grounds.

People vs. Gallarde, G.R. No. 133025. February 17, 2000

The constitutional right of an accused against self-incrimination proscribes the use of physical or moral compulsion to extort communications from the accused and not the inclusion of his body in evidence when it may be material. Purely mechanical acts are not included in the prohibition as the accused does not thereby speak his guilt, hence the assistance and guiding hand of counsel is not required. The essence of the right against self-incrimination is testimonial compulsion, that is, the giving of evidence against himself through a testimonial act. Hence, it has been held that a woman charged with adultery may be compelled to submit to physical examination to determine her pregnancy; and an accused may be compelled to submit to physical examination and to have a substance taken from his body for medical determination as to whether he was suffering from gonorrhea which was contracted by his victim; to expel morphine from his mouth; to have the outline of his foot traced to determine its identity with bloody footprints; and to be photographed or measured, or his garments or shoes removed or replaced, or to move his body to enable the foregoing things to be done.

In what proceedings available

Pascual vs. Board of Medical Examiners, 28 SCRA 344 (1969)

To the argument that *Cabal v. Kapunan* could thus distinguished, it suffices to refer to an American Supreme Court opinion highly persuasive in character.¹⁰ In the language of Justice Douglas: "We conclude ... that the Self-Incrimination Clause of the Fifth Amendment has been absorbed in the Fourteenth, that it extends its protection to lawyers as well as to other individuals, and that it should not be watered down by imposing the dishonor of disbarment and the deprivation of a livelihood as a price for asserting it." We reiterate that such a principle is equally applicable to a

proceeding that could possibly result in the loss of the privilege to practice the medical profession.

Galman vs. Pamaran, 138 SCRA 274 (1985)

The deletion of the phrase "in a criminal case" connotes no other import except to make said provision also applicable to cases other than criminal. Decidedly then, the right "not to be compelled to testify against himself" applies to the herein private respondents notwithstanding that the proceedings before the Agrava Board is not, in its strictest sense, a criminal case.

Use Immunity vs. Transactional Immunity

Art. XIII

Section 18. The Commission on Human Rights shall have the following powers and functions:

x x x

8. Grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority;

R.A. No. 1379

Section 8. Protection against self-incrimination. Neither the respondent nor any other person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and other records on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to prosecution; but no individual shall be prosecuted criminally for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and conviction for perjury or false testimony committed in so testifying or from administrative proceedings.

Galman vs. Pamaran, 138 SCRA 274 (1985)

Immunity statutes may be generally classified into two: one, which grants "use immunity"; and the other, which grants what is known as "transactional immunity." The distinction between the two is as follows: "Use immunity" prohibits use of witness' compelled testimony and its fruits in any manner in connection with the criminal prosecution of the witness. On the other hand, "transactional immunity" grants immunity to the witness from prosecution for an offense to which his compelled testimony relates. It is beyond dispute that said law belongs to the first type of immunity statutes. It grants merely immunity from use of any statement given before the Board, but not immunity from prosecution by reason or on the basis thereof. Merely testifying and/or producing evidence do not render the witness immuned from prosecution notwithstanding his invocation of the right against self-incrimination. He is merely saved from the use against him of such statement and nothing more. Stated otherwise ... he still runs the risk of being prosecuted even if he sets up his right against self-incrimination. The dictates of fair play, which is the hallmark of due process, demands that private respondents should have been informed of their rights to remain silent and warned that any and all statements to be given by them may be used against them. This, they were denied, under the pretense that they are not entitled to it and that the Board has no obligation to so inform them. It is for this reason that we cannot subscribe to the view adopted and urged upon Us by the petitioners that the



right against self-incrimination must be invoked before the Board in order to prevent use of any given statement against the testifying witness in a subsequent criminal prosecution. A literal interpretation fashioned upon Us is repugnant to Article IV, Section 20 of the Constitution, which is the first test of admissibility.

Brown v. Walker, 161 U.S. 591

*"no person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the interstate commerce commission, or in obedience to the subpoena of the commission, . . . on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify, or produce evidence, documentary or otherwise, before said commission, or in obedience to its subpoena, or the subpoena of either of them, or in any such case or proceeding."*The act of Congress in question, securing to witnesses immunity from prosecution, is virtually an act of general amnesty, and belongs to a class of legislation which is not uncommon either in England or in this country. Although the Constitution vests in the President "power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment," this power has never been held to take from Congress the power to pass acts of general amnesty, and is ordinarily exercised only in cases of individuals after conviction, although, as was said by this Court, "it extends to every offense known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment."If, as was justly observed in the opinion of the court below, witnesses standing in Brown's position were at liberty to set up an immunity from testifying, the enforcement of the Interstate Commerce law, or other analogous acts, wherein it is for the interest of both parties to conceal their misdoings, would become impossible, since it is only from the mouths of those having knowledge of the inhibited contracts that the facts can be ascertained. While the constitutional provision in question is justly regarded as one of the most valuable prerogatives of the citizen, its object is fully accomplished by the statutory immunity, and we are therefore of opinion that the witness was compellable to answer, and that the judgment of the court below must be affirmed.

Exclusionary rule

Art. II, Sec. 12 (3)

Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

Effect of denial of privilege by court

Chavez vs. Court of Appeals, 24 SCRA 663 (1968)

The judge's words heretofore quoted — "But surely counsel could not object to have the accused called on the witness stand" — wielded authority. By those words, petitioner was enveloped by a coercive force; they deprived him of his will to resist; they foreclosed choice; the realities of human nature tell us that as he took his oath to tell the truth, the whole truth and nothing but the truth, no genuine consent underlay submission to take the witness stand. Constitutionally sound consent was absent.

FREEDOM OF EXPRESSION

Article III

Section 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

Article III, Section 18.

(1) No person shall be detained solely by reason of his political beliefs and aspirations.

Purpose

United States v. Bustos, 37 Phil. 731 (1918)

The interest of society and the maintenance of good government demand a full discussion of public affairs. Completely liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and an unjust accusation; the wound can be assuaged with the balm of a clear conscience. A public officer must not be too thin-skinned with reference to comment upon his official acts. Only thus can the intelligence and the dignity of the individual be exalted. Of course, criticism does not authorize defamation. Nevertheless, as the individual is less than the State, so must expected criticism be born for the common good.

Burgos v. Chief Of Staff, 133 SCRA 800 (1984)

We find petitioners' thesis impressed with merit. Probable cause for a search is defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched. And when the search warrant applied for is directed against a newspaper publisher or editor in connection with the publication of subversive materials, as in the case at bar, the application and/or its supporting affidavits must contain a specification, stating with particularity the alleged subversive material he has published or is intending to publish. Mere generalization will not suffice. Thus, the broad statement in Col. Abadilla's application that petitioner "is in possession or has in his control printing equipment and other paraphernalia, news publications and other documents which were used and are all continuously being used as a means of committing the offense of subversion punishable under Presidential Decree 885, as amended ..." is a mere conclusion of law and does not satisfy the requirements of probable cause. Bereft of such particulars as would justify a finding of the existence of probable cause, said allegation cannot serve as basis for the issuance of a search warrant and it was a grave error for respondent judge to have done so.

New York Times v. Sullivan 376 US 254 (1964)

[T]here is evidence that the Times published the advertisement without checking its accuracy against the news stories in the Times' own files. The mere presence of the stories in the files does not, of course, establish that the Times "knew" the advertisement was false, since the state of mind required for actual malice would have to be brought home to the persons in the Times' organization having responsibility for the publication of the advertisement. With respect to the failure of those persons to make the check, the record shows that they relied upon their knowledge of



the good reputation of many of those whose names were listed as sponsors of the advertisement, and upon the letter from A. Philip Randolph, known to them as a responsible individual, certifying that the use of the names was authorized. There was testimony that the persons handling the advertisement saw nothing in it that would render it unacceptable under the Times' policy of rejecting advertisements containing "attacks of a personal character"; their failure to reject it on this ground was not unreasonable. We think the evidence against the Times supports, at most, a finding of negligence in failing to discover the misstatements, and is constitutionally insufficient to show the recklessness that is required for a finding of actual malice.

Restrictions

Gonzales vs. COMELEC, 27 SCRA 835 (1969)

...At the very least, free speech and free press may be identified with the liberty to discuss publicly and truthfully any matter of public interest without censorship and punishment. There is to be no previous restraint on the communication of views or subsequent liability whether in libel suits, prosecution for sedition, or action for damages, or contempt proceedings unless there be a clear and present danger of substantive evil that Congress has a right to prevent.

Social Weather Station v. Comelec, G.R. 147571, May 5, 2001

To summarize then, we hold that §5.4 is invalid because (1) it imposes a prior restraint on the freedom of expression, (2) it is a direct and total suppression of a category of expression even though such suppression is only for a limited period, and (3) the governmental interest sought to be promoted can be achieved by means other than suppression of freedom of expression.

Balancing of Interest Test

The principle requires a court to take conscious and detailed consideration of the interplay of interests observable in a given situation or type of situation.

Dangerous Tendency Test

[I]f the words uttered create a dangerous tendency which the state has a right to prevent, then such words are punishable. It is not necessary that some definite or immediate acts of force, violence, or unlawfulness be advocated. It is sufficient that such acts be advocated in general terms. Nor is it necessary that the language used be reasonably calculated to incite persons to acts of force, violence, or unlawfulness. It is sufficient if the natural tendency and probable effect of the utterance be to bring about the substantive evil which the legislative body seeks to prevent. (26-010)

Clear and Present Danger Test

[T]he evil consequence of the comment or utterance must be "extremely serious and the degree of imminence extremely high" before the utterance can be punished. The danger to be guarded against is the "substantive evil" sought to be prevented. (26-010). The question in every case is whether the words used are used in such

circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. (Holmes)

Zaldivar vs. Sandiganbayan, 170 SCRA 1 (1989)

Under either the "clear and present danger" test or the "balancing-of-interest test," we believe that the statements here made by respondent Gonzalez are of such a nature and were made in such a manner and under such circumstances, as to transcend the permissible limits of free speech. This conclusion was implicit in the *per curiam* Resolution of October 7, 1988. It is important to point out that the "substantive evil" which the Supreme Court has a right and a duty to prevent does not, in the instant case, relate to threats of physical disorder or overt violence or similar disruptions of public order.⁵ What is here at stake is the authority of the Supreme Court to confront and prevent a "substantive evil" consisting not only of the obstruction of a free and fair hearing of a particular case but also the avoidance of the broader evil of the degradation of the judicial system of a country and the destruction of the standards of professional conduct required from members of the bar and officers of the courts. The "substantive evil" here involved, in other words, is not as palpable as a threat of public disorder or rioting but is certainly no less deleterious and more far reaching in its implications for society.

Sanidad vs. COMELEC, G.R. 90878, January 29, 1990

Anent respondent Comelec's argument that Section 19 of Comelec Resolution 2167 does not absolutely bar petitioner-columnist from expressing his views and/or from campaigning for or against the organic act because he may do so through the Comelec space and/or Comelec radio/television time, the same is not meritorious. While the limitation does not absolutely bar petitioner's freedom of expression, it is still a restriction on his choice of the forum where he may express his view. No reason was advanced by respondent to justify such abridgement. We hold that this form of regulation is tantamount to a restriction of petitioner's freedom of expression for no justifiable reason.

Reno v. ACLU, D-96-511 June 26, 1997

The vagueness of the CDA is a matter of special concern for two reasons. First, the CDA is a content-based regulation of speech. The vagueness of such a regulation raises "Indecent" does not benefit from any textual embellishment at all. "Patently offensive" is qualified only to the extent that it involves "sexual or excretory activities or organs" taken "in context" and "measured by contemporary community standards." The statute does not indicate whether the "patently offensive" and "indecent" determinations should be made with respect to minors or the population as a whole. The Government asserts that the appropriate standard is "what is suitable material for minors."

Miriam College v. Court of Appeals, G.R. No. 127930 December 15, 2000

It is in the light of this standard that we read Section 7 of the Campus Journalism Act. Provisions of law should be construed in harmony with those of the Constitution; acts of the legislature should be construed, wherever possible, in a manner that would avoid their conflicting with the fundamental law. A statute should not be given a broad construction if its validity can be saved by a narrower one. Thus, Section 7 should be read in a manner as not to infringe upon the school's right to discipline its students. At



the same time, however, we should not construe said provision as to unduly restrict the right of the students to free speech. Consistent with jurisprudence, *we read Section 7 of the Campus Journalism Act to mean that the school cannot suspend or expel a student solely on the basis of the articles he or she has written, except when such article materially disrupt class work or involve substantial disorder or invasion of the rights of others.*

ABS-CBN Broadcasting Corp. v. Comelec, G.R. No. 133486, January 28, 2000

In exit polls, the contents of the official ballot are not actually exposed. Furthermore, the revelation of whom an elector has voted for is not compulsory, but voluntary. Voters may also choose not to reveal their identities. Indeed, narrowly tailored countermeasures may be prescribed by the Comelec, so as to minimize or suppress incidental problems in the conduct of exit polls, without transgressing the fundamental rights of our people.

Chavez v. Gonzales (2008)

There is enough evidence of chilling effect of the complained acts on record. The warnings given to media came from no less the NTC, a regulatory agency that can cancel the Certificate of Authority of the radio and broadcast media. They also came from the Secretary of Justice, the alter ego of the Executive, who wields the awesome power to prosecute those perceived to be violating the laws of the land. After the warnings, the KBP inexplicably joined the NTC in issuing an ambivalent Joint Press Statement. After the warnings, petitioner Chavez was left alone to fight this battle for freedom of speech and of the press. This silence on the sidelines on the part of some media practitioners is too deafening to be the subject of misinterpretation.

Freedom of Expression, Libel and National Security

- Truth is not a defense.
- Good faith is a defense.
 - Legal duty
 - Moral duty
 - Social duty

Babst v. NIB, 132 SCRA 316 (1984)

[T]he right to seek redress when libeled is a personal and individual privilege of the aggrieved party, and no one among the respondent officials has the authority to restrain any of his subordinates who has been libeled from vindicating his right by instituting a libel suit. Brig. Gen. Tadiar has filed the libel case against petitioners Suarez and Doyo in his personal capacity. Moreover, he is not even a member of respondent NIB. And the NIB does not appear to have anything to do with Gen. Tadiar's private right to complain of libel.

Espuelas v. People, 90 Phil. 524 (1951)

Not to be restrained is the privilege of any citizen to criticize his government officials and to submit his criticism to the "free trade of ideas" and to plead for its acceptance in "the competition of the market." However, let such criticism be specific and therefore constructive, reasoned or tempered, and not a contemptuous condemnation of the entire government set-up. Such wholesale attack is nothing less than an invitation to disloyalty to the government. In the article now under examination one will find no particular objectionable actuation of the government. It is called dirty, it is called a dictatorship, it is called shameful, but no particular

omissions or commissions are set forth. Instead the article drip with male-violence and hate towards the constituted authorities. It tries to arouse animosity towards all public servants headed by President Roxas whose pictures this appellant would burn and would teach the younger generation to destroy.

Mercado v. CFI 116 SCRA 93 (1982)

Respondents have in their favor a decision of this Court supporting their stand. In *People v. Monton*, the question of whether or not a motion to quash based on a qualified privilege should be upheld was decided adversely against the claim of those accused of libel. This Court made clear that malice can be shown. It "simply puts the burden of doing so on the prosecution." The *ponencia* of then Justice, later Chief Justice, Makalintal distinguished the Bustos decision, thus: "That case is not here applicable, because the acquittal of the accused therein on the ground that the defamatory imputation was qualifiedly privileged was adjudged only after trial, wherein the prosecution tried to establish, although unsuccessfully, the element of malice."¹¹ Further, the opinion stated: " It need only be added that in the instant case the information alleges that the defendants, appellees here, wrote and sent the subject letter to the President 'with malicious intent and evil motive of attacking, injuring and impeaching the character, honesty, integrity, virtue and reputation of one Jose J. Montecarlo ... and with malicious intent of exposing (him) to public hatred, contempt, ridicule, discredit and dishonor, without any justifiable motive.' Under the foregoing allegation, the prosecution is entitled to go to trial and present the necessary evidence to prove malice; and the denial, to it of the opportunity to do so, upon the defendants' motion to quash, constitutes reversible error."

Lopez v. Court of Appeals, 34 SCRA 116 (1970)

Petitioners would make much, likewise, of their correction, which has all the force of a retraction, as a basis from being absolved from any pecuniary responsibility. The present Chief Justice in *Policarpio v. Manila Times*² restated the controlling principle: "We note that the news item published on August 13, 1956, rectified a major inaccuracy contained in the first article, by stating that neither Col. Alba nor the PCAC had filed the aforementioned complaints with the city fiscal's office. It, likewise, indicated the number of sheets of stencil involved in said complaints. But, this rectification or clarification does not wipe out the responsibility arising from the publication of the first article, although it may and should mitigate it.

PJI v. Thoenen, G.R. No. 143372, December 13, 2005

The Court pointed out that Lee's brief news item contained falsehoods on two levels. On its face, her statement that residents of BF Homes had "asked the Bureau of Immigration to deport a Swiss who allegedly shoots neighbors' pets" is patently untrue since the letter of the spurious Atty. Angara was a mere request for verification of Thoenen's status as a foreign resident. Lee's article, moreover, is also untrue, in that the events she reported never happened. The respondent had never shot any of his neighbors' pets, no complaints had been lodged against him by his neighbors, and no deportation proceedings had been initiated against him. Worse, the author of Lee's main source of information, Atty. Efren Angara, apparently either does not exist, or is not a lawyer. Petitioner Lee would have been enlightened on substantially all these matters had she but tried to contact either Angara or Thoenen.

Texas v. Johnson, 491 U.S. 397 (1989)

The Court is tempted to say, in fact, that the flag's deservedly cherished place in our community will be



strengthened, not weakened, by our holding today. Our decision is a reaffirmation of the principles of freedom and inclusiveness that the flag best reflects, and of the conviction that our toleration of criticism such as Johnson's is a sign and source of our strength. Indeed, one of the proudest images of our flag, the one immortalized in our own national anthem, is of the bombardment it survived at Fort McHenry. It is the Nation's resilience, not its rigidity, that Texas sees reflected in the flag -- and it is that resilience that we reassert today. The way to preserve the flag's special role is not to punish those who feel differently about these matters. It is to persuade them that they are wrong.

Borjal v. C.A., 301 SCRA 1(1999)

Lest Courts be misconstrued, this is not to diminish nor constrict that space in which expression freely flourishes and operates. For we have always strongly maintained, as we do now, that freedom of expression is man's birthright - constitutionally protected and guaranteed, and that it has become the singular role of the press to act as its "defensor fidei" in a democratic society such as ours. But it is also worth keeping in mind that the press is the servant, not the master, of the citizenry, and its freedom does not carry with it an restricted hunting license to prey on the ordinary citizen.

Baguio Midland Courier v. CA, G.R. No. 107566, November 25, 2004

The Court holds that petitioner Afaible's article constitutes a fair comment on a matter of public interest as it dealt with the character of private respondent who was running for the top elective post in Baguio City at the time. Considering that private respondent assured his would-be constituents that he would be donating millions of his own money, petitioner Afaible's column with respect to private respondent's indebtedness provided the public with information as regards his financial status which, in all probability, was still unbeknownst to them at that time. Indeed, the information might have dissuaded some members of the electorate from voting in favor of private respondent but such is the inevitable result of the application of the law. The effect would have been adverse to the private respondent but public interest in this case far outweighs the interest of private respondent.

Freedom of Expression and the Administration of Justice

Cabansag v. Fernandez, 102 Phil. 152

We would only add one word in connection with the participation in the incident of Cabansag's co-appellants, Attys. Roberto V. Merrera and Rufino V. Merrera. While the conduct of Cabansag may be justified considering that, being a layman, he is unaware of the technical rules of law and procedure which may place him under the protective mantle of our constitution, such does not obtain with regard to his co-appellants. Being learned in the law and officers of the court, they should have acted with more care and circumspection in advising their client to avoid undue embarrassment to the court or unnecessary interference with the normal course of its proceedings. Their duty as lawyers is always to observe utmost respect to the court and defend it against unjust criticism and clamor. Had they observed a more judicious behavior, they would have avoided the unpleasant incident that had arisen. However, the record is bereft of any proof showing improper motive on their part, much less bad faith in their actuation. But they should be warned, as we now do, that a commission of a similar

misstep in the future would render them amenable to a more severe disciplinary action.

People v. Alarcon, 69 Phil. 265 (1939)

Contempt of court is in the nature of a criminal offense, and in considering the probable effects of the article alleged to be contemptuous, every fair and reasonable inference consistent with the theory of defendant's innocence will be indulged, and where a reasonable doubt in fact or in law exists as to the guilt of one of constructive contempt for interfering with the due administration of justice the doubt must be resolved in his favor, and he must be acquitted.

In Re Ramon Tulfo, AM 90-4-1545-0, April 17, 1990

The inherent power of courts to punish any publication calculated to interfere with the administration of justice is not restricted by the constitutional guarantee of freedom of the press, for freedom of the press is subordinate to the authority, integrity and independence of the judiciary and the proper administration of justice. Freedom of the press must not be confounded with license or abuse of that freedom. Writers and publishers of newspapers have the right, but no greater than the right of others, to bring to public notice the conduct and acts of courts, provided the publications are true and fair in spirit; in short, there is no law to restrain or punish the freest expression of disapprobation of what is done in or by the courts, provided that free expression is not used as a vehicle to satisfy one's irrational obsession to demean, ridicule, degrade and even destroy the courts and their members. Consequently, Tulfo's as well as intervenors' claim to press freedom, is not well taken in this instance.

Nestle Phils. v. Sanchez, 154 SCRA 542 (1987)

The Court realize that the individuals herein cited who are non-lawyers are not knowledgeable in her intricacies of substantive and adjective laws. They are not aware that even as the rights of free speech and of assembly are protected by the Constitution, any attempt to pressure or influence courts of justice through the exercise of either right amounts to an abuse thereof, is no longer within the ambit of constitutional protection, nor did they realize that any such efforts to influence the course of justice constitutes contempt of court. The duty and responsibility of advising them, therefore, rest primarily and heavily upon the shoulders of their counsel of record. Atty. Jose C. Espinas, when his attention was called by this Court, did his best to demonstrate to the pickets the untenability of their acts and posture. Let this incident therefore serve as a reminder to all members of the legal profession that it is their duty as officers of the court to properly apprise their clients on matters of decorum and proper attitude toward courts of justice, and to labor leaders of the importance of a continuing educational program for their members.

In Re Atty. Emil Jurado, A.M. No. 93-2-037 SC April 6, 1995

The people's right to discover the truth is not advanced by unbridled license in reportage that would find favor only with extremist liberalism. If it has done nothing else, this case has made clear the compelling necessity of the guidelines and parameters elsewhere herein laid down. They are eminently reasonable, and no responsible journalist should have cause to complain of difficulty in their observance. Jurado's actuations, in the context in which they were done, demonstrate gross irresponsibility, and indifference to factual accuracy and the injury that he might cause to the name and reputation of those of whom he wrote. They constitute contempt of court, directly tending as they do to degrade or abase the administration of justice and the judges engaged in that function. By doing them, he has placed himself



beyond the circle of reputable, decent and responsible journalists who live by their Code or the "Golden Rule" and who strive at all times to maintain the prestige and nobility of their calling.

Freedom of Expression, Movie Censorship, Obscenity and the Right to Privacy

Tests of Obscenity

- Isolated Passage Test
- Social Redeeming Value Test
- Dominant Theme Test
- Community Standard Test
- National Character Test
- Aggregate Character Test

Least Regulated to Most Regulated

1. Print media
2. Films
3. Televisions
4. Radio (more pervasive)
5. Live shows

Gonzales v. Kalaw Katikbak, 137 SCRA 356 (1985)

All that remains to be said is that the ruling is to be limited to the concept of obscenity applicable to motion pictures. It is the consensus of this Court that where television is concerned: a less liberal approach calls for observance. This is so because unlike motion pictures where the patrons have to pay their way, television reaches every home where there is a set. Children then will likely will be among the avid viewers of the programs therein shown. As was observed by Circuit Court of Appeals Judge Jerome Frank, it is hardly the concern of the law to deal with the sexual fantasies of the adult population. It cannot be denied though that the State as *parens patriae* is called upon to manifest an attitude of caring for the welfare of the young.

Lagunzad v. Sotto, Vda. De Gonzales 92 SCRA 476 (1979)

In the case at bar, the interests observable are the right to privacy asserted by respondent and the right of -freedom of expression invoked by petitioner. Taking into account the interplay of those interests, we hold that under the particular circumstances presented, and considering the obligations assumed in the Licensing Agreement entered into by petitioner, the validity of such agreement will have to be upheld particularly because the limits of freedom of expression are reached when expression touches upon matters of essentially private concern.

Ayer Productions v. Judge Capulong, 160 SCRA 861 (1988)

The line of equilibrium in the specific context of the instant case between the constitutional freedom of speech and of expression and the right of privacy, may be marked out in terms of a requirement that the proposed motion picture must be fairly truthful and historical in its presentation of events. There must, in other words, be no knowing or reckless disregard of truth in depicting the participation of private respondent in the EDSA Revolution. There must, further, be no presentation of the private life of the unwilling private respondent and certainly no revelation of intimate or embarrassing personal facts. The proposed motion picture should not enter into what Mme. Justice Melencio-Herrera in

Lagunzad referred to as "matters of essentially private concern." To the extent that "The Four Day Revolution" limits itself in portraying the participation of private respondent in the EDSA Revolution to those events which are directly and reasonably related to the *public facts* of the EDSA Revolution, the intrusion into private respondent's privacy cannot be regarded as unreasonable and actionable. Such portrayal may be carried out even without a license from private respondent.

PUBLIC FIGURE (Ayer case)

A public figure has been defined as a person who, by his accomplishments, fame, or mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doings, his affairs, and his character, has become a 'public personage.' He is, in other words, a celebrity. Obviously to be included in this category are those who have achieved some degree of reputation by appearing before the public, as in the case of an actor, a professional baseball player, a pugilist, or any other entertainment. The list is, however, broader than this. It includes public officers, famous inventors and explorers, war heroes and even ordinary soldiers, an infant prodigy, and no less a personage than the Grand Exalted Ruler of a lodge. It includes, in short, anyone who has arrived at a position where public attention is focused upon him as a person.

Such public figures were held to have lost, to some extent at least, their right to privacy. Three reasons were given, more or less indiscriminately, in the decisions" that they had sought publicity and consented to it, and so could not complain when they received it; that their personalities and their affairs has already public, and could no longer be regarded as their own private business; and that the press had a privilege, under the Constitution, to inform the public about those who have become legitimate matters of public interest. On one or another of these grounds, and sometimes all, it was held that there was no liability when they were given additional publicity, as to matters legitimately within the scope of the public interest they had aroused.

The privilege of giving publicity to news, and other matters of public interest, was held to arise out of the desire and the right of the public to know what is going on in the world, and the freedom of the press and other agencies of information to tell it. "News" includes all events and items of information which are out of the ordinary hum-drum routine, and which have 'that indefinable quality of information which arouses public attention.' To a very great extent the press, with its experience or instinct as to what its readers will want, has succeeded in making its own definition of news, as a glance at any morning newspaper will sufficiently indicate. It includes homicide and other crimes, arrests and police raids, suicides, marriages and divorces, accidents, a death from the use of narcotics, a woman with a rare disease, the birth of a child to a twelve year old girl, the reappearance of one supposed to have been murdered years ago, and undoubtedly many other similar matters of genuine, if more or less deplorable, popular appeal.

The privilege of enlightening the public was not, however, limited, to the dissemination of news in the scene of current events. It extended also to information or education, or even entertainment and amusement, by books, articles, pictures, films and broadcasts concerning interesting phases of human activity in general, as well as the reproduction of the public scene in newsreels and travelogues. In determining where to draw the line, the courts were invited to exercise a species of censorship over what the public may be permitted to read; and they were understandably liberal in allowing the benefit of the doubt.

KMU v. Director General, G.R. No. 167798, April 19, 2006

Petitioners have not shown how EO 420 will violate their right to privacy. Petitioners cannot show such violation by a mere facial examination of EO 420 because EO 420 narrowly draws the data collection, recording and exhibition



while prescribing comprehensive safeguards. *Ople v. Torres* is not authority to hold that EO 420 violates the right to privacy because in that case the assailed executive issuance, broadly drawn and devoid of safeguards, was annulled solely on the ground that the subject matter required legislation. As then Associate Justice, now Chief Justice Artemio V. Panganiban noted in his concurring opinion in *Ople v. Torres*, "The voting is decisive only on the need for appropriate legislation, and it is only on this ground that the petition is granted by this Court."

MTRCB v. ABS-CBN, G.R. No. 155282, January 17, 2005

It bears stressing that the sole issue here is whether petitioner MTRCB has authority to review "*The Inside Story*." Clearly, we are not called upon to determine whether petitioner violated Section 4, Article III (Bill of Rights) of the Constitution providing that no law shall be passed abridging the freedom of speech, of oppression or the press. Petitioner did not disapprove or ban the showing of the program. Neither did it cancel respondents' permit. Respondents were merely penalized for their failure to submit to petitioner "*The Inside Story*" for its review and approval. Therefore, we need not resolve whether certain provisions of P. D. No. 1986 and the MTRCB Rules and Regulations specified by respondents contravene the Constitution.

Reno v. ACLU, June 26, 1997, D-96-511

The Government's argument that this Court should preserve the CDA's constitutionality by honoring its severability clause, § 608, and by construing nonseverable terms narrowly, is acceptable in only one respect. Because obscene speech may be banned totally, see *Miller*, 413 U. S., at 18, and § 223(a)'s restriction of "obscene" material enjoys a textual manifestation separate from that for "indecent" material, the Court can sever the term "or indecent" from the statute, leaving the rest of § 223(a) standing. The Government's argument that its "significant" interest in fostering the Internet's growth provides an independent basis for upholding the CDA's constitutionality is singularly unpersuasive. The dramatic expansion of this new forum contradicts the factual basis underlying this contention: that the unregulated availability of "indecent" and "patently offensive" material is driving people away from the Internet.

Miller v. California, 413 U.S. 15 (1973)

In sum, The Court reaffirms the *Roth* holding that obscene material is not protected by the First Amendment; (b) hold that such material can be regulated by the States, subject to the specific safeguards enunciated above, without a showing that the material is "utterly without redeeming social value"; and (c) hold that obscenity is to be determined by applying "contemporary community standards, not "national standards." The judgment of the Appellate Department of the Superior Court, Orange County, California, is vacated and the case remanded to that court for further proceedings not inconsistent with the First Amendment standards established by this opinion.

Fernando v. Court of Appeals, G.R. No. 159751 December 6, 2006

We emphasize that mere possession of obscene materials, without intention to sell, exhibit, or give them away, is not punishable under Article 201, considering the purpose of the law is to prohibit the dissemination of obscene materials to the public. The offense in any of the forms under Article 201 is committed only when there is publicity. The law does not require that a person be caught in the act of selling, giving away or exhibiting obscene materials to be liable, for as long as the said materials are offered for sale, displayed or exhibited to the public. In the present case, we find that

petitioners are engaged in selling and exhibiting obscene materials.

Radio Broadcasts

Eastern Broadcasting Corp. (DYRE) v. Dans, 137 SCRA 247 (1985)

The clear and present danger test, therefore, must take the particular circumstances of broadcast media into account. The supervision of radio stations—whether by government or through self-regulation by the industry itself calls for thoughtful, intelligent and sophisticated handling. The government has a right to be protected against broadcasts which incite the listeners to violently overthrow it. Radio and television may not be used to organize a rebellion or to signal the start of widespread uprising. At the same time, the people have a right to be informed. Radio and television would have little reason for existence if broadcasts are limited to bland, obsequious, or pleasantly entertaining utterances. Since they are the most convenient and popular means of disseminating varying views on public issues, they also deserve special protection.

Freedom of speech: at once the instrument and the guarantee and the bright consummate flower of liberty.

- Wendell Philipp

FREEDOM OF ASSEMBLY

BATAS PAMBANSA BLG. 880
AN ACT ENSURING THE FREE EXERCISE BY THE PEOPLE OF THEIR RIGHT PEACEABLY TO ASSEMBLE AND PETITION THE GOVERNMENT FOR OTHER PURPOSES

Section 1. Title - This Act shall be known as "The Public Assembly Act of 1985."

Section 2. Declaration of policy - The constitutional right of the people peaceably to assemble and petition the government for redress of grievances is essential and vital to the strength and stability of the State. To this end, the State shall ensure the free exercise of such right without prejudice to the rights of others to life, liberty and equal protection of the law.

Section 3. Definition of terms - For purposes of this Act:

- (a) "Public assembly" means any rally, demonstration, march, parade, procession or any other form of mass or concerted action held in a public place for the purpose of presenting a lawful cause; or expressing an opinion to the general public on any particular issue; or protesting or influencing any state of affairs whether political, economic or social; or petitioning the government for redress of grievances.

The processions, rallies, parades, demonstrations, public meetings and assemblages for religious purposes shall be governed by local ordinances: Provided, however, That the declaration of policy as provided in Section 2 of this Act shall be faithfully observed.

The definition herein contained shall not include picketing and other concerted action in strike areas by workers and employees resulting from a labor dispute as defined by the Labor Code, its implementing rules and regulations, and by the Batas Pambansa Bilang 227.

- (b) "Public place" shall include any highway, boulevard, avenue, road, street, bridge or other thoroughfare, park,



plaza, square, and/or any open space of public ownership where the people are allowed access.

- (c) "Maximum tolerance" means the highest degree of restraint that the military, police and other peace keeping authorities shall observe during a public assembly or in the dispersal of the same.
- (d) "Modification of permit" shall include the change of the place and time of the public assembly, rerouting of the parade or street march, the volume of loud-speakers or sound system and similar changes.

Section 4. Permit when required and when not required - A written permit shall be required for any person or persons to organize and hold a public assembly in a public place. However, no permit shall be required if the public assembly shall be done or made in a freedom park duly established by law or ordinance or in private property, in which case only the consent of the owner or the one entitled to its legal possession is required, or in the campus of a government-owned and operated educational institution which shall be subject to the rules and regulations of said educational institution. Political meetings or rallies held during any election campaign period as provided for by law are not covered by this Act.

Section 5. Application requirements - All applications for a permit shall comply with the following guidelines:

- (a) The applications shall be in writing and shall include the names of the leaders or organizers; the purpose of such public assembly; the date, time and duration thereof, and place or streets to be used for the intended activity; and the probable number of persons participating, the transport and the public address systems to be used.
- (b) The application shall incorporate the duty and responsibility of applicant under Section 8 hereof.
- (c) The application shall be filed with the office of the mayor of the city or municipality in whose jurisdiction the intended activity is to be held, at least five (5) working days before the scheduled public assembly.
- (d) Upon receipt of the application, which must be duly acknowledged in writing, the office of the city or municipal mayor shall cause the same to immediately be posted at a conspicuous place in the city or municipal building.

Section 6. Action to be taken on the application -

- (a) It shall be the duty of the mayor or any official acting in his behalf to issue or grant a permit unless there is clear and convincing evidence that the public assembly will create a clear and present danger to public order, public safety, public convenience, public morals or public health.
- (b) The mayor or any official acting in his behalf shall act on the application within two (2) working days from the date the application was filed, failing which, the permit shall be deemed granted. Should for any reason the mayor or any official acting in his behalf refuse to accept the application for a permit, said application shall be posted by the applicant on the premises of the office of the mayor and shall be deemed to have been filed.
- (c) If the mayor is of the view that there is imminent and grave danger of a substantive evil warranting the denial or modification of the permit, he shall immediately inform the applicant who must be heard on the matter.
- (d) The action on the permit shall be in writing and served on the application within twenty-four hours.
- (e) If the mayor or any official acting in his behalf denies the application or modifies the terms thereof in his permit, the applicant may contest the decision in an appropriate court of law.
- (f) In case suit is brought before the Metropolitan Trial Court, the Municipal Trial Court, the Municipal Circuit Trial Court,

the Regional Trial Court, or the Intermediate Appellate Court, its decisions may be appealed to the appropriate court within forty-eight (48) hours after receipt of the same. No appeal bond and record on appeal shall be required. A decision granting such permit or modifying it in terms satisfactory to the applicant shall, be immediately executory.

- (g) All cases filed in court under this Section shall be decided within twenty-four (24) hours from date of filing. Cases filed hereunder shall be immediately endorsed to the executive judge for disposition or, in his absence, to the next in rank.
- (h) In all cases, any decision may be appealed to the Supreme Court.
- (i) Telegraphic appeals to be followed by formal appeals are hereby allowed.

Section 7. Use of public thoroughfare - Should the proposed public assembly involve the use, for an appreciable length of time, of any public highway, boulevard, avenue, road or street, the mayor or any official acting in his behalf may, to prevent grave public inconvenience, designate the route thereof which is convenient to the participants or reroute the vehicular traffic to another direction so that there will be no serious or undue interference with the free flow of commerce and trade.

Section 8. Responsibility of applicant - It shall be the duty and responsibility of the leaders and organizers of a public assembly to take all reasonable measures and steps to the end that the intended public assembly shall be conducted peacefully in accordance with the terms of the permit. These shall include but not be limited to the following:

- (a) To inform the participants of their responsibility under the permit;
- (b) To police the ranks of the demonstrators in order to prevent non-demonstrators from disrupting the lawful activities of the public assembly;
- (c) To confer with local government officials concerned and law enforcers to the end that the public assembly may be held peacefully;
- (d) To see to it that the public assembly undertaken shall not go beyond the time stated in the permit; and
- (e) To take positive steps that demonstrators do not molest any person or do any act unduly interfering with the rights of other persons not participating in the public assembly.

Section 9. Non-interference by law enforcement authorities - Law enforcement agencies shall not interfere with the holding of a public assembly. However, to adequately ensure public safety, a law enforcement contingent under the command of a responsible police officer may be detailed and stationed in a place at least one hundred (100) meter away from the area of activity ready to maintain peace and order at all times.

Section 10. Police assistance when requested - It shall be imperative for law enforcement agencies, when their assistance is requested by the leaders or organizers, to perform their duties always mindful that their responsibility to provide proper protection to those exercising their right peaceably to assemble and the freedom of expression is primordial. Towards this end, law enforcement agencies shall observe the following guidelines:

- (a) Members of the law enforcement contingent who deal with the demonstrators shall be in complete uniform with their nameplates and units to which they belong displayed prominently on the front and dorsal parts of their uniform and must observe the policy of "maximum tolerance" as herein defined;
- (b) The members of the law enforcement contingent shall not carry any kind of firearms but may be equipped with baton



or riot sticks, shields, crash helmets with visor, gas masks, boots or ankle high shoes with shin guards;

- (c) Tear gas, smoke grenades, water cannons, or any similar anti-riot device shall not be used unless the public assembly is attended by actual violence or serious threats of violence, or deliberate destruction of property.

Section 11. Dispersal of public assembly with permit - No public assembly with a permit shall be dispersed. However, when an assembly becomes violent, the police may disperse such public assembly as follows:

- (a) At the first sign of impending violence, the ranking officer of the law enforcement contingent shall call the attention of the leaders of the public assembly and ask the latter to prevent any possible disturbance;
- (b) If actual violence starts to a point where rocks or other harmful objects from the participants are thrown at the police or at the non-participants, or at any property causing damage to such property, the ranking officer of the law enforcement contingent shall audibly warn the participants that if the disturbance persists, the public assembly will be dispersed;
- (c) If the violence or disturbances prevailing as stated in the preceding subparagraph should not stop or abate, the ranking officer of the law enforcement contingent shall audibly issue a warning to the participants of the public assembly, and after allowing a reasonable period of time to lapse, shall immediately order it to forthwith disperse;
- (d) No arrest of any leader, organizer or participant shall also be made during the public assembly unless he violates during the assembly a law, statute, ordinance or any provision of this Act. Such arrest shall be governed by Article 125 of the Revised Penal Code, as amended:
- (e) Isolated acts or incidents of disorder or breach of the peace during the public assembly shall not constitute a group for dispersal.

Section 12. Dispersal of public assembly without permit - When the public assembly is held without a permit where a permit is required, the said public assembly may be peacefully dispersed.

Section 13. Prohibited acts - The following shall constitute violations of this Act:

- (a) The holding of any public assembly as defined in this Act by any leader or organizer without having first secured that written permit where a permit is required from the office concerned, or the use of such permit for such purposes in any place other than those set out in said permit: Provided, however, That no person can be punished or held criminally liable for participating in or attending an otherwise peaceful assembly;
- (b) Arbitrary and unjustified denial or modification of a permit in violation of the provisions of this Act by the mayor or any other official acting in his behalf.
- (c) The unjustified and arbitrary refusal to accept or acknowledge receipt of the application for a permit by the mayor or any official acting in his behalf;
- (d) Obstructing, impeding, disrupting or otherwise denying the exercise of the right to peaceful assembly;
- (e) The unnecessary firing of firearms by a member of any law enforcement agency or any person to disperse the public assembly;
- (f) Acts in violation of Section 10 hereof;
- (g) Acts described hereunder if committed within one hundred (100) meters from the area of activity of the public assembly or on the occasion thereof;
1. the carrying of a deadly or offensive weapon or device such as firearm, pillbox, bomb, and the like;
 2. the carrying of a bladed weapon and the like;
 3. the malicious burning of any object in the streets or thoroughfares;
 4. the carrying of firearms by members of the law enforcement unit;

5. the interfering with or intentionally disturbing the holding of a public assembly by the use of a motor vehicle, its horns and loud sound systems.

Section 14. Penalties - Any person found guilty and convicted of any of the prohibited acts defined in the immediately preceding Section shall be punished as follows:

- (a) violation of subparagraph (a) shall be punished by imprisonment of one month and one day to six months;
- (b) violations of subparagraphs (b), (c), (d), (e), (f), and item 4, subparagraph (g) shall be punished by imprisonment of six months and one day to six years;
- (c) violation of item 1, subparagraph (g) shall be punished by imprisonment of six months and one day to six years without prejudice to prosecution under Presidential Decree No. 1866;
- (d) violations of item 2, item 3, or item 5 of subparagraph (g) shall be punished by imprisonment of one day to thirty days.

Section 15. Freedom parks - Every city and municipality in the country shall within six months after the effectivity of this Act establish or designate at least one suitable "freedom park" or mall in their respective jurisdictions which, as far as practicable, shall be centrally located within the poblacion where demonstrations and meetings may be held at any time without the need of any prior permit.

In the cities and municipalities of Metropolitan Manila, the respective mayors shall establish the freedom parks within the period of six months from the effectivity of this Act.

Section 16. Constitutionality - Should any provision of this Act be declared invalid or unconstitutional, the validity or constitutionality of the other provisions shall not be affected thereby.

Section 17. Repealing clause - All laws, decrees, letters of instructions, resolutions, orders, ordinances or parts thereof which are inconsistent with the provisions of this Act are hereby repealed, amended, or modified accordingly.

Section 18. Effectivity - This Act shall take effect upon its approval. (Approved, October 22, 1985)

Primicias v. Mayor Fugoso, 80 Phil. 71 (1948)

The right of freedom of speech and to peacefully assemble and petition the government for redress of grievances, are fundamental personal rights of the people recognized and guaranteed by the Constitutions of democratic countries. But it a settled principle growing out of the nature of well-ordered civil societies that the exercise of those rights is not absolute for it may be so regulated that it shall not be injurious to the equal enjoyment of others having equal rights, not injurious to the rights of the community or society. The power to regulate the exercise of such and other constitutional rights is termed the sovereign "police power" which is the power to prescribe regulations, to promote the health, morals, peace, education, good order or safety, and general welfare of the people. This sovereign police power is exercised by the government through its legislative branch by the enactment of laws regulating those and other constitutional and civil rights, and it may be delegated to political subdivisions, such as towns, municipalities, and cities authorizing their legislative bodies, called municipal and city councils to enact ordinances for the purpose.

Navarro v. Mayor Villegas, 31 SCRA 730 (1970)

That respondent Mayor has expressly stated his willingness to grant permits for peaceful assemblies at Plaza Miranda during Saturdays, Sundays and holidays when they would not cause unnecessarily great disruption of the normal activities of the community and has further offered Sunken Gardens as an alternative to Plaza Miranda as the site of the demonstration sought to be held this afternoon; That



experiences in connection with present assemblies and demonstrations do not warrant the Court's disbelieving respondent Mayor's appraisal that a public rally at Plaza Miranda, as compared to one at the Sunken Gardens as he suggested, poses a clearer and more imminent danger of public disorders, breaches of the peace, criminal acts, and even bloodshed as an aftermath of such assemblies, and petitioner has manifested that it has no means of preventing such disorders;

Ignacio vs. Ela, 99 Phil. 346 (1956)

The contention that the northwestern part of the plaza cannot be considered as part of said plaza but of the road in the northwestern portion beyond the concrete fence is untenable, for it appears that that portion is part of the plaza and has a space capable of accommodating hundreds of people. In fact, during the past celebrations of the traditional town *fiesta* of the municipality, said portion has been utilized by the authorities as a place for staging *dramas, zarzuelas,* and cinematograph shows. Verily, the pretense of petitioners cannot be attributed to the unsuitability of that portion as a meeting place but rather to their obstinate desire to use the kiosk knowing it to be contrary to the policy of the municipality.

J.B.L. Reyes v. Bagatsing, 125 SCRA 553 (1983)

There is merit to the observation that except as to the novel aspects of a litigation, the judgment must be confined within the limits of previous decisions. The law declared on past occasions is, on the whole, a safe guide. So it has been here. Hence, as noted, on the afternoon of the hearing, October 25, 1983, this Court issued the minute resolution granting the mandatory injunction allowing the proposed march and rally scheduled for the next day. That conclusion was inevitable in the absence of a clear and present danger of a substantive, evil to a legitimate public interest. There was no justification then to deny the exercise of the constitutional rights of free speech and peaceable assembly. These rights are assured by our Constitution and the Universal Declaration of Human Rights. The participants to such assembly, composed primarily of those in attendance at the International Conference for General Disarmament, World Peace and the Removal of All Foreign Military Bases would start from the Luneta proceeding through Roxas Boulevard to the gates of the United States Embassy located at the same street. To repeat, it is settled law that as to public places, especially so as to parks and streets, there is freedom of access. Nor is their use dependent on who is the applicant for the permit, whether an individual or a group.

Ruiz vs. Gordon, 126 SCRA 233 (1983)

Free speech and peaceable assembly, along with the other intellectual freedoms, are highly ranked in our scheme of constitutional values. It cannot be too strongly stressed that on the judiciary, — even more so than on the other departments — rests the grave and delicate responsibility of assuring respect for and deference to such preferred rights. No verbal formula, no sanctifying phrase can, of course, dispense with what has been so felicitously termed by Justice Holmes 'as the sovereign prerogative of judgment.' Nonetheless, the presumption must be to incline the weight of the scales of justice on the side of such rights, enjoying as they do precedence and primacy.

Malabanan v. Ramento, 129 SCRA 359 (1984)

Petitioners invoke their rights to peaceable assembly and free speech. They are entitled to do so. They enjoy like the rest of the citizens the freedom to express their views and communicate their thoughts to those disposed to listen in gatherings such as was held in this case. They do not, to

borrow from the opinion of *Justice Fortas in Tinker v. Des Moines Community School District*, "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." While, therefore, the authority of educational institutions over the conduct of students must be recognized, it cannot go so far as to be violative of constitutional safeguards. On a more specific level there is persuasive force to this formulation in the Fortas opinion: "The principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students. This is not only an inevitable part of the process of attending school; it is also an important part of the educational process. A student's rights, therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without 'materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school' and without colliding with the rights of others. ... But conduct by the student, in class or out of it, which for any reason — whether it stems from time, place, or type of behavior — materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech."

Arreza v. GAUF, 137 SCRA 94 (1985)

There is no need, therefore, to inquire into the allegations of respondent University as to the non-peaceable character of the rally or demonstration. As made clear from the above excerpt, infractions of University rules or regulations by petitioner-students justify the filing of appropriate charges. What cannot be justified is the infliction of the highly-disproportionate penalty of denial of enrollment and the consequent failure of senior students to graduate, if in the exercise of the cognate rights of free speech and peaceable assembly, improper conduct could be attributed to them.

German v. Barangan, 135 SCRA 514 (1985)

In the case at bar, petitioners are not denied or restrained of their freedom of belief or choice of their religion, but only in the manner by which they had attempted to translate the same into action. Suffice it to say that the restriction imposed on the use of J.P. Laurel Street, the wisdom and reasonableness of which have already been discussed, is allowed under the fundamental law, the same having been established in the interest of national security.

Acosta v CA and CSC G.R. No. 132088 Jun 28, 2000

Petitioners' contentions are without merit. The character and legality of the mass actions which they participated in have been passed upon by this Court as early as 1990 in *Manila Public School Teachers' Association (MPSTA) v. Laguio, Jr.* wherein we ruled that "these 'mass actions' were to all intents and purposes a strike; they constituted a concerted and unauthorized stoppage of, or absence from, work which it was the teachers' sworn duty to perform, undertaken for essentially economic reasons." It bears stressing that suspension of public services, however temporary, will inevitably derail services to the public, which is one of the reasons why the right to strike is denied government employees. It may be conceded that the petitioners had valid grievances and noble intentions in staging the "mass action," but that will not justify their absences to the prejudice of innocent school children. Their righteous indignation does not legalize an illegal work stoppage.



Bayan v. Ermita, G.R. No. 169838, April 25, 2006

For this reason, the so-called calibrated preemptive response (CPR) policy has no place in our legal firmament and must be struck down as a darkness that shrouds freedom. It merely confuses our people and is used by some police agents to justify abuses. On the other hand, B.P. No. 880 cannot be condemned as unconstitutional; it does not curtail or unduly restrict freedoms; it merely regulates the use of public places as to the time, place and manner of assemblies. Far from being insidious, "maximum tolerance" is for the benefit of rallyists, not the government. The delegation to the mayors of the power to issue rally "permits" is valid because it is subject to the constitutionally-sound "clear and present danger" standard. In this Decision, the Court goes even one step further in safeguarding liberty by giving local governments a deadline of 30 days within which to designate specific freedom parks as provided under B.P. No. 880. If, after that period, no such parks are so identified in accordance with Section 15 of the law, *all* public parks and plazas of the municipality or city concerned shall in effect be deemed freedom parks; no prior permit of whatever kind shall be required to hold an assembly therein. The only requirement will be written notices to the police and the mayor's office to allow proper coordination and orderly activities.

**FREEDOM
OF INFORMATION**

Right to information → public right

Access to information → citizens only

Access → Not available to aliens

Art. III, Sec. 7

The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

Baldoza vs. Dimaano, 71 SCRA 14 (1976)

After a careful evaluation of the recommendation, we find that the respondent did not act arbitrarily in the premises. As found by the Investigating Judge, the respondent allowed the complainant to open and view the docket books of respondent certain conditions and under his control and supervision. It has not been shown that the rules and conditions imposed by the respondent were unreasonable. The access to public records predicated on the right of the people to acquire information on matters of public concern. Undoubtedly in a democracy, the public has a legitimate interest in matters of social and political significance. In an earlier case,¹ this Court held that mandamus would lie to compel the Secretary of Justice and the Register of Deeds to examine the records of the latter office. Predicating the right to examine the records on statutory provisions, and to a certain degree by general principles of democratic institutions, this Court stated that while the Register of Deeds has discretion to exercise as to the manner in which persons desiring to inspect, examine or copy the records in his office may exercise their rights, such power does not carry with it authority to prohibit.

Tañada vs. Tuvera, G.R. No. L-63915, 24 April 1985

The very first clause of Section I of Commonwealth Act 638 reads: "There shall be published in the Official Gazette" The word "shall" used therein imposes upon respondent officials an imperative duty. That duty must be enforced if the Constitutional right of the people to be informed on matters of public concern is to be given substance and reality. The law itself makes a list of what should be published in the Official Gazette. Such listing, to our mind, leaves respondents with no discretion whatsoever as to what must be included or excluded from such publication.

Valmonte vs. Belmonte, 170 SCRA 256 (1989)

The right to information is an essential premise of a meaningful right to speech and expression. But this is not to say that the right to information is merely an adjunct of and therefore restricted in application by the exercise of the freedoms of speech and of the press. Far from it, the right to information goes hand-in-hand with the constitutional policies of *full public disclosure and honesty in the public service*. It is meant to enhance the widening role of the citizenry in governmental decision-making as well as in checking abuse in government.

Legaspi vs. CSC, 150 SCRA 530 (1987)

But the constitutional guarantee to information on matters of public concern is not absolute. It does not open every door to any and all information. Under the Constitution, access to official records, papers, etc., are "subject to limitations as may be provided by law" (Art. III, Sec. 7, second sentence). The law may therefore exempt certain types of information from public scrutiny, such as those affecting national security (Journal No. 90, September 23, 1986, p. 10; and Journal No. 91, September 24, 1986, p. 32, 1986 Constitutional Commission). It follows that, in every case, the availability of access to a particular public record must be circumscribed by the nature of the information sought, i.e., (a) being of public concern or one that involves public interest, and, (b) not being exempted by law from the operation of the constitutional guarantee. The threshold question is, therefore, whether or not the information sought is of public interest or public concern.

Garcia vs. BOI, 177 SCRA 374 (1989)

[P]etition for *certiorari* is granted. The Board of Investments is ordered: (1) to publish the amended application for registration of the Bataan Petrochemical Corporation, (2) to allow the petitioner to have access to its records on the original and amended applications for registration, as a petrochemical manufacturer, of the respondent Bataan Petrochemical Corporation, excluding, however, privileged papers containing its trade secrets and other business and financial information, and (3) to set for hearing the petitioner's opposition to the amended application in order that he may present at such hearing all the evidence in his possession in support of his opposition to the transfer of the site of the BPC petrochemical plant to Batangas province.

**FREEDOM
OF ASSOCIATION**

Art. III, Sec. 8

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

**Art. IX (C), Sec. 2 (5)**

Section 2. The Commission on Elections shall exercise the following powers and functions:

5. Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.

Financial contributions from foreign governments and their agencies to political parties, organizations, coalitions, or candidates related to elections, constitute interference in national affairs, and, when accepted, shall be an additional ground for the cancellation of their registration with the Commission, in addition to other penalties that may be prescribed by law.

Art. XIII, Sec. 3, Par. 2

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

Occena vs. COMELEC, 127 SCRA 404 (1984)

Outside of the cases where the Constitution clearly requires that the selection of particular officials shall be thru the ballot and with the participation of political parties, the lawmaking body, in the exercise of its power to enact laws regulating the conduct of elections, may in our view ban or restrict partisan elections. We are not aware of any constitutional provision expressly or impliedly requiring that barangay officials shall be elected thru partisan electoral process. Indeed, it would be within the competence of the National Assembly to prescribe that the barangay captain and councilmen, rather than elected, shall be appointed by designated officials such as the City or Municipal Mayors or Provincial Governors. If barangay officials could thus be made appointive, we do not think it would be constitutionally obnoxious to prescribe that they shall be elective, but without political party or partisan involvement in the process in order to promote objectivity and lack of partisan bias in the performance of their duties that are better discharged in the absence of political attachment.

In re Edillon, 84 SCRA 554 (1978)

To compel a lawyer to be a member of the Integrated Bar is not violative of his constitutional freedom to associate. Integration does not make a lawyer a member of any group of which he is not already a member. He became a member of the Bar when he passed the Bar examinations. All that integration actually does is to provide an official national organization for the well-defined but unorganized and incohesive group of which every lawyer is a ready a member. Bar integration does not compel the lawyer to associate with anyone. He is free to attend or not attend the meetings of his Integrated Bar Chapter or vote or refuse to vote in its elections as he chooses. The only compulsion to which he is subjected is the payment of annual dues. The Supreme Court, in order to further the State's legitimate interest in elevating the quality of professional legal services, may require that the cost of improving the profession in this fashion be shared by the subjects and beneficiaries of the regulatory program — the lawyers.

Rotary Int'l v. Rotary Club, 481 U.S. 537 (1987)

Application of the Act to local Rotary Clubs does not interfere unduly with club members' freedom of private association. In determining whether a particular association is sufficiently intimate or private to warrant constitutional protection, consideration must be given to factors such as size, purpose, selectivity, and whether others are excluded from critical aspects of the relationship. Here, the relationship among Rotary Club members does not warrant protection, in light of the potentially large size of local clubs, the high turnover rate among club members, the inclusive nature of each club's membership, the public purposes behind clubs' service activities, and the fact that the clubs encourage the participation of strangers in, and welcome media coverage of, many of their central activities.

LIBERTY OF ABODE AND TRAVEL

Art. III, Sec. 6

Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

Salonga vs. Hermoso, 97 SCRA 121 (1980)

The necessity for any ruling was thus obviated. Nonetheless, in view of the likelihood that in the future this Court may be faced again with a situation like the present which takes up its time and energy needlessly, it is desirable that respondent Travel Processing Center should exercise the utmost care to avoid the impression that certain citizens desirous of exercising their constitutional right to travel could be subjected to inconvenience or annoyance. In the address of President and Prime Minister Ferdinand E. Marcos before the American Newspaper Publishers Association last Tuesday April 22, 1980, emphasized anew the respect accorded constitutional rights. The freedom to travel is certainly one of the most cherished. He cited with approval the ringing affirmation of Willoughby, who, as he noted was "partial to the claims of liberty." Burdick and Willis, both of whom were equally convinced that there be no erosion to human rights even in times of martial law, likewise received from President Marcos the accolade of his approval. It would appear, therefore, that in case of doubt of the Officer-in-Charge of the Travel Processing Center, the view of General Fabian Ver should immediately be sought. It goes without saying that the petition for such certificate of eligibility to travel be filed at the earliest opportunity to facilitate the granting thereof and preclude any disclaimer as to the person desiring to travel being in any way responsible for any delay.

Cauca vs. Salazar, 82 Phil. 851 (1940)

An employment agency, regardless of the amount it may advance to a prospective employee or maid, has absolutely no power to curtail her freedom of movement. The fact that no physical force has been exerted to keep her in the house of the respondent does not make less real the deprivation of her personal freedom of movement, freedom to transfer from one place to another, from to choose one's residence. Freedom may be lost due to external moral compulsion, to founded or groundless fear, to erroneous belief in the existence of the will. If the actual effect of such psychological spell is to place a person at the mercy of another, the victim is entitled to the protection of courts of justice as much as the individual who is illegally deprived of liberty by deprived or physical coercion.



Manotoc vs. CA. 142 SCRA 149 (1986)

As petitioner has failed to satisfy the trial courts and the appellate court of the urgency of his travel, the duration thereof, as well as the consent of his surety to the proposed travel, We find no abuse of judicial discretion in their having denied petitioner's motion for permission to leave the country, in much the same way, albeit with contrary results, that We found no reversible error to have been committed by the appellate court in allowing Shepherd to leave the country after it had satisfied itself that she would comply with the conditions of her bail bond.

Marcos vs. Manglapus, 177 SCRA 668 (1989)

It must be emphasized that the individual right involved is *not* the right to travel from the Philippines to other countries or within the Philippines. These are what the right to travel would normally connote. Essentially, the right involved is the right to return to one's country, a totally distinct right under international law, independent from although related to the right to travel. Thus, the Universal Declaration of Humans Rights and the International Covenant on Civil and Political Rights treat the right to freedom of movement and abode within the territory of a state, the right to leave a country, and the right to enter one's country as separate and distinct rights. The Declaration speaks of the "right to freedom of movement and residence within the borders of each state" [Art. 13(l)] separately from the "right to leave any country, including his own, and to return to his country." [Art. 13(2).] On the other hand, the Covenant guarantees the "right to liberty of movement and freedom to choose his residence" [Art. 12(l)] and the right to "be free to leave any country, including his own." [Art. 12(2)] which rights may be restricted by such laws as "are necessary to protect national security, public order, public health or morals or enter qqqs own country" of which one cannot be "arbitrarily deprived." [Art. 12(4).] It would therefore be inappropriate to construe the limitations to the right to return to one's country in the same context as those pertaining to the liberty of abode and the right to travel.

Silverio vs. CA, G.R. no. 94284 April 8, 1991

Petitioner is facing a criminal charge. He has posted bail but has violated the conditions thereof by failing to appear before the Court when required. Warrants for his arrest have been issued. Those orders and processes would be rendered nugatory if an accused were to be allowed to leave or to remain, at his pleasure, outside the territorial confines of the country. Holding an accused in a criminal case within the reach of the Courts by preventing his departure from the Philippines must be considered as a valid restriction on his right to travel so that he may be dealt with in accordance with law. The offended party in any criminal proceeding is the People of the Philippines. It is to their best interest that criminal prosecutions should run their course and proceed to finality without undue delay, with an accused holding himself amenable at all times to Court Orders and processes.

Lorenzo v. Director of Health, 50 Phil 595 (1927)

Judicial notice will be taken of the fact that leprosy is commonly believed to be an infectious disease tending to cause one afflicted with it to be shunned and excluded from society, and that compulsory segregation of lepers as a means of preventing the spread of the disease of supported by high scientific authority (See Osler and McCrea, The Principles and Practice of Medicine, 9th ed., p. 153.) Upon this view, laws for the segregation of lepers have been provided the world over. Similarly, the local legislature has regarded leprosy as a contagious disease and has authorized measures to control the dread scourge. To that

forum must the petitioner go to reopen the question. We are frank to say that it would require a much stronger case than the one at bar for us to sanction admitting the testimony of expert or other witnesses to show that a law of this character may possibly violate some constitutional provision.

**FREEDOM
OF RELIGION**

Art. III, Sec. 5

Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

Non-establishment Clause

Operation of Secretarian schools

Art. XIV, Sec. 4(2)

Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty per centum of the capital of which is owned by such citizens. The Congress may, however, require increased Filipino equity participation in all educational institutions. The control and administration of educational institutions shall be vested in citizens of the Philippines.

Religions instruction in Public schools

Art. XIV Sec. 3(3)

At the option expressed in writing by the parents or guardians, religion shall be allowed to be taught to their children or wards in public elementary and high schools within the regular class hours by instructors designated or approved by the religious authorities of the religion to which the children or wards belong, without additional cost to the Government.

Civil Code, Art. 359(1)

Article 359. The government promotes the full growth of the faculties of every child. For this purpose, the government will establish, whenever possible:
(1) Schools in every barrio, municipality and city where optional religious instruction shall be taught as part of the curriculum at the option of the parent or guardian;

x x x

Anti-evolution laws

Epperson v. Arkansas, 33 U. S. 27 (1968)

Appellant Epperson, an Arkansas public school teacher, brought this action for declaratory and injunctive relief challenging the constitutionality of Arkansas' "anti-evolution" statute. That statute makes it unlawful for a teacher in any state supported school or university to teach or to use a textbook that teaches "that mankind ascended or descended from a lower order of animals." The State Chancery Court held the statute an abridgment of free speech violating the First and Fourteenth Amendments. The State Supreme Court, expressing no opinion as to whether the statute prohibits "explanation" of the theory or only teaching that the theory is true, reversed the Chancery Court. In a two-sentence opinion, it sustained the statute as within the State's power to specify the public school curriculum.



Held: The statute violates the Fourteenth Amendment, which embraces the First Amendment's prohibition of state laws respecting an establishment of religion.

- (a) The Court does not decide whether the statute is unconstitutionally vague, since, whether it is construed to prohibit explaining the Darwinian theory or teaching that it is true, the law conflicts with the Establishment Clause.
- (b) The sole reason for the Arkansas law is that a particular religious group considers the evolution theory to conflict with the account of the origin of man set forth in the Book of Genesis.
- (c) The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.
- (d) A State's right to prescribe the public school curriculum does not include the right to prohibit teaching a scientific theory or doctrine for reasons that run counter to the principles of the First Amendment.
- (e) The Arkansas law is not a manifestation of religious neutrality.

Prayer and Bible reading in public schools

Engel v. Vitale, 370 U. S. 421 (1962)

Because of the prohibition of the First Amendment against the enactment of any law "respecting an establishment of religion," which is made applicable to the States by the Fourteenth Amendment, state officials may not compose an official state prayer and require that it be recited in the public schools of the State at the beginning of each school day -- even if the prayer is denominationally neutral and pupils who wish to do so may remain silent or be excused from the room while the prayer is being recited.

Abington Schools Dist. v. Schempp, 374 U. S. 203 (1973)

Because of the prohibition of the First Amendment against the enactment by Congress of any law "respecting an establishment of religion," which is made applicable to the States by the Fourteenth Amendment, no state law or school board may require that passages from the Bible be read or that the Lord's Prayer be recited in the public schools of a State at the beginning of each school day -- even if individual students may be excused from attending or participating in such exercises upon written request of their parents.

Stone v. Graham, 449 U.S. 39 (1980)

A Kentucky statute requiring the posting of a copy of the Ten Commandments, purchased with private contributions, on the wall of each public school classroom in the State has no secular legislative purpose, and therefore is unconstitutional as violating the Establishment Clause of the First Amendment. While the state legislature required the notation in small print at the bottom of each display that "[t]he secular application of the Ten Commandments is clearly seen in its adoption as the fundamental legal code of Western Civilization and the Common Law of the United States," such an "avowed" secular purpose is not sufficient to avoid conflict with the First Amendment. The preeminent purpose of posting the Ten Commandments, which do not confine themselves to arguably secular matters, is plainly religious in nature, and the posting serves no constitutional educational function. That the posted copies are financed by voluntary private contributions is immaterial, for the mere posting under the auspices of the legislature provides the official

support of the state government that the Establishment Clause prohibits. Nor is it significant that the Ten Commandments are merely posted, rather than read aloud, for it is no defense to urge that the religious practices may be relatively minor encroachments on the First Amendment.

Tax exemption

Art. VI, Sec. 28 (3)

Charitable institutions, churches and personages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation.

Public aid to religion

Art. VI, Sec. 29 (2)

No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.

Aglipay v. Ruiz, 64 Phil. 201 (1937)

We are much impressed with the vehement appeal of counsel for the petitioner to maintain inviolate the complete separation of church and state and curb any attempt to infringe by indirection a constitutional inhibition. Indeed, in the Philippines, once the scene of religious intolerance and prescription, care should be taken that at this stage of our political development nothing is done by the Government or its officials that may lead to the belief that the Government is taking sides or favoring a particular religious sect or institution. But, upon very serious reflection, examination of Act No. 4052, and scrutiny of the attending circumstances, we have come to the conclusion that there has been no constitutional infraction in the case at bar, Act No. 4052 grants the Director of Posts, with the approval of the Secretary of Public Works and Communications, discretion to misuse postage stamps with new designs "as often as may be deemed advantageous to the Government." Even if we were to assume that these officials made use of a poor judgment in issuing and selling the postage stamps in question still, the case of the petitioner would fail to take in weight. Between the exercise of a poor judgment and the unconstitutionality of the step taken, a gap exists which is yet to be filled to justify the court in setting aside the official act assailed as coming within a constitutional inhibition.

Mueller v. Allen, 463 U.S. 388 (1983)

A Minnesota statute (§ 290.09, subd. 22) allows state taxpayers, in computing their state income tax, to deduct expenses incurred in providing "tuition, textbooks and transportation" for their children attending an elementary or secondary school. Petitioner Minnesota taxpayers brought suit in Federal District Court against respondent Minnesota Commissioner of Revenue and respondent parents who had taken the tax deduction for expenses incurred in sending their children to parochial schools, claiming that § 290.09, subd. 22, violates the Establishment Clause of the First Amendment by providing financial assistance to sectarian institutions. The District Court granted summary judgment for respondents, holding that the statute is neutral on its face and in its application and does not have a primary effect of



either advancing or inhibiting religion. The Court of Appeals affirmed.

Held: Section 290.09, subd. 22, does not violate the Establishment Clause, but satisfies all elements of the "three-part" test laid down in *Lemon v. Kurtzman*, 403 U. S. 602, that must be met for such a statute to be upheld under the Clause.

- (a) The tax deduction in question has the secular purpose of ensuring that the State's citizenry is well educated, as well as of assuring the continued financial health of private schools, both sectarian and nonsectarian.
- (b) The deduction does not have the primary effect of advancing the sectarian aims of nonpublic schools. It is only one of many deductions -- such as those for medical expenses and charitable contributions -- available under the Minnesota tax laws; is available for educational expenses incurred by all parents, whether their children attend public schools or private sectarian or nonsectarian private schools, *Committee for Public Education v. Nyquist*, 413 U. S. 756, distinguished; and provides aid to parochial schools only as a result of decisions of individual parents, rather than directly from the State to the schools themselves. The Establishment Clause's historic purposes do not encompass the sort of attenuated financial benefit that eventually flows to parochial schools from the neutrally available tax benefit at issue. The fact that, notwithstanding § 290.09, subd. 22's facial neutrality, a particular annual statistical analysis shows that the statute's application primarily benefits religious institutions does not provide the certainty needed to determine the statute's constitutionality. Moreover, private schools, and parents paying for their children to attend these schools, make special contributions to the areas in which the schools operate.
- (c) Section 290.09, subd. 22, does not "excessively entangle" the State in religion. The fact that state officials must determine whether particular textbooks qualify for the tax deduction and must disallow deductions for textbooks used in teaching religious doctrines is an insufficient basis for finding such entanglement.

Lemon v. Kurtzman, 403 U.S. 602 [1971]

In the absence of precisely stated constitutional prohibitions, we must draw lines with reference to the three main evils against which the Establishment Clause was intended to afford protection: "sponsorship, financial support, and active involvement of the sovereign in religious activity."

Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. **First**, the statute must have a secular legislative purpose; **second**, its principal or primary effect must be one that neither advances nor inhibits religion, **finally**, the statute must not foster "an excessive government entanglement with religion."

N.B. the above doctrinal ruling provides for the so called Lemon (Three-Part) Test.

Wallace v. Jaffree, 472 U.S. 38 [1985].

In proceedings instituted in Federal District Court, appellees challenged the constitutionality of, *inter alia*, a 1981 Alabama Statute (§ 16-1-20.1) authorizing a 1-minute period of silence

in all public schools "for meditation or voluntary prayer." Although finding that § 16-1-20.1 was an effort to encourage a religious activity, the District Court ultimately held that the Establishment Clause of the First Amendment does not prohibit a State from establishing a religion. The Court of Appeals reversed.

Held: Section 16-1-20.1 is a law respecting the establishment of religion, and thus violates the First Amendment.

- (a) The proposition that the several States have no greater power to restrain the individual freedoms protected by the First Amendment than does Congress is firmly embedded in constitutional jurisprudence. The First Amendment was adopted to curtail Congress' power to interfere with the individual's freedom to believe, to worship, and to express himself in accordance with the dictates of his own conscience, and the Fourteenth Amendment imposed the same substantive limitations on the States' power to legislate. The individual's freedom to choose his own creed is the counterpart of his right to refrain from accepting the creed established by the majority. Moreover, the individual freedom of conscience protected by the First Amendment embraces the right to select any religious faith or none at all.
- (b) One of the well-established criteria for determining the constitutionality of a statute under the Establishment Clause is that the statute must have a secular legislative purpose. *Lemon v. Kurtzman*, 403 U. S. 602, 403 U. S. 612-613. The First Amendment requires that a statute must be invalidated if it is entirely motivated by a purpose to advance religion.

The record here not only establishes that § 16-1-20.1's purpose was to endorse religion, it also reveals that the enactment of the statute was not motivated by any clearly secular purpose. In particular, the statements of § 16-1-20.1's sponsor in the legislative record and in his testimony before the District Court indicate that the legislation was solely an "effort to return voluntary prayer" to the public schools. Moreover, such un rebutted evidence of legislative intent is confirmed by a consideration of the relationship between § 16-1-20.1 and two other Alabama statutes -- one of which, enacted in 1982 as a sequel to § 16-1-20.1, authorized teachers to lead "willing students" in a prescribed prayer, and the other of which, enacted in 1978 as § 16-1-20.1's predecessor, authorized a period of silence "for meditation" only. The State's endorsement, by enactment of § 16-1-20.1, of prayer activities at the beginning of each schoolday is not consistent with the established principle that the government must pursue a course of complete neutrality toward religion.

Islamic Dawah Council of the Phils. Inc. v. Executive Secretary, G.R. No. 153888, July 9, 2003

Through the laws on food safety and quality, therefore, the State *indirectly* aids Muslim consumers in differentiating food from non-food products. The NMIC guarantees that the meat sold in the market has been thoroughly inspected and fit for consumption. Meanwhile, BFD ensures that food products are properly categorized and have passed safety and quality standards. Then, through the labeling provisions enforced by the DTI, Muslim consumers are adequately apprised of the products that contain substances or ingredients that, according to their Islamic beliefs, are not fit for human intake. These are the non-secular steps put in place by the State to ensure that the Muslim consumers right to health is protected. The halal certifications issued by petitioner and similar organizations come forward as the *official religious approval* of a food product fit for Muslim consumption.



We do not share respondents apprehension that the absence of a central administrative body to regulate halal certifications might give rise to schemers who, for profit, will issue certifications for products that are not actually halal. Aside from the fact that Muslim consumers can actually verify through the labels whether a product contains non-food substances, we believe that they are discerning enough to know who the reliable and competent certifying organizations in their community are. Before purchasing a product, they can easily avert this perceived evil by a diligent inquiry on the reliability of the concerned certifying organization.

(Petition was GRANTED and Executive Order 46, s. 2001, was declared NULL AND VOID.)

Intramural religious disputes

Fonacier v. CA, 96 Phil. 417 (1955)

We can hardly add to the above findings to which we agree. We wish only to make the following observations. The complaint in this case was filed on February 9, 1946 raising as the main issue whether petitioner should still be regarded as legitimate Supreme Bishop of the Iglesia Filipina Independiente or whether he has been properly replaced by Bishop Gerardo Bayaca. This has been recognized by petitioner himself who, in the brief he submitted to the Court of Appeals, maintained that the only issue was, "Who is the true and legitimate Obispo Maximo of the IFI?" The alleged abjuration of respondent De los Reyes and Bishops Bayaca and Aguilar and the alleged restatement of articles of religion and doctrinal differences between the new and original constitutions of the church were never alleged directly or indirectly in the pleadings of the parties. These questions were raised for the first time on January 10, 1948 when petitioner filed a supplementary answer alleging that on August, 1947, the respondent "formally joined the Protestant Episcopal Church of America." The alleged doctrinal changes and abjuration took place therefore after this case was filed in court, and after the division of the church into two groups had occurred and consequently, they could not have been the cause of the division. Under these circumstances, it would seem clear that the allegation regarding the alleged changes in doctrinal matters or in matters of faith incorporated in the constitutions of the church are entirely irrelevant in the present case. And, on this matter, this observation of the Court of Appeals comes in very fittingly: "The amendments of the constitution, restatement of articles of religion, and abandonment of faith or abjuration alleged by appellant, having to do with faith, practice, doctrine, form of worship, ecclesiastical law, custom and rule of a church having reference to the power of excluding from the church those allegedly unworthy of membership, are unquestionably ecclesiastical matters which are outside the province of the civil courts." (45 Am. Jur., 748-752, 755.) To this we agree.

Free Exercise Clause

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

The Establishment and Free Exercise Clauses, it should be noted, were not designed to serve contradictory purposes. They have a single goal to promote freedom of individual religious beliefs and practices. In simplest terms, the Free Exercise Clause prohibits government from inhibiting religious beliefs with penalties for religious beliefs and practice, while the Establishment Clause prohibits government from inhibiting religious belief with rewards for

religious beliefs and practices. In other words, the two religion clauses were intended to deny government the power to use either the carrot or the stick to influence individual religious beliefs and practices.

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[E]ven assuming that the OSG has proved a compelling state interest, it has to further demonstrate that the state has used the least intrusive means possible so that the free exercise is not infringed any more than necessary to achieve the legitimate goal of the state, i.e., it has chosen a way to achieve its legitimate state end that imposes as little as possible on religious liberties. Again, the Solicitor General utterly failed to prove this element of the test. Other than the two documents offered as cited above which established the sincerity of respondents religious belief and the fact that the agreement was an internal arrangement within respondents congregation, **no iota of evidence was offered. In fact, the records are bereft of even a feeble attempt to procure any such evidence to show that the means the state adopted in pursuing this compelling interest is the least restrictive to respondents religious freedom.**

Thus, we find that **in this particular case and under these distinct circumstances**, respondent Escritors conjugal arrangement cannot be penalized as she has made out a case for exemption from the law based on her fundamental right to freedom of religion. The Court recognizes that state interests must be upheld in order that freedoms - including religious freedom - may be enjoyed. In the area of religious exercise as a preferred freedom, however, man stands accountable to an authority higher than the state, and so the state interest sought to be upheld must be so compelling that its violation will erode the very fabric of the state that will also protect the freedom. In the absence of a showing that such state interest exists, man must be allowed to subscribe to the Infinite.

Flag salute

West Virginia Board of Education v. Barnette, 319 U. S. 624 (1943)

- State action against which the Fourteenth Amendment protects includes action by a state board of education.
- The action of a State in making it compulsory for children in the public schools to salute the flag and pledge allegiance -- by extending the right arm, palm upward, and declaring, "I pledge allegiance to the flag of the United States of America and to the Republic for which it stands; one Nation, indivisible, with liberty and justice for all" -- violates the First and Fourteenth Amendments. So *held* as applied to children who were expelled for refusal to comply, and whose absence thereby became "unlawful," subjecting them and their parents or guardians to punishment.
- That those who refused compliance did so on religious grounds does not control the decision of this question, and it is unnecessary to inquire into the sincerity of their views.
- Under the Federal Constitution, compulsion as here employed is not a permissible means of achieving "national unity."

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If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith



therein. If there are any circumstances which permit an exception, they do not now occur to us.

We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power, and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.

Ebralinag v. Division Superintendent, G.R. No. 96770, March 1, 1993

We hold that a similar exemption may be accorded to the Jehovah's Witnesses with regard to the observance of the flag ceremony out of respect for their religious beliefs, however "bizarre" those beliefs may seem to others. Nevertheless, their right not to participate in the flag ceremony does not give them a right to disrupt such patriotic exercises. Paraphrasing the warning cited by this Court in *Non vs. Dames II*, 185 SCRA 523, 535, while the highest regard must be afforded their right to the free exercise of their religion, "this should not be taken to mean that school authorities are powerless to discipline them" if they should commit breaches of the peace by actions that offend the sensibilities, both religious and patriotic, of other persons. If they quietly stand at attention during the flag ceremony while their classmates and teachers salute the flag, sing the national anthem and recite the patriotic pledge, we do not see how such conduct may possibly disturb the peace, or pose "a grave and present danger of a serious evil to public safety, public morals, public health or any other legitimate public interest that the State has a right (and duty) to prevent (*German vs. Barangan*, 135 SCRA 514, 517).

Freedom to propagate religious doctrines

American Bible Society v. City of Manila, 181 Phil. 386 (1957)

Nor could dissemination of religious information be conditioned upon the approval of an official or manager even if the town were owned by a corporation as held in the case of *Marsh vs. State of Alabama* (326 U.S. 501), or by the United States itself as held in the case of *Tucker vs. Texas* (326 U.S. 517). In the former case the Supreme Court expressed the opinion that the right to enjoy freedom of the press and religion occupies a preferred position as against the constitutional right of property owners.

"When we balance the constitutional rights of owners of property against those of the people to enjoy freedom of press and religion, as we must here, we remain mindful of the fact that the latter occupy a preferred position. . . . In our view the circumstance that the property rights to the premises where the deprivation of property here involved, took place, were held by others than the public, is not sufficient to justify the State's permitting a corporation to govern a community of citizens so as to restrict their fundamental liberties and the enforcement of such restraint by the application of a State statute." (*Tañada and Fernando on the Constitution of the Philippines*, Vol. 1, 4th ed., p. 304-306).

Swaggart Ministries v. Cal Bd. Of Equalization, 493 U.S. 378 (1990)

California law requires retailers to pay a 6% sales tax on in-state sales of tangible personal property and to collect from state residents a 6% use tax on such property purchased outside the State. During the tax period in question,

appellant religious organization, which is incorporated in Louisiana, sold a variety of religious materials at "evangelistic crusades" within California and made mail-order sales of other such materials to California residents. Appellee State Board of Equalization (Board) audited appellant and advised it that it should register as a seller as required by state law and report and pay sales and use taxes on the aforementioned sales. Appellant paid the taxes and the Board ruled against it on its petitions for redetermination and refund, rejecting its contention that the tax on religious materials violated the First Amendment. The state trial court entered judgment for the Board in appellant's refund suit, the State Court of Appeal affirmed, and the State Supreme Court denied discretionary review.

Held:

1. California's imposition of sales and use tax liability on appellant's sales of religious materials does not contravene the Religion Clauses of the First Amendment.

(a) The collection and payment of the tax imposes no constitutionally significant burden on appellant's religious practices or beliefs under the Free Exercise Clause, which accordingly does not require the State to grant appellant a tax exemption. Appellant misreads *Murdock v. Pennsylvania*, 319 U. S. 105, and *Follett v. McCormick*, 321 U. S. 573, which, although holding flat license taxes on commercial sales unconstitutional with regard to the evangelical distribution of religious materials, nevertheless specifically stated that religious activity may constitutionally be subjected to a generally applicable income or property tax akin to the California tax at issue. Those cases apply only where a flat license tax operates as a prior restraint on the free exercise of religious belief. As such, they do not invalidate California's generally applicable sales and use tax, which is not a flat tax, represents only a small fraction of any sale, and applies neutrally to all relevant sales regardless of the nature of the seller or purchaser, so that there is no danger that appellant's religious activity is being singled out for special and burdensome treatment. Moreover, the concern in *Murdock* and *Follett* that flat license taxes operate as a precondition to the exercise of evangelistic activity is not present here, because the statutory registration requirement and the tax itself do not act as prior restraints -- no fee is charged for registering, the tax is due regardless of preregistration, and the tax is not imposed as a precondition of disseminating the message. Furthermore, since appellant argues that the exercise of its beliefs is unconstitutionally burdened by the reduction in its income resulting from the presumably lower demand for its wares (caused by the marginally higher price generated by the tax) and from the costs associated with administering the tax, its free exercise claim is in significant tension with *Hernandez v. Commissioner*, 490 U. S. 680, 490 U. S. 699, which made clear that, to the extent that imposition of a generally applicable tax merely decreases the amount of money appellant has to spend on its religious activities, any such burden is not constitutionally significant because it is no different from that imposed by other generally applicable laws and regulations to which religious organizations must adhere. While a more onerous tax rate than California's, even if generally applicable, might effectively choke off an adherent's religious practices, that situation is not before, or considered by, this Court.

(b) Application of the California tax to appellant's sale of religious materials does not violate the Establishment Clause by fostering an excessive governmental entanglement with religion. The evidence of administrative entanglement is thin, since the Court of Appeal expressly found that, in light of



appellant's sophisticated accounting staff and computerized accounting methods, the record did not support its assertion that the collection and payment of the tax impose severe accounting burdens on it. Moreover, although collection and payment will require some contact between appellant and the State, generally applicable administrative and recordkeeping burdens may be imposed on religious organizations without running afoul of the Clause. See e.g., *Hernandez, supra*, at 490 U. S. 696-697. The fact that appellant must bear the cost of collecting and remitting the tax -- even if the financial burden may vary from religion to religion -- does not enmesh the government in religious affairs, since the statutory scheme requires neither the involvement of state employees in, nor on-site continuing inspection of, appellant's day-to-day operations. Most significantly, the imposition of the tax without an exemption for appellant does not require the State to inquire into the religious content of the items sold or the religious motivation for selling or purchasing them, since they are subject to the tax regardless of content or motive.

2. The merits of appellant's Commerce and Due Process Clause claim are not properly before, and will not be reached by, this Court, since both the trial court and the Court of Appeal ruled that the claim was procedurally barred because it was not presented to the Board as required by state law. See, e.g., *Michigan v. Long*, 463 U. S. 1032, 463 U. S. 1041-1042. Appellant has failed to substantiate any claim that the California courts in general apply the procedural bar rule and a pertinent exception in an irregular, arbitrary, or inconsistent manner.

Exemption from Union Shop

Victoriano v. Elizalde Rope Workers Union, 59 SCRA 54 (1974)

We believe that in enacting Republic Act No. 3350, Congress acted consistently with the spirit of the constitutional provision. It acted merely to relieve the exercise of religion, by certain persons, of a burden that is imposed by union security agreements. It was Congress itself that imposed that burden when it enacted the Industrial Peace Act (Republic Act 875), and, certainly, Congress, if it so deems advisable, could take away the same burden. It is certain that not every conscience can be accommodated by all the laws of the land; but when general laws conflict with scruples of conscience, exemptions ought to be granted unless some "compelling state interest" intervenes. In the instant case, We see no such compelling state interest to withhold exemption.

Disqualification for local government officials

Pamil v. Teleron, 86 SCRA 413 (1978)

It would be an unjustified departure from a settled principle of the applicable construction of the provision on what laws remain operative after 1935 if the plea of petitioner in this case were to be heeded. The challenged Administrative Code provision, certainly insofar as it declares ineligible ecclesiastics to any elective or appointive office, is, on its face, inconsistent with the religious freedom guaranteed by the Constitution. To so exclude them is to impose a religious test. *Torcaso v. Watkins* an American Supreme Court decision, has persuasive weight. What was there involved was the validity of a provision in the Maryland Constitution prescribing that "no religious test ought ever to be required

as a disqualification for any office or profit or trust in this State, other than a declaration of belief in the existence of God ..." Such a constitutional requirement was assailed as contrary to the First Amendment of the United States Constitution by an appointee to the office of notary public in Maryland, who was refused a commission as he would not declare a belief in God. He failed in the Maryland Court of Appeals but prevailed in the United States Supreme Court, which reversed the state court decision. It could not have been otherwise. As emphatically declared by Justice Black: "this Maryland religious test for public office unconstitutionally invades the appellant's freedom of belief and religion and therefore cannot be enforced against him."

The analogy appears to be obvious. In that case, it was lack of belief in God that was a disqualification. Here being an ecclesiastic and therefore professing a religious faith suffices to disqualify for a public office. There is thus an incompatibility between the Administrative Code provision relied upon by petitioner and an express constitutional mandate. It is not a valid argument against this conclusion to assert that under the Philippine Autonomy Act of 1916, there was such a prohibition against a religious test, and yet such a ban on holding a municipal position had not been nullified. It suffices to answer that no question was raised as to its validity. In *Vilar v. Paraiso*, decided under the 1935 Constitution, it was assumed that there was no conflict with the fundamental law.

Religious Test

Torcaso v. Watkins 367 U.S. 488 (1961)

Appellant was appointed by the Governor of Maryland to the office of Notary Public, but he was denied a commission because he would not declare his belief in God, as required by the Maryland Constitution. Claiming that this requirement violated his rights under the First and Fourteenth Amendments, he sued in a state court to compel issuance of his commission, but relief was denied. The State Court of Appeals affirmed, holding that the state constitutional provision is self-executing, without need for implementing legislation, and requires declaration of a belief in God as a qualification for office.

Hold: This Maryland test for public office cannot be enforced against appellant, because it unconstitutionally invades his freedom of belief and religion guaranteed by the First Amendment and protected by the Fourteenth Amendment from infringement by the States.

GOOD LUCK!!!

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